

(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 99/95
T.A. No.

199

DATE OF DECISION 1.11.96

L.R. Verma

Petitioner

Mr. Kamal Dave

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondent

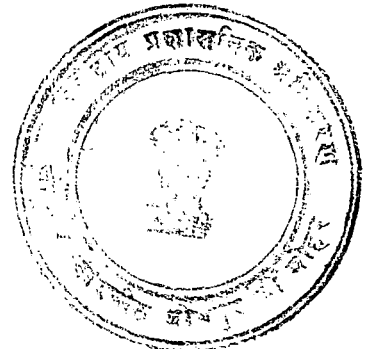
Mr. Vineet Mathur

Advocate for the Respondent (s)


CORAM :

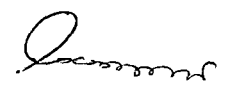
The Hon'ble Mr. S.P. Biswas, Member (A)

The Hon'ble Mr. A.K. Misra, Member (J)



1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
- ✓ 4. Whether it needs to be circulated to other Benches of the Tribunal ? *yes*


(A.K. Misra)
Member (J)


(S.P. Biswas)
Member (A)

IN CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 1.11.1996

O.A. No. 99/95

L.R. Verma

...

Applicant.

v e r s u s

Union of India & Ors.

...

Respondents.

Mr. Kamal Dave, Counsel for the applicant.

Mr. Vineet Mathur, Counsel for the respondents.

CORAM:

Hon'ble Mr. S.P. Biswas, Administrative Member.

Hon'ble Mr. A.K. Misra, Judicial Member.

PER HON'BLE MR. S.P. BISWAS:

The applicant Shri L.R. Verma, in this application filed under Section 19 of the Administrative Tribunals Act, 1985, is highly aggrieved by A/1 and A/2 orders dated 28.4.93 and 19.12.94 respectively. By A/1 order, the applicant has been transferred with immediate effect from the post of Cashier to an equivalent post in the TRA branch replaced by Shri Bhoo Dev Singh. By A/2 order, applicant's representation dated 27.8.93, against the aforesaid transfer order stands rejected. Consequently, he has prayed for quashing the above orders as well as issuance of a direction to respondents to continue allowance as prescribed for the post of Cashier.

2. The facts of the case have relevance to the legal issues raised herein and are stated hereunder. It is the case of the applicant ^{that} he has been deprived of his 'allowance' attached to the post of Cashier under the garb of a transfer order dated 24.8.93. The applicant was appointed as Cashier in the Divisional Office, Sriganagar in January, 1991 under respondent No. 4, after having been duly selected for the said post. The post of cashier draws an allowance of Rs. 125/- per month and involve dealing with finance and monetary matters. The applicant being the Circle President of BTEU, represented cause of members of Union, brought the prevailing corruption amongst the officers of the Telecom Division, Sriganagar to the notice of the higher authorities and was instrumental in safeguarding the interest of the employees under the respondents. The applicant submits that as per Rule 60 of the P&T



13

Manual, Volume IV, the tenure of the post of Cashier is prescribed for 4 years and he was shifted out on 24.8.93, about 15/16 months before he was due to complete the tenure as a Cashier in the Divisional Office. The applicant alleges that malafide and biased approach on the part of respondent No. 4 is evident in the impugned order dated 24.8.1993 inasmuch as a person duly selected for the post of Cashier carrying monthly allowance has been replaced by an official not eligible for the said post.

3. We have heard counsel for both the rival parties. Shri Kamal Dave, learned counsel for the applicant argued strenuously to say that short-circuiting the period of tenure of the applicant as Cashier is against Rule 60 of P&T Manual (Vol.IV) governing postings/transfers on tenure basis. As per counsel, the applicant challenged the said order before this Tribunal in O.A. No. 316/93. In its judgement on 20.9.94, this Tribunal issued the following direction :-

"The case is disposed of with the direction that the applicant's representation pending with the competent authority will be disposed of within three months of the date of the receipt of this order in the light of the observations above. If on consideration of his representation, the order of the transfer is found to be irregular, he should be paid the due allowances of the post of Cashier for the balance of the period of four years tenure."

