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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 78/2003
~~XXXXXX~~

199

DATE OF DECISION 26.05.2003

P.R. Sharma

Petitioner

Mr. S.K. Malik

Advocate for the Petitioner (s)

Versus

Union Of India & Ors.

Respondent

Mr. Vineet Mathur

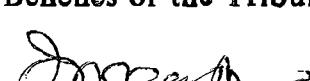
Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. J.K. Kaushik, Judicial Member

The Hon'ble Mr. -

1. Whether Reporters of local papers may be allowed to see the Judgement? *no*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal? *yes*


(J.K. KAUSHIK)
JUDICIAL MEMBER

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO: 78/2003

DATE OF ORDER: 26 May, 2003

P.R. Sharma S/O Shri Amba Lal Sharma, aged about 54 years, R/O QTR Type IV, Postal Colony, Nagaur (Rajasthan), Presently working on the post of Superintendent, Nagaur Division, Nagaur.

...Applicant

VERSUS

- (1) Union of India through Secretary, Ministry of Communication, Dak Bhavan, New Delhi.
- (2) Chief Post Master General (CPMG), Rajasthan Circle, Jaipur (Rajasthan).
- (3) Assistant Director, Postal Services, Office of the Post Master General, Rajasthan Western Region, Jodhpur (Rajasthan).
- (4) Shri J.P. Verma, Superintendent of Post Offices, Sriganganagar (Rajasthan).

...Respondents.

Mr. S.K. Malik, Counsel for the applicant.
Mr. Vineet Mathur, Counsel for the respondents.

CORAM:

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER

ORDER

Shri P.R. Sharma has assailed the impugned order dated 31.03.2003 (Annexure A/1) by which he has been ordered to be transferred from Nagaur to Bikaner. He has also prayed for a



direction to the respondents to keep the applicant at Nagaur till he completes his 4 years tenure and also to impose an exemplary cost on the respondents.

2. The abridged facts of this case are that the applicant while working on the post of Superintendent of Post Offices Group 'B' gazetted at Barmer in the year 2002 was allowed on request transfer to Nagaur. He joined at Nagaur at his own cost without any TA or DA or joining time on 02.01.2002. This transfer had to be sought on certain domestic problem in as much as he had a daughter of marriageable age and was look after his old aged mother. Just on completion of one year, he has been again ordered to be transferred vide letter dated 31.03.2003 to Bikaner by the respondent no. 3 who was no authority to transfer the applicant. It is the respondent no. 2 or Director General who is competent authority to transfer Group 'B' Gazetted Officers from one place to another within circle.

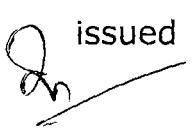
3. The further facts of the case of the applicant are that tenure of Superintendent of Post Offices is 4 years according to para 57 of the Postal Manual (Vol. IV) and these officers are not to be transferred within 4 years. It has also been submitted that the transfer has been made in mid-academic school session and his children are studying in various classes wherein the present session will be over only by the end of May 2003.

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4. The salient grounds for the relief sought in the Original Application are that the impugned order has been issued by the incompetent authority who has no power to transfer of the applicant being Group 'B' gazetted officer. The applicant has just completed one year and as per the statutory provision he can remain at one place for a period of 4 years. The action of the respondents is in violation of Article 14 & 16 of the Constitution of India. The transfer is mid-academic session and has been made just to accommodate the respondent no. 4. The transfer is also outcome of colourable exercise of power which is regarded as malafide exercise of power in the eyes of law and the same deserves to be quashed and set aside.

