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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

O.A. NO. 173/2002

Date of Order: 28-8-2002

Shri R.L. Kansara S/o shri Babu Lal Kansara, aged about 49 years R/o Dev Nagar Colony, Sirohi (Rajasthan)
Presently working on the post of Accountant at Sirohi Head Post Office (Rajasthan)

...APPLICANT.

V E R S U S

(1) Union of India through the Secretary, Ministry of Communication Sanchar Bhawan, New Delhi.

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

(3) Superintendent of Post Offices, Sirohi Division, Sirohi (Rajasthan).

...RESPONDENTS.

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

Mr. Vinit Mathur, counsel for the respondents.

CORAM:

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

BY THE COURT:

Shri R.L. Kansara has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, challenging the impugned order dated 08.07.2002 (Annexure A/1), by which he has been

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transferred from Sirohi Head Office to Jalore Head Office on the post of Accountant.

2. The factual matrix of the case are that after completion of the tenure, the applicant was transferred from Sirohi Divisional Office to Sirohi Head Office at his own cost and request vide memo dated 01.06.2001. Just after one year he has been transferred from Sirohi Head Office to Jalore Head Office at a distance of about 75 kms. vide letter dated 08.07.2002. The applicant has further averred that he has an old father aged about 80 years and is suffering from heart disease. There is no one else to be looked after at Sirohi. As per the rotational transfer policy, the normal tenure for the post of accountant is four year and the transfers are normally to be made in April to June but he has been transferred after commencement of academic session. He has got admitted his children in school in first week of July itself.

3. The Original Application has been filed on the ground that he has been transferred in mis-academic session, there is only rotation transfer within the same station and he cannot be transferred out of Station, the applicant has been transferred just after completion of one year and he has not completed even the normal tenure. No one has been posted and no qualified accountant is available at Sirohi Division, there is no administrative or public interest and therefore the action of the respondents is out-come of colorable exercise of power.

4. The respondents have filed a detailed counter reply to the Original Application and have controverted the facts and grounds raised in Original Application. A detailed rejoinder has also been filed on behalf of the applicant wherein an order dated 12.07.2002 has been annexed wherein one Shri Inder Singh Deora, Accountant, DO, Sirohi has been transferred in place of the applicant. The applicant has also submitted that to defeat

the claim of the applicant, the order transferring another person in place of the applicant has been passed. An additional reply has been filed to rejoinder on behalf of the respondents.

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


6. The learned counsel for the applicant has vehemently argued that the applicant has been transferred from one unit to another and such transfer cannot be made as per the rules in force and he also placed reliance on the judgement of one of the Bench of this Tribunal in D.M. Parmar and Ors. vs. Union of India and Ors., 1996 (1) ATJ, 200 wherein it has been held that Rule 37 is no more operative and transfer of employee from one unit to another on account of administrative reason is held to be illegal and quashed. The learned counsel for the respondents has countered the same and has submitted that the transfer of the applicant has been made in administrative interest and he has not been transferred to different unit Sirohi as well as Jalore Head Office are under the control of Post Offices, Sirohi Division, Sirohi and it is not a case of transfer to a different unit, hence. this contention of the application is not sustainable. The next argument of the learned counsel for the applicant has been that the applicant has been transferred in mid-term academic session and the same hit by the verdict of Hon'ble Supreme Court in Director of School Education wherein it has been held that in absence of urgency no transfer should be made in mid-term academic session. A specific query was made to the learned counsel for the applicant in regards the particulars of the children said to have been studying. The learned counsel for the applicant after consulting his client submitted that one his of the child has taken admission in 1st Year of graduation. No other detail was given. In fact except making an averment no material has been

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placed on record and I am not inclined to accept this contention in absence of any proof. Further the learned counsel for the applicant has also drawn my attention to para 60 of PNT Manual and certain other provisions wherein it has been provided that the normal tenure for the accountant is four years but it is argued that the applicant has been transferred much earlier to the completion of the four years. On this the learned counsel for the respondents have submitted that it was in the interest of administration to transfer the applicant at Jalore as no qualified accountant was available at Jalore Head Office. It has also been submitted that the applicant has completed about 26 years of service at Sirohi itself and was having longest stay at Sirohi. In this way, he was transferred. There is no malafide, arbitrariness and the order has been passed in good faith to meet the administrative exigency.

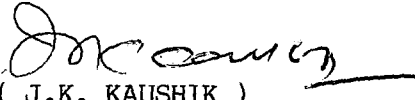
7. The learned counsel for the applicant resisted the contention of the learned counsel for the respondents and cited the judgement of Apex Court in Ramadhan Pandey vs. U.P. & Others, wherein it was observed that the transfer order was not issued in public interest and there was no indication to this effect from the transfer order or from the other records. On this the learned counsel for the respondents submitted that the said case has no application to this present case in as much as it has been specifically submitted in the reply that the transfer has been made in the administrative exigencies for the detailed reasons mentioned in the reply.

8. I am not persuaded with the contention of the applicant and aim of the considered view that there is no infirmity, illegality or arbitrariness in passing of the impugned order. The position of the law regarding to the judicial review of the transfer orders is settled in catena of judgements by the Apex Court and until there is any malafide in passing of transfer



order or order has been passed in colorable exercise of power etc. no interference in transfer matters is called for. I find the present one is the case of such type.

9. In view of the foregoing discussions, I do not find any force in this Original Application and the same deserves to be dismissed and the same is hereby dismissed. No order as to costs.


(J.K. KAUSHIK)

MEMBER (J)

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