

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,  
JODHPUR

DATE OF ORDER ; 01.12.1998.

O.A.NO. 200/1998.

Kantilal Jain S/o Shri Manaklal, Age about 52 years, R/o Vill. Peech, Teh. Simalwara, Dist. Dungarpur and working as Postman in Head Post Office Dungarpur.

..... APPLICANT.

V E R S U S

1. Union of India through the Secretary to the Government, Ministry of Communication (Postal Department), Sanchar Bhawan, New Delhi.
2. The Superintendent of Post Offices, Dungarpur, Division, Dungarpur 0 314 001.

.....RESPONDENTS.

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C O R A M

HONOURABLE MR. A.K.MISRA, JUDICIAL MEMBER

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None present for the Applicant.

Mr. Vineet Mathur, Counsel for the Respondents.

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BY THE COURT

The applicant has filed this O.A. with the prayer that the impugned transfer order dated 22.7.1998 (Annex.A/1) be declared illegal and be quashed with all consequential benefits. The applicant has further prayed that the impugned order Annex.A/1 be not enforced against him which has not yet been executed. He had also prayed for interim relief of staying the operation of order Annex.A/1.

2. Notice of the O.A. was given to the respondents on 27.1.1998. The respondents sought time for filing reply, therefore, the operation of the impugned transfer

order was stayed and the same continued to be extended from time to time.

3. I have heard the learned counsel for the respondents in detail. Having waited for learned counsel for the applicant for sufficiently long time, as mentioned in the Order-sheet, I proposed to dispose of the case on merits. The order is as follows :-

4. The applicant has alleged in his O.A. that inspite of expressing his un-willingness to be transferred and posted as Mail Overseer, he has been transferred as Mail Overseer from Dungarpur to Banswara vide impugned order Annex.A/1. This order seems to have been passed to accommodate Shri Laxmanlal, Postman, who is the junior most Postman. In absence of applicant's willingness to go on transfer as Mail Overseer, the person next junior to him should have been transferred. The transfer order is not in public interest and is mala fide in so much so <sup>that</sup> as it accommodates the next junior man at Dungarpur Headquarter. The applicant has further alleged that he is an elected Treasurer of All India Postal Employees Union Class-IV etc. at Dungarpur and is immuned from transfer as per the Guidelines and Circulars issued by the department. For all these reasons, transfer is bad in law and deserves to be quashed. In the petition itself, the applicant has mentioned rulings in support of his own contentions.

5. The respondents have filed their detailed reply in which it is alleged that against the transfer order, the applicant has made no representation to the departmental authorities and has straight-way filed the O.A. which should be rejected as pre-mature. It has further been alleged that Shri Laxmanlal no doubt was the junior-most Postman but is under suspension for a charge under Sec.3 for which he is facing a trial in the Criminal Court. Therefore

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the person next above Shri Laxmanlal, which incidently the applicant is, has been transferred. The transfer order is made in public interest and in exigencies of service. Unwillingness to go on transfer is no consideration for not transferring a particular candidate from one place to another. It has also been argued, that the term for which the applicant was elected as Treasurer of the Dungarpur Branch of the Union, was only one year which has come to an end in the month of May, therefore, the protection of not transferring the Union post-holders is not available to the applicant. No instances of mala fide have been described in the application. Therefore, the impugned transfer order cannot be interfered with as no statutory Guidelines or the Rules have been dis-obeyed in the instant transfer order. A person facing suspension can't be transferred on an active posting. The O.A. is devoid of merits and deserves to be rejected.

6. The applicant has filed rejoinder but the same has not been taken on record by accepting the application for grant of permission to file rejoinder.

7. From the foregoing facts it appears that the applicant is challenging the transfer on only three grounds i.e. accommodation of junior-most person at the Headquarter, transfer of applicant inspite of the fact that he is a Union post-holder and thirdly he has been transferred inspite of his un-willingness to go on the post of Mail Overseer on transfer.

8. I have considered all these grounds. The junior-most Postman at Dungarpur Shri Laxmanlal is undisputedly under suspension, however, it is a different matter that he was suspended only a week before the order Annex.A/1 was

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passed. The fact remains that on the date when the order Annex.A/1 was passed Shri Laxmanlal, Postman, was a suspended employee. As a Mail Overseer i.e. a promotional post, a suspended employee could not have been transferred. For this reason, the transfer of the applicant cannot be said to be bad in the eye of law. On these given facts it can also not be said that Shri Laxmanlal has been accommodated at Dungarpur Headquarter in preference to the applicant and thus the applicant has been discriminated. The ground taken by the applicant does not possess force.

