

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

ORIGINAL APPLICATION NO: 102/2003.

DATE OF ORDER: June 17, 2003

S.D.Paliwal S/o Shri Buli Dan Ji Paliwal, aged about 57 years, resident of G-236, Shastri Nagar, Jodhpur at present employed on the post of Sub. Post Master, Udaimandir post Office under Sr. Superintendent of Post Offices, Jodhpur, Division Jodhpur.

...Applicant



VERSUS

(1) Union of India through Secretary to Govt. of India, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi.

(2) Director, Postal Services, Rajasthan, Western Region, Jodhpur (Raj).

(3) Senior Superintendent of Post Offices Jodhpur, Division Jodhpur (Rajasthan).

(4) Shri Faizoor Rahman, Post Master General, Western Region, Jodhpur (Rajasthan).

.....Respondents.

Mr. B.Khan, counsel for the applicant.

Mr. Vinit Mathur, counsel for the respondents No.1 to 3. ~~And~~
~~None~~ for Respondent No.4.

CORAM:

[Handwritten signature]

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

ORDER**(Per J.K.Kaushik, Judicial Member)**

Sri S.D. Paliwal has assailed the order dated 25.4.2003 (Annexure A.1) by which he has been transferred from the post of SPM Udai Mandir NDTSO, Jodhpur to the post of SPM Ramgarh SO (Jaisalmer).

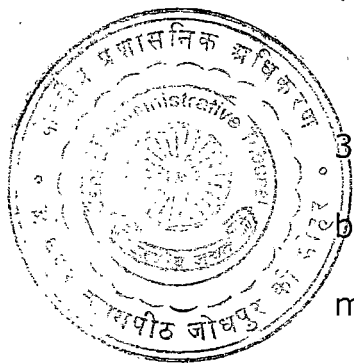
1. The ^{brief}~~natural~~ facts necessary for the adjudication of the controversy involved in this case are that the applicant was initially appointed to the post of Postal Assistant in the year 1965 and thereafter he has been transferred to a number of places. He has rendered about 38 years of service out of which he has served for 25 years in rural areas. At one occasion he was ordered to be compulsorily retired from service in the year 1996, but on appeal he was reinstated with all benefits. The applicant's son Shri Pramod is suffering from mental disorder and psychiatric problem and is under constant treatment at Jodhpur. The applicant has requested the authorities to keep him at Jodhpur. His request was accepted and he was posted and continued at Jodhpur. He was lastly posted on 3.5.2002 from Pratap Nagar to Uday Mandir post office and has not completed the normal tenure of 4 years . His son is still under treatment at Mathurdas Mathur Hospital Jodhpur.



2. The further case of the applicant is that he is also the Honorary Secretary of the Anti Corruption Council, a non political organization and one Shri K.L. Dave , a retired Asstt. PMG is its

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President. Certain irregularities and misappropriation of public funds in purchasing of computers was found by the Council and a complaint was made by the President of the said Council to the CBI . The 4th respondent got annoyed with the applicant and threatened him to face the consequences. The applicant showed his innocence and has stated that he knew nothing about the complaint but the respondent No. 4 did not believe him. The respondent No. 4 managed and got issued a transfer order through the 3rd respondent on 25.4.2003 by which the applicant has been transferred as SPM Ramgarh, SO (Jaisalmer) which is after 10 months of his earlier transfer. The charge from his was immediately taken on the same day and one T.D. Vaishnav has been directed to work in his place. The 3rd respondent is only an officiating authority on the post of Senior Superintendent of Post Offices (SSPO for short) and has no authority to issue the transfer order in public interest. He has passed the order on the advice of the 4th respondent which is a malafide intention against the applicant. The applicant has also not been allowed the benefit of promotion under the BCR Scheme and all these are happening due to the malafide intention of the 4th respondent. The applicant is also in the verge of his retirement.



3. The salient grounds on which this Original Application has been filed are that the transfer order has been passed with malafide intention and arbitrary action of Respondent No. 4 since the applicant has been transferred just after 10 months of his earlier transfer while the normal tenure is of 4 years.

Further the transfer order has been issued to accommodate Shri T.D. Vaishnav , due to extraneous reasons and that too by an authority who is only officiating in the post of SSPO, who has no such authority to transfer the applicant. The son of the applicant needs regular treatment at Jodhpur and his illness is not cured.

4. The respondents have contested the case and detailed reply has been filed on behalf of the official respondents.

5. The main defence set out in the reply is that the applicant has been continuing at Jodhpur since 1986 at various post offices i.e. for more than 16 years and it had become necessary to transfer the applicant in the interest of service and administrative exigencies so that outside station officials may be allowed to give room at Jodhpur. The work of the applicant was also examined and taking into consideration all the relevant factors, the competent authority thought it proper to transfer the applicant to Ramgarh which is comparatively having less amount of work. It has been specifically averred that the applicant has nowhere stated regarding the malafide or incompetency of the transferring authority. It is incorrect to state that he has served for more than 25 years in rural areas . He was posted to Bilara but he did not join there and ultimately joined at Chopasani Road Post Office, Jodhpur. Family problem cannot come in the way of legal transfer of a government servant. Respondent No.4 is not the transferring authority and there is nothing on record to show that the transfer has been done at the instance of Respondent No.4. Mere bald allegation of mala fide are totally baseless and unfounded. The charge has



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been taken by one Shri T.D.Vaishnav and there cannot be anything wrong in the said action.

