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Reserved

Central Administrative Tribunal, Allahabad.

Registration O.A.No.119 of 1988

Jagat Ram Applicant

Vs.

Union of India & 3 others... Respondents.

Hon. Ajay Johri, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

In this petition u/s.19 of the Administrative Tribunals Act XIII of 1985, the applicant has prayed for quashing his transfer order dated 25.8.1987 with a direction to the respondents to permit him to serve at Jhansi till the expiry of usual term of 4 years and in the alternative for a direction to pay him Travelling Allowance and Transit Period (for short TA&TP) in connection with the transfer in question.

2. Shortly stated, the relevant facts of the case are that the applicant is an officer of Senior Time Scale of the Indian Postal Service Group 'A' and he belongs to North West Circle. Vide order dated 1.5.1986 of the Director General Posts, New Delhi he was allotted U.P. Circle and thereafter he was posted to Jhansi as Senior Superintendent of Post Offices (for short Sr.SPO) under order dated 15.5.1986 of the Post Master General, U.P.-respondent no.2. The applicant belongs to district Hosiarpur in Punjab and only a few months after his posting at Jhansi, he made a representation to the Director General of Post Offices on 5.3.1987 for his transfer to Punjab, Hima-chal Pradesh or Haryana circle due to his family

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problems. The Director General acceded to his request and vide impugned order dated 25.8.1987, he was transferred to Himachal Pradesh circle but without any TA& TP. This transfer from Jhansi to Himachal Pradesh without TA&TP was not acceptable to the applicant and first he made oral request and then made a representation on 5.10.1987 to the Director General for granting him TA& TP in view of the fact that he will have to incur a huge expenditure in moving his family and other house-hold luggage from Jhansi to Himachal Pradesh. On 17.10.1987 he sent a telegram to the Director General and some other authorities stating that his transfer without TA& TP will cause financial hardship and disturbance in the education of his children and his request for transfer be treated as withdrawn. On 27.10.1987, the applicant made a further representation to the Director General for the cancellation of his transfer on the ground that the same will cause financial hardship and disturbance in the education of his children due to his transfer in mid-season. The applicant also seems to have approached the Minister of Communication with the similar request. Vide letter dated 15.1.1988, Sri V.N.Kapoor, Asstt.Post Master General, Lucknow- respondent no.3 informed the applicant that the Hon'ble Minister has not acceded to his request for his retention in U.P. Circle and the applicant was required to hand over the charge to Sri V.P.Rai Sr.SPO Kanpur City-respondent no.4, further stating that in case the charge was not handed over by the applicant, he will be deemed to have been relieved from the circle henceforth. After this order, the present petition was filed with the allegations that

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the applicant had never given up his TA&TP and had simply made a request for transfer and in case his transfer was to be made without TA&TP on his request, it should have been made immediately and not in the mid-session and he was not prepared to proceed to Himachal Pradesh without TA&TP in the mid-session.

3. The petition has been contested on behalf of the respondents and in the reply filed on their behalf by the respondent no.3, it has been stated that soon after his posting at Jhansi, the applicant started making requests for his transfer to Punjab, Himachal Pradesh or Haryana forming part of the erstwhile North West Circle and his transfer to Himachal Pradesh circle was made under the impugned order dated 25.8.87 on his request. The delay in the transfer was on account of non-availability of the post earlier. In his representation dated 5.10.1987, the applicant did not make any allegation for not proceeding on transfer due to the disturbance of the education of his children and this allegation was made by him only in his subsequent representation. According to the rule 114 and S.9 F.R.S.R., a transfer at the own request of a public servant cannot be treated as a transfer for the public convenience and for such transfers no travelling allowance is to be paid. The transfer of the applicant having been made within 2 years of his posting at Jhansi on his request, he was not entitled to any TA&TP and his request for TA&TP involving a sum of Rs.5 to 6 thousand rupees is not reasonable. On a second thought the applicant

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has changed his mind and decided to continue at Jhansi and his transfer having already been materialised, the reliefs claimed by the applicant in his petition cannot be granted to him. It was further stated that the applicant stood relieved of his charge under order dated 15.1.1988 with immediate effect and he is now no more Sr.SPO Jhansi and is not entitled to any relief.

4. The applicant has alleged in his rejoinder that he is still holding the charge of Sr.SPO Jhansi under the statusquo order passed by the Tribunal and he also received his pay for Feb.1988 but the subsequent pay, i.e. from March onward, was wrongly withheld by the respondents and he is entitled to the reliefs claimed.

5. From the pleadings of the parties, as stated above, there is no dispute in this case that within a year of his posting at Jhansi, the applicant made a request for his transfer to North-West circle and on his request, he was accommodated by the Director General Posts and was transferred to Himachal Pradesh circle. On receiving the order of his transfer, the only hitch expressed by the applicant in moving to Himachal Pradesh was that the transfer to such a distant place will involve a huge expenditure, which was not easy for him to manage and he prayed that he be granted TA&TP. Afterwards, when he found that his request was not going to be accepted, he changed his stand and requested that he was not prepared to proceed on transfer in the mid-session and his transfer at the end of the session with TA&TP be considered

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and he specifically requested to cancel the transfer. The contention of the respondents is that it is ^{not} always open to an officer to make a request for transfer and then to make another request for its cancellation.

