

(6)

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

Original Application No.953 of 2006.

Allahabad, this the 22nd day of December, 2006.

Hon'ble Mr. P.K. Chatterji, Member (A)

Km. Bindu Jaiswar,
D/o Shri Harihar Prasad Jaiswar,
Post Assistant, Kutchery Post Office
Moradabad,
R/o Ward No.34, Ram Talliya
(Manpur Narayanpur)
Police Station : Majhola, Linepar
District : Moradabad.Applicant.

(By Advocate : Shri S. Mandhyan/Shri K.K. Arora)

Versus

1. Union of India, through Secretary, Ministry of Communication, Department of Post, Shansd Marg, New Delhi.
2. Senior Superintendent of Post Offices, Moradabad Division, Moradabad.
3. Shri Shiv Autar Saxena, Personal Assistant/Stenographer to Senior Superintendent of Post Office, Moradabad Division, Moradabad.

....Respondents.

(By Advocate : Shri S.Singh)

ORDER

The applicant is a Postal Assistant. She is aggrieved that within a short time she was transferred from Moradabad Head Post Office to Kutchery Post Office, Moradabad. She was served with a transfer order dated 24.7.2006 on administrative ground. She was brought to Kutchery Post Office on tenure transfer in May,

meat

2005. The transfer order ^{was} stated to be made on administrative ground though the reasons have not been recorded. She submits that this amounts to a punitive action for which there was no opportunity of hearing to defend herself.

2. She further submitted that the transfer order is a result of some alleged complaints by a few customers of the Postal Services at Kutchery Post Office. She has alleged that no confrontal inquiry was made to substantiate the complaint and without this opportunity she was ordered to be transferred and directed to be relieved. The Tribunal after preliminary hearing on the OA had directed that the Status-quo should be maintained. However, she has not been allowed to work in the Post Office from July and is not being paid any salary for 4-5 months, which is causing her extreme hardship. She has also stated that sudden transfer to a station about 40 K.m. away is extremely hard for her and has been made without any reason. She has stated that this is a result of a conspiracy in which respondent No.3 is also involved. She has referred in this OA to a letter written by the Post Master to the Senior Superintendent of Post Office, Moradabad. This letter was written by the Post Master Kutchery Post Office dated 6.7.2006. It would appear from the letter that the Post Master had written to the Senior Superintendent that orders for transfer of the applicant having already been made, action should be taken for her relief immediately. This letter is dated 6.7.2006 i.e. 18 days before issuing the transfer order.

3. By citing this, learned counsel for the applicant says that this should clearly indicate

muah

that her transfer order was not made on administrative ground, but on ^{extraneous consideration} the basis of complaints (which were not genuine). It was due to the reasons that she was not in the Good Book of the Post Master as well as respondents. Moreover, the fact that she had made some complaints against respondent No.3 ^{also} could have caused the orders of transfer. The learned counsel also stated that it was punitive action for which the respondents should have first made an inquiry and if it was proved on inquiry that the applicant was responsible, the same should have been issued. They could have initiated disciplinary action against the applicant. The transfer as a penal action without adequate opportunity was bad in the eye of law. It was ^{argued} ~~directed~~ that when the transfers were made on the ground of complaint it would be necessary to give an opportunity to the applicant to defend herself by a confrontal inquiry, failing which the orders issued by the respondents will become ultra vires. though it is stated to be on merit

4. Learned counsel for the respondents submitted at length that various complaints against the applicant were made when she was working as Postal Assistant in the Kutchery Post Office. The various complaints are from the Advocates who are responsible people and are not expected to lodge complaint for no reason. The matter was so serious that even the Secretary Bar Association wrote to Senior Superintendent complaining against her behavior. All these could not have come without any basis. He countered the allegations of the learned counsel for the applicant that these were procured at the behest of Post Master and respondent No.3 by saying that

meant

the Advocates could not lend themselves to being instruments in the hands of some officials, being responsible citizens. Moreover, the complaints were received not at a time but over ^a period of many months during which she was working. Therefore, it would show that the complaints were not contrived. He further stated that the respondents are quite justified in ordering the transfer in public interest. Customer's satisfaction is of utmost importance and if customers are dis-satisfied in this matter, the administration has to take suitable action including transfer. The Administration is competent and authorised to take this action besides other disciplinary action. As to the allegations that no inquiry was made, the learned counsel stated that in October, 2006 a show cause notice was issued to the applicant on all the complaints asking why an inquiry not made and disciplinary action not taken against her. Learned counsel for the respondents very emphatically rejected the point made by the learned counsel for the applicant that merely saying that a transfer was made on administrative ground was not sufficient. Learned counsel for the respondents emphatically stated that there was no settled law to that effect and to elaborate the reason in the transfer order was not necessary. However, he could not explain why the show cause notice could not be issued to the applicant before ordering her transfer.

