

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

OA No.207/2020

This the 10th day of August, 2020

**Coram : Hon'ble Shri J.V.Bhairavia, Member (J)
Hon'ble Shri A.K.Dubey, Member (A)**

Shri Yogesh S/o. Late Kanaiyalal Joshi
Age : 34 years, serving as Inspector of Posts
in the office of the respondents.
Residing at : 2544/B-1, Bhangali Gate,
Talaja Road, B/h. Sankalp Flat,
Bhavnagar – 364001. Applicant.

(By Advocate Shri M.S.Trivedi)

VERSUS

1. Union of India through
The Director (SPN)
Govt. of India, Ministry of Communication
Department of Posts,
Personnel Division
Dak Bhavan, Sansad Marg,
New Delhi 110 001.
2. The Chief Post Master General
Office of CPMG,
Gujarat Circle, Khanpur,
Ahmedabad 380 001.
3. The Post Master General
Office of PMG,
Rajkot Region,
Rajkot – 360 001.
4. Superintendent of Post
Bhavnagar Division,
Nr. Takteshwar Mahadev,
Bhavnagar – 364 001. Respondents

(By Advocate : Ms. R.R.Patel)

O R D E R – ORAL

Per : Hon'ble Shri J.V. Bhairavia, Member (J)

Aggrieved by the transfer order dated 22.07.2020 (Annexure A-1), the applicant has preferred the present OA.

2. Counsel for the applicant, Shri M.S.Trivedi mainly submitted that vide order dated 20.03.2020 issued by the respondent No.3 i.e. Assistant Director Postal Service (S&V), Postmaster General, Rajkot Region, Rajkot the transfer request of the applicant was accepted and the applicant was transferred from SDI (P), Morbi Sub-Division, Rajkot to SDI (South) Sub Division, Bhavnagar. It is contended that though the said transfer order was passed on 20.03.2020, he was relieved only on 18.6.2020 and he joined the same day at Bhavnagar. However, the respondents have issued impugned order dated 22.7.2020 (Annexure A-1) whereby the applicant has been transferred from Bhavnagar to IRM 4th Surat, S/Division RMS “W” Division, Vadodara against the vacant post. It is stated that the said transfer order was issued on administrative ground and also looking into the exigency that arose in the department.

3. Counsel for the applicant further submits that the respondents had circulated the guidelines for tenure transfer dated 19.05.2020 (Annexure A-3) which was issued by the Department of Posts. Therein, it is stated that to tackle situation arising out of pandemic of COVID-19 situation, the Government has decided to impose cut on

various heads of account and in view of this, the said guidelines for tenure transfer order for the year 2020-21 had been issued. It stipulates that the same has been reviewed in consultation with Vigilance Branch of Postal Directorate and it has been decided that with a view to keep the expenditure at the barest minimum, economy on TA/TP should be a major consideration in the decision making. It has been submitted that in Surat, present situation is more serious than cities of the Gujarat. Even public transportation has been stopped recently. Without following the said instruction and for other reasons best known to the respondents, the applicant has been ordered to be transferred.

4. Considering of the aforesaid submissions, this Tribunal had issued the notice to the respondents and in response to it, the respondents have filed their reply and denied the contentions of the applicant. The respondents have mainly contended that against the impugned decision/ transfer order, the applicant had submitted his representation before the competent authority, which was received on 24.07.2020 and the same was pending consideration. It is further submitted that applicant has also furnished additional representation through email requesting grant of some more time to join his transferred place and to sanction his leave as per his leave application. Counsel for the respondents stated since the applicant has been relieved on 22.07.2020, he was not entitled to claim any relief in this

OA. Learned counsel for the applicant further submits that in their reply and more particularly at para 4, the request have contended that the impugned transfer order was issued by the respondents taking into consideration the Office Note issued by the Vigilance Section of Circle Office, Ahmedabad dated 22.07.2020. The said Vigilance Note indicates that the applicant has been proposed to be involved in the grave charges on corruption at Bhavnagar and investigation was on there-against and therefore physical presence of the applicant at Bhavnagar was likely to impact the investigation; there is apprehension on the part of the respondents that evidences may be tampered with or hampered if the applicant continued there. Hence, for the said reasons, in administrative interest, the applicant has been transferred from Bhavnagar to Vadodara Region with posting at Surat.

