

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 211/2002

DATE OF DECISION 04.09.2002

H.K. Jakhar

Petitioner

Mr. S.K. Malik

Advocate for the Petitioner (s)

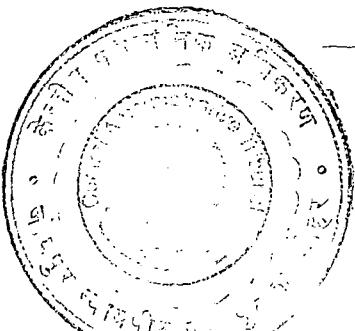
Versus

Union of India & Ors.

Respondent

Mr. Vinit Mathur

Advocate for the Respondent (s)



CORAM:

The Hon'ble Mr. 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 ? Yes.
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes.

J.K. Kaushik
(J.K. Kaushik)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

O.A. NO. 211/2002

Date of Order: 4.9.2002

H.R. Jakhar S/o Shri Hameer Ram Ji aged about 43 years, R/o Tilak Nagar, Bikaner (Rajasthan).

Presently working on the post of Inspector of Post Offices (IPO) Public Grievances (PG) in the office of Superintendent of Post Offices Bikaner (Rajasthan).

...APPLICANT.

V E R S U S

(1) Union of India through the Secretary Ministry of Communication, Department of Posts, Dak Bhawan, NEW DELHI.

(2) Post Master General, Rajasthan Western Region, Jodhpur, (Rajasthan).

(3) Assistant Post Master General, Rajasthan Western Region, Jodhpur, (Rajasthan).

(4) Superintendent of Post Offices, Bikaner (Rajasthan).

(5) Shri Ram Singh Sub Divisional Inspector of Post Offices Bandikui, District Dosa (Rajasthan).

...RESPONDENTS.

Mr. S.K. Malik, counsel for the applicant.

Mr. Vinit Mathur, counsel for the respondents No. 1 to 4.

None present for the respondent no. 5.

CORAM:

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

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O R D E R

BY THE COURT:

Shri H.R. Jakhar has filed this original application under Section 19 of the Administrative Tribunals Act, 1985 and has challenged the order dated 16.08.2002 (Annexure A/1) by which his representation against transfer order has been rejected and order dated 25.07.2002 (Annexure A/2) while which he has been ordered to be transferred from I.P.O. (P.G.) Bikaner to I.P.O. (P.G.), Sriganganagar.

2. The undisputed facts of the case as borne out from the pleadings in O.A. as well as the reply are that the applicant was allowed on request transfer from Merta City to Bikaner Post Office on completion of his normal tenure of 4 years vide order dated 13.04.2000 (Annexure A/3). The normal tenure for IPOs post is 4 years. The applicant has completed about 2 years and 4 months at Bikaner and thereafter he has been ordered to be transferred to Sriganganagar vide impugned order dated 25.07.2002. His son is studying in class XI at Bikaner in Govt. School.

3. The applicant has further pleaded that one Shri Ram Singh was earlier ordered to be transferred from Bandikui to Sriganganagar vide order dated 12.07.2002. Just after about 13 days, impugned order has been issued by which Shri Ram Singh is being accommodated at Bikaner vice the applicant and in place of Shri Ram Singh, the applicant has been posted. The applicant also protested against his transfer order and submitted a representation to the Competent Authority which has been rejected vide letter dated 16.08.2002 (Annexure A/1).

4. The Original Application has been filed on multiple grounds i.e. the applicant has been transferred to accommodate respondent no. 5 who

was earlier transferred from Bandikui to Sriganganagar, the son of applicant is studying in class XIth in Bikaner and the transfer has been made in mid of academic session, there is no public interest involved in transferring the applicant, the 3rd respondent is not competent to order the transfer of the applicant, the transfer order is against the policy of the department as well as the statutory rules contained in para 59, volume-IV of P&T Manual, no reasons have been indicated while deciding the representation of the applicant, the complete action is clearly arbitrary and in colorable exercise of power etc.

5. I have heard the learned counsel for the parties and have carefully considered the records of this case.

6. In the last, the learned counsel for the applicant has submitted that there was no administrative exigency in transferring the applicant from Bikaner to Sriganganagar and the grounds of passing the impugned order taken in the reply to the Original Application did not have any nexus with the objects sought to be achieved. On the other hand, the learned counsel for the respondents has vehemently argued and submitted that the applicant's transfer from Bikaner to Sriganganagar has been made in administrative exigencies and larger public interest. He has emphasised on para (1) of the brief facts mention in the reply to the Original application, I considered it appropriate to extract the same as under:-

" 1/- That the applicant was working as SDI (P), Merta was transferred to Bikaner as IPO (P.G.) vide order dated 13th April, 2000 at his own request. He has been working at Bikaner since 24th April, 2000. Shri Ram Singh, SDI (P), Bandikui who was transferred and allotted to the Western Region by the Chief Post Master General, Rajasthan Circle, Jaipur vide order dated 4th June, 2002 and as such, he has been posted as SDI (PG), Sri



Ganganagar vide PMG (Western Region), Jodhpur letter dated 12th July, 2002 but the respondent No. 5 Shri Ram Singh did not join at Sri Ganganagar. The Superintendent of Post Offices, Sri Ganganagar vide his letter dated 22nd July, 2002 requested to change the transfer order in respect of Shri Ram Singh, the respondent No. 5 for the reason that there is a fraud case at Uttradabas B.O. and the official who is involved is the real brother of Shri Ram Singh, the respondent No. 5. Therefore, it will not be in the public interest to post Shri Ram Singh at Sri Ganganagar. It was in these circumstances that taking into consideration all the factors, administrative exigency and public interest, the applicant has been transferred to Sri Ganganagar which is absolutely just and proper."

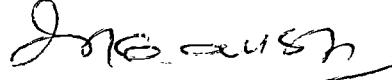
7. The learned counsel for the respondents has contended that posting the respondent no. 5 at Sri Ganganagar where his real brother against whom there is a fraud case is also employed would not be in the interest of administration. He has also submitted a copy of FIR filed against Shri Bhai Ram S/o Shri Lal Chand Karodiwal, BPM, Uttaradhabas, which is taken on record and indicates that the FIR has been lodged under Section 409, 467, 468 and 471 of IPC against the brother of respondent no. 5.

8. On the other hand, the learned counsel for the applicant has submitted a copy of an order dated 14.08.2002 by which Shri Mai Ram brother of Shri Ram Singh, respondent no. 5 has already been dismissed from service. The copy of the order is taken on record. It has been contended by the learned counsel for the applicant that the very basis and ground which is said to have necessitated the transfer of the applicant has gone. Even otherwise such ground could not be said to be a genuine one and the transfer of the applicant could not have been termed in the administrative interest. While agreeing with the contention of the learned counsel for the applicant, I hasten to add that the matter involved has far reaching effect in as much as if

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posting of a person is to be barred to a place where his relative is employed on the pretext that his said relative is involved in criminal or disciplinary case, is justified, there could be justification of posting out all the relatives of a person employed at the place, the movement any criminal case/disciplinary proceeding is initiated against such employee. There is no logic in this. However, there is no need to examine this case further since the very basis of the transfer order i.e. the disciplinary case against the brother of respondent no. 5 is already over. In this view of the matter, the Original Application deserves acceptance.

9. In view of the foregoing discussion, the Original Application is allowed. The impugned orders dated 16.08.2002 (Annexure A/1) and 25.07.2002 (Annexure A/2) is hereby quashed. However, there shall be no order as to costs.


(J.K. KAUSHIK)
MEMBER (J)

Kumawat