5. The respondents have contested the case and have filed a detailed counter reply to the Original Application. They have also annexed an order by which the power and function of Chief Post Master General (CPMG, for bravity) have been revised. It has been stated that Nagaur Division having 3 Head Post Offices whereas the Bikaner is having a single Head Post Office so the work at Bikaner is lighter than that of Nagaur and after having observed the working and other administrative aspects of the matter, which was thought proper by the competent authority of the department that it is in the interest of department to utilize the services of the applicant at Bikaner instead of Nagaur. Further it has been submitted the respondent no. 3 has not issued the impugned transfer order but the same has been



issued by the Post Master General Rajasthan, Western Region, Jodhpur (PMG, for bravity) who is competent to issue the same in view of the circular dated 5th December 1989 (Annexure R/1). Further the transfer of the applicant has been done absolutely in the administrative exigency and the public interest. It is also submitted that the domestic problem cannot come in the way of implementing the transfer orders. It is not mandatory to keep a person for a period of 4 years at a particular station. One can be transferred even after completion of one year as per D.G.P. letter dated 23rd February, 1998 as per the rotational transfer policy of the Department. The main ground of defence as set out in the reply of the respondents is that PMG is the Head of Circle in the entire Rajasthan which is considered as one circle upto 1989. But it has been divided into 3 offices and therefore the PMG Rajasthan, Western Region is very much competent to transfer the group 'B' Officers as he is Head of the Circle and both Nagaur and Bikaner come under the jurisdiction of PMG Rajasthan, Western Region, Jodhpur. There is also no question of accommodating the respondent no. 4 as by the very impugned order, 5 persons have been transferred. The applicant has also not availed the departmental remedies and the Original Application is also pre-mature.

6. With the consent of parties for disposal of this case at admission stage, I have heard the learned counsel for the parties at a considerable length and have bestowed my earnest

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consideration to the arguments, pleadings and records of this case.

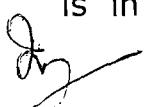
7. The learned counsel for the applicant has mainly banked upon the ground relating to the competence of the transferring authority as well as to the non-completion of tenure of 4 years by the applicant. He has not pressed the ground relating to the mid-term school session, perhaps rightly so since the academic session is almost over by now.

8. The learned counsel for the applicant has submitted that in the present case a transfer order has been issued by the respondent no. 3 or else it could have said to be issued by the PMG, Jodhpur. PMG, Jodhpur is not competent to transfer a person holding the rank of Superintendent of Post Offices in view of para Para 3 Schedule No. I.C. read with para 6 of Schedule 2 to the Postal Manual (Volume III). As per the learned counsel for the applicant the competent authority to transfer the applicant is Director General of Posts. He has also referred to the Rule 57 and 58 at Annexure A/2 and has submitted that as per the statutory rule it was incumbent upon the respondents to keep the applicant at Nagaur for a period of 4 years. Thus, the impugned transfer order is illegal, arbitrary and has been issued in colourable exercise of power, therefore, the same may be declared as inoperative and of no effect.

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9. On the contrary, the learned counsel for the respondents has reiterated the averments made in reply and has made the clean breast of the rules position especially in regard to the competence of the PMG Jodhpur to transfer the applicant from Nagaur to Bikaner. He has also endeavored to countenance the other grounds of defence as set out in the reply as regards to the tenure of transfers. He has submitted that the tenure is provided for rotational transfer but one could be transferred at any time in public interest or in the exigency of service (which was the case here).

10. In so far as the impugned transfer order is concerned, it would be pertinent to notice that it is well settled that the question of transfer for public servant and further question that it is in the interest of service in public interest is to be decided by the competent authorities. The court will not sit in judgment over the decision of the competent authorities on the post that certain public servant has been transferred in the exigencies of services and replaced the judgment of administrative authority by its own finding. This is, however, not to say that there is no scope for judicial interference in the case of transfer, the Court or a Judicial Forum can intervene and set aside the transfer order and if the same is found malafide or in breach of Constitutional provisions or binding administrative instructions, statutory rule or is capricious and based on extraneous reason or is in colorable exercise of power. In the present case the



applicant has impeached the impugned transfer order as being issued by an authority that was not competent and thereby without jurisdiction and also that the applicant had legal right to stay at a particular place i.e. Nagaur till completion of tenure of 4 years.

11. These grounds are dealt with in seriatim – as regards the competent of the authority i.e. the PMG Jodhpur regarding the transfer of applicant. It is the admitted position of the case that the applicant was holding a Group 'B' gazetted post. It is also admitted that both Nagaur as well as Bikaner fall under the administrative control of PMG, Jodhpur and the present is not a case of inter regional transfer: rather it is case of intra regional transfer i.e. transfer between the same region.

