

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH**

...

**Original Application No.290/00192/2018**

Reserved on : 16.04.2019

Pronounced on : 24.04.2019

**CORAM:**

**HON'BLE MRS. HINA P.SHAH, MEMBER (J)**

**HON'BLE MS. ARCHANA NIGAM, MEMBER (A)**

Dr. Mala Rathore W/o Shri Rakesh Singh Chouhan, aged about 52 years, R/o House No.2, Type V, Arid Forest Research Institute Campus, New Pali Road, P.O. Krishi Upaj Mandi, Jodhpur-342005 presently working on the post of Scientist 'E' in AFRI Jodhpur.

...Applicant

(By Advocate: Shri S.K.Malik)

Versus

1. Union of India through the Secretary, Ministry of Environment, Forest and Climate Change, VI Floor, Jal Indra, Prayavaran Bhawan, Jor Bagh Road, New Delhi-110003.
2. The Director General, Indian Council of Forestry Research and Education, P.O. New Forest Dehradun, Uttarakhand.
3. The Secretary, Indian Council of Forestry Research and Education, P.O. New Forest Dehradun, Uttarakhand.
4. The Director, Arid Forest Research Institute (AFRI) Krishi Upaj Mandi, New Pali Road, Jodhpur
5. Mrs. Rashmi, Scientist-E, F.R.I. Dehradun (Uttarakhand).

...Respondents

(By Advocate: Shri Sanjeev Johri & Mr. Lalit Parihar for resp. 1 to 4)

## **ORDER**

### **Per Mrs. Hina P.Shah**

In this OA filed u/s 19 of the Administrative Tribunals Act, 1985, the applicant prays for the following reliefs:-

- (i) By an appropriate writ, order or direction impugned order dated 14.5.2018, 20.6.2018 and 26.6.2018 at annexure A/1, A/2 & A/3 be declared illegal and be quashed and set aside.
- (ii) By an order or direction, respondents may be directed to keep the applicant at Jodhpur till the end of academic session of the children or alternatively cancel her transfer.
- (iii) Any other relief which this Hon'ble Court deem just and proper be passed in favour of the applicant.

2. Brief facts, as stated by the applicant, are that she was appointed as Scientist-SC on 3.5.1993. Thereafter she got promotions and lastly she was promoted to the post of Scientist-E on 1.7.2014. As per the transfer policy, transfer of Group-A Scientists in general should be discouraged in the ICFRE. Her husband who is a legal practitioner practicing in Jagdalpur, District Bastar (M.P.) has shifted to Jodhpur because of the fact that her wife will be permanently at AFRI, Jodhpur till her retirement. Her children are studying in Class XII and VIII in Delhi Public School, Jodhpur. Their session has already started from 1<sup>st</sup>

April, 2018 onwards and the requisite fee has already been deposited. The respondents vide impugned order dated 14.5.2018 has transferred the applicant from Jodhpur to Dehradun contrary to the policy and ignoring the fact that in case the transfer is effected, the education of children will be jeopardized apart from other difficulties. In this regard, the applicant submitted representation dated 16.5.2018 and 25.5.2018 narrating her personal difficulties. The applicant avers that similarly situated person Dr. Tarun Kant transferred along with the applicant has also made representation for cancellation of his transfer on the ground of children education and his transfer has been cancelled vide order dated 30.5.2018. It is the plea of the applicant that without considering the points raised by her in the representation, the same has been rejected by a non-speaking order dated 20.06.2018. It is clear that vide order dated 26.6.2018 the applicant stands relieved from AFRI, Jodhpur on 26.6.2018 knowing fully that the applicant is sick and under treatment of medical authority. The respondent no.4 is adamant to relieve the applicant even Mrs. Rashmi, Scientist, who has been transferred to Jodhpur has not joined and she is ready to go for mutual adjustment with the applicant as per her telephonic

conversation. The applicant is having 3 ongoing important projects which are likely to yield good result. After transfer of the applicant, time, efforts and resources and knowledge devoted will be wasted. Therefore, aggrieved by the transfer order, the applicant has filed the present OA praying that orders Ann.A/1, A/2 and A/3 deserves to be quashed and set-aside.

3. The respondents have filed reply dated 7.9.2018 stating that the transfer policy (Ann.A/4) pertains to Group-A Scientists to which the applicant belongs, but she has miserably failed to show that by the impugned order, the transfer policy has been violated or there are any malafides in passing the transfer order. The respondents have further stated that Mrs. Rashmi, respondent No.5 has already joined her duty on 4.9.2018 and respondent No.4 being Director of AFRI, Jodhpur has already sent communication dated 5.9.2018 to ICFRE, Dehradun (Ann.R/1). The respondents have further stated that as per transfer policy of ICFRE, transfer is needed for personal development of a Scientist and overall growth of the organization. The transfer policy is framed in the form of guidelines so as to regulate the transfer of Group-A Scientists in the Council in a transparent and fair manner. The applicant was

