

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH : JODHPUR.

Date of Order :- 01.10.2002

O.A. No. 223/2002.

L. S. Bhagora S/o Shri Martaji Bhagora, aged about 55 years, R/o Qtr. No. 4, Postal Colony, Dungarpur, presently working on the post of Asstt. Superintendent, Post Offices (South) Dungarpur, 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. The Post Master General, Rajasthan Southern Region, Ajmer (Raj.).
3. Shri Ramji Lal Meena, Superintendent of Post Offices, Dungarpur (Raj.).
4. Shri Mota Ram Meghwal, Asstt. Superintendent of Post Offices, Office of P&G, Southern Region, Ajmer (Raj.).

... RESPONDENTS.

Mr. S. K. Malik, counsel for the applicant.  
Mr. Vinit Mathur, counsel for the respondents.

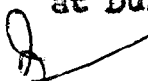
CORAM

Hon'ble Mr. Gopal Singh, Administrative Member.  
Hon'ble Mr. J. K. Kaushik, Judicial Member.

: O R D E R :

(per Hon'ble Mr. J. K. Kaushik)

L. S. Bhagora has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, for seeking a direction to quash the impugned memo dated 23.07.2002 (Annexure A-1) and also to retain the applicant on the post of ASP, South Sub Division, at Dungarpur till completion of his tenure.



2. The facts of the case, as narrated in the OA are that the applicant was allowed on own request posting, on the post of ASP at Dungarpur, South Sub Division, in June 2000 and since then he is working at Dungarpur. The applicant has been under constant ~~harassment~~ harassment by respondent No. 3, who has always demanded money from the applicant and also put pressure that he should take bribe from the employees and in turn give him the same. The applicant expressed his inability to adhere to the same. The applicant was given adverse remarks by respondent No. 3, being reporting authority and the same has been communicated vide order dated 18.06.2002. A representation has been made against the same giving full details.

3. The further case of the applicant is that he was asked by the 3rd respondent to remain at Headquarter and an enquiry was conducted against him without even issuance of the chargesheet. His statement was taken on 23.07.2002. With ulterior motive, number of complaints were made to Respondent No. 2 on which the impugned transfer order dated 23.08.2002, transferring the applicant from Doongarpur to Beawar, has been issued. The order has been issued with connivance with Respondent No. 2 due to malafide of the respondent No. 3. The applicant has not completed the tenure of four years as per transfer policy. ~~The OA has been filed on multiple grounds~~

4. The Original Application has been filed on multiple grounds i.e., the transfer has been made due to the complaint of respondent No. 3 and thereby it is the

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outcome of malafide intention, without a chargesheet, inquiry has been conducted and the representation against the ACR has not been decided, the applicant is a diabetic patient and his wife is also working in medical department in Doongarpur District. The normal tenure is of four years whereas he has completed two years. He has ~~xxx~~ been transferred just for causing harassment. There is a government policy that husband and wife should be posted at the same place. But without any administrative interest he has been transferred in mid of tenure. There is no public interest involved and the the public interest is absent in the impugned order , etc.

5. Respondent No. 1 to 4 have filed the counter reply to the Original Application and have contraverted the facts and grounds mentioned in the OA. An additional affidavit has been filed by the respondent No. 3 refuting the allegations of malafide. It has been averred that the matter regarding adverse remark is being looked by the competent authority as per the Rules. Merely asking an official to remain at the particular headquarter cannot be construed to be malafide. As regards the plea of the enquiry, it was a preliminary investigation conducted regarding the appointment case of EDMC, Khanari. There was no question of issuance of any chargesheet. The allegations of bribe is false, baseless and unfounded. Respondent No. 3 has never written any letter to Respondent No. 2 for shifting the applicant from Doongarpur. Respondent No. 3 has nothing to say in the matter, since he has no role to play, so far as transfer of the applicant is concerned. The transfer order has been



issued by respondent No. 2. It is for the department to consider the exigencies of service in the public interest and policy and guidelines are for the smooth functioning of the administration. If administrative interest and the exigencies of service demand that a particular person is required to be transferred from a particular place, the same can be done by the competent authority <sup>not</sup> and it may/always be possible to keep husband and wife at one station. Hence the action of the respondents is absolutely just and proper. The OA deserves to be dismissed with no order as to costs.

