

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

ORIGINAL APPLICATION NO. 252/2009

Date of order: 28-5-2010

CORAM:

HON'BLE MR. V.K. KAPOOR, ADMINISTRATIVE MEMBER

Bhera Ram S/o Shri Jamuna Ram, aged about 50 years, b/c Bhil (ST), R/o Bhil Basti, Opp. Police Station, Pokharan, District Pokharan. Office Address: - Fatehgarh Post Office, Employed on the post of Sub Post Master.

...Applicant.

Mr. S.P. Singh, counsel for applicant.

VERSUS

1. 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, Jaipur.
3. The Post Master General, Western Region, Jodhpur.
4. Sr. Supdt. of Post Offices, Jodhpur Division, Jodhpur.
5. Asst. Director, Postal Services, Rajasthan Western, Region Jodhpur.

... Respondents.

Mr. M. Godara, proxy counsel for
Mr. Vinit Mathur, counsel for respondents.

ORDER

Per Hon'ble Mr. V.K. Kapoor, Administrative Member

Shri Bhera Ram has filed the present O.A. against his transfer vide order dt. 07.09.2009 (ann A-1) passed by respd.-4.

The applicant has sought the reliefs that are as follows:


- "a. The respondent may kindly be directed to cancel the transfer order vide B1-8/1/09 dated 7-9-2009 (Annexure-A-1).
- b. The 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.
- c. That the costs of this application may be awarded to applicant."

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2. The factual matrix of the case is that the applicant is presently posted at Fatehgarh transferred as PA Tibi, he has 30 years of unblemished service record, faced frequent transfers before completion of fixed tenure to far off places. The transfers were made in the mid academic session against rule 37-A of Post and Telegraph Manual, Vol-IV. The applicant has submitted copies of his children's educational record, his serious medical problems, submitted representations dt. 13.9.2009, 04.10.2009 requesting to cancel the transfer order (ann A-6&7). Applicant belongs to reserve category (ST), said to be transferred on complaint. The transfer is not made in public interest, is malafide & against directions of Govt. of India, DOPT OM dated 24.06.1985 (ann. A-9) & transfer and posting policy guidelines (ann. A-10 to ann. A-12). The transfer is malafide, a glaring example of arbitrariness, he is transferred at two place in one year. Accordingly, applicant has requested the transfer order dated 07.9.2009 (ann. A-1) be cancelled in public interest.


3(a). The respondents in reply have narrated that applicant stands transferred from Fatehgarh Jodhpur Dn. to Sriganganagar Postal Dn. under rule 37 of P&T Manual-IV. He is transferred by competent authority and is not supposed to choose the place of his posting. The scope of judicial review in transfer matter is limited and narrow; the courts should not normally interfere. The applicant got punished many a times and his service record is full of adverse events. He is penalized or reprimanded as many as on 12 occasions by different authorities; he faced suspension for the period from 10.01.2009 to 05.5.2009. Some



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of his children are getting education at Pokran Town, away from Fatehgarh. The applicant is posted at a small village not having advanced medical, educational facilities. He was transferred on grounds of dereliction to duty, mis-behaviour and many lapses on his part. The Govt. introduced NREG Scheme through post offices; the wages to labourers engaged under NREG Scheme were paid through post offices. The applicant created hurdles in effective implementation of the NREG Scheme; there were serious lapses/complaints against him. The applicant's transfer is made in public interest to maintain efficiency and decency in public service. Instead of bringing improvement in work & attitude, the applicant continued to pave way for inefficiency and indecency. The respondents have prayed to maintain the order dated 07.9.2009 (ann. A-1) and dismiss the present O.A.



