

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

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Original Application No.136/2005

Date of decision: 5th July 2005

**Hon'ble Mr. J K Kaushik, Judicial Member.
Hon'ble Mr. G.R Patwardhan, Administrative Member.**

R L Patel S/o Shri Hem Chand, aged 43 years, Inspector of Post Offices, Udaipur, r/o Qr. No. 16, Sec. 5, 5 Postal Colony, Udaipur.

: Applicant.

Rep. By Mr. Vijay Mehta: Counsel for the applicant.

VERSUS

1. Union of India, through the Secretary, Ministry of Communications (Department of Post) Sanchar Bhavan, New Delhi.
2. Post Master General, Rajasthan, Southern Region, Ajmer.
3. Director Postal Services Southern Region, Rajasthan, Ajmer.
4. Senior Superintendent of Post Offices, Udaipur.

Respondents

Rep. By Mr. Vinit Mathur: Counsel for the respondents.

ORDER

Per Mr. J K Kaushik Judicial Member.

Shri R.L.Patel, has questioned the validity of the order dated 11.05.2005, by which he has been ordered to be transferred from Udaipur to Kekri. He has, inter alia, prayed for quashing of the same amongst other reliefs.

2. With the consent of the learned counsel for both the parties, this case was heard for final disposal at the admission stage, keeping in view the urgency in the matter as well as the pleading being complete. We have also carefully perused the pleadings and

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records of this case including the relevant notings in the file, giving rise to the issuance of the impugned order.

3. The material facts, as averred in the original application, are that during the year 2003, the applicant was posted at Tonk. He submitted an application for own request transfer to Udaipur on the ground of education of his children. The same was accepted and he was transferred to Udaipur, accordingly, where he joined as Inspector of Post Offices (PG) in the office of the SSPOs Udaipur, in June 2003. He has been satisfactorily discharging his duties at Udaipur. It has been averred that as per the rules in force the tenure for the post of Inspector of Post Offices is four years and transfer should not be ordered except in 'public interest'. Transfers are normally to be made in the month of April. The applicant did not complete his tenure at Udaipur and he has been subjected to transfer from Udaipur to Kekri vide impugned order dated 11.05.2005 (Annex. A/1). It has been further averred that the applicant's two sons are studying in Senior Secondary having science as their subjects, they shall take their admission in B. Sc and there is no Science College at Kekri. The applicant's wife frequently falls unconscious and she requires medical aid but no such facility is available at Kekri. Besides, Kekri falls in Beawar Division, where one Shri R.L. Meena has been posted as Superintendent of Post Offices. He is inimical and prejudiced with the applicant. The said Shri R.L. Meena had earlier demanded a huge amount from the applicant as bribe when the applicant was posted at Dungarpur. The applicant did not agree to give money



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which had resulted in unwarranted harassment meted out to the applicant e.g. adverse remarks in the ACR, warnings and as well as imposed minor penalties. He has filed O.A. Nos. 302/03, 303/03 and 304/03 before this Tribunal, wherein the mala fides has been alleged against Shri R.L. Meena and the OAs are still pending. It is further averred that there are six posts of Inspector of Post Offices are lying vacant in the region and the applicant alone has been picked up for posting in Beawar Division.

4. The further facts are that one R.S. Udwat, Superintendent of Post Offices, Tonk, against whom the applicant has alleged serious allegations and who had sent a draft charge sheet against the applicant to Respondent No. 4 to be issued to the applicant.

But the respondent No. 4 did not issue the charge sheet and in turn replied vide letter dated 10.05.2005, that no such action was warranted. Immediately after receipt of the said communication, the impugned order has been issued just for ensuring that the charge sheet is issued to the applicant through R.L. Meena so as to facilitate the imposition of penalties. The Original Application has been filed on multiple grounds inter mixed with the facts. It has been averred that the applicant has been transferred before the expiry/normal tenure of four years without indicating any reason. The transfer is also made in the mid academic session. The expression of the words 'in the interest of service' is also vague and the transfer is in fact meant to penalize tantamounts to mala fide transfer and deserves to be quashed.