5. The applicant had filed rejoinder. He reiterated his submissions and additionally submits that the OA was filed on 24.7.2020 and at that time, the counsel for the applicant was not aware about the representation of the applicant. It is further submitted that since the respondents themselves have stated that only based on Vigilance Note, the applicant has been transferred and that too on the ground of imaginary apprehension and proposed action and therefore impugned action of transfer of the applicant cannot be said to be taken in the interest of administrative exigency. As such, nothing on record has been placed nor the applicant has been served with any show cause

notice. The applicant further submits that since the transfer order has been passed on the basis of the Vigilance Note, and there is no administrative exigency other than it having been seen by the Tribunal, this Tribunal interfere it in this case and quash and set aside the transfer order. To substantiate his submissions, he has placed reliance on the judgment passed by Maduria Bench of Madras High Court in Writ Petition (MB) No.2886/2020 in the case of S. Sivaperumal v/s. Director General of Police, Chennai & Ors.. It is further contended that in the said judgment, the Hon'ble High Court has referred the judgment passed by the Hon'ble Apex Court in the case of Somesh Tiwari v/s. Union of India & Ors., reported in (2009) 2 SCC 592. Therein, it was held that "*the transfer order was issued in administrative exigencies should not be interfered by the Court, but, if there is malice and the employee is transferred on the basis of non-existent facts and if the same is punitive in nature or shows non-application of mind, the transfer order can be interfered with*". The Hon'ble Apex Court further accordingly held that "*impugned transfer order is a punitive transfer order passed only to victimize the petitioner and there is no other go for this Court except to quash the impugned order and therefore, Court has stated that they inclined to interfere with the impugned order*."

6. Based on the said observation of the Hon'ble High Court of Madras, counsel for the applicant pressed his submission that in the

present case, the transfer order amounts to punitive order since it is passed on the basis of the Vigilance Note. He further submits that there are various vacancies available in the Bhavnagar District. He also submits that the applicant's case is required to be considered sympathetically as recently he has been transferred from Rajkot to Bhavnagar after long time.

7. Heard the learned counsel for both the parties at length and perused the materials available on record. It is noticed that the applicant's request of his own request transfer was considered by the respondents in the month of March, 2020. However, he was relieved to his choice place i.e. Bhavnagar only in the month of June, 2020 and after joining the said transferred place on 18.6.2020, again the applicant has been transferred from Bhavnagar to Surat vide impugned order dated 22.07.2020 on the ground of administrative exigency. However, it is stated that the applicant's transfer was due to Vigilance Note dated 22.7.2020 issued by the Vigilance Section of Circle Office, Ahmedabad and the respondents proposed to take some action as the respondents apprehended that the evidence might be tampered with in investigation. In this regard, in our considered view, there is nothing on record to suggest any departmental action has so far been taken against the applicant, more particularly, show cause notice or any other departmental action with respect to his conduct. Under the circumstances, it is difficult to accept the said contention of

the respondents that there exist administrative exigencies to transfer the applicant from Bhavnagar to Surat in this covid-19 pandemic period. The guidelines issued by the Department of Post dated 19.5.2020 that does not restrict transfer of the official who are doubtful integrity. However, certain other instructions are required to be taken into consideration by the respondents. As contended by the counsel for the respondents that the applicant has already been relieved and his request for extension of joining period along with the leave application is pending consideration before the competent authority besides, his representation against the transfer order dated 22.7.2020 / additional representation are also pending consideration.

8. At this juncture, respondents counsel submits that if the applicant submits fresh representation / application for leave application and extension of his joining place, the same will be considered by them.

9. In view of the factual matrix, we dispose of this OA with a direction to the respondent No.1 to consider the pending representation of the applicant expeditiously, but not later than thirty days from the date of receipt of a copy of this order and in the meantime, applicant is directed to file fresh representation for so far grant of leave and extension of joining period is concerned, and the respondent is directed to consider and decide the same expeditiously. The respondents while considering the representation shall keep in

mind what has been stated herein above and also in the light of the existing guidelines issued by the Department of Post dated 19.5.2020.

Accordingly, the OA stands disposed of .

10. Direct service is permitted. Registry is directed to sent a copy of this order to counsel for both the parties through e-mail

(A.K.Dubey)
Member (A)

(J.V.Bhairavia)
Member (J)

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