12. Before appreciating the primary issue involved in this case it would be necessary to examine the relevant rule position for which the extract of the following provisions are reproduced as under: -

**"POSTS AND TELEGRAPHS MANUAL (VOLUME IV),
CHAPTER II, TRANSFERS AND POSTINGS, GENERAL
RULES 34 :**

Powers

34. The powers of the Director-General, the Head of a Circle and subordinate authorities to sanction transfers and postings of a member of the Department are laid down in the Schedule of administrative powers in the posts and Telegraphs Manual, Volume III".

"Postal Manual, Volume III, Schedule I.C.

Nature of Power	Extent of Power	Remarks
-----------------	-----------------	---------



1

2

3

TRANSFERS

1. XXXXXXXXXX
 2. XXXXXXXXXX
 3. Power to transfer Officers. Full powers to Transfer Officers Below the rank of Directors of Postal Services."

"SCHEDULE No. 2**SCHEDULE OF ADMINISTRATIVE POWERS OF THE HEAD OF A CIRCLE.**

The following officers may also exercise the administrative powers of the Head of a Circle in so far as they apply to their respective charges:

Nature of Power	Extent of Power	Remarks
1	2	3
1 to 5 XXXXXXXXXXXXXX		
6. Power to transfer Gazetted Officers	Full Powers to transfer within his jurisdiction Group "B" Officers of all Services Officers of the Junior Time Scale Officers of the Indian Postal Services Group "A" including officers in charge of R.M.S. Division.	Rules 38 & 63 of the P&T Manual Vol IV and Ministry of Communications (P&T) letters, No. SPA 71-1/48, dated 13 th November, 1948, and No. SPB 111-13/48, dated 21 st February, 1949 and Ministry of Communications (Dept. of Communications and Civil Aviations) letter No. 2/1/58 SPA, dt. 16 th June, 1958 and 23 rd December, 1958."

"PARA 3 OF POWER AND FUNCTION OF CHIEF POSTMASTER GENERAL/ POSTMASTER GENERAL (REGION) - REVISED INSTRUCTIONS, DATED 5TH DECEMBER, 1989.

3. POWERS AND FUNCTIONS OF THE REGIONAL PMG AND CHIEF PMG – DELEGATION AND LIMITATIONS.

Each Regional PMG including the Chief PMG is hereby delegated all financial and administrative powers of the Head of



the Department as spelt out in the Delegation of Financial Powers Rules, General Financial Rules, F.Rs and S.Rs and Delegations issued by the Board from time to time. Each Regional PMG (including the Chief PMG) is also hereby delegated all administrative powers of the Head of Circle in respect of the units placed under the Regional PMG or the Chief Postmaster General as the case may be. The following functions and powers will, however, continue to be vested in the Chief PMG as shown below:

- (a) to (b) XXXXXXXX
- (c) STAFF:
 - (i) Inter-regional transfers of Circle cadre staff;
 - (ii) to (iv) XXXXXXXX
- (d) to (m) XXXXXXXX

6. Delegation of Additional administrative Powers to the Chief Postmaster General.

In addition to the powers already exercised by the Chief PMG in his capacity as Head of the Circle and Head of the Deptt., the following administrative powers of the D.G. are hereby delegated to the Chief PMG:-

Sl. No.	Nature of Power	Extent of Power of Director General	Extent of Power of Chief PMG
1 to 3 XXXXXX			
4.	Powers to transfer officers.	Full powers to transfer officers below the rank of Directors of Postal Services.	Full powers to transfer officers below the rank of Directors of Postal Services within the Circles."

13. At the very outset, it is pointed out that no rejoinder has been filed on behalf of the applicant and there is also no dispute regarding the applicability for or existence of order dated 5th December 1989 (Annexure R/1) from the side of the applicant.