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5. The respondents have contested the case and have filed a detailed and exhaustive reply to the O.A. It has been averred that certain allegations of mala fide have been alleged against Shri R.L. Meena, but he has not been impleaded as a party respondent in the O.A. The competent authority has taken into consideration the 'administrative exigencies' and 'public interest' in the matter and transferred the applicant from Udaipur to Kekri. It has been averred that an employee can be transferred before the expiry of the tenure at a particular place if the 'administrative exigencies' demands. The transfer order has not been issued by Shri R.L. Meena and merely raising the contention of mala fide is not sufficient. It is for the competent authority to decide as to who should be posted where. The matter relating to charge sheet shall be taken up by the competent authority at the appropriate level and cannot be mixed with other issues. The applicant has been transferred purely on 'administrative exigencies of service' and in 'public interest'. The grounds raised in the O.A have generally been denied.

6. The learned counsel for the applicant, while reiterating the facts and grounds raised in the O.A, has added that there is no 'administrative exigency' or 'public interest' involved in the transfer of the applicant. Merely using the words 'administrative exigencies' or in the 'interest of administration' or 'public interest' is not sufficient. The burden is on the transferring authority to prove that the transfer of the applicant is really for 'administrative

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exigencies'. He has submitted that a similar matter came up for adjudication before the Hon'ble High Court of Rajasthan at Jaipur in **Kailash Chandra Sharma vs. Director, Sheep and Wool, Rajasthan & ors** [RLR 1992 (2) 441] and the Hon'ble High Court has upheld the contentions of petitioner therein. In this regard he has also referred to a judgement of the Apex Court in the case of **Ramadhar Pandey vs. State of UP and others** [1993 (4) SLR 349] and a judgement of a coordinate Bench at Ernakulam in the case of **Y Kurikesu vs. Senior Supdt. Of Telegraph Traffic, Trivandrum Division and others**. [Swamy's Case Law Digest No. 598.-1993].

Per contra, the learned counsel for the respondents has submitted that the transfer is an incident of service and the scope of judicial review is very limited and therefore the transfer order should not be interfered with until the same is violative of statutory rules, or issued due to mala fides of the authority or the same has not been issued by the competent authority. He has submitted that in the instant case, no individual has been impleaded as party respondent and mala fides have been alleged against certain persons who are not party respondents before this Bench of the Tribunal. Thus the said plea has to be construed as without basis. He has next contended that adhering of the tenure is not mandatory and in the exigencies of service, one can be transferred even prior to the completion of the tenure. He has next contended that the instant case cannot be termed as mid academic transfer in as much as the transfer order has been issued on 11.05.2005,

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whereas generally the academic session is upto 31st May of a particular year and this very Bench of the Tribunal has dealt with and settled the issue that one can be transferred even prior to the completion of tenure in the exigencies of service or in the interest of administration. Thus the impugned order does not called for any indulgence of this Bench of the Tribunal. As regards the pendency of the other cases filed by the applicant before this Bench of the Tribunal is concerned, it has been contended that those are separate matters and have no relevance with the instant case in as much as those cases have been filed in the year 2003 and the transfer order has been issued only in May 2005 and thus they are not even remotely connected with the instant case.

8. We have considered the rival submission put forth on behalf of both the parties. As far as the factual aspect of the matter is concerned, there is hardly any dispute. The applicant admittedly came own request transfer in June 2003 and the normal tenure is four years and he has been transferred within two years i.e. before completing his tenure. We have gone through the relevant records of the case and the case file containing the notings relating to the transfer of the applicant. As per the notings there were 7 vacancies in the grade of Sub Divisional Inspector (Posts) and these posts are lying vacant from 01.10.2002 and onwards. A proposal was made indicating that local arrangements had been made against these posts but due to non posting of regular SDI (posts), the work relating to achievement of target of PLI/RPL/BD activities is lagging behind and the post of IPO Kekri was sought to

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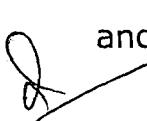
be filled un. The proposal was approved as per some discussion. We have also gone through the information relating to the Inspector of Post Offices and these IPOs came to be posted to their present place of posting as under:

(i)	IPOs (PG) Udaipur	Shri R.L. Patel	16.06.2003
(ii)	IPOs (PG) Dungarpur	Shri Jai Singh	19.06.2003
(iii)	IPOs (PG) Beawar	Shri Babulal	25.05.2002
(iv)	IPOs (PG) Ajmer	Shri D.K.Tripathi	21.02.2003
(v)	IPOs (PG) Tonk	Shri S.R.Panchal	04.07.2003
(vi)	IPOs (PG) Kota	Shri B.L.Meena	03.12.2004

9. As far as the question of mid academic session is concerned, we find that the impugned order has been issued on 11.05.2005 and the rules provide that transfer order should normally be issued in April. Academic session normally ends by 31st of May of every year. In this view of the matter we are unable to persuade ourselves with the contention of the learned counsel for the applicant that the transfer is made during mid academic session.

