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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.430 of 2013
Cuttack this the 4th day of July, 2014
CORAM
HON'BLE SHRI R.C.MISRA, MEMBER(A)

Niranjan Rana,
Aged about 50 years
S/o-Late Jogendra Rana,
Vill/PO-Jalasuan,
PS-Ramachandrapur,
Dist-Keonjhar
At present working as SPM, Salapada Sub Post Office
Keonjhar Division - under orders to Transfer to Postal Assistant
Keonjhargarh H.O

...Applicant

By the Advocate(s)-M/s.S.Rath
B.K.Nayak-3
D.K.Mohanty
-VERSUS-

Union of India represented through

1. The Director General of Posts,
Ministry of Communications,
Department of Posts,
Dak Bhawan,
New Delhi-11001.
2. The Chief Postmaster General,
Orissa Circle,
Bhubaneswar,
Dist-Khurda.
3. The Postmaster General,
Sambalpur Region,
At/PO/Dist-Sambalpur-768001.


Ran

4. The Superintendent of Post Offices,
Keonjhar, Division
At/PO/Dist-Keonjhargarh-758001
5. Sri Binod Bihari Modi
At present working as Postal Assistant Joda LSG S.O
Keonjhar
under orders of Transfer to SPM Salapada S.O.

...Respondents

By the Advocate(s)-Ms.S.Mohapatra
MR. S.B. Mohapatra

ORDER

R.C.MISRA, MEMBER(A)

This is the second round of litigation by the applicant before this Tribunal. Earlier, applicant had moved this Tribunal in O.A.No.301 of 2013 questioning the legality of the order dated 8.5.2013 transferring and posting him as Postal Assistant to Keonjhargarh H.O. from Salapada SO. This Tribunal vide order dated 15.5.2013 disposed of the said O.A. in the following terms.

“We find that officials whose names find place at Sl.Nos. 15 to 22 have been made on administrative grounds only. Since the representation of the applicant is pending, as stated by the applicant, with the Respondent No.3 and the authority being benign employer has every authority to take a decision considering the personal difficulties to be caused in case transfer is effected, at this stage without expressing any opinion on the merit of



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the matter, we dispose of this O.A. with direction to the Respondent No.3 to take a decision on the pending representation of the applicant and communicate the result thereof in a reasoned order to the applicant within a period of 60(sixty) days from the date of receipt of copy of this order. Till such time status quo in respect of the relieve of the applicant shall be maintained".

2. In compliance with the above direction, Respondent No.3 considered and rejected the representation of the applicant vide Memo dated 2.7.2013 (Annexure-A/7). Aggrieved with the above communication, applicant has again approached this Tribunal in the present O.A. seeking relief as under .

"To quash the order of transfer so far as applicant is concerned dated 8.5.2013 under Annexure-A/4 and order of rejection under Annexure-/7 dated 2.7.2013".

3. In support of his case, applicant has urged the following points.

i) Earlier applicant had been imposed with minor punishment on account of disciplinary proceedings initiated against him under Rule-16 of CCS(CCA) Rules and therefore, his transfer based on the self-same facts tantamounts to double punishment, which is absolutely illegal, arbitrary and mala fide.



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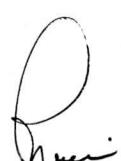
- ii) Transfer having been effected during the mid academic session is bad in law as held by the Hon'ble Apex Court.
- iii) The speaking order issued by Respondent No.2 does not deal with all the points raised in the representation and as such, the same is non est in the eye of law.
- iv) Annexure-A/7 which deals with administrative reasons to the effect that the applicant misused the official power as SPM and also mis-utilized the Govt. money for his personal gain, has been passed in lieu of punishment (**Somesh Tiwari Vs. Union of India and others reported in AIR 2009 SC 1399.**)
- v) Transfer of the applicant is contrary to the norms of transfer guidelines as he has been transferred before completion of his tenure of four years.
- vi) In the order of transfer, no cogent and convincing reasons have been mentioned regarding administrative interests and therefore, this is a novel procedure adopted by the Respondents just to harass the applicant.
- vii) Order of transfer does not mention grant of T.A/D.A and jointing time.



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4. Private Respondent No.5 has neither appeared nor filed any counter.