6. A rejoinder has been filed on behalf of the applicant almost reiterating the facts and grounds mentioned in this OA and certain letters ~~incorporating~~ giving details of subsequent events have been placed on record alongwith the rejoinder to the reply.

7. We have heard the learned counsel for the parties and have carefully perused the record of the case.

8. The main contention and ground of the attack by the learned counsel for the applicant has been on the point of malafide. It has been argued that the transfer of the applicant has been got issued at the instance of respondent No. 3 who has been harassing the applicant and when the applicant did not act as per his desire, the last weapon of ousting the applicant from Doongarpur has been adopted. The 3rd respondent with malafide <sup>engineered</sup> intention/~~engineered~~ the complete case and made complaints

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to respondent No. 2 who has transferred the applicant. In support of his contention, the applicant has submitted that he was asked to remain at Headquarter and an inquiry is conducted against him without issuance of a charge-sheet, the ACR of the applicant has been spoiled, the transfer has been made in clear violation of the mandatory rules where the tenure is said to be of four years. The Instructions of the Central Government for keeping husband and wife together has been thrown over Board. He has also invited our attention to Annexure A-10 to A-13, in support of his contention regarding the malafide. On the other hand, learned counsel for the respondents has reiterated the averments made in the reply to the Original Application and has submitted that the transfer of the applicant has been made in the interest of administration and due to the service exigencies, the applicant was transferred against a vacant post. As regards the malafide, Annexure A-10 to A-13 do not show that there is any malafide. Even the so called inquiry is nothing but a part of the preliminary enquiry conducted in regard to the appointment of one of the EDMC. He has submitted that there is absolutely no malafide even on the part of Respondent No. 3. Respondent No. 3 is not the transferring authority and there is no allegation of malafide against respondent No. 2. Respondent No. 3 has also filed an additional affidavit and denied the allegations of malafide. As regards the keeping husband and wife together and regarding the tenure, the instruction guidelines are directory in nature and are subject to the

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service exigencies. In the present case, the applicant's transfer is neither tainted with malice nor issued in colourable exercise of power. This Tribunal will not like to interfere with the impugned order.

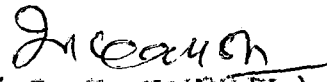
9. We have given our anxious consideration to the pleadings and the rival contentions put before us. The contention of the applicant is that the impugned order has been issued malafidely, does not have any basis. Inasmuch as the applicant has narrated that certain complaints were made by respondent No. 3 to respondent No. 2, but neither a reference has been given of same nor a copy of the same made <sup>available</sup> ~~to~~ to us. As regards Annexure A-10 to A-13, none of them support the contentions of the applicant. The position regarding the so called inquiry has been made amply clear. It is settled law that a transfer which is an incident of service not to be interfered with ~~xx~~ by the courts unless it is shown to be clearly arbitrary or vitiated by malafides or infraction of any professed norm or principle governing the transfer (Abani Kanta Ray vs. State of Orissa, 1995 Supp (4) SCC 169). As regards the malafide it may be easy to allege malafide but difficult ~~xx~~ to prove. The nature of evidence to establish malafide has to be strong and convincing (State of U.P. vs. V.N. Prasad (Dr.) 199 5 Supp (2) SCC 151).

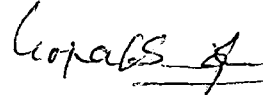
10. The law is well settled by now as regards the posting of ~~xxx~~ husband and wife together. The instructions provides that as far as possible husband and wife should be kept together. As regards the tenure of a particular post as per Para 59 of P&T, it has been provided that



the tenure of Assistant Superintendent of Post Office should not permanently remain in the same division or the sub division, as the case may be, or at the same post for more than four years at a time. Thus the tenure is not fixed one rather the maximum tenure in the same division/sub division can be of four years and one could be transferred even before the completion of the tenure, if the same is required in the interest of administration. However, these Guidelines/instructions are only directory in nature and in the present case, no violation of any statutory rules has been complained of.

11. In view of the foregoing discussions, there is no force in this Original Application and the same deserves to be dismissed. The Original Application is hereby dismissed with no order as to costs. The interim order granted earlier stands vacated.

  
( J. K. KAUSHIK )  
Judicial Member

  
( GOPAL SINGH )  
Administrative Member

Joshi