6. The next contention in support of the defence of the respondents is that the official who holds the charge of SSPO has full powers and taking into position of the circumstances he has transferred the applicant and the SSPO will continue to hold the powers till a regular incumbent joins the said post.

7. Regarding the BCR scheme benefits the same can be granted according to rules, but he has not agitated the matter before any authority.

8. The grounds raised in the Original Application have been denied and it has been prayed that the O.A. may be dismissed with costs. No Rejoinder has been filed on behalf of the applicant.

9. With the consent of the parties, the case was heard at the admission stage for final disposal.

10. I have heard the learned counsel for both the parties and have bestowed my earnest consideration on the pleadings and the reports of the case. The learned counsel for the applicant has reiterated facts and grounds raised in the O.A. and has placed reliance on the judgment in the case of Jai Ram Khatik &

Anr. Vs. Union of India & Ors. (O.A. No.165/2001 decided on 14.12.2001) and has submitted that when an official is appointed to perform the current duties, he cannot exercise the power to transfer an employee as per para 48 of the P & T Manual Vol. III. In this way, there was no regular incumbent on the post of SSPO and one Birbal Meena was appointed as officiating SSPO and he was not competent to transfer the



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applicant. He has next contended that the applicant has completed about 10 months period before the present transfer and he has not completed the normal tenure of four years as per the transfer guidelines. He has also submitted that the respondents have not disclosed any public interest in making the transfer and therefore the transfer is not sustainable. He has placed reliance in the case of Smt. Kulwant Kaur Vs. Ch. Suraj Bhan & Ors. decided by the Punjab & Haryana High Court (1991 (1) SLR 744), with regard to the disclosure of public interest while making transfer orders.

11. The other ground on which the learned counsel for the applicant banked upon is that of mala fide. He has submitted that the transfer has been effected at the instance of fourth respondent since a complaint was made by the President of the Anti Corruption Council to which the applicant is the honorary secretary. He stressed that the Respondent No.4 has manipulated the transfer of the applicant since he has an impression that the complaint against him was lodged by the President in consultation with the applicant. Yet another ground on which the learned counsel for the applicant stressed is that applicant's son is under constant treatment for the mental disorder and there is no facility for the same at Jaiselmer. He has submitted that these facts are well within the knowledge of the respondents since during so many number of years he requested to continue him at Jodhpur and that was being acceded to by the authorities on medical grounds. He has also



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invited my attention to the prescription slip Annexure A-3 and A-5 of the paper book.

12. On the contrary, the learned counsel for the respondents have submitted that none of the contents raised on behalf of the applicant are sustainable. He has submitted that the person who has transferred is also holding the post of SSPO and he is not an officiating SSPO. He is looking after the current charge of the said post of the Jodhpur Division. Transfer is an administrative matter and there is no bar for such an authority in making such transfers which are executive actions and under the statutory rules. Nothing was projected against the Rules by the learned counsel for the applicant.



13. As regards the contention that the applicant has not completed his normal tenure at Jodhpur also falls to the ground and the issue has been settled by this bench in O.A. No.78/2003 indicated in para 19 of this order. Normal tenure is meant for rotational transfers and not for the transfer in public interest. Even otherwise, the applicant himself has stayed at Jodhpur for over 16 years continuously. Normal tenure are provided under the transfer guidelines and there is no statutory rules to this effect. The applicant had to be transferred in the interest of service. He has also contended that only a bald statement has been made with regard to mala fide against the applicant by Respondent No.4 who is not the transferring authority. In the present case, the transfer order is issued by the third respondent. There is no evidence or even an iota of malafide established against the applicant by the fourth respondent.

Merely because a complaint has been made on the letter-head of the Anti Corruption Council to which the applicant is honorary secretary cannot be simplicitor said to be a ground of mala fide. Even the pleadings made on behalf of the applicant did not indicate as to in what way the applicant was threatened by fourth respondent or to face the consequences and how the fourth respondent had annoyance with the applicant.

14. Lastly, he has submitted as regards the medical treatment of the applicant's son at Jodhpur, as per the prescription slip at page 16 of the paper book, the treatment continued only upto 30.4.1996 and thereafter it is only Annexure A-5 wherein a slip has been issued on 27.4.1993 which is subsequent to the transfer of the applicant. This itself shows that the son of the applicant is not under constant treatment. However, it is not for the Tribunal take score of the personal problems or inconvenience caused to the employees and such matters can be objectively considered by the Department concerned. However, in the present case the applicant has not made any endeavour to project his problems before the authorities and therefore, no interference on this count is called for by this Tribunal.

15. 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 of a public servant in public interest is to be decided by the competent authorities. The court will not sit in appeal over the decision of the competent authority on the post that certain public servant has been transferred in the exigencies of services and replace the judgement of administrative



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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 only 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 colourable exercise of power.