As the transfer of the applicant was made on his own request, he is bound to carry out the transfer orders.

6. The question of TA&TP is certainly a material question in this case as it involves a huge expenditure in shifting from Jhansi to Simla where the applicant is shown to have been posted. The question to be seen is whether the request of the applicant for his premature transfer implied his consent that he was prepared to forego TA&TP or in other words, if it is established that the applicant had made the request for his pre-mature transfer knowing fully well that he will not get TA&TP, he can hardly be heard making any grievance for not granting the same.

7. Extract of rule 38 of the Posts and Telegraph Manual Vol.IV, annexure 1 provides that transfers of officers, when desired for their ^{own} convenience, should not be discouraged if they can be made without injury to the rights of others. This rule does not provide for depriving the officers of TA&TP on their transfer on own request. On the other hand, it provides that transfer on request should not be discouraged by the department. The applicant, therefore, committed no wrong in making a request and the Director General showed no undue favour in accepting his request for transfer on his convenience. The extract of F.R.S.R. Part II, annexure 3 provides for granting transfer travelling allowance and it does not contain any provision for withholding transfer TA in case of premature transfer on request of the officer concerned.

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On the other hand, the respondent no.3 in para 20 of his reply has quoted rule 114 of the Supplementary Rules which provides that the travelling allowance may not be drawn by a Govt. servant on transfer from one station to another unless he is transferred for the public convenience. A transfer at his own request should not be treated as a transfer for the public convenience unless an authority sanctioning the transfer so directs for special reasons to be recorded in writing. This rule does provide to deprive an official of TA on his transfer being made on his own request but the discretion has been given to the authority making the transfer to grant TA even in such cases. We, therefore, feel *ourselves* inclined to hold that there is no absolute rule prohibiting the payment of T.T.A to any officer who is transferred on his own request. It, therefore, could not be implied that the applicant had sought his transfer from Jhansi to North West Circle with his consent or knowledge that he had not to receive any TA for such transfer. The refusal of the applicant to accept his transfer without TA&TP therefore, cannot be said to be wrong or illegal and it was necessary for the Director General Posts to apply his mind to consider the implications of his refusal and in case there was no practical difficulty, the refusal should have been accepted.

8. As the applicant has made both the prayers, i.e to cancel the transfer and in the alternative to make a direction for granting TA&TP, it is necessary for us to see what appropriate relief can be granted to the applicant in this case. The order dated 15.1.1988 issued by the respondent no.3 states that in case the applicant fails to hand over the charge, he shall be

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deemed to have been relieved from the circle forthwith. The respondents relied on this condition of the order and they are treating the applicant relieved. Indisputedly, the applicant was on leave when this order was communicated to him and he reported for resuming his duty on 4.2.1988. Initially the Tribunal had not granted any interim order in this case but on 3.2.1988, it had ordered the parties to maintain the statusquo as existed on that date. The contention of the respondents is that under the order dated 15.1.88, the respondent no.4 was directed to take over the additional charge of the post of Sr.SPO Jhansi and later on a regular posting order of Sr. O.N.Awasthi was issued vide copy annexure RA2 but this order could not be given effect to due to the interim order of the Tribunal and according to the order dated 3.2.1988 of the Tribunal, the respondent no.4 is holding the additional charge of the Sr.SPO and the applicant is not occupying that post from the date of his proceeding on leave before that date. The applicant has challenged in his rejoinder this contention of the respondents and has alleged that he is still discharging his duty as Sr.SPO. By moving an application he also prayed for a direction to the respondents to pay his salary from March 1988 till date. For the purpose of this case, it is not necessary to decide whether the applicant is holding the charge of the post of Sr.SPO Jhansi from 3.2.88 or not as this thing has to be decided mainly on the basis of the actual working. As the applicant stood relieved of his charge immediately under order dated 15.1.1988 and the respondent no.4 resumed his charge, this position existed on 3.2.1988 and strictly speaking, the applicant cannot be deemed to be in the charge

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of his post at Jhansi. However, due to the inability of the respondent no.4 to discharge his additional duties from Kanpur, if the respondents allowed the applicant to discharge the duties as Sr.SPO Jhansi and he actually did so, the position will be different. In any way for the purpose of this case, it is clear that no regular substitute of the applicant has joined at Jhansi so far and the post is thus still vacant. As such, there can be no difficulty for the respondents to allow the applicant to resume his duty in case he is not holding the charge, now till his transfer from Jhansi is considered in the normal course ignoring his request. It has not been disputed on behalf of the respondents that but for the request of the applicant he could not be transferred from Jhansi under the impugned transfer order. As the applicant was transferred subject to certain conditions not acceptable to him, the impugned transfer order is liable to be cancelled.

9. The impugned transfer of the applicant from Jhansi to Himachal Pradesh is accordingly cancelled. The parties are directed to bear their own costs.

Sharma
MEMBER (J)

Sharma
MEMBER (A)

Dated: 19.9.1988
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