appointed vide letter dated 7.4.1993 and it was mentioned in clause 2(iv) that "the Headquarter of the post at present is at Jodhpur, however, the appointment carries with the liability to serve anywhere in India." As the applicant ever since her appointment continued to work for last 25 years at AFRI, Jodhpur, her transfer is justified and is according to rules. So far cancellation of transfer of Dr. Tarun Kant is concerned, it is stated that the DG, ICFRE while considering representation has taken the decision on merit on case to case basis. Mutual adjustment cannot be allowed as this is not in the interest of research work and transfer of Mrs. Rashmi, Scientist has been done from FRI, Dehradun to AFRI, Jodhpur as per her profile, bio-data and period of stay at FRI, Dehradun. The ICFRE has already issued guidelines for alternative arrangements for continuation of projects subsequent to transfer of PIs and Co-PIs in which provisions have been made that Co-PIs may be assigned the duties of PI to carry out the project activities till the completion of a project. The competent authority after considering the specialization of the applicant, length of service and requirement of various institutes after restructuring has decided to transfer the applicant from AFRI, Jodhpur to FRI, Dehradun. Therefore, since the applicant ever since her

appointment as Scientist has continued working for 25 years at AFRI, Jodhpur and has never served outside Jodhpur in any other institute/centre of ICFRE, her transfer is justified as the same is according to rules.

4. The applicant has filed rejoinder to the reply filed by the respondents reiterating the averments made in the OA. The applicant further submits that as on date, sanctioned strength of Scientist-E at AFRI, Jodhpur is 23 whereas as on December, 2018 the working strength is 16 including the applicant and one scientist is retiring. Therefore, the plea of the applicant is that there is still lack of 8 Scientists in AFRI, Jodhpur. It is the submission of the applicant that there are other scientists who have completed 25 years of service, but they have not been transferred and, therefore, the transfer of the applicant also can be cancelled. The applicant further states that the transfer of the applicant to FRI, Dehradun is nothing but a policy of pick and choose, which is illegal and discriminatory and therefore, not justified.

5. Heard Shri S.K.Malik, counsel for the applicant and Shri Sanjeev Johri, counsel for respondents and have perused the material available on record.

6. Besides reiterating the submissions made above, the applicant states that Scientist-E can remain at one place for number of years as he/she is concerned with the research work and since the applicant has undertaken research projects, she was not required to be considered for transfer. The plea of the applicant is that as per the judgment of the Hon'ble Supreme Court in Writ Petition (Civil) No.82 of 2011- **T.S.R.Subramanian and Ors. vs. Union of India and Ors.**, decided on 31<sup>st</sup> October, 2013, it is clear that repeated shuffling/transfer of the officer is deleterious of good governance, and the respondents have violated the transfer policy and guidelines in its true spirit.

The representations of the applicant pertaining to her children's education have not been considered by the respondents and that they have rejected the same by passing a non-speaking order. The applicant also states that the transfer of the applicant was in mid-academic session and, therefore, the same is required to be quashed and set aside. In support of her contention, the applicant relied upon the case of **Director of School Education, Madras and Ors. vs. O.Karuppa Thevan and Anr.**, (1994) 28 ATC 99, stating that in the absence of any urgency, mid-terms transfer should not be effected.

Further, the respondents have considered the case of Dr. Tarun Kant and the applicant being similarly situated employee, her case need to be considered in the same manner. It is the plea of the applicant that due to her being in Jodhpur, her husband has shifted himself to practice in Rajasthan High Court and, therefore, the present transfer will jeopardise legal practice of her husband and therefore, the transfer is contrary to the transfer policy.

7. On the other hand, the respondents have stated that the present transfer order dated 14<sup>th</sup> May, 2018 was a general transfer order and was not a mid-term transfer, but on administrative reasons without any malice or malafide. Personal difficulties of each case has to be considered by the respondents separately and the department has taken its decision after going through each and every aspect of the case and thereafter transfer order has been passed accordingly. As per Ann.A/2 order, it is clear that case of the applicant was considered sympathetically, but it could not be acceded by the competent authority. So far as the projects undertaken by the applicant is concerned, the respondents have stated that the ICFRI has already issued guidelines for alternative arrangements for continuation of projects subsequent to transfer of PI and Co-PI and,



therefore, the applicant need not worry about the said projects. Pertaining to Dr. Tarun Kant's transfer, the respondents have contended that each case is decided by the competent authority on the facts and circumstances of the case and the applicant cannot compare her case with Dr. Tarun Kant. Therefore, the respondents contend that the transfer order is passed in accordance with law/rules, which does not require any interference by this Tribunal. In support of their contentions, the respondents have referred to the following judgments:-

- i) State of U.P. & Ors. vs. Gobardhan Lal, (2004) 11 SCC 402.
- ii) Shilpi Bose (Mrs.) & Ors. vs. State of Bihar and Ors., (1991) Supp (2) SCC P.659.
- iii) Rajendra Singh & Ors. vs. State of Uttar Pradesh & Ors.,(2009) 15 SCC P.178
- iv) N.K.Singh vs. Union of India & Ors. (1994) 6 SCC P.98
- v) R.R.Sharma vs. Union of India, CAT, Lucknow Bench in OA no.269/2009 decided on 13.4.2012.

