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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

Original Application No. 513/2011

Jodhpur, this the 1st day of January 2013

[Reserved on 18.12.2012]

CORAM :

HON'BLE Mr. B.K.SINHA, ADMINISTRATIVE MEMBER

Girdhari Lal Chaudhary
S/o Shri Teja Ram aged about 51 years,
resident of Sunaro Ka Nohra Ki Gali,
Shastrinagar, Barmer at present
employed on the post of Postal Assistant
in Barmer HO in Barmer Postal Division.

..... Applicant

[Through Mr.J.K.Mishra, Advocate]

Versus

1. Union of India through Secretary to the Government of India, Ministry of Communication & Info. Technology, Department of Post, Dak Bhawan, Sansad Marg, New Delhi.
2. Post Master General, Rajasthan Western Region, Jaipur – 302001.
3. Superintendent of Post Offices, Barmer Division, Barmer.

..... Respondents

[Through Mr. Vinit Mathur, ASGI with Advocate Mr. Anirudh Purohit]

ORDER

The instant OA is directed against the order transferring the applicant from the post of Treasurer, Barmer HPO in Barmer, to Jodhpur Division under the provisions of Rule 37 of the P&T Manual, Volume IV subject to the conditions as laid down in Rule 37 in the interest of service, with immediate effect. The applicant in his application has prayed for the following relief(s):-

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"(i) That impugned order dt. 28.4.2011 (Annexure A-1) and order dated 4.5.2011 (Annexure A/2), may be declared illegal and the same may be quashed. Any adverse order, if passed on his pending representation, may also be quashed. The respondents may be directed to allow all consequential benefits to the applicant as if none of the impugned orders were in existence.

(ii) That the respondents may be directed to produce the relevant file containing noting leading to decision to pass the impugned order at the time of hearing of this case, for perusal by this Hon'ble Tribunal so as to unfold the true facts.

(iii) 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.

(iv) That the cost of this application may be awarded."

Case of the applicant:

2. The applicant was transferred at Head Office, Barmer in June 2009 and was put to work as Postal Assistant w.e.f. 15.10.2010. His three daughters are studying locally at Barmer. On 11.06.2010, instructions were issued by the Circle Headquarters for making special arrangements for remittance of cash for Mahatma Gandhi NREGS in the peak season for wage payment vide letter dated 9/10.12.2010 at Annex.A/3. No additional man power was sanctioned for this and the task has to be performed with the aid of existing strength. Since the task involved deviation from the normal rules, a good deal of confusion prevailed and the employees were left to their own wisdom to sort the same out. The applicant was placed under suspension on 24.09.2010 which was revoked 20 days latter on 14.10.2010. He was issued a Chargesheet vide Memo dated 24.11.2010 for

temporary misappropriation for two to six days [A/4]. The applicant following the revocation of the suspension order was posted to work as Postal Assistant at Head Office, Barmer. However, the impugned transfer order has been issued on 28.4.2011, whereby, he has been transferred in administrative interest to Jodhpur Division vide Annex.A/1 under Para 37 of the P&T Manual, Vol.IV. The applicant has been posted as Postal Assistant at Jodhpur vide order dated 4.5.2011 passed by the respondent No.3. The learned counsel for the respondents contends that the normal tenure is of four years but, the applicant has been transferred after six months affording him the post of Postal Assistant at Barmer Head Office which, he fears, will adversely affect his seniority. The applicant has further drawn the attention of the Tribunal to the fact that the All India Transfer liability of Group 'C' and Group 'D' employees have been done vide letter No. 20-12/90 SPB.I dated 23.8.1990. The applicant has also submitted a detailed and exhaustive representation to the 2nd respondent without having evoked any reply. The applicant informs that he is also facing disciplinary proceedings and he has been put to jeopardy in case he is transferred out.

Case of the respondents

3. The respondents have filed a counter reply opposing the OA. The learned proxy counsels Shri Anirudh Purohit and Ms. Garima Chouhan, argued the case vehemently against the plea of the applicant being allowed. The transfer order has been carried out as per the procedure established under law and is not to set

with any lacuna. The applicant stands charged with having temporarily misappropriated the Government money more than Rs. 38 lakhs by showing false entries of facts of cash remittances and he actually did not remit the cash to the concerned cash office while the amount was falsely shown in the transit and transit entries were adjusted in latter dates. The matter was reported to the Post Master General, Rajasthan Western Region. The applicant has been transferred on receipt of directions from the Assistant Director General, New Delhi under the provisions of Rule 37 of the P&T Manual, Vol. IV subject to the conditions as laid down in Rule 37 in the interest of justice to a less sensitive place. A Chargesheet has been issued against the applicant vide O.M. dated 24.11.2010. The applicant feigned sickness on 9.2.2011, as he did not want to face the oral inquiry order. The learned counsels for the respondents were at pains to emphasize that the transfer has not been carried-out as per Rule 60 of the P&T Manual and the Director General combines in himself his own inherent powers with those of the competent authority. The learned proxy counsels for the respondents further submitted that the seniority of the applicant stands to be fully protected and that it is not a punitive transfer but, only as a measure of administrative precaution.