3(b). Learned counsel for the applicant in rejoinder has stated frequent transfers in applicant's case; he is transferred twice within 02 years. The respondents accommodated own persons to suit their convenience. His suspension was a clear violation of law, thus it was revoked by memo no. B2/6-10/08-09/KW, dt. 05.5.2009 (ann A-15). The respondents are adamant to transfer him to a distant place in the garb of public interest. In regard to NREGS, the authorized strength is 4+1, but actually it was 2+1 since long, the respondents have violated Rule 37-A, 60 of transfer guidelines & circulars issued on 16.7.2007. As regards complaint against him, he was implicated in false & fabricated case, complainant is facing criminal proceedings. The frequent



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transfers, dislocating family members, producing irrelevant facts, are sufficient to prove the malafide on respondents' part.

4 (a). Learned counsel for applicant in arguments has stated that applicant has 30 years of service, he was posted to Fatehgarh from Pokaran vide order dated 12.5.2009 (ann A-2), transferred as PA Tibi SO under Hanumangarh Jn. HO vide order dt. 07.9.2009 (ann. A-1). He was transferred from SPM Pokaran City to PA Pokaran vide order dt. 29.3.2007 (ann. A-3). This was his third transfer order in a span of two years. It is averred that the transfer under mid academic sessions should not be made as per rule 37-A of Postal Manual. The normal tenure of a person to remain at a particular place is for 04 years as per rule 60 of the Postal Manual & DOPT instructions dated 24.6.1985 (ann. A-9,13). Applicant is a severe diabetic case & has cardiac problem; in mid-educational session, the transfer is not justifiable. This transfer is not made in public interest & the administrative exigencies. The frequent transfers in his case are made with malafide & fault finding intent. The violation of rules regulations is explicit on respondents' part, thus citations put forth by respondents are not applicable. As regards complaints in NREG Scheme, the village Sarpanch is behind the bars. In all, 04 punishments are given to applicant, the plea of respondents is exaggerated. The Sub Post Office is understaffed; sanctioned strength of SPO Fatehgarh is 05; against this there are 2+1 staff posted. The claims of respondents are based on misconceived notion; there is no question of spoiling the peaceful official



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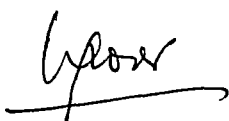
atmosphere. In all fairness, the transfer of applicant from Fatehgarh to Tibi should be cancelled.

4(b). Learned counsel for the respondents in arguments has stated that the applicant is not entitled for any relief because there are so many allegations against him; he was punished for 12 times in his service career. In scheme introduced under NREGA, wages of labourers were to be distributed by Post Offices. There were numerous complaints against applicant; the labours were not getting payments for long time. The applicant has approached the Tribunal with unclean hands, thus he is not supposed to be provided relief: 1993 AIR (SC) 852. Applicant has no right to remain at one place, which is supported by Union of India & Ors. vs. Sri Janardhan Debanath & Anr. - 2004 (2) SLJ 446. The transfer of an undesirable person cannot be treated as punitive, attracts no penalty. The employee spoiling a healthy office atmosphere, transfer can be made to restore proper order & peace at office; the respondents have relied on the ruling of CAT, Cuttack Bench in OA Nos. 674, 672, 673/1995, order dated 04 May, 1998. As regards mid-academic session transfer, the respondents have stated that already applicant's children are studying at a distant place. Applicant cannot demand transfer as a matter of right, respondents have relied on Govt. of Andhra Pradesh vs. G. Venkata Ratnam (2008) 2 SCC (L&S) 900. The respondents' counsel has prayed to dismiss present O.A.

5. The applicant is being S.T. by caste, he was posted as SPM Fatehgarh in Jodhpur Dn. Vide order dt. 07.9.2009 (ann. A-1), he was transferred to Sriganganagar Postal Dn. under rule 37 of