The counsel argued that the Tribunal had considered all the aspects raised and observed that there was a clear violation of the statutory rules and executive instructions enshrined in P&T Manual wherein the tenure of four years was prescribed for Cashier. In the instant case, the competent authority did not issue any show cause notice before the transfer was affected reverting him to the substantive post by terminating his tenure as Cashier. Since he was holding a post after being duly selected by a properly constituted Body and the tenure was governed by an appropriate provision of the Manual, the competent authority acted in most arbitrary fashion resulting in the transfer order being punitive in nature. Drawing support from decisions of Hon'ble Supreme Court in the case of C.C. Padmanabhan & Others vs. Director of Public Instructions, AIR 1981 SC 64, the counsel contended that the applicant's representation was rejected mechanically on 19.12.1994 without any application of mind. In the above mentioned case, orders transferring the applicants from the post of AEOs (carrying special allowance) to those of HSAs were quashed. The Apex Court held that the appellants shall be deemed to

14

have continued to hold the post of AEOs (in spite of right from the date of the order of his transfer as HSA) and to be entitled to all the benefits pertaining to that post and the respondents were directed to re-post him as AEO. The counsel submitted that the same situation prevails in the facts and circumstances of the instant case and since the impugned order was an act of colourable exercise of powers, this Tribunal held that the same was liable to be quashed.

4. In the counter, the respondents have submitted that representations submitted by the applicant were considered by the competent authority objectively and after careful consideration of the representation submitted by the applicant, the same was disposed of by a speaking order on 19.12.1994. The applicant was initially inducted as a Cashier but subsequently, his working was found unsatisfactory and various deficiencies were pointed out to the applicant. That the respondents were in receipt of several complaints regarding working of the applicant in the post of Cashier. The respondents have further contended that the tenure given in Rule 60 is not an inflexible one. Though in the special note attached to the above Rule, it is mentioned that general tenure for such posts will be for four years, the rule is only directory in nature and does not prohibit transfers in exigencies of service. The counsel for the respondents further submitted that the main observation of the Hon'ble Tribunal was to the effect that since the tenure of the applicant was curtailed by transfer order, the competent authority was required to give reasons for curtailing the tenure of the applicant and this was complied with.

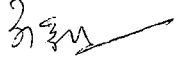
5. The issue that arises for consideration is whether an official ordered to fill up a post on tenure basis drawing allowance could be transferred without offering an opportunity.

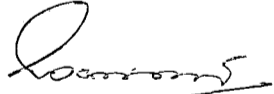
6. It is not in dispute that the transfer of the applicant to the TRA Bench was in the same grade. It was also admitted during the course of arguments that the allowance "attached to the post" was not to be added for the purpose of calculating pensionary benefits. We find that the respondents were in receipt of various complaints against the applicant and they were investigated into and there was substance in the complaints against the applicant. It is in the context of this back ground, respondents felt that it was not desirable to retain the applicant on the substantive post of Cashier. We also notice that the main observation of the Tribunal

was to dispose of the applicant's representation and if the transfer order was found to be irregular, he should be paid the due allowance for the post of Cashier for the left over period of his tenure i.e. 15-16 months. The respondents have duly carried out that exercise and the reasons have been spelt out in A/2 dated 19.12.1994. We have carefully gone through the order of the Court in the case cited by the applicant. That was a case where the post of A.E.O. was of higher grade than H.S.A. Not only this, the special pay attached with the post of A.E.O. was to be counted towards pension. In the instant case, neither it is a reversion nor are the allowances to be taken into account for the purpose of calculating pensionary benefits. The facts and circumstances of the case cited by the applicant do not render any assistance to the applicant herein.

7. The provisions under Rule 60 stipulate administrative directions only and do not restrict the competent officer to effect a transfer when considered essential in the interest of service. Tribunal cannot strike down an order of transfer as penal merely because it is in respect of a person against whom there are allegations of misconduct. The transfer orders made in violation of the transfer policy by itself could not be a ground for quashing the order of transfer as instructions embodying the transfer policy are in the form of guidelines to the officers who are vested with the power to order such transfers in the exigencies of administration. In this respect, we are fortified by a decision of the Full Bench in the case of Kamlesh Trivedi vs. I.C.A.R., 1988 Vol.7 ATC 253 CAT Full Bench. In this case, it was held that pendency of a disciplinary proceeding or receipt of a complaint may by itself be a valid ground of transfer. It is not necessary that an enquiry must be held into a complaint before a transfer is ordered (para 13).

8. In view of the circumstances aforementioned, we find that the application is devoid of any merit and is accordingly dismissed. There shall, however, be no order as to costs


(A.K. MISRA)
Member (J)


(S.P. BISWAS)
Member (A)

cvr*