5. After hearing the arguments and going through the pleadings, I am of the view that the respondent's action in ordering the transfer cannot be held void on the ground stated therein. If the complaints which have been made the ground

Muath

for transfer are genuine, the respondents are fully justified in issuing the transfer order. However, there are some loose ^{ends} hanging here and there which the respondents have not been able to tie together. The letter of the Post Master Kutchery Post Office dated 6.7.2006 remains mysterious. It has not been clearly explained why and how such a letter was issued 18 days before the order of transfer. The point made by the learned counsel for the applicant that no confrontal inquiry was made has also to be taken into account.

6. The applicant has also alleged that respondents have acted malafide by passing the impugned order of transfer. The applicant has alleged that she had made certain complaints against the private respondent No.3 i.e. Stenographer to Senior Superintendent of Post Offices and out of grudge and malice, respondent No.3 influenced the Senior Superintendent of Post Offices to transfer her out. Therefore, she is of the view that respondent No.2 i.e. Senior Superintendent of Post Offices has acted out of malice and the order is, therefore, malafide. However, I am not convinced as to the charge of malafide. The applicant was not able to establish as to how respondent No.2 could act out of any bad intention towards her. If there was any hostile and ill feeling between respondent No.3 and the applicant, it is not clear how it would influence respondent No.2 to issue a malafide order. Learned counsel for the applicant has also alleged that the respondents issued the transfer order without any application of mind. In this context, he cited the following judgment

Muath

in the case of Salek Chand Vs. State of U.P. and Others which reads as under :-

"Service-Transfer-Sub-Inspection-With in one year-On behest of a Member of Parliament and a leader of political party-Held-Transfer being not an Administrative exigency or public interest-Illegal-Order was not an application of mind by competent authority but was based on dictate of outsider to the department."

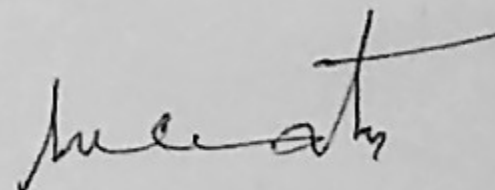
7. A look at the order of the Apex Court would show that the same was issued in a different context as the transfer order was made at the behest of leader of a political party. The Hon'ble Court has observed that the concerned authority did not apply its mind but mechanically and blindly followed the wishes the leader of the political party. There is no parallel between the two.

8. However, after going through all the records and on the hearing of the arguments, I am of the view that the applicant has a reason to be aggrieved as no inquiry was conducted into the allegations against the applicant before the transfer order. I am aware that the respondents have the right to transfer an official from his/her post if it is so required by public interest. If he/she, being in a service in which daily interaction with the public is required, is failing short of their expectation, the administration has the right to transfer him/her. But the official has also the reciprocal right to know the ground of such transfer. In this case it is noticed that although the transfer order was issued quite some months ago, only now some inquiry is being contemplated.

muah

9. From the above observations, it would be clear that although the transfer is purportedly on the ground of allegations against the applicant's work at Kutchery Post Office, the transfer order has been made hastily without waiting for the allegations to be verified. On this ground the allegations of extraneous considerations behind the transfer cannot be altogether dismissed. For these reasons, it is directed that the impugned transfer order dated 24.7.2006 is set-aside. If the respondents are of the view that her presence in Kutchery Post Office would cause resentment of customers, she can be posted at any other Post Office within Moradabad. Otherwise she may be allowed ^{to} continue at Kutchery Post Office. This order is issued without any prejudice to the right of the respondents to conduct necessary inquiry into her work with regard to the allegations and take appropriate action on the basis of the finding of the inquiry as admissible under rules.

10. With these orders, the OA is disposed of. No order as to costs.



Member-A

RKM/