

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

21.08.2013

OA No. 504/2013

Mr. V.D. Sharma, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents.

Heard learned counsel for the parties.

The OA is disposed of by a separate order.

Anil Kumar
(Anil Kumar)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 504/2013

Jaipur, the 21st day of August, 2013

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Ram Kishan Meena son of Late Shri Bhoori Lal Meena, aged about 55 years, resident of V&P Tholai Via Andhi, Jaipur. Presently working as Senior Technical Assistant, Registrar of Companies Cum official Liquidator, Rajasthan, Jaipur.

... Applicant

(By Advocate: Mr. V.D. Sharma)

Versus

1. Union of India through Secretary, Ministry of Finance, New Delhi.
2. Union of India through Secretary, Ministry of Corporate Affairs, Shastri Bhawan, Dr. Rajendra Prasad Road, New Delhi.
3. Regional Director, North Western Region, ROC Bhawan, Narayanpura, Ahmedabad.
4. Registrar of Companies-Cum-Official Liquidator "Corporate Bhawan", G/6-7 Residential Area, Civil Line, Jaipur.
5. K.C. Meena, Official Liquidator, Jodhpur, Camp: "Corporate Bhawan", G/6-7, Residential Area, Civil Line, Jaipur.
6. Om Prakash Bhadania, STA, Office of the Official Liquidator, Jivabhai Chambers, Ashram Road, Navrangpura, Ahmedabad.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER (ORAL)

The applicant has filed this OA praying for the following reliefs:-

- "(i) That the order dated 04.07.2013 and 05.07.2013 issued by respondent no. 3 may kindly be quashed and set aside qua the applicant.

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- (ii) That any other beneficial orders or directions which this Hon'ble Tribunal deems just and proper in the facts and circumstances of the case be kindly passed in favour of the applicant.
- (iii) Costs be quantified in favour of the applicant."

2. Vide office order dated 04.07.2013 (Annexure A/1), the applicant has been transferred from ROC-cum-OL, Jaipur to OL, Ahmedabad. Vide office order dated 05.07.2013 (Annexure A/2), the applicant has been relieved of his duties in the afternoon of 05.07.2013 in pursuance of his transfer order dated 04.07.2013. Aggrieved by these orders, the applicant has filed the present OA.

3. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant is presently working on the post of STA in the office OL, Jodhpur.

4. That vide office Memorandum dated 04.10.2012 (Annexure A/3), RD Ahmedabad was instructed to post one STA and one JTA with Shri K.C. Meena on the basis of their seniority in Jaipur Station, that is the STA/JTA having the longest stay at Jaipur Station will be posted in OL, Jodhpur office. The learned counsel for the applicant submitted that the respondents in clear violation of the Ministry order dated 04.10.2012 (Annexure A/3), posted the applicant to Jodhpur, who is junior to B.L. Sharma (Annexure A/4).

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5. Vide order dated 20.03.2013 (Annexure A/6), it was directed that Shri Ram Kishan Meena, STA, will work in the office of OL, Jodhpur against the sanctioned strength of ROC-cum-OL, Jaipur and will draw salary from the office of the ROC-cum-OL, Jaipur.

6. Learned counsel for the applicant further submitted that the background of his transfer from Jaipur to Ahmedabad vide office order dated 04.07.2013 (Annexure A/1) begins from February, 20013 when the applicant submitted an oral complaint against the Car Driver attached to the OL, Jaipur relating to bills submitted by him. This Car is attached to OL, Jaipur Office. The Driver of the vehicle used to travel in this car and also used the car for going to Jodhpur and Jaipur on eleven occasions during 18.10.2012 to 19.02.2013. He submitted forged bills showing another vehicle and produced them for payment. Shri K.C. Meena, private respondent no. 5, protected his action and verified the bills illegally and when the applicant informed to ROC-cum-OL, Jaipur, he refused to take any action against these persons. Thus the respondent no. 5, Shri K.C. Meena, developed grudge against the applicant and thereafter on various occasions, the applicant is being harassed by him.

7. That on 24.06.2013, the applicant was communicated the APAR for the period from 01.04.2012 to 31.03.2012. The applicant was shocked to see that the Reporting Officer has

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given 5.97 marks and the Reviewing Officer has converted/downgraded it to 3.85 marks shows that respondent no. 4 that is ROC cum OL Jaipur is malafidely going against the applicant (Annexure A/7).

8. The applicant submitted a detailed representation to the authorities and requested to expunge the downgrading in APAR. He also leveled serious allegations against respondent no. 4 (Annexure A/8).