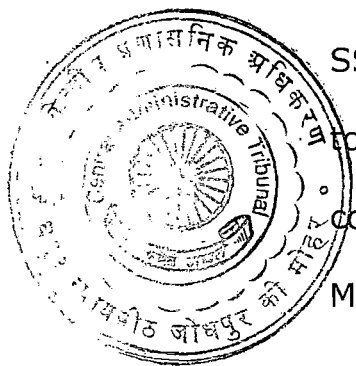
16. In the present case, the applicant challenged the impugned transfer order on the various grounds mentioned above. These grounds are dealt with hereunder.

17. As regards the competence of the authority who has issued the transfer order, it is an admitted position that the person who has issued the transfer order is holding the post of SSPO and a person who is holding a post of SSPO is competent to issue transfer orders. The only contention of the learned counsel for the applicant is that as per para 48 of the P & T Manual Vol. III Chapter IV, Respondent No. 3 was holding the current charge of the post of SSPO and therefore he can exercise such powers. To appreciate the controversy the relevant portion from the judgement in Jai Ram Khatik (supra)

is reproduced hereunder:

" This aspect of the matter has been taken care of in paragraph 48 of the posts and Telegraphs Manual Vol. III Chapter 1, which deals with the procedure to be followed in disciplinary case against Government servants governed by the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Para 48 of the P & T Manual Vol. III may be profitably be extracted as below:-

" 48. An Officer appointed to perform the current duties of an appointment can exercise Administrative or



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financial powers vested in the full fledged incumbent of the post but he cannot exercise statutory powers, whether those powers are derived direct from an Act of Parliament or Rules, Regulations and Bye Laws made under various articles of the Constitution."

A bare reading of the above provision makes it clear that an officer who has been appointed to perform the normal current duties in addition to his own duties in respect of the office which is lying vacant, though can exercise administrative or financial powers, he is not authorised to exercise statutory powers. The statutory powers ;mean those powers which flow from an Act of parliament or Rules, Regulations or Bye-laws made under various articles of the Constitution.



18. Admittedly the person who is holding the current charge of the post can exercise the administrative or financial powers and the power regarding the transfer is purely an administrative power. Thus it can safely concluded that the impugned order of transfer has been issued by the competent authority and the contention of the learned counsel for the applicant that the transfer has been made by a in competent person is unfounded and baseless. Further there is no law ^{requiring} giving reason or disclosing the reason for the transfer in public interest. However, in the present case the respondents have elaborately disclosed the reasons for the transfer of the applicant and due to administrative exigencies the applicant has been transferred. The Judgment of Smt. Kulwant Kaur (supra) where no public interest was disclosed is of no help to the applicant.

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19. By now this issue has been settled in catena of judgements of the Apex Court and various Courts/Tribunals. The learned counsel for the respondents placed reliance on a very recent judgement of this Bench of the Tribunal in P.R. Sharma vs. Union of India and others (O.A. No. 78/2003 – decided on 26.5.2003), wherein in para 17 it has been specifically held as under.



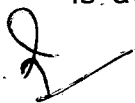
"17. As regards the other issue that as per Annexure A/2, the applicant was required to be kept for a period of 4 years as per para 57 & 58. The same contains qualificatory word ordinarily and there is no mandatory fixed period of tenure. These paras are only providing certain guidelines and they are 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 the 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."

20. The next ground of mala fide is also baseless. I have sifted the various averments made regarding mala fides in issuance of the impugned order and find that they are not only casual, but scrappy and jumpy. What the applicant proposes to reflect or establish from Annexure A-6 is neither here nor there and it smacks no bias or prejudice against the applicant by the Respondent No.4 or 3. The Respondent No.4 had no axe to grind in the matter. I am unimpressed with the wild allegations

of impropriety made by the applicant against Respondent No.4 since there is absolutely no other material to countenance his contentions. It is easy to allege mala fide, but difficult to prove the same. A high degree of proof is required in such matters. The applicant has been continuously adjusted in Jodhpur for over sixteen long years negatives the plea of mala fide. I have no reason to disregard the contention of the learned counsel for the respondents that there is absolutely any relation between the complaint made by the President of the Anti Corruption Council against the Respondent No.4 and the issuance of the impugned transfer order.

21. As regards the last contention of the learned counsel for the applicant that his son requires treatment at Jodhpur, there is no rebuttal of the contention made by the learned counsel for the respondents that after April, 1996 there is no prescription indicating that the sickness or treatment of the applicant's son at Jodhpur. I also subscribe the views expressed by the learned counsel for the respondents. But, I hasten to add that the personal inconvenience and personal problems could not be the matters for adjudication before the Tribunal. Further, the applicant can project his problems before the authorities even after carrying out the present transfer and joining at the new place of posting or at any time whenever he considers it expedient and necessary.

22. In view of the aforesaid discussion, the present application is devoid of merit and substance and calls for no interference.




Therefore, the present application stands dismissed with no order as to costs.



J.K. Kaushik
(J.K. KAUSHIK)
JUDICIAL MEMBER

JSV