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CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION NO. 261/2002

DATE OF ORDER: 29-10-2002

Suresh Chandra Sharma Son of Shri Bhanwar Lal Sharma,
Aged about 43 years, resident of 12, Shiv Colony,
Narsingh Pura, Beawar, Distt. Ajmer: Official Address:
Sub. Divisional Inspector (Post Office), Nimbahera.

...APPLICANT.

V E R S U S

1. The Union of India through:
The Secretary, Ministry of Communication
Post & Telegraph, Department of Post,
Dak Bhawan, New Delhi.
2. The Post Master General Manager,
Rajasthan Southern Region,
Ajmer.
3. The Supdt. Post Offices,
Chittorgarh.
4. Shri S.P. Palod,
Inspector Post Offices,
PMI, Udaipur.



...RESPONDENTS.

For the applicant: Mr. Kamal Dave, Advocate.

For the respondents: Mr. Vinit Mathur, Advocate.

CORAM:

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

ORDER

PER KAUSHIK

Shri Suresh Chandra Sharma has filed this Original

.. 2 ..

.. 2 ..

Application under Section 19 of the Administrative Tribunals Act, 1985 and has sought following reliefs:-

- "8.1 The respondents may be directed to place the relevant record/file before the Hon'ble Tribunal
- 8.2 That the impugned order dated 24.09.2002 may kindly be quashed and set aside and the respondents may be directed to allow applicant to serve at Nimbahera till the extended period allowed by the department vide order dated 15.07.2002.
- 8.3 Any other appropriate order or direction, which may be considered just and proper in the light of above, may kindly be issued in favour of the applicant.
- 8.4 Costs of the application may kindly be awarded in favour of the applicant."

2. The brief facts of this case, as pleaded by the applicant, are that applicant is holding the post of Inspector of Post Offices at Nimbahera. He completed the normal tenure of posting and submitted his willingness for posting at (i) SDI (P) Bhilwara (E) (ii) SDI (P), Nasirabad (iii) SDI (P), Kishangarh, vide letter dated 4.3.2002. Regular transfer orders were issued in the month of April 2002 but his name was not included in the list of routine transfers.

3. The applicant made a request for grant of one year extension since the academic session had started in July 2002. The same was granted vide letter dated 15.07.2002 (Annexure A/2). Thereafter, he got his children admitted in class XI & B.Sc. Part I, respectively at Nimbahera.

.. 3 ..

The applicant was also sent for training of IRM ASRM. While he was undergoing the training, the impugned order dated 24.09.2002 was passed and he has been ordered to be transferred to Bhilwara just to accommodate one Shri S.P. Palod, respondent no. 4, who is allowed own request transfer vice applicant whose transfer is indicated as in the administrative interest.

4. The applicant has raised number of grounds in support of his case e.g. he was granted extension for one year and doctrine of estoppel comes into play, he has been transferred just to accommodate respondent no. 4, the transfer is made in mid of the academic session and such act is abuse of power and is clearly a case of malice in law, he has got his children admitted and transferring him in mid-academic session reflects colourable exercise of power etc.

5. The respondents have filed a detailed reply and have submitted that the competent authority has never extended the tenure of applicant. Letter dated 15.07.2002 (Annex.A/2) has been issued by incompetent person which perhaps passed in collusion with applicant and does not have any sanctity. Even appropriate disciplinary action is being taken against the erring official. The transfer order has been passed with due application of mind and after taking into account the administrative exigency. The applicant has been transferred to his first choice of posting. He has been posted on the vacancy caused due to posting/promotions effected vide order dated 24.09.2002 (i.e. promotion of Shri P.P. Chakoo). Thus there is no question of any colourable exercise of power or abuse of power. The Original Application is baseless

.. 4 ..

and deserves to be dismissed with costs. No rejoinder has been filed on behalf of applicant.

6. With the consent of counsels of both the parties the case was heard for final disposal at admission stage.

7. I have heard both the parties at length and have carefully perused the records of this case.

8. The learned counsel in addition to reiterating the facts and grounds mentioned in the Original Application, has also tried to substantiate the ground of mala fide by referring to the subsequent action of respondents i.e. hurrying up the joining of respondent no. 4, after the grant of stay order. He has stressed more emphasis on the point of mala fide of respondent for the reason that respondent no. 4 has been accommodated by ousting the applicant. Despite grant of extension, the applicant is being compelled to go on transfer especially in mid of the academic session. Numerous decisions have been cited before me by the learned counsel for the applicant.

