

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
O.A.224/2023**

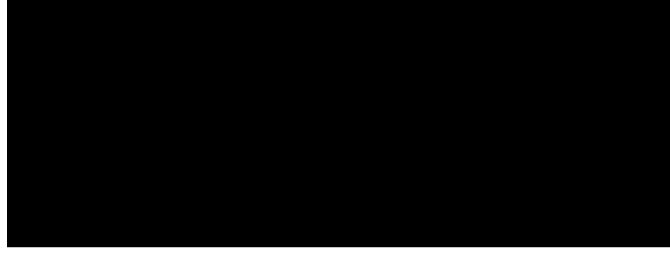
Dated the 12th day of April, 2024

**Reserved on: 01.04.2024
Pronounced on: 12.04.2024**

**CORAM:
Hon'ble Shri Umesh Gajankush, Member (J)**



1. Shri Gajendra Meena,



... Applicant

(By Advocate Mr. Joy Mathew)

V/s.

1. Union of India,
Notice through the Secretary,
Ministry of Agriculture,
Krishi Bhavan,
New Delhi 110 001.
2. Chief Soil Survey Officer,
Soil & Land Use Survey of India,
IARI Building,
New Delhi 110 012.
3. Soil Survey Officer,
Soil & Survey of India,
Marida Sarvekshan Flats,
Vasna, Ahmedabad 380 007.

... Respondents

(By Advocate Ms. R.R. Patel)

ORDER**Per: Hon'ble Shri Umesh Gajankush, Member (J)**

1. By way of present Original Application, applicant is challenging transfer order dated 13.07.2023 issued by the respondent no.2 by which he has been transferred from Ahmedabad Centre to Kolkata Centre on exigencies of technical work at Kolkata Centre till further orders.
2. In the Original Application it is stated that applicant was appointed in the month of March 2018, as Assistant Field Officer (AFO) and posted at Bangalore. In the month of March, 2021, applicant was transferred to Ahmedabad and since then the applicant is working at Ahmedabad. Challenging the impugned order it has been stated that several persons of 2017 batch recruits were posted at Ahmedabad on the post of Assistant Field Officer and seniors to applicant at Ahmedabad Centre. They all have been working at Ahmedabad Centre from the year 2017, however, only applicant has been transferred by the impugned order. It was stated that after the receipt of the impugned order, applicant submitted a representation dated 19.07.2023 to the respondent no.2 requesting him to cancel the transfer order. In the said representation, applicant has narrated his family problems. However, on the same date respondent no.2 issued an order dated 19.07.2023 rejecting the said representation. It is stated that the respondent no.2 has added one more ground of programmatic consideration along with the ground of exigencies of technical work at Kolkata.
3. It was further stated that on 26.03.2018, the respondents had issued an OM publishing the transfer policy 2018 for officers/officials working in Soil and Land Use Survey of India. As per this policy the tenure of officers of group B (Non-gazetted) is 10 years. It was submitted that as per the judgments of Hon'ble Supreme Court of

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India in case of TSR Subramanian, it is mandatory on the part of the respondents to have a Transfer and Placement Committee. In the present case, before issuing the impugned order, the respondents have not approached the said committee and therefore impugned order is arbitrary, discriminatory, illegal, null and void and in violation of Articles 14, 16 and 21 of the Constitution of India. It was further submitted that the applicant has old parents to look after and added to this his wife filed a case against the applicant and his relatives and in order to attend the court proceedings, quite often he has to travel to Jaipur. All these reasons were assigned by the applicant in his representation dated 19.07.2023. However, the authority did not accept the same and rejected his representation without assigning any cogent reason. Distance between the present place of posting and the transferred place is about more than 2050 kms. Therefore, on the basis of facts and grounds mentioned in the Original Application, applicant has prayed for quashment of the impugned order dated 13.07.2023 and rejection of representation dated 19.07.2023.



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4. After notice, official respondents have filed their reply and justified their action. It was stated that department/respondent no.2 has passed transfer order dated 13.07.2023 as per the requirement of the department on the ground that “exigencies of the technical work at Kolkata Centre of Soil & Land Use Survey of India”, and “on programmatic considerations”. The transfer is essential as the Kolkata Centre has the highest physical survey area target. The Kolkata Centre has vacant position in Field and Soil Laboratory section hence to achieve physical filed survey and soil laboratory work Soil Survey Officer, Kolkata demanded staff to complete the physical target within scheduled time. The proposal for transfer of Assistant Filed Officer from Ahmedabad Centre to Kolkata Centre of SLUSI was propped by the Comptent Authority. The transfer of AFO from Ahmedabad to Kolkata Centre and the North-Eastern

Region is justified to address the high work load and future survey target. It was submitted that transfer of the applicant is manifestly not a 'Rotational Transfer', but, due to exigency of work. It is a well established law that, who will transfer, where and when are the questions which would fall within the domain of administration. Unless and until, transfer order is issued by the incompetent authority or in violation of statutory Rules or mala fide, neither can be assailed nor court of law would interfere in the transfer order. Transfer is a condition of service. Representation was rejected on 19.07.2023 due to exigency of work viz. in the interest of administration. So far as, grounds mentioned in the representation is concerned same are personal and cannot be considered under the present departmental requirement. Therefore, on the basis of reply respondents have prayed for dismissal of the Original Application.



