

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

Original Application No.290/00239/2018

Reserved on : 28.08.2018
Pronounced on : 30.08.2018

CORAM:

**HON'BLE MR. A.K.BISHNOI, MEMBER (A)
HON'BLE MRS. HINA P.SHAH, MEMBER (J)**

Om Prakash Meena s/o Shri Devi Ram Meena, aged about 29 years, R/o Guest House, CAZRI Jodhpur, presently working on the post of Soil Scientist CAZRI, Jodhpur (Raj.)

...Applicant

(By Advocate: Shri S.K.Malik)

Versus

1. Indian Council of Agriculture Research through its Secretary, Krishi Bhawan, New Delhi – 110 014.
2. The Director, Central Arid Zone Research Institute (CAZRI), Jodhpur.
3. Assistant Administrative Officer, Central Arid Zone Research Institute (CAZRI), Jodhpur

...Respondents

(By Advocate: Shri Ashok Chhangani)

ORDER

Per Hon'ble Mrs. Hina P.Shah, M(J)

The applicant has filed the present OA u/s 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- (i) By an appropriate writ, order or direction impugned order dated 16.07.18 at Annx.A/1 be declared illegal and be quashed and set aside as if the same was never passed against the applicant.
- (ii) Any other relief which this Hon'ble Court deem just and proper be passed in favour of the applicant.

2. Brief facts of the case, as stated by the applicant, are as under:-

The applicant was appointed on the post of Soil Scientist and after undergoing training at Indian Institute of Soil & Water Conservation (IISWC), Dehradun, he was posted to Regional Station Vasad, Distt. Anand (Gujrat) on 12.8.2016. The applicant thereafter applied for online transfer on priority basis on the ground of spouse and medical grounds of his dependent vide his application dated 8.5.2018 and accordingly, his transfer choice was considered and he was allowed to join at Central Arid Zone Research Institute (CAZRI), Jodhpur pursuant to order dated 11.6.2018. The applicant stood relieved on 3.7.2018 and he joined CAZRI, Jodhpur on 4.7.2018. The applicant has submitted that thereafter vide impugned order dated 16.7.2018 (Ann.A/1) he was transferred to Regional Research Station Kukma, Bhuj (Gujarat) with immediate effect. It is his case that as per transfer policy/guidelines

dated 20th February, 2107, the authority who has passed the impugned transfer order has no authority to pass the said order. He also states that as per the said transfer policy, tenure of posting for 'B' category stations shall be for 3 years and for 'A' category stations, it shall be 5 years, as the case may be. This is as per the transfer policy pertaining to tenure of posting, which has not been complied with by the respondents. The applicant has also submitted that as per transfer policy pertaining to inter-institutional transfer, the same can be considered and recommended only by the institute Transfer Committee and based on the recommendation of such committee, the transfer will be affected with the approval of the Director of the concerned institute. He also stated that the tenure in the regional station may be from 3 to 5 years depending upon properly justified needs and requirement and relied upon the transfer policy at item No. 6(i) and (ii).

The applicant further states that though the transfer order dated 11.6.2018 was on his own request where he was transferred from IISWC, Dehradun to ICAR-CAZRI, Jodhpur, but immediately by order dated 16.7.2018, he is again transferred to ICAR, CAZRI-Regional Research Station, Kukma, Bhuj (Gujrat) with immediate effect.

According to the applicant, a lot of hardship will be faced by him as he has been transferred to a far off place within 12 days without any authority of law and the same is in clear colourable exercise of power. There is also malafide exercise of powers and the said transfer is punitive in the eyes of law. Further, the respondent No.3 transferred him in arbitrary and illegal manner and, therefore, he has approached the Tribunal praying for quashing and setting aside the impugned order dated 16.7.2018.

This Tribunal vide order dated 10.08.2018 had directed to retain the applicant at CAZRI, Jodhpur for next 14 days since a prima-facie case was made out by him for grant of interim relief in his favour.

3. The respondents have filed a short reply on 23.8.2018. The respondents in their reply have pointed out that the impugned order dated 16.7.2018 is not a transfer order but is merely a posting order whereby the applicant was posted at Regional Research Station, Kukma, Bhuj. Vide order dated 11.6.2018, the applicant on his own request was transferred from IISWC-Dehradun to CAZRI, Jodhpur. The respondents have stated that after posting vide order dated 16.7.2018 neither the applicant is working at Jodhpur nor

joined Regional Research Station, Kukma, Bhuj. Though he was transferred to CAZRI, Jodhpur but he was not given any posting. The said posting order was issued vide order dated 16.7.2018, therefore, this posting order is not a further transfer order as it was merely a posting order. The respondents further submitted that the post of Soil Scientist is lying vacant at Regional Research Station, Kukma and there is no Scientist working there, as such, there is paramount need of the Soil Scientist at that Regional Research Station, Kukma, where the applicant is posted. The applicant has not joined at Kukma, Bhuj and is also not at CAZRI, Jodhpur. The respondents have further submitted that the applicant has approached this Tribunal with unclean hands and concealed the fact that the post of Soil Scientist is lying vacant and the work of soil research is adversely affected at CAZRI, Jodhpur. The applicant is posted at Regional Research Station, Kukma, Bhuj in administrative and public interest. As per Ann.R/4 dated 18.8.2018, since no Soil Scientist has joined at Bhuj, the work on soil aspect is suffering a lot. Further, it is to note that approval of the competent authority has been taken and thereafter the impugned order dated 16.7.2018 was issued to the applicant. The relevant notesheet regarding

approval of the competent authority is placed at Ann.R/1. The respondents further state that though by transfer order dated 11.6.2018, the applicant was transferred to Jodhpur but no work was allotted to him as he was about to be given the posting order, which the applicant was aware but he has misguided the court and obtained interim relief vide order dated 10.08.2018.