14. From the perusal of the aforesaid provisions, there is no doubt that the full powers vest with the Director General to transfer officers below the rank of Director of Post Offices. Further the full power has been given to the Head of the Circle in respect of transfer within his jurisdiction in respect of group 'B' officers of all services ~~group~~ ~~to~~ to which the applicant belongs.

15. Now the question arises as to whether the Regional PMG can exercise the power of transfer in respect of the applicant within the same Region. Perusal of the para 3 ibid letter dated 5th December, 1989 prescribes that the each Regional PMG (including the Chief PMG) is also delegated all administrative power of Head of the Circle in respect of the units placed under the Regional PMG or CPMG as the case may be. Rajasthan Circle has admittedly been divided into 3 parts as per Annexure-A at page 33 of the paper book and the applicant falls under the 3rd category. The mere perusal of the delegation letter purports that the PMG Jodhpur has been given all the administrative power Head of the Circle in respect of Bikaner & Nagaur in addition to 9 other places. And as per the very schedule No. 2 of Part III para 6 of Postal Manual, the full power has been given to transfer of Group "B" officers to the Head of the Circle. If that be so, the PMG being clothed with full power of Head of the Circle would be competent to transfer to Group "B" gazetted officer i.e. the applicant. The said schedule does not prescribe

any designation it only provides as Head of the Circle i.e. it neither says CPMG nor says the PMG. In the present case, the admitted position is that PMG Jodhpur has been delegated with all powers of Head of the Circle and therefore he would have the full power of transferring a group 'B' gazetted officer within his jurisdiction. Thus, the contention of applicant that transfer order is without jurisdiction falls out of ground and stands repelled.

16. Now looking the matter from another angle in para 3 of the letter dated 5th December 1989 it has been provided that certain powers will continue to be vested in CPMG and one of such power is inter-regional transfer of circle cadre staff. Thus, ^{some} power has been preserved. In the present case it is not a case of inter-regional transfer since the applicant has been transferred in the same Region i.e. Nagaur as well as Bikaner are under the administrative control of the PMG, Jodhpur. From that angle also there is absolutely no illegality in the action of the respondents. As far as the para 6 of the letter dated 5th December, 1989 are on is concerned, there is further delegation of powers of the PMG to the CPMG in respect of transfer of officers. This para is not having any direct bearing in the present case. Since there is a specific provision relating to the transfer of Group "B" gazetted officer and the power has been specifically vested with the Head of the Circle. In this view of the matter also the contention of the learned counsel for the

applicant that impugned order has been issued without jurisdiction is unfounded and stands repelled.

17. As regards the other issue that as per Annexure A/2, the applicant was required to be kept for a period of 4 years as per para 57 & 58. The same contains qualificatory word ordinarily and there is no mandatory fixed period of tenure. These paras are only providing certain guidelines and they are not statutory in substance. The norms enunciated by the Government for the guidelines of its officers in the matter on regulating transfers are more in the nature of guidelines in case of rotational transfer and can have no application to the transfer required in the exigencies of service. There is no vested right to remain at a particular place in Government service. In the present case, it is the specific defence of the respondents that the transfer of the applicant has been made in public interest and in the interest of administration. There has been unanimity in the judicial pronouncements as regards the transfers in administrative interest wherein it has been held that it is for the executive as to who should be posted at what place and as pointed out in the aforesaid paragraphs, the courts have certain limitations. In the present case, there is no malafide alleged against any individual and also the applicant has been transferred by a composite order along with four other employees. Thus, there is absolutely no ground which could support the contentions of the applicant. Thus, there is no infirmity or illegality in the action of

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the respondent on transferring the applicant from Nagaur to Bikaner.

18. The upshot of the aforesaid discussion is that the Original Application is devoid of any merit and the same stands dismissed. The interim order granted in this case shall also stand vacated forthwith. In the facts and circumstances of the case, there shall be no order as to costs.

Meawat
(J. K. KAUSHIK)
JUDICIAL MEMBER

Kumawat

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W.M.

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S.K. Murali
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by

R/ copy

Part II and III destroyed
in my presence on 1/2/05
under the supervision of
section officer () as per
order dated 5/2/05

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Section officer (Record)