4. I have carefully gone through the pleadings and have also listened to the arguments advanced by their respective counsels and I find that the following facts in issue are germane to this case:

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1. Whether the transfer is punitive or has been made as administrative measures?
2. Whether there is a lack of application of mind to the facts of this case or leading to miscarriage of justice?
3. Whether the transfer is hit by the procedural irregularities or misapplication of laws of natural justice?
4. What relief, if any, could be given to the applicant?

Whether the transfer is punitive or has been made as administrative measures?

5. In so far as the first issue is concerned it is necessary to go into the provisions of FR 15 which provides as under:-

"15. (a) The President may transfer a Government servant from one post to another provided that except -

- (1) on account of inefficiency or misbehaviour, or
- (2) on his written request,

A Government servant shall not be transferred to, or except in a case covered by Rule 49, appointed to officiate in a post carrying less pay than the pay of the post on which he holds a lien."

6. Rule 37 of the P&T Manual provides as under:-

37. All officials of the Department are liable to be transferred to any part of India unless it is expressly ordered otherwise for any particular class or classes of officials. Transfers should not, however, be ordered except when advisable in the interests of the public service. Postmen, village postmen and Group D servants should not, except for very special reasons, be transferred from one district to another. All transfers must be subject to the conditions laid down in Fundamental Rules 15 and 22.

7. It emerges from a plain reading of Rule 37 of the P&T Manual that a transfer under this provision can be made either in the interest of the service or on the basis of inefficiency or for misbehaviour. As per the counter replies submitted by the respondents and the submissions made by the learned counsel of the respondents, there is more to the allegation than what the applicant is prepared to concede. The applicant has represented

applicant is prepared to concede. The applicant has represented that this is a simple case of temporary measure misappropriation at its worst. A special provision has been made for expediting the payment under the Mahatma Gandhi NREGA programme and the applicant was given a custody of some of cash, out of which a part could not be disbursed by him. It is contended that there was no time to deposit the same in Bank and he was acting as per the order of his superior authorities to retain the cash. This does not amount even to temporary defalcation as the action of the applicant was covered under superior orders. Departmental proceedings have not even commenced against the applicant. In any case, the provisions of Rule 34 and Rule 37 of the P&T Manual, Vol. IV, are not attracted as no administrative interest is being served by transferring the applicant out to a place 300 Kms. from his present place of posting. The applicant has also relied upon the case of **Kamlesh Trivedi versus Indian Council of Agricultural Research & Anr.** reported in ATR 1988 (2) CAT 116 = 1989 (1) SLJ 641, wherein, it has been held as under :

"No inquiry need be made if no finding of guilt, misconduct or stigma is attached. Transfer may be on administrative grounds and one of the grounds could very well be the allegations themselves. If the transfer is ordered in the exigency of service without giving any finding on the allegations, it would not be vitiated. If a charge sheet is issued and statement regarding imputation of misconduct is given or a memo is issued on a complaint and the representation of the employee or statement with reference thereto is recorded, or even where no chargesheet, or statement regarding imputation of misconduct or a memo has been issued but the concerned official's statement with regard to the allegations has been recorded, that would more than satisfy the principles of natural justice. But we must add that the question of observing the principles of natural justice in a case of transfer does not arise where it is not based upon a finding on the allegations of misconduct or

the like made against the employee. But if a finding of misconduct is arrived at without observing the principles of natural justice and that is the "operative reason" for transfer, it is liable to be quashed."