The respondents further state that there is no question of any malafide or any colourable exercise of power as the posting order dated 16.7.2018 is issued in the interest of the department as per the administrative exigency. The department is the best judge to decide who is to be posted at a particular place and the Court/Tribunal cannot interfere in the said transfer/posting order, if the same is passed in administrative exigency by the competent authority.

The respondents have further stated that though the applicant was in Jodhpur, he has not filled biometric form and no application has been received from the applicant till date so he was not allotted any work. It is pointed out by the respondents that there is no violation of any transfer policy/guidelines and the same has been done as per rules. The grounds of challenge raised by the applicant are

erroneous and illegal as transfer to CAZRI, Jodhpur was on his own request vide order dated 11.6.2018 and his posting is done in administrative exigency. Therefore, the interim relief granted on 10.8.2018 be vacated.

4. The applicant has filed rejoinder on 28.8.2018 to the reply filed by the respondents annexing documents at Ann.A/11 to A/16 and reiterating the averments made in the OA.

5. Heard Mr. S.K.Malik, counsel for the applicant and Shri Ashok Chhangani, for the respondents.

6. From perusal of record, it is seen that the transfer order dated 11.6.2018 was a joint transfer order. By the said transfer order, the applicant was transferred from IISWC, Dehradun to CAZRI, Jodhpur. The order dated 16.7.2018 is not a transfer order but is merely a posting order whereby he was posted at ICAR-CAZRI-Regional Research Station, Kukma, Bhuj with immediate effect. The plea of the applicant pertaining to competency of the order passed by the authority cannot be accepted as the respondents have sought permission from the competent authority which can be seen from Ann.R/1. The next point raised by the applicant pertaining to the issue that he is

immediately transferred within 12 days of the first transfer order is of no help to the applicant as the order dated 16.7.2018 was not a further transfer order but merely a posting order whereby he was posted to Regional Research Station, Kukma, Bhuj (Gujarat). Pertaining to the ground of working couple and medical grounds raised by the applicant vide his application dated 8.5.2018, the same was considered by the competent authority and accordingly the applicant was transferred vide order dated 11.6.2018. Therefore, the grounds raised by the applicant have already been considered by the respondents and as per his request he was transferred to Jodhpur. With regard to case of Dr. Sugan Chand Meena, the respondents have stated that the said Dr. Sugam Chand Meena has already joined at Jaisalmer knowing it fully well that he has not been transferred but posted at Jaisalmer. Therefore, the ground of Dr. Sugan Chand Meena relied by the applicant cannot sustain.

7. In support of his contention, the applicant has relied on the following judgments:-

- i) Somesh Tiwari Vs. UOI and Ors., (2009) 2 SCC 592
- ii) Darshan Kumar vs. State of Punjab and Ors. 2006 (2) ATJ 169

iii) Rashmi Metaliks Limited and Anr. vs. Kolkata Metropolitan Development Authority and Ors., (2013) 10 SCC 95

iv) Shri Badri Prasad Rai vs. UOI and Ors. 2006(2) ATJ 86

v) Dr. Ravi Shanker decided by the CAT-Lucknow Bench in OA No. 137/2004 decided on 3.12.2004

8. In support of their contentions, the respondents relied on the following judgments:-

i) Bank of India vs. Jagjit Singh Mehta, (1992) 1 SCC 306

ii) Union of India and Ors. vs. S.L.Abbas, (1993) 4 SCC 357

iii) S.C.Saxena vs.Union of India and Ors., (2006) 9 SCC 583

iv) Dr. Krishna Chandra Dubey Son of.... vs.Union of India dated 5th September, 2005 of the Allahabad High Court.

v) Shilpi Bose vs. State of Bihar, AIR 1991 SC 532

9. After going through the judgments cited by the applicant/respondents, it is clear that transfer is an incidence of service and if the same is passed in public interest/administrative exigency, Courts/Tribunals should not interfere with the same. None of the judgments cited by the applicant show that even if the transfer/posting order is passed in administrative exigency, Courts/Tribunals should interfere and set-aside such transfer/posting order. As the present case is not of transfer, but rather about posting, we

need not go in depth in respect of the judgments as the posting order dated 16.7.2018 has been passed in administrative exigency on a vacant post according to the requirement at Regional Research Station, Kukma, Bhuj, Gujarat.

10. On considering the submissions of both the sides, we are satisfied that the posting order dated 16.7.2018 is passed by the competent authority as per rules, therefore, no interference is required in the said matter.

11. Accordingly, the OA is dismissed being devoid of merit. The IR granted on 10.8.2018 stands vacated. No order as to costs.

(HINA P.SHAH)
Member (J)

(A.K.BISHNOI)
MEMBER (A)

R/