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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**ORIGINAL APPLICATION NO. 239/2009  
JODHPUR : THIS IS THE 5<sup>th</sup> DAY OF MAY, 2010.**

**CORAM :**

**HON'BLR MR. JUSTICE S.M. M. ALAM, MEMBER (J)**

Prakash Chandra Bothra S/o Sh. Chintamani Dass, aged about 58 years, B/C Oswal, R/o 208, Dnani Bazar, District Barmer, Office Add : HO Churu (Postal Department), District Churu, employed on the post of SPM.

**.....Applicant**

(For Applicant : Mr. S. P. Sharma)

**VS.**

- 1 The Union of India through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Tar Bhawan, New Delhi.
- 2 The Chief Post Master General, Rajasthan Circle, Jaipur.
- 3 The Director, Postal Service, Office of Post Master General, Western Region, Jodhpur.
- 4 Superintendent of Post Offices, Barmer Division, Barmer.
- 5 Superintendent of Post Offices, Churu Division, Churu.

**.....Respondents**

(For Respondents -Mr. M. Godara for Mr. Vineet Mathur)

**.....  
ORDER(ORAL)  
[BY THE COURT]**

This Application has been preferred by one P.C. Bothra, S/o Shri Chintamani Das at present working at SPM at HO Churu in the Postal Department claiming for grant of following reliefs :

- Sm A*
- "a- The respondent may kindly be directed to cancel the transfer order vide Memo No. B4/P.C. Bothra/2009 dated 10-9-2009 (Annexure-A/1).
  - b- The respondent may kindly be directed to transfer the applicant from Churu to Siwana with immediate effect.
  - c- That any other direction or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
  - d- That the costs of this application may be awarded to the applicant."

2- The brief facts of the case are as follows :

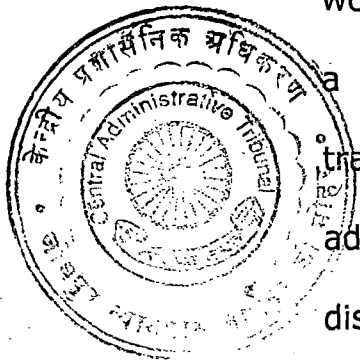
That applicant is presently <sup>-2-</sup> posted at Churu Head Office as Postal Assistant. He has completed 38 years of service and is on the verge of retirement as he has crossed 57 years of age. During his service he was transferred to several places either after completion of tenure or before completing the tenure. In the year 2008 he was posted at Balotra from where on 14.3.2008 he was transferred to Siwana vide Memorandum No. B4-1/1/Tfrs/07-08 dated 14.3.2008. Against the said order of transfer the applicant submitted a representation dated 2.4.2008 mentioning therein that he had been transferred to Siwana in violation of the circular of the Department as he had not completed his tenure which was fixed for four years. He also pointed out this fact that many officials are staying at particular station for longer period even for the period of 20 years. No order was passed on his representation and vide Memorandum No. B-4/P.C.Bothra/2009 dated 10.9.2009 he was again transferred from Siwana to Churu Head Office under Churu Division with immediate effect. The said order of respondent No. 4 which is Annex. A/1 in this application is under challenge. It is stated that the order of the respondents whereby he has been transferred from Siwana to Churu Head Office is arbitrary and discriminatory and is also violative of Rule 60 of Transfer policy guidelines for the year 1998-99 and the guidelines issued under letter No. 4/95/Misc.03/2007- dated 16.7.2007 which provide that the normal tenure of posting of an employee at one place shall be four years which can be extended for two years by competent authority. Annex. A/1 has also been challenged on the ground that the order is also violative of Rule 37 (A) of Rotational transfer policy which says that transfer should



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generally be made in the month of April<sup>43-</sup> each year, whereas, the applicant was transferred in the month of September. On the above ground the prayer has been made to quash and set aside the impugned order of transfer (Annex. A/1).

3- On filing of application notices were issued to the respondents and the respondents have made their appearance through their Lawyer and filed reply to Original Application. As per the reply of the respondents, the transfer of the applicant was done in public interest as several complaints had been received against the applicant at Siwana while the applicant was working there as SPM. It is also pleaded that the transfer is not a punishment and the authorities are within its jurisdiction to transfer any employee in public interest and whenever any such administrative exigencies arise. So the prayer has been made to dismiss the application.

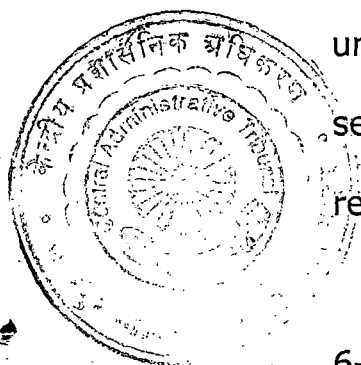


4- Heard the arguments of the learned Advocate appearing for the applicant as well as of the respondents.

