

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/465/2019

Date of Reserve: 28.11.2019

Date of Order: 03.01.2020

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Sarbeswar Das, aged about 43 years, S/o.late Gangadhar Das, resident of At/PO-Ertal, PS-Basudevapur, Dist-Bhadrak, Odisha, PIN-756 124, presently working as Sub-Postmaster, Dukura SO under Mayurbhanj Division, PIN-757 075.

...Applicant

By the Advocate(s)-M/s.C.P.Sahani
D.K.Mohanty-A
P.K.Samal

-VERSUS-

Union of India represented through :

1. The Secretary-cum-Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. Chief Post Master General, Odisha Circle, At;/PO-Bhubaneswar, Dist-Khurda, Odisha-751 001.
3. Director of Postal Services (Hqrs.), O/o.CPMG, Odisha, Bhubaneswar-751 001.
4. Superintendent of Post Offices, Mayurbhanj Division, Baripada, PIN-757 001.

...Respondents

By the Advocate(s)-Mr.M.R.Mohanty

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is presently working as Sub Postmaster, Dukura SO under Mayurbhanj Postal Division. Being aggrieved by the order dated 23.04.2019 (A/6), by virtue of which the applicant has been transferred and posted as Postal Assistant, Kaptipada S.O., has approached this Tribunal in the present O.A. seeking for the following reliefs:

- i) Admit the Original Application, and
- ii) After hearing the counsels for the parties be further pleased to quash the transfer Memo No.B-35/Ch.VI dated 23.04.2019 at Annexure-A/6 in respect to the transfer and posting of the applicant. And consequently, orders may be

passed directing the Departmental Respondents to reconsider the transfer and posting of the applicant to the place of his choice.

And/or

- iii) Pass any other order(s) as the Hon'ble Tribunal deems just and proper in the interest of justice considering the facts and circumstances of the case and allow this O.A. with costs.

2. Shorn of unnecessary details, it would suffice to note that the applicant joined as Postal Assistant in Baripada HO under Mayurbhanj Division in the year 2015. On 07.11.2017, he was directed to join as SPM, Dukura SO on deputation/temporary transfer and on 08.11.2017, he joined the said post. While working as such, the applicant was asked to give his preference for his transfer and posting, which he did exercise vide his letter dated 29.01.2019 (A/5), inter alia, indicating the order of preference as under:

- (i) Dukura S.O.
- (ii) Sankerko S.O.
- (iii) Laxmiposi S.O.

3. Vide Memo No.B-35/Ch.VI dated 23.04.2019 (A/6), a number of incumbents including the applicant were posted on transfer based on the recommendations of the Divisional Level Transfer and Placement Committee. In the said Memo, the name of the applicant finds place at Sl.No.9 of Part-II posting him on transfer as PA, Kaptipada SO. Since the applicant's posting on transfer was not in conformity with his place of choice, he submitted a representation dated 28.06.2019 (A/7) to the Director of Postal Services (HQ), Bhubaneswar (Respondent No.3) ventilating his grievance, and lest, he should be relieved, has approached this Tribunal in this O.A. on 16.07.2019, seeking for the reliefs as referred to above.

4. The grounds on which the applicant has based his claim are that he having been asked to exercise his choice of posting, he so opted vide A/5, with

an indication that he would not claim transfer TA in the event he is posted on transfer at the place of his choice. But, to his utter surprise, despite there being vacancy in those places, the respondents while issuing rotational transfer orders, deliberately, ignored his choice of posting and posted him to a place on their own, which exhibits malicious intent of the respondent-authorities. It is the case of the applicant that those officials who had not opted the places of their choice akin to him, have been posted on transfer against those offices, purportedly, to harass him. Further, the applicant has contended that while working as P.A, Baripada HO, he was directed to join as SPM, Dukura SO on deputation/temporary transfer before his tenure as PA, Baripada HO could be complete. But it is quite unreasonable to again transfer him from Dukura SO within a period of about six months of his joining there. In the end, the applicant has called in question the legality and validity of the order transferring him from Dukura SO as PA, Kaptipada SO, as bias and mala fide, besides, the same has been done as a punitive measure.

5. Per contra, the respondents have filed a detailed counter-reply. The Respondents have pointed out that before Memo No.B-35/Ch.VI dated 23.04.2019 transferring the applicant to Kaptipada SO could be issued, due formalities for issuance of rotational transfer order has strictly been followed. According to respondents, the applicant was continuing as SPM, Dukura S.O. since 08.11.2017 on deputation basis. In spite of rotational transfer order dated 23.04.2019 transferring him to Kaptipada SO, he remained silent till July, 2019 and when one reliever reported for duty in order to relieve him, the applicant approached this Tribunal. However, it has been submitted by the respondents that the applicant had opted for his posting at (1)Dukura SO , (2)Sankerko SO and (3) Laxmiposi SO, which are single-handed offices and the

post of SPM in those offices have been upgraded/re-designated as LSG Post after cadre restructuring of Group 'C' employees vide Circle Office order received through e-mail dated 11.12.2017. Hence, posting of the applicant against any of those offices was not feasible, since he is not eligible for those posts. Besides, the respondents have brought out in the counter-reply certain deficiency/irregularity on the part of the applicant while discharging his duties as SPM, Dukura S.O.

6. Applicant has not filed any rejoinder to the counter.

7. We have heard the learned counsels for both the sides and perused the records. We have also gone through the written notes of arguments along with the citations filed by the applicant. To fortify his standpoint, the applicant has placed reliance on the decisions of Hon'ble Supreme Court in *Somesh Tiwari vs. Union of India & Ors.* (AIR 2009 SC 1399) as well as the decisions of this Tribunal in O.A.No.260/13/2019 and in O.A.No.419/2016 dated 07.03.2019 and dated 16.8.2018, respectively, which we have perused.

8. Prima facie, it appears that the applicant has not been able to establish that he has been transferred to Kaptipada SO as a punitive measure. The whole object of applicant's transfer to Kaptipada SO, which is a rotational transfer, revolves round the fact that the posts of the Post Offices in respect of which he had exercised his option for his posting, have been upgraded to LSG on account of cadre restructuring of Group-C posts, as communicated vide Circle Office e-mail dated 11.12.2017, and as such, he was not considered eligible by the Placement Committee to be posted at any of the places of his choice. The plea of the applicant that despite upgradation of the post to LSG, he has been continuing at Dukura SO and under such circumstances, it was unreasonable on the part of the respondents not to consider his option, *ip so*

facto holds no water and in this context, this Tribunal is of the opinion that no right accrues on him to be posted against an upgraded post. Therefore, we are of the considered view that the posting of the applicant on transfer to Kaptipada SO vide Memo dated 23.04.2019 is not backed by a punitive measure or bias or mala fide, as the case may be. Hence, the decisions relied upon by the applicant are of no assistance to him. At this juncture, we may add that it is not in dispute that deputation and/or posting of the applicant as SPM, Dukura SO was as a temporary measure against the leave vacancy and hence, it does not take the place of rotational transfer under the transfer guidelines. In view of this, we do not find any flaw or illegality while posting the applicant on rotational transfer to Kaptipada SO under Mayurbhanj Postal Division vide Memo No.B-35/Ch.VI dated 23.04.2019 (A/6) and therefore, the same is sustained.

9. For the discussions held above, the O.A. being devoid of merit is dismissed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

BKS

(GOKUL CHANDRA PATI)
MEMBER(A)