9. That the applicant was posted to Jaipur on his own request due to illness of his wife.

10. The learned counsel for the applicant submitted that the applicant has been transferred out of Jaipur arbitrarily and malafidely and in gross violation of the transfer policy. The transfer order of the applicant dated 04.07.2013 (Annexure A/1) has been issued at the behest of respondent no. 4. As per the transfer policy, it has been prescribed that there shall be minimum tenure of three years.

11. That the applicant was transferred on 04.07.2013 and his relieving order has been issued on the very next day i.e. 05.07.2013. Thus proper time has not been given to the applicant to hand-over his charged. The transfer order of the applicant has been issued to accommodate the private respondent no. 6. The transfer order is also illegal and

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arbitrary as the same has been issued ignoring the physical and mental condition of wife of the applicant and also ignoring the representation of the applicant against downgrading of his APAR. Therefore, the transfer order dated 04.07.2013 (Annexure A/1) and his relieving order dated 05.07.2013 (Annexure A/2) suffer from malice and hence be quashed and set aside.

12. The applicant has also filed the rejoinder.

13. On the contrary, the learned counsel for the respondents submitted that the competent authority has transferred the applicant from the office of ROC-Cum-OL, Jaipur to OL, Ahmedabad and in pursuance of his transfer order, the relieving order of the applicant was issued on 05.07.2013. The applicant has been transferred in the administrative exigency without any malafide. The applicant has been transferred by respondent no. 3 i.e. Regional Director, North Western Region, Ahmedabad. No malice has been alleged against him.

14. The applicant has made allegation of bias against Shri K.C. Meena, private respondent no. 5, and against respondent no. 4, ROC-Cum-OL, Jaipur. However, the applicant has not made respondent no. 4 a party in his personal capacity. The law is well settled that if there is allegation of bias or malafide against any officer then he should be made party by name.

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15. The learned counsel for the respondents also denied that Shri B.L. Sharma is senior to the applicant so far as the stay in Jaipur is concerned. He submitted that Shri B.L. Sharma is fresh appointee as Senior Technical Assistant through Staff Selection Commission with effect from 16.05.2012. On the basis of past experience in this Department and the longest stay in Jaipur in various capacities, the applicant, Shri Ram Kishan Meena, was transferred to Official Liquidator, Jodhpur.

16. Learned counsel for the respondents further submitted that the transfer of the applicant and entry in APAR are two different issues.

17. He further argued that the Magistrate of the Court of Economic Office had orally asked the office of respondent not to depute the applicant to appear before it. He was not maintaining cordial relations with his superiors and did not take advice in the true spirit. Therefore, in the administrative exigency, the applicant was transferred from Jaipur to Ahmedabad.

18. That respondent nos. 4 & 5 are not the transferring authority of the applicant. Therefore, the allegation of the applicant that at the behest of them, the transfer order has been issued is totally misconceived. The applicant has been transferred in view of the administrative exigency by the competent authority that is respondent no. 3.

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19. The applicant has been working in this Department since 28.12.1988 in various capacities in Jaipur Station till now excluding 25.06.1997 to 11.12.2000 during which he was working with the office of ROC, Delhi. Thus, there is no violation of transfer policy. Therefore, he submitted that the OA has no merit and it should be dismissed with costs. In support of his averments, the learned counsel for the respondents referred to the following case laws:-

- (i) Union of India vs. S.L. Abbas
1993 (4) SCC 357
- (ii) State of U.P. vs. Goverdhan Lal
2004 (11) SCC 402

20. Heard the learned counsel for the parties and perused the relevant documents on record and the case law referred to by the learned counsel for the respondents.

21. The main ground of the learned counsel for the applicant during the argument was that the applicant has been transferred because of malafide and bias attitude of respondent no. 4 & 5. From the perusal of the transfer order dated 04.07.2013 (Annexure A/1), it is clear that this order has been issued by the Regional Director, Ahmedabad, respondent no. 3, and no malafide has been leveled against him. The learned counsel for the applicant has also failed to prove that this order dated 04.07.2013 was issued at the behest of respondent nos. 4 & 5. The entry in the APAR is a

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different matter than the transfer order. In fact respondent no. 5 has given the applicant 5.97 marks in the APAR as Reporting Officer. The applicant has also filed APARs for the year 2010-11 in which a different Reporting Officer has given him 5.2 marks and the Reviewing Authority has also given 5.2 marks (Annexure A/11).