More so even by that date none of sons of the applicant had taken admission in Science College/ next higher class. Thus this contention falls on the grounds.

10. As regards the plea of mala fide against Shri R.L. Meena is concerned, the same may be relevant in other cases but in the instant case there is no allegation that the transfer order has been procured or engineered by Shri R.L. Meena and in this way, the contention of mala fides against Shri R.L. Meena are irrelevant. We are also not impressed with the submissions and contentions that some charge sheet is intended to be served on the applicant and the respondent No. 4 was not inclined to serve the same on



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the applicant. There is no foundation or basis for such contention. Thus on this count also, the transfer order cannot be interfered with.

11. Now, we would advert to another issue that the applicant has been transferred before the completion of normal tenure of four years. As far as the said rule is concerned, the rule is only directory in nature and not mandatory, despite the fact that there is a flexibility in the very rule itself, that tenure provided under the normal rules could be deviated in the exigencies of service or in public interest and one can be transferred even prior to the completion of such tenure. By now, it is well settled that directory provisions can be deviated in case there is justification for the same. Whether in the instant case, there is proper justification for transfer of the applicant prior to the completion of his normal tenure or not, shall be dealt with in the succeeding paragraphs.

12. Now we shall advert to one of the very significant issue, which has been emphasized by the learned counsel for the applicant, that there was no administrative exigency or public interest in transferring the applicant. We find that there is no disclosure of any administrative exigency or public interest adduced by the respondents in their reply to the O.A. However, the respondents have been fair enough in producing the relevant file. A coherent reading of the said reveals that there was some pre-determination to transfer the applicant. As indicated above, the applicant was neither a longest stayee nor a shortest stayee in the region but he

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has been picked up and posted to a post which is lying vacant since October 2002 at Kekri. The notings indicate that there were 7 specified places in which SDI(Posts) are lying vacant and the work relating to achievement of target of PLI/RPLI/BD activities is lagging behind but it was proposed to fill up only one post of IPO at Kekri, without indicating any distinctive feature. From the point of view of a prudent person, it looks quite abnormal as to why it has been chosen to fill up only one post that too at Kekri, by transferring the applicant when the target is lagging behind in other places also. Another amazing feature is that as to why the applicant alone has been chosen despite the fact that neither he is longest stayee or shortest stayee. Incidentally no details regarding the targets which are stated to be lagging behind are forthcoming and the notings could aptly be construed as stereotyped noting made in a mechanical manner. In this view of the matter the action of the respondents smacks of being unfair and there is no basis to say that there was administrative exigency behind or public interest in the impugned transfer. The ratio of the cases cited by the learned counsel for the applicant fully supports the case of applicant on this issue. Thus the impugned order cannot be sustained.

13. We may hasten to add that the transfer can uproot a family, cause irreparable harm to an employee and drive him into desperation. Therefore, the exercise of the power of transfer must be just and fair. A Division Bench of the Bombay High Court in case of Seshrao Nagorao Umap V. State of Maharashtra (1985) II



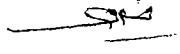
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LLJ 73, in brief passage but with admirable comprehensiveness has summarized the law on this aspect as under:

" It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best judge to decide how to distribute and utilise the services of its employees. However, this power must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. Frequent transfers without sufficient reasons to justify such transfers, cannot, but be held as mala fide. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, than is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration that even administrative actions should be just and fair."



14. In view of what has been said and discussed above, we find that there is ample merit and substance in this O.A and the same stands allowed accordingly. The impugned order dated 11.05.2005 is hereby quashed. The rule already issued is made absolute. No costs.


(G.R. Patwardhan)
Administrative Member.


(J K Kaushik)
Judicial Member.

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Part II and III destroyed
in my presence on 10-6-14
under the supervision of
Section officer ... as per
order dated 18/12/13

~~Section officer (Record)~~

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