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5. Thereafter, rejoinder was filed reiterating and supporting the averments made in the Original Application. On the basis of memorandum dated 26.07.2023 and reply dated 31.07.2023, it was stated that at the one hand department says that due to the need at Kolkata transfer was made and on the other hand, they say the behavior of the applicant is rude and in the year 2021 the officer recommended his transfer.
6. Learned counsel for the applicant vehemently contended that impugned transfer order dated 13.07.2023 is illegal and arbitrary. Officers who were working since 2017 are still working at Ahmedabad Centre, whereas the applicant has been transferred to distant place i.e. at Kolkata on programmatic consideration. Impugned action is arbitrary and discriminatory. It is also contended that his case was not placed before the committee as per the judgment of the Hon'ble Supreme Court of India in case of TSR Subramaniam.



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7. On the other hand, learned counsel for the respondents while supporting the impugned order and rejection of representation dated 19.07.2023 submitted that looking to the need of the work at Kolkata the transfer was made. The applicant has failed to show that the transfer order is issued by the incompetent authority or in violation of the statutory rules or mala fide and therefore there is no ground available to interfere in the transfer order as transfer is condition of service. It was further submitted that looking at the OM dated 26.03.2018 (Annexure A/4) it is clear that the centers of SLUSI are available only at Ahmedabad, Bangalore, Hyderabad, Kolkata, Nagpur, Noida, Ranchi and Headquarters at New Delhi. There is no centre available in the state of Rajasthan and therefore the reason in respect of old parents is not tenable. On the basis of communication dated 06.07.2023 (Annexure R/2) it was submitted that in proposal every aspect has been considered which is clear from Sr. no 7 & 8. Therefore, there is no ground available to interfere in the transfer order as transfer is a condition of service.
8. During the course of the arguments, learned counsel for the respondents also relied on judgments mentioned below:-
- (2009) 8 SCC 337 in case of Airports Authority of India Vs. Rajeev Ratan Pandey & Ors., (2009) 15 SCC 178 in case of Rajendra Singh & Ors. Vs. State of Uttar Pradesh & Ors., Order dated 16.03.2023 passed by Hon'ble High Court of Judicature for Rajasthan At Jodhpur in case of Hemesh Bhavsar Vs. State of Rajasthan & Ors., (2004) 11 SCC 402 in case of State of Uttar Pradesh Vs. Gobardhan Lal, AIR 1993 Supreme Court 1236 in case of Rajendra Roay Vs. Union of India & Ors. and AIR 1999 batch no. 2444 Union of India & Ors. Vs. S.L. Abbas
9. After hearing learned counsel for the parties and perusal of the records it is not under dispute that in the year 2021 petitioner was transferred to Ahmedabad on his own request. Looking to the order dated 13.07.2023, it is clear that transfer has been made on

programmatic consideration till further orders. When the transfer order is looked into along with the communication dated 06.07.2023 (Annexure R/2) and the proposal of transfer it is clear that there is a requirement at Kolkata in respect of conducting comprehensive detailed soil survey and said work is to be completed on urgent basis. In a proposal at Sr. no 7 the committee has considered the factum of other AFOs at Ahmedabad Centre. Therefore, looking to the nature of work at Kolkata and other circumstances it cannot be said that the contention of the applicant in respect of the arbitrariness and discrimination is sustainable. It is the domain of the employer/department to see where, when and how it's employee can be posted. In the present case, the transfer has not been challenged on the ground of incompetency or any mala fides and therefore there is no ground available for judicial review in respect of impugned transfer order.



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10. So far as the representation dated 19.07.2023 (Annexure A/2) is concerned only two reasons have been stated and the sum and substance is that in respect of inconvenience to the applicant, same was rejected on the ground of exigencies of technical work (Annexure A/3). Therefore, same is also needs no interference.
11. At this stage, it is relevant here to take note of the observations of the Hon'ble Supreme Court in case of judicial review of the transfer orders for this purpose relevant portion of some cases is reproduced herein below:-

(2009) 8 SCC 337 in case of Airports Authority of Inida Vs. Rajeev Ratan Pandey & Ors.

“7. In State of U.P. v. Gobardhan Lal¹, while dealing with a matter of transfer, this Court observed that allegations of mala fides must inspire confidence of the Court and ought not to be entertained on the mere asking of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference would ordinarily be made with an order of transfer. That the burden of proving mala fides is on a person leveling such allegations and the burden is heavy, admits of no legal ambiguity. Mere assertions and the burden is heavy, admits of no legal

ambiguity. Mere assertion or bald statement is not enough to discharge the heavy burden that the law imposes upon the person leveling allegations of mala fides; it must be supported by requisite materials.”

(2009) 15 SCC 178 in case of Rajendra Singh & Ors. Vs. State of Uttar Pradesh & Ors.

“8. A government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. 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 contrary. No Government can function if the government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires (see *State of U.P. v. Gobardhan Lal*¹, SCC p. 406, para 7).”

9. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In *Shilpi Bose v. State of Bihar*² this Court held: (SCC p. 661, para 4)

“4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.”

10. In *N.K. Singh v. Union of India*³ this Court reiterated that: (SCC p. 103, para 6)

“6. ... the scope of judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides and violation of any specific provision....”



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(2004) 11 SCC 402 in case of State of Uttar Pradesh Vs. Gobardhan Lal

“7. 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 any 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 and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infringement 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.

8. 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 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 conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.”

12. Thus, in view of the aforesaid discussion and keeping in view the proposition of law laid down by the Hon’ble Supreme Court in the aforesaid cases no ground is available for interference in the impugned transfer order and rejection of representation dated



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19.07.2023. Original Application is accordingly dismissed. No order as to costs. Pending MA, if any, shall also stands disposed of.

(Umesh Gajankush)
Member(J)



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