5. Official Respondents have filed their counter reply. The main thrust of the counter reply are as under:

- i) Applicant as SPM Salapada S.O mis-utilized the official power and Government money for his personal gain. Therefore, his continuance as SPM is fraught with risk and burden to the Government exchequer. Hence, he was transferred from the post of SPM, Salapada SO and posted as Postal Assistant in Keonjargarh HO.
- ii) According to official Respondents, transfer is not a punishment rather it is an administrative need in exigency of service. Therefore, there is no mala fide intention and no dual policy adopted resorting the choose & pick formula in the transfer memo.
- iii) As the transfer of the applicant has been made on administrative ground and on valid reasons, the same is not illegal and therefore, the allegation of illegality & mala fide exercise of power have been refuted.
- iv) The allegation of harassing the applicant by transferring him in administrative ground in a novel manner, according to official Respondents, has no basis and therefore, the said plea is not at all acceptable. The applicant's transfer is due to administrative need in order to run the office smoothly.



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v) According to official Respondents, 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 an administrative ground. Hence, it is pleaded that the transfer of the applicant in administrative ground is legal just and proper and tenable in the eye of law.

6. Heard Shri D.K.Mohanty, learned counsel for the applicant and Shri U.B.Mohapatra, learned SCGSC for the Respondents at a considerable length and perused the pleadings. I have also gone through the rejoinder filed by the applicant.

7. It is the settled position of law that ordinarily Tribunal should not interfere with the orders of transfer. The Tribunal can interfere with such matters if there has been violation of statutory mandatory rules while effecting transfer of an employee or transfer arises out of bias or mala fide.

8. In the instant case applicant although has urged mala fide, but has not substantiated this plea by conclusive evidence. Therefore, the plea of mala fide as urged by the applicant is hardly of any help to him.

9. The next point to be considered is that the applicant has urged that the instant transfer amounts to double punishment since he had been earlier punished on the grounds which are



the whole objects of his transfer. He has also further contended that this transfer has been resorted to in lieu of punishment. In this connection, applicant has also relied on the decision of the Hon'ble Supreme Court in Somesh Tiwari(supra), the relevant portion of which reads as under.

"It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal".

10. I have considered the above submissions of the learned counsel for the applicant in the face of the averments made in the counter reply by the official Respondents. Undoubtedly, applicant's transfer to Keonjhargarh H.O. vide Annexure-A/4 dated 8.5.2013 is on administrative ground. The submission of the applicant that this transfer has been effected in lieu of punishment is nothing but a presumption, as no such corroborative material has been adduced by the applicant in this regard. It is also an admitted position that the applicant for certain omissions and commissions on his part has been punished already. Had the applicant instead of being punished



been transferred, then certainly such transfer would have been constructed as a transfer in lieu of punishment. Transfer Memo dated 8.5.2013 is very luculent that applicant has been transferred on administrative ground. This apart, the submission of the applicant that by such transfer, he has been punished twice holds no water. It is, however, made clear that transfer is not a punishment but an incident of service.

11. So far as plea of the applicant that before completion of his tenure he has been subjected to transfer is a matter which only could be considered by the authorities who are the best judge in the matter. It is to be noted that transfer of the Government servant is regulated by a policy guidelines set out by the Department itself. It is neither statutory nor mandatory. It is the prerogative of the authority to decide who should be posted where and at what point of time. Since in the opinion of the authorities applicant has been transferred to a place where better administrative interests could be served, in my considered view, it would not be proper for the Tribunal to intervene in the administrative affairs of the Department. It is also not the case of the applicant that Respondent No.3, during the course of considering his representation in pursuance of



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the direction of this Tribunal in O.A.No.301 of 2013, has left out of consideration any vital point to his prejudice. As regards, mid academic session is concerned, since by virtue of interim order of stay applicant has been continuing at the present place of posting with effect from 9.7.2013 and in the meantime, about one year is going to be over carrying with it another academic session, plea in this respect is rejected. So far as TA/DA as claimed by the applicant, if under the rules, he is due to get so, nothing would ⁰ prevent him from laying a claim before the authority in this regard.

For the aforesaid reasons, I am not inclined to interfere with the order of transfer issued by the Respondent-Department. In the result, O.A. is dismissed. No costs.


(R.C.MISRA)
MEMBER(A)

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