22. The applicant has also submitted his APAR for the period from 01.04.2011 to 31.03.2012 (Annexure A/12) in which Reporting Officer has given the applicant grading of 5.5 marks say 6 marks and the Reviewing Officer has given him 5.3 marks. If compared with these two APARs, the Reporting officer for the APAR for the period from 01.04.2012 to 31.03.2013 has given 5.97 marks to the applicant which is the highest in the three years and this grading has been given by private respondent no. 5. Therefore, it cannot be said that this entry is on the basis of bias/malafide. The Reviewing Authority has given 3.85 marks. However, the applicant has represented against this APAR and the Department has to take action on his representation in due course according to the provisions of law. Moreover, as stated earlier, Respondent no. 4 has not been made party by name.

23. Therefore, I am of the opinion that the transfer order dated 04.07.2013 (Annexure A/1) has not been issued on the basis of any malafide.

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24. The respondents in their reply have stated that the applicant has been working in this Department since 28.12.1988 in various capacities in Jaipur Station till now excluding the period from 25.06.1997 to 11.12.2000 during which he was working with the office of ROC, Delhi. Thus, it is clear that for the last 25 years, the applicant has been at Jaipur Station except for a brief period of two & a half year. Therefore, in my opinion, it cannot be said that the transfer order of the applicant dated 04.07.2013 has been issued in violation of transfer policy.

25. With regard to the submission of the learned counsel for the applicant that he was transferred on 04.07.2013 and he was relieved on 05.07.2013 without giving him adequate time to handover the charges, the learned counsel for the respondents showed me the orders of other officials who have also been relieved in the same manner. Vide office order dated 05.10.2012, Shri K.C. Meena, Dy. ROC was relieved on 05.10.2012 against his transfer order dated 04.10.2012. Similarly, one Shri R.C. Mishra, Deputy Office Liquidator was relieved on 28.06.2013 against his transfer order dated 27.06.2013. Thus on the basis of submissions made on behalf of the learned counsel for the respondents, it cannot be said that the relieving order of the applicant dated 05.07.2013 is based on any bias or malice.

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26. The learned counsel for the applicant is not able to prove that the applicant has been transferred to accommodate private respondent no. 6. In fact the respondents have categorically stated that the applicant has been transferred due to administrative exigency and since the applicant was transferred from Jaipur to Ahmedabad, therefore, the respondent no. 6 was transferred to fill in the vacancy created by the transfer of the applicant.

27. The learned counsel for the applicant argued that the applicant was transferred from Delhi to Jaipur on his own request due to the illness of his wife in the year 2000. This itself shows that the respondents have accommodated the applicant on humanitarian ground. Thereafter the applicant has been working in Jaipur for more than 12 years. Applicant cannot claim to be permanently posted at Jaipur on the ground of illness of his wife. Ahmedabad, where the applicant has been posted, has very good medical facilities. Therefore, on this count also, the applicant is not entitled for any relief from this Tribunal.

28. Hon'ble Supreme Court in Para No. 7 of its judgment in the case of Union of India vs. S.L. Abbas (Supra) has held that-

"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it....."

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In Para No. 8 of the judgment, the Hon'ble Supreme Court has held that:-

"8.The Administrative Tribunal is not an Appellate Authority sitting in judgment over the orders of transfer. It cannot substitute its own judgment for that of the authority competent to transfer....."

29. Hon'ble Supreme Court in Para Nos. 8 & 9 of its judgment in the case of State of U.P. vs. Goverdhan Lal (supra) has held that

"8. It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in the transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

"9. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the

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Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

Hon'ble Supreme Court in Para No. 9 has held that even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

30. In the present OA, the applicant has not leveled malafide or bias against respondent no. 3 who is the competent authority to transfer the applicant. The transfer has been issued by the competent authority and it is not in violation of any statutory provision, Act or Rule. Therefore, there is no justifiable ground to interfere with the transfer order.

31. It is well settled law that the transfer of an employee is an incidence of service. An employee can be transferred by the competent authority to any place in public interest and in exigency of service as long as the official status is not affected.

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It is for the competent authority to decide as to which employee is to be posted where. In the instant case, the applicant has been in Jaipur for almost 25 years except a short break of two and half years (from 25.06.1997 to 11.12.2000) when he was posted at Delhi. Therefore, I do not find any reason to interfere with the transfer order dated 04.07.2013 (Annexure A/1) and his relieving order dated 05.07.2013 (Annexure A/2).

32. Consequently the OA being bereft of merit is dismissed with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

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