5- It has been pointed-out by the learned Advocate of the applicant that vide order dated 14.3.2008 (Annex.A/2), the applicant was transferred from Balotra to Siwana and again by order dated 10.9.2009 (Annex.A/1) he has been transferred from Siwana to Churu H.O. which establishes beyond doubt that before the applicant completed his tenure (four years period) at Siwana he has been transferred to Churu Head Office. He submitted that as per Notional Transfer policy guideline for the years 1998-99 (Annex.A/4) the station tenure for gazetted

Annex A

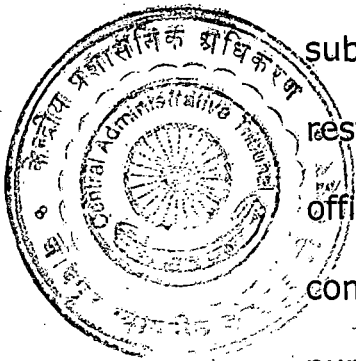
officer is normally four years which may be extended up to six years in the individual cases in public interest (Instruction 7), but as the applicant was transferred from Siwana much before the expiry of the tenure as such, the transfer of the applicant is violative of the guideline issued by the respondents in the matter of transfer. He also submitted that Rule 37-A of transfer and posting Rules (Annex. A/6) provide that transfer should generally be made in the month of April each year so that the education of the school going children of the staff may not be dislocated. He submitted that the applicant was transferred in the month of September which shows that the said transfer order was also issued in violation of the instructions contained under Rule 37-A. On the above ground he prayed to quash and set aside the order of transfer Annex. A/1 and to direct the respondents to again post the applicant at Siwana.



6- The argument of the learned Advocate of the respondents is that the applicant's behaviour was never found by the authorities as that of a Government servant and that is why a departmental proceeding was initiated against him while he was posted at Balotra and thereafter vide order dated 22.12.2003 the disciplinary authority passed an order of compulsory retirement of the applicant from service. However, the revisional authority set aside the said order of compulsory retirement and he was retaken in service. He further submitted that while the applicant was posted at Siwana the authorities received complaints against him and on such complaints he was transferred to Churu H.O. from Siwana in public interest. He submitted that with regard to the complaints received against

Annex A

the applicant Memorandum of Charge dated 19.11.2008, 31.12.2008 and 5.2.2009 were issued to the applicant and punishment of stoppage of annual increment was passed. He further submitted that the applicant is a veteran litigant and he has already filed several OAs before this Tribunal which are still pending. He supplied the numbers of some of the O.As filed by the applicant which are pending before this Tribunal, which are as follows – OA No. 230/2009, 276/2009, 41/2009, 45/2010 and 46/2010. He submitted that the transfer of the applicant is in public interest as such, the same should not be disturbed especially when the applicant has already joined at Churu H.O. and the cause of action does not survive on this day. He further submitted that any circular or letter of the Department cannot restrict the power of the officials to transfer or to remove any official suspected of creating indiscipline and against whom complaints are received and such transfers cannot be said to be punitive in nature. In support of his argument he has placed reliance upon a Full Bench decision of Central Administrative Tribunal Cuttack Bench dated 4.5.1998 given in O.A. No. 674/1995, 672/1995 and 673/1995.



7- On going through the pleadings of both the parties and on perusal of the relevant documents attached with the record as well as Rules and the circulars annexed with the O.A., I have come to the conclusion that from the materials brought on record, it is proved that the applicant's transfer was made before completion of his tenure, which is as per the rules and circular minimum period of four years to be further extended for two years. The question is whether the authorities are within its

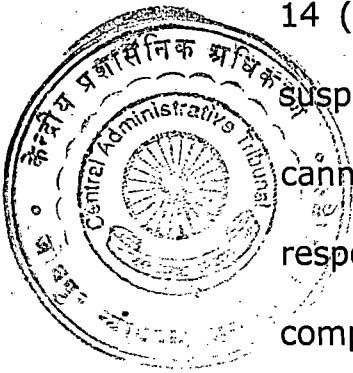
दिनांक 17/11/15 मन्देशानुसार  
मेरी उपस्थिति 10/2/16  
को ध्यान में रख कर किया गए।

अध्यक्ष अधिकारी  
वे. प्रौद्योगिकी प्रशासनिक अधिकारण  
जोधपुर न्यायपीठ, जोधपुर

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jurisdiction to transfer any employee against its own policy whereby they have fixed the tenure of a particular employee at particular place as minimum four years. There is settled principle of law that in general the authorities should act as per the circular and the instructions of the department but it does not mean that in no case the authority can move beyond the instructions contained in the circular and letter with regard to the transfer and posting. It appears that similar issue was before the Full Bench of Central Administrative Tribunal, Cuttack Bench, in OA No. 674/1995, 672/1995 and 673/1995 and after considering the matter in detail the Bench passed order at Para 14 (iii) that a transfer can be resorted to, to remove officials suspected of creating indiscipline and such transfer on such basis cannot be said to be punitive in nature. The reply filed by the respondents in the instant O.A. reveals that there were several complaints against the applicant while working as SPM Siwana for which a fact finding inquiry was conducted and the applicant was awarded punishment of stoppage of annual increments. This fact alone goes to establish that the applicant retention at Siwana was not in the interest of administration. Thus I am of the view that by transferring the applicant from Siwana to Churu H.O. the authorities have not committed any illegality. Moreover the submission of the learned advocate of the respondents that the applicant is a habitual litigant and he has filed as many as twelve OAs before this Tribunal finds corroboration as the verification from office establishes that OA No. 230/2009, 276/2009, 41/2010, 45/2010 and 26/2010 were filed by this applicant alone. In the above mentioned background I am of the view that the respondents have rightly



JMA