

8

O.A. No. 279 OF 2006

Order dated : 22-11-2006

Shorn of unnecessary details, it would suffice to say that while the Applicant was working as Postal Assistant of Motiganj Sub Post Office under Balasore Postal Division, in order dated 15.03.2005 (Annexure-1) in his present capacity, he was transferred and posted to the office of the Balasore Head Post Office. Under Annexure-2, dated 20.03.2006 he having been transferred and posted as SPM, Rasalpur Sub Post Office, preferred representation under Annexure A/3 dated 23.03.2006. Apprehending to be relieved before giving consideration to the points raised in his representation, he approached this Tribunal in the present Original Application filed under section 19 of the Administrative Tribunals Act, 1985. He has challenged the order of transfer on the following grounds:

- (i) The order of transfer is contrary to clause 8 of Chapter 27 of the Post Office Small Savings Scheme which *inter alia* provides that a Postal Assistant on completion of five years of service at one station can only be transferred/Replaced.
- (ii) He has been disturbed during the mid academic session that too, just after completion of only one year while allowing the other similarly situated employees have been retained in one place for years together.

9

- 2 -

- (iii) the transfer order is an out come of mala fide exercise of power.

Respondents have filed their counter refuting the stand taken by the Applicant in his Original Application. By giving details of the places of posting of the Applicant, the Respondents have averred that it is incorrect to say that the applicant has been transferred to such a long distant place. He has been transferred from Balasore town to Rasalpur PO within a distance of 12 KMs after having a stay of about 17 years at Balasore Town (excluding the RTP period which is about 4 years). It has been clarified in the counter that the Applicant was in the Head Post Office of Balasore from 27.02.1988 to 02.02.2000. During this period of about 12 years, he had performed three years duty as PA, NSC counter and two years as Ledger Assistant thus, totaling a period of five years in SB/SC branch of Balasore HO. On the allegation that this transfer would cause difficulty to the study of his children, the Respondents have stated that the first daughter of applicant is taking medical coaching at Bhubaneswar, the second one is prosecuting her study in KKS Women's College, Balasore residing in a mess there and the third one is staying with her mother who is serving in Saun Primary School which is 5 KMs from the new place of posting of applicant. It has

been stated that on rotational transfer the applicant has been adjusted in nearby place to look after his family. It is also stated that the transfer order being made in public interest keeping in mind the guidelines available in the field, there is hardly any scope for this Tribunal to interfere in it. While denying the allegation of mala fide exercise of power, the Respondents have stated that since the transfer of applicant is in accordance with the guidelines issued by the competent authorities, the same should be maintained.

Mr. S.K.Swain, Learned Counsel appearing for the Applicant and Mr. S.B. Jena, Learned Additional Standing Counsel for the Respondents have reiterated their stand taken in the pleadings during the hearing of this matter and having heard them, perused the materials placed on record.

It is not in dispute that in transfer matters the power of the Courts/Tribunal is very limited and in such matters, interference of the Courts/Tribunal is possible where the order of transfer has been made in violation of statutory provisions prohibiting any such transfer [Ref: **Mrs. Shilpi Bose and Others v. State of Bihar and Others** -AIR 1991 SC 532; **Union of India v. N.P.Thomas**-AIR 1993 SC 1605; **Union of India v. S.L.Abas** -AIR 1993 SC 2444; **State of Madhya**

Pradesh v. Shri Arjun Sing – AIR 1993 SC 1239 ; Abani Kanta Ray v. State of Orissa - 1995 (Suppl.) 4 SCC 169; Union of India and Others v. V. Janardan Debanath and Another - (2004)4 SCC 245; National Hydroelectric Power Corpn. Ltd. Vs. Shri Bhagwan (2001) 8 SCC 574; Union of India v. H.N. Kirtania - (1989 (3) SCC 445); State of Orissa v. Kishore Chandra Samal- 1992 (2) Scale page-251; State of Madhya Pradesh v. S.S. Kourav- AIR 1995 SC 1056; State of UP and Others v. Gobardhan Lal and D.B. SINGH v. D.K. Shukla and Others -2005 SCC (L&S)55; and State of U.P. & Ors. v Siva Ram & Anr.-2005(1) AISLJ 54. Applicant has failed to satisfy the test so as to enable this Tribunal to interfere in the present order of transfer. It is also noticed that representation filed by applicant against his transfer has been considered and rejected by his higher authority. Where the transfer order has been made in public interest, question of discrimination does not arise; because it is the settled rulings that authorities shall decide the terms of transfer and place of posting of the employees. Similarly, in view of the facts stated by the Respondents, the transfer of the applicant has nothing to do with the education of his children.

Similarly, except bald allegation of *mala fide* exercise of power, no materials have been produced to enable this Tribunal to come to the conclusion that the transfer of applicant is by a colourable exercise of power. The rulings of the Hon'ble Apex Court on the subject are that no cognizance can be taken on the bald and unfounded allegations of *mala fides* in absence of any documentary proof. It is also not possible to draw inference from dubious facts [[**Union of India & Ors. V. Ashok Kumar & Ors**, 2006 (1) AISLJ 312 = 2006 SCC (L&S)47]. The Hon'ble Apex Court have also noticed that the allegations of *mala fides* are often more easily made than proved and, therefore, it was observed that the very seriousness of such allegations demands proof of a high order of credibility [**E.P. Royappa v. State of T.N.**, AIR 1974 SC 555=1974 SCC (L&S) 165=(1974)4 SCC 3]. Hence, in absence of any such proof, I am not inclined to accept the argument of the Learned Counsel appearing for the Applicant that the order of transfer is an out come of *mala fide* exercise of power..

Since transfer is an incident of service of an employee and the Government cannot be restrained from issuing order of transfer of their employees in public interest or on administrative ground, I am not inclined to interfere with the present order of transfer

13

- 6 -

of Applicant. Hence, this O.A. fails and stands dismissed by leaving the parties to bear their own costs.

10/3/2
(B.B.MISHRA)
MEMBER(ADMN.)