

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN  
AT JAIPUR BENCH

ORDER

(S.B. Civil Writ Petition No.6971/2019)

Smt. Rani Jain W/o Shri Pankaj Kumar Jain, aged about 46 years R/o H-216, Apha Ghar  
Shalimar, Alwar, Rajasthan, 301001.

--- Petitioner

Versus

1. Secretary and Transport Commissioner, Transport Department, Government of Rajasthan, Parivahan Bhavan, Jaipur.
2. Joint Secretary & Additional Transport Commissioner (Adm.), Transport Department, Government of Rajasthan, Parivahan Bhavan, Jaipur.
3. Anil Kumar Jain, Shri Chetan Prakash Jain, aged about 59 years, R/o House No.85, Subhash Nagar, NEB, Alwar (Raj.)

--- Respondents

Date of Order:

May 13, 2019.

PRESENT

HON'BLE MR. JUSTICE ALOK SHARMA

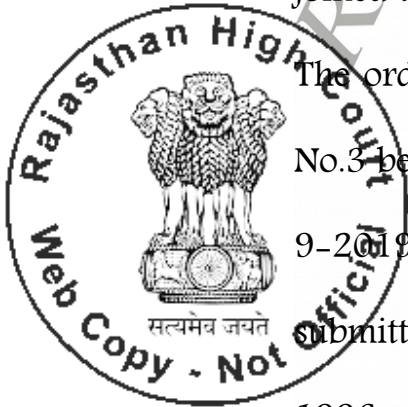
Mr. S.S. Hora, for the petitioner.

BY THE COURT:

A challenge has been made to the order dated 27-3-2019 passed by the Rajasthan Civil Services Appellate Tribunal Jaipur (hereafter 'the Tribunal') whereby the appeal filed by the respondent No.3, a Regional Transport Officer (RTO), against the order of his transfer dated 1-3-2019 has been allowed. The consequential order dated 5-4-2019, pursuant to the impugned order whereby the petitioner, was directed to join at the Head Office, Parivahan Bhavan, Jaipur as RTO, has also been put to challenge.

The facts of the case are that vide order dated 1-3-2019 the petitioner was transferred and posted on the post of RTO Alwar while transferring respondent No.3 from the post of RTO Alwar to Transport Department, Parivahan Bhavan, Jaipur. The petitioner joined the said post at Alwar and commenced her duties on the post.

The order dated 1-3-2019 was put to challenge by the respondent No.3 before the Tribunal on the ground that he was to retire on 30-9-2019 just after six months of the date of his transfer. It was submitted that Rule 80 of the Rajasthan Civil Service (Pension) Rules, 1996 provides for initiation of proceedings for preparing pension papers of the employees who are to retire within two years. The intent of the said rule is that an employee to shortly superannuate may get his pension papers processed and following his superannuation avail retiral benefits timely. Relying on the order dated 21-10-2016 of this court in the case of Manjula Pathak Vs. State of Rajasthan, SBCWP No.14577/2016, it was submitted before the Tribunal that an employee, who is to retire within one year, should not be ordinarily transferred, as such a transfer if without an obvious cause would cause avoidable disruption at the fag end of a government servant's career and create difficulties in post retiral settlement. The Tribunal considering the submissions of respondent No.3, vide order dated 27-3-2019 quashed the transfer order 1-3-2019 to the extent it related to him.





Consequently the department vide order dated 5-4-2019 re-posted the respondent No.3 to the post of RTO Alwar and directed the petitioner to join at Head Office Parivahan Bhavan Jaipur. Hence this petition.

Heard counsel for the petitioner, perused the orders dated 27-3-2019 passed by the Tribunal allowing the appeal filed by respondent No.3 as also the order 5-4-2019 whereby the petitioner has been transferred from the post of RTO Alwar.

The impugned order dated 27-3-2019 passed by the Tribunal quashing the transfer order dated 1-3-2019 is a well considered and founded on cogent reasons. The order dated 5-4-2019, whereby the petitioner has been transferred from RTO Alwar to Head Office Jaipur, is only an order consequential to the Tribunal's order dated 27-3-2019. Indeed a transfer is an incident of service and the discretion of an employer in transferring an employee is quite wide. Ordinarily no interference is to be made with an order of transfer unless it violates a statutory rule or is malafide. That however is not the whole, complete and iron-clad statement of law on the subject. Policy and practice of the State Government are also to be reckoned for to evaluate an attack founded on arbitrariness against an order of transfer. In the instant case the transfer order dated 1-3-2019, vide

which the respondent No.3 was transferred and which has been quashed by the Tribunal, sought to displace the respondent No.3 from RTO Alwar his place of posting a mere six months before his superannuation. That was in the cross hair of the inarticulated but yet principal premise of the order of this court in the case of Manjula Pathak (supra). In the case of Manjula Pathak (supra) this court vide ad-interim order dated 21-10-2016, noting that the petitioner had only one year to superannuate stayed the transfer order dated 9-10-2016. Subsequently, on the matter coming up before the court on 3-11-2017, the transfer order was quashed as the petitioner was to retire in the said month itself. The cumulative effect of the two orders aforesaid, entails an enunciation by the court that the transfer of an employee, within a year of his imminent superannuation, deserves interference. The thought process behind the two orders, referred to above, appears to have been that a superannuating employee, in the last year of his service, should not ordinarily be disturbed by the State, as a model employer, lest the exercise entail unwarranted inconvenience and difficulties for him in post retiral settlement.

I am of the considered view that it was for the State Government to satisfy the Tribunal as to the circumstances which made it manifest that transferring the petitioner—set to



superannuate in six months—out of Alwar was founded upon a careful evaluation of public interest and/ or administrative exigencies and that the impugned transfer was not a casual and mechanical exercise of discretion. The state should have also satisfied the Tribunal that while passing the impugned transfer order the fact of the respondent No.3 superannuating in six months was consciously taken into consideration. Neither of the above was admittedly done.



In this view of the matter, the order passed by the Tribunal, a well considered and reasoned one requires no interference by this court under Article 226 of the Constitution of India. No manifest injustice can be said to have been caused to the petitioner by the impugned order of transfer. The consequential order dated 5-4-2019 passed by respondents has thus to be sustained. There is no merit in the writ petition.

Consequently it is dismissed.

(Alok Sharma), J.

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