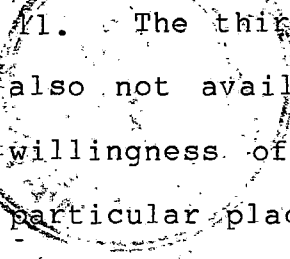
9. The second ground is also not available to the applicant. ~~Wide~~ intimation letter dated 10.4.1997 (Annex.A/6) the Secretary of the Union Shri Jagdeo Roat had informed the Superintendent Post Offices, Dungarpur about the ~~elected~~ Office Bearers and their term <sup>that</sup> they were elected for the year 1997. From the date of intimation one year comes to an end on 10.4.1998. The applicant has not produced the Constitution of the Association which may go to show the term of election but the indication in the letter that Office Bearers have been ~~elected~~ for the year 1997 goes to show that the Association is holding yearly election.

9-A. As per the Guidelines and Circulars (Annex.A/5) the Office Bearers are immuned from being transferred during the first year of their election. In the same Circular Clause 5 says that concession of immunity from transfer may be granted for the 2nd year also to the office bearers of such of the Associations/Unions whose Constitution provides for Conference/Elections in two years, instead of annually. In the instant case, there is nothing on record to show that

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the election of the applicant was for a period of two years or the Dungarpur Branch of the Association has a procedure of electing its Office Bearer for two years, therefore, this ground is also not available to the applicant for challenging the transfer.

10. Here I may venture to mention that public interest and exigency of services are paramount than the personal convenience and interest of an individual employee, therefore, it cannot be said that an employee who is an Office Bearer of a Union/Association is immuned from transfer in public interest.



11. The third ground which relates to un-willingness is also not available to the applicant. In my opinion, the willingness of an employee to proceed on transfer to a particular place is asked by the department to find out a person who is in a need of accommodation by way of transfer to such place but that does not mean that un-willing person cannot be transferred to such place. No employee can be permitted to serve on his own conditions. Showing un-willingness to go on transfer is one such condition which cannot be permitted to be taken by an employee for staying at a particular place. Moreover, the applicant is being transferred on a superior post than that of a Postman and if on promotion or on such supervisory post if employees are permitted to give their un-willingness then probably the work of the department will come to an stand-still. On the one hand employees from time to time advance their grievance for not giving promotion in time and on the other hand they are not willing to go even on promotion to new place, therefore, I am not inclined to accept the contention raised by the applicant in the O.A. that he is being transferred against his wishes. Here I may again

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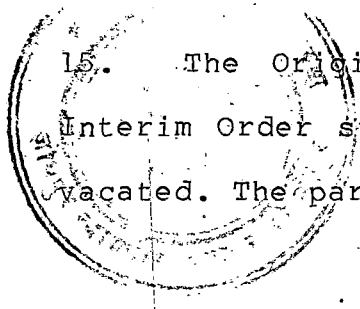
repeat that individual choice has no preference over the official action. It is for the department to see as to who is fit person to be posted at a particular place on a particular post.

12. In the matters of transfer Hon'ble Supreme Court has very clearly laid down that unless transfer order is per se mala fide and has been made in colourable exercise of power, the same cannot be interfered with. In the instant case, the applicant has not been able to show the mala fides of the concerned authorities or that the transfer order has been made in colourable exercise of power, therefore, the transfer order in question cannot be interfered with.

13. I have also gone through the rulings cited by the learned counsel for applicant in O.A. While there cannot be two opinion in respect of law propounded therein. But in such matters, the facts of the case are the guiding factor. General principles have been laid down in the various rulings but they are propounded keeping in view the facts of the case. In all such cases, the transfer order was found to be contrary to rules or departmental guidelines or earlier than the term prescribed for a particular post and in view of these facts, the transfer orders were quashed in respective cases. But no such case of violation of statutory rules, guidelines or pre-mature transfers is available in the case in hand. All these rulings as cited by the learned counsel in his O.A. are distinguishable on facts and therefore cannot be made applicable here.

14. In my opinion, the Original Application is devoid of merits and deserves to be rejected.

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15. The Original Application is hereby dismissed. The Interim Order staying the operation of transfer is hereby vacated. The parties are left to bear their own costs.

( A.K.MISRA )  
Judicial Member

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MEHTA

Rec'd copy  
SPB/Kendall  
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W.

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Part II and III destroyed  
in my presence on 7-11-2006  
under the supervision of  
section officer (J) as per  
order dated 20/9/2006

Section officer (Record)