P&T Manual Vol. IV. The applicant has alleged that he was transferred many a times in educational sessions. He has quoted the order of respondent-4 dated 29.3.2007 (ann. A-3) whereby he was transferred from SPM Pokaran City to PA Pokaran. The applicant has quoted his children's educational record, they are studying at different educational levels. He suffers from severe diabetic & allied medical problems, in support he has enclosed concerned medical certificates. He moved applications to PMG and CPMG vide applications dated 13.09.2009 and 04.10.2009 (ann. A-6 & A-7). The applicant has drawn attention to circular dt. 24.06.1985 of DOP&T (ann. A-9) and rule 37-A (ann. A-10) of P&T Manual Vol. IV. These rules speak of transfer policy as regards education of school going children & avoidance of dislocation of children of the staff. His contention is that in normal condition, the officers/staff should remain posted at a particular place for a period of 04 years as per rule 60 of P&T Manual. Applicant has serious medical problems like cardiac trouble besides being chronic diabetic, he should not be transferred before prescribed schedule of 04 years. Applicant's contention is that transfer is not made in public exigency, he is frequently transferred on malafide or in an arbitrary manner.

6. The respondents have quoted applicant's service record; there are serious charges and allegations against him. He was penalized 12 times during his service career (ann. R-1), though applicant refers to punishment for 04 times in service. There were serious lapses against him for acts of omissions and commissions (ann. R-2). He was placed under suspension for 04

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months from 10.01.2009 to 05.05.2009, his behaviour and demeanor was consistently bad. He committed fraud & created problems under NREG Scheme, being implemented through postal dept, the wages of labourers were distributed through post offices. As there were serious complaints against him and his service record was full of adverse events, he was transferred in public interest. Under administrative exigency, he was transferred out because of his rough and erratic behaviour. He is in the habit of behaving rudely with local persons and shown indecency to the visiting officers. He was transferred on the ground of dereliction of duty, mis-behaviour and serious lapses. His children are studying at a distant place from Fatehgarh, thus his contentions on educational grounds are beyond acceptance.

Owing to complaints of severe nature against him, it cannot be accepted that applicant was shifted for fault finding process; the transfer cannot be termed as malafide.

7. On perusal of record, the transfer of applicant does not seem to be made on an arbitrary exercise of power or a faultfinding process. There are serious lapses against applicant as regards complaints in NREGS pertaining to disbursement of wages to the labourers. He has not come with clean hands and concealed material facts relating to punishment. Thus, he has not appeared before this Tribunal with clean hands, supported by AIR 1993 SC 852 - the Ramjas Foundation and others vs. Union of India and others. The record shows that the applicant remained posted at Pokaran & Ramdevara throughout his service career. It is not as a matter of right for him to seek choice place of posting which is

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corroborated by the apex court citation 2004 (2) SLJ 446 - Union of India and Ors. vs. Sri Janardhan Debanath and Anr. Due to applicant's mis-behaviour & serious allegations against him, his transfer was rightly made. As he was spoiling a healthy atmosphere of office, this transfer was made to restore peace & order there. This view is supported by the citation of CAT, Cuttack Bench in OA Nos. 674, 672 and 673/1995, order dated 05 May, 1998 which squarely applies in the present case. From the perusal of record, there is not even an iota of evidence that transfer was made malafide or there was a colorful exercise of power of respondents' part. Thus, the citation of the apex court in Government of Andhra Pradesh vs. G. Venkata Ratnam - (2008) 2 SCC (L&S) 900 that speaks out that the party could not be allowed to choose his own place of posting and the power of judicial review is limited in transfer matters. The transfer is not contrary to the statutory provisions or policy, nor is an outcome of malafide. In the present case, no arbitrary action or colorful exercise of power is manifest on the respondents' part. The transfer is properly made under prescribed rules by competent authority, thus requires no interference in applicant's case.

8. In the light of observations made above, there is no need for any intervention in the transfer order dated 07.9.2009 passed by the respondents (ann. A-1). The applicant has failed to prove his case: accordingly, the present O.A. is dismissed with no order as to costs.


(V.K. KAPOOR)
ADMINISTRATIVE MEMBER

Ram

दिनांक 12/11/11 के आदेशानुसार
मेरी जमानत में दिनांक 10/11/11
को भाग-II में III नंबर दि. 11/11/11

अनुपम कुमार
केन्द्रीय प्रशासक एवं निगरण
जोधपुर न्याय क्षेत्र, जोधपुर