

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH,
JODHPUR

Date of Order: 2.11.95

D.A.No. 276/95.

Kishan Suthar ...Applicant.

Vs.

Union of India & Ors. ...Respondents.

Mr. J.K.Kaushik, Counsel for the applicant.

Mr. Sunil Joshi, Brief holder for,

Mr. J.P.Joshi, Counsel for the respondents.

CORAM:

Hon'ble Mr. Gopal Krishna, Vice Chairman.

Hon'ble Ms Usha Sen, Administrative Member.

PER HON'BLE MR. GOPAL KRISHNA :

Kishan Suthar has filed this application under Section 19 of the Administrative Tribunals Act, 1985, challenging the impugned order dated 20.6.95 (Annex.A/1) by which he was transferred from S.P.M. Pach Padra City to P.A. (LSG) Barmer.

2. The applicant's case is that he is presently posted as LSG P.A. A penalty of withholding of increment for one year without future effect was imposed on him during the current year. Due to certain domestic

Chakraborty

...2.

reasons, he had sought his transfer from Balotra to Pach Padra in 1994. The concerned authorities acceded to his request and transferred him as S.P.M. to Pach Padra by an order at Annexure A/2 dated 29.4.94. He joined at Pach Padra on 5.5.94. However, by the impugned order dated 20.6.95, the applicant was transferred at Government cost from Pach Padra to Barmer despite the provisions contained in Rule 60 of the P.&T. Manual Volume IV to the effect that normally the tenure of posting at one station for non-gazetted Sub Post Master (S.P.M. for short) may be four years. The applicant was ^{also} denied an option to exercise for a posting of his own choice in terms of guide-lines laid down on the subject of rotational/ tenure transfers in the communication dated 12.1.95 at Annexure A/3. The transfer order has been assailed as being illegal and arbitrary. It has also been assailed on the ground that the applicant was transferred because his transfer was advised by his predecessor for the reason that his integrity was considered to be doubtful.

3. On the contrary, the respondents have stated in the counter that the provisions in the P & T Manual are not statutory. The applicant was posted at Pach Padra City at his own request and having not been found suitable for the said post, he has been transferred in public interest and in the exigencies of service. Since it was not in the public

interest to retain the applicant at Pach Padra City where the applicant has already served for a considerable time, the applicant was transferred vide Annexure A/1. The representation made by the applicant in regard to his transfer on 22.6.95 was objectively considered and it was decided not to accede to his request as it was not possible to retain him at Pach Padra City in the exigencies of service.

4. We have heard the learned counsel for ~~the~~ parties and have gone through the records of the case carefully.

5. The learned counsel for the applicant has assailed the order of transfer on the ground that the same has been passed in an arbitrary manner ignoring the provisions contained in Rule 60 of the P & T Manual Volume IV which provides that normally the tenure of posting at one station of a non-gazetted S.P.M. may be four years. The learned counsel for the respondents has produced before us the original file which shows that the applicant's transfer was necessitated since he was not found fit and up to the mark to continue as S.P.M. The learned counsel for the applicant urged that the order is stigmatic and, therefore, it should be struck down. The applicant has not raised any plea to the effect that the order is stigmatic or it ~~smacks~~ of malafides in the O.A. Since the concerned authorities considered it *CPK/AR* desirable to transfer the applicant in public interest,

We are of the opinion that the exigencies of service must take precedence over all other considerations. The normal tenure of four years provided in the P & T Manual Volume IV is subject to the exigencies of service and public interest. An order of transfer cannot be struck down merely because it is in respect of a person against whom there are allegations of misconduct. The instructions contained in the communication dated 12.1.95 on the subject of rotational/ tenure transfers are merely directory. The learned counsel for the applicant has relied on 1995 (1) (CAT) 245 Rakesh Sharma v. State of H.P. and Others, wherein it has been observed that transferring one within a short period of his stay to accommodate someone else is not proper. The applicant has pleaded that the order under challenge was passed merely to harass him and to extend special favour to the favourites of the administration due to extraneous reasons. It has not been specifically pleaded that the order was passed merely to accommodate the respondent No.4. The true fact is that Shri H.P.Meena, working as S.P.M. Jasol, has been posted vice the applicant at his own request as he was due for transfer after completing the normal tenure at Jasol. The request made by Shri H.P.Meena was accepted and he was posted at Pach Padra City at his own cost in the exigencies of service and in public interest. The contention of the applicant that the respondent No.4 was accommodated at his place is, therefore, unsustainable. We are of the view that the transfer order is ~~not~~ neither illegal nor the same can be characterised as arbitrary or malafide.

6. This application, therefore, has no substance and it is hereby dismissed at the stage of admission. No order as to costs.

Usha
(Usha Sen)
Member (A)

Gopal Krishna
(Gopal Krishna)
Vice Chairman

V.S./cvr.