8. Considered the rival contention of both the parties.

9. In the present matter, the transfer order under challenge dated 14<sup>th</sup> May, 2018 is a general transfer order wherein for administrative reasons the transfer has been effected. The said transfer cannot be said to be mid-session transfer, as the same is passed in the month of

May. The applicant is presently posted in Jodhpur for the last 25 years and her transfer carries all India liability and she can be transferred to any place as per terms and condition of her appointment, which has been accepted by the applicant at the time of joining the service. With regard to mid academic session transfer, the son of the applicant was in 12<sup>th</sup> standard and the examinations are already over and therefore, the question of mid-academic transfer is not relevant. Her second child was studying in 8<sup>th</sup> standard, which cannot be said to be affected by this transfer as the transfer has been made in the month of May and the applicant has remained in Jodhpur for another academic session in pursuance of the interim order of this Tribunal. So far as the plea regarding her husband practising in Rajasthan High Court, it is evident that it is a private practice, which can be performed in any State. Further, the provisions regarding husband and wife should be posted at a place does not apply in this case as husband of the applicant is not a Government servant. So far as the contention of the applicant regarding cancellation of transfer order of Dr. Tarun Kant, the competent authority was empowered to decide the case on its merit and the applicant cannot compare her case to that of Dr. Tarun

Kant. With regard to the plea of the applicant that there are number of posts in Jodhpur and she can be adjusted in Jodhpur itself, it is the prerogative of the Department to decide whose services are required at a particular place. The transfers of scientists are within the power of the ICFRE and the applicant has not pointed out any violation of rules, which calls for any interference by this Tribunal. Further, we also do not find any malafide on the part of department as the transfer orders have been done in a transparent and fair manner.

10. It is settled law that Courts and Tribunals should not normally interfere in transfer matters. The Hon'ble Apex Court in the case of **Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey & Ors.**, (2004) 12 SCC 299 held that transfer is in incidence of service. Who should be transferred and posted where, is a matter for administrative authority to decide. Unless the order or transfer is shown to be clearly arbitrary or is vitiated by mala fides or is made in violation of any operative guidelines or rules governing the transfer, the courts should not ordinarily interfere with it.

In the case of **State of U.P. and Ors. vs. Gobardhan Lal**, (2004) 11 SCC 402, the Hon'ble Apex Court held that

transfer is prerogative of the authorities concerned and court should not normally interfere therewith, except when transfer order is shown to be vitiated by mala fides, or in violation of any statutory provisions or having been passed by an authority not competent to pass such an order. It is further held that allegation of mala fides must be based on concrete material and must inspire confidence of the court.

In this regard, it would also be relevant to extract some of the observations of the Hon'ble Rajasthan High Court in the case of **Bhagwan Das Mittal vs State Of Rajasthan And Ors.** decided on 12 April, 2007 reported in RLW 2007 (3) Raj 1713, where in the Hon'ble Rajasthan High Court in para 28 and 29 observed as under:-

"28. So far as the plea of the learned Counsel for the petitioners that they have been put to great harassment by transferring them to far off places and that too in mid term session prematurely and within two years of superannuation though the posts were available at the places from where they have been transferred and the respondents could have accommodated the petitioners against vacant posts, is also not sustainable as the transfer is an exigency of service and the petitioners cannot dictate the employer for his posting at a particular place or at a nearer distance or the petitioners have difficulties because of their children are minor and school going. It is the prerogative of the employer to post his employees wherever their services are required in public interest In similar circumstances the Apex Court while discussing the plea of the [State of Panjab and Ors. v. Joginder Singh Dhatt](#) wherein the High Court allowed the writ petition on the ground that it was mid term transfer and within two years of the superannuation, was reversed by the Supreme Court allowing the Civil Appeal preferred by the State of Punjab, observing as under:

This Court has time and again expressed its disapproval of the courts below interfering with the order of transfer of public servant from one place to another. It is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting. Ordinarily the courts have no jurisdiction to interfere with the order of transfer of the respondent from Hoshiarpur to Sangrur. The High Court was not justified in extending its jurisdiction under [Article 226](#) of the Constitution of India in a matter where, on the face of it, no injustice was caused

29. The malafide as pleaded by the petitioners also cannot be taken into consideration as the concerned Minister/Authority of the State/MLA has not been arrayed as party respondents. No observation and finding can be recorded in their absence. Allegations of malice has been leveled without supporting material and the court is unable to record any finding bereft of supporting evidence. Dealing with such situation, the Apex Court in case title [State of U.P. and Ors. v. Gobardhanlal & D.B. Singh](#) v. D.K. Shukla and Ors. , while maintaining the transfer order observed as under:

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 the 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 and 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 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.

A challenge to an order of transfer should normally be eschewed and should not be countenanced by the 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 to be entertained on the mere making of it or on consideration borne out of or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

11. Viewing the matter in the light of the ratio decided by the Hon'ble Apex Court in the aforementioned judgments, we are of the view that no interference is called for in this matter. Accordingly, the OA being bereft of merits deserves to be dismissed, which is dismissed with no order as to costs.

**(ARCHANA NIGAM)**  
**Administrative Member**

**(HINA P.SHAH)**  
**Judicial Member**

R/