9. On the other hand, the learned counsel for the respondent has vehemently opposed the arguments on behalf of applicant. He has submitted that transfer of the applicant was necessitated for the reason that certain promotion/posting were made vide a composite order dated 24.09.2002. A post of IPO fell vacant at Bhilwara and the department posted the applicant by materialising his option. There is no question of any mala fide. It is not the case of applicant that he is being transferred in place of respondent no. 4. The impugned order is also a composite order.

.. 5 ..

10. The further submission of the learned counsel for the respondents is that firstly they have not granted any extension. However, independent of any such extension or tenure one could be transferred in administrative/public interest. As regards the question of mid-term academic session, there is no statutory rules and the authorities have full power to transfer; after-all the individual's inconvenience can not out-weigh the interest of administration. ~~That~~ There is no illegality or infirmity requiring any interference by way of judicial review of the impugned order.

11. I have considered the rival contentions raised on behalf of both the parties. The primary issue for determination in this case is whether the impugned transfer order, transferring the applicant from Nasirabad to Bhilwara could be said to be for accommodating the respondent no. 4 and not in the public interest. It is admitted by both the parties that the applicant had completed his normal tenure of posting by April 2002 and he became due for tenure transfer. It is also admitted that the applicant submitted his first option for posting as Bhilwara. The applicant has been posted in pursuance to his option to Bhilwara is also not in dispute. It is also fact that a vacancy for the post of Inspector of Post Offices fell vacant on promotion of one Shri P.P. Chakoo on which the applicant has been transferred. The vacancy fell vacant on 23.08.2002 and the applicant was transferred on 24.09.2002. The impugned order Annexure A/1 is a composite order wherein four person have been transferred out of which three are own request

and applicant's transfer has been termed in the interest of service. The contention of the learned counsel for the applicant that the respondent no. 4 was relieved to join at Bhilwara and showing anxiety in the matter indicates that whole exercise was done to accommodate him. In my opinion, such inference does not appeal to the reason, since generally in cases of own request transfer one tries to join at the earliest possible and there is nothing wrong least to say ~~mala fide~~ of joining of respondent no. 4 because at Nimbahera. The applicant has been transferred at Bhilwara not in place of respondent no. 4 but against a vacant post caused due to the promotion of Shri P.P. Chakoor where is the question of accommodation. Perhaps the whole confusion seems to have been arisen because instead of passing one order for the postings/promotions, they have passed two orders with a gap of about one month. Not only this the applicant has been posted to the place to which he has given his first choice, had there been any mala fide exercise of power, the respondents could have transferred him elsewhere and not to his choice place. I am unable to comprehend as to how the action of the respondents could be termed as mala fide or in colourable exercise of power. It is the settled position of the law that it is easy to allege the mala fide but difficult to prove the same. Nature of evidence to establish mala fide has to be strong and convincing. Not only this the officer against whom a malafide has been alleged is also required to be impleaded as necessary party. In this case nothing such has been done. Since I am of firm opinion that neither it is a case of transferring the applicant for accommodating any one nor



a case of mala fide exercise of power, I do not consider it necessary to refer to the numerous decisions cited by the learned counsel for the applicant on the point of mala fide exercise of power.

12. Now the only question remains regarding the mid-term academic session transfer. Although there may not be any rule preventing the exercise of power, the Supreme Court has held that in effecting transfer the fact that the children of an employee are studying and in the middle of the academic term should be given due weight if the exigencies of services were not urgent (Director of School Education v. O. Karuppa Thevan, 1996 (1) SLR 225 (SC):). In the present case there was urgency in as much as the applicant has been posted against a vacant post which fell vacant due to the promotion of the incumbent who held the same. In this view of the matter merely because it is a mid-term transfer, it is well not necessarily make the transfer vulnerable.

13. Nextly as regards the grant of extension, I have observed that the letter dated 15.07.2002 (Annex. A/2) does not make in reference to any instruction or letter of the competent authority. However, I do not express any opinion as to the validity of the same. However, such extension or even the tenure periods do not attract the doctrine of estoppel one can always be transferred in the exigencies of service even if he has not completed the tenure or the extended tenure. In the present case the applicant has been transferred in the exigency of service and thus the content of the learned counsel for the applicant that the applicant ought not to have been transferred until his expiry of the

.. 8 ..

extended period stands repelled and is not tenable, thus, there is no illegality and infirmity in the impugned order.

14. In view of the foregoing discussions, the Original Application is meritless and the same is hereby dismissed. However, there shall be no order as to costs. Rule already issued stands discharged.


(J.K. KAUSHIK)
Judl. Member

Kumawat