8. In the instant case, I have no reasons to disbelieve the statement of the learned counsels for the respondents that the charges are grave and the departmental proceedings are under progress. There is also no reason to disbelieve that the applicant is occupying a sensitive post and that the applicant has to be removed to a different location as an administrative measure. When questioned, the learned counsels for the respondents submitted that it was a part of the administrative policy that once such incidence have been there, where a considerable sum money is involved defalcation administrative precautions have to be taken. This transfer has come as a part of administrative requirement. It is neither punitive nor motivated. It has been clearly held by a number of decisions by the Hon'ble Apex Court that who should serve where is the discretion of the Department and it cannot be determined by the Courts/Tribunals. The scope of interference of the Courts/Tribunals would only arise when there is a mala fide involved or there is a violation of any statute or the applicant faces hostile discrimination. In this regard, the applicant has relied upon the case of ***Union of India and Ors. Vs. Janardhan Debanath and Anr.***

Vs. Janardhan Debanath and Anr., reported in 2004 SCC (L&S) 631. In this case, it is apt to quote from the aforesaid judgment

"9. A bare reading of Rule 37 shows that officials of the Department are liable to be transferred to any part of India unless it is expressly ordered otherwise for any particular class or classes of officials. Transfers were not

8

to be ordered except when advisable in the interests of public service. The transfers can be made subject to conditions laid down in FRs 15 and 22. The appellant has indicated as to why and under what circumstances the transfers were thought proper in the interests of public service. The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon the peculiar facts and circumstances of the case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer / management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corp. Ltd. v. Shri Bhagwan.

10. The Fundamental Rules primarily deal with the financial implications and consequences relating to services of government servants whose pay is debited to civil estimates and to any other class of government servants too to which the President may, by general or special order, declare them to be applicable. Rule 15 has to be read along with Rule 14-B. FR 15 has been quoted above and, therefore, quotation of FR 14-B would suffice. The same reads as follows :

"14-B. Subject to the provisions of Rule 15, the President may transfer to another post in the same cadre, the lien of a government servant who is not performing the duties of the post to which the lien relates."

11. A bare reading of FR 15 makes it clear that except in cases where the transfer is (a) on account of inefficiency or misbehaviour, or (b) on a written request the government servant cannot be transferred or except in a case covered by Rule 49 appointed to officiate in a post carrying less pay than the pay of the post on which he holds a lien. The clear intention of the prescription is that except the two categories indicated above, in all other cases the pay to be paid on transfer shall not be less than of the post on which he holds a lien. Exception is made in case of a transfer where it is on account of inefficiency or misbehaviour. In a case where transfer is on account of inefficiency or misbehaviour, the same can be made to a post carrying less pay than the payoff the post on which he holds a lien. Similar is the position where a transfer is made on a written request. Where the transfer is otherwise than for inefficiency or misbehaviour

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or on a written request made by the transferred employee, the protection of pay is ensured. The High Court seems to have completely misconstrued the rule as if there cannot be any transfer in terms of FR 15 on account of inefficiency or misbehaviour. The view is clearly contrary to the pronounced intention of FR 15."

9. Since the application of Rule 37 of the P&T Manual, as quoted above, is a matter of facts which have already been narrated, I find that going deeper into the principle of administrative convenience down to the last digit is not the job of this Tribunal. It would otherwise take the place of the superior authority of the department which is not intended. In the case of

Union of India Vs. S.L.Abbas reported in 1994 SCC (L&S) 230

Hon'ble the Supreme Court has held as under :-

"6. An order of transfer is an incident of Government service. Fundamental Rule 11 says that "the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority". Fundamental Rule 15 says that "the President may transfer a Government servant from one post to another". That the respondent is liable to transfer anywhere in India is not in dispute. It is not the case of the respondent that the order of his transfer is vitiated by mala fides on the part of the authority making the order, - though the Tribunal does say so merely because certain guidelines issued by the Central Government are not followed, with which finding we shall deal later. The respondent attributed "mischief" to his immediate superior who had nothing to do with his transfer. All he says is that he should not be transferred because his wife is working at Shillong, his children are studying there and also because his health had suffered a setback some time ago. He relies upon certain executive instructions issued by the Government in that behalf.

Those instructions are in the nature of guidelines. They do not have statutory force.

7. ***Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right."***

10. The contention of the applicant that it was a simple case of retaining the money under superior orders, cannot be accepted on face value in the light of what has been submitted by the learned counsels for the respondents on the gravity of offence with which the applicant is being charged. Moreover the full gamut of departmental proceedings are yet to be gone through. Therefore, there can be no presumption regarding the innocence of the applicant at the present juncture of time nor is the departmental proceeding principally, in issue. Therefore, I find myself only to give any opinion on the same in absence of which the contention of the respondents on this issue must sustain.

Whether there is a lack of application of mind to the facts of this case or leading to miscarriage of justice?

11. In so far as the 2nd issue is concerned, the learned counsel for the applicant has alleged that there is a total non-application of mind leading to miscarriage of justice. The instances cited for this allegation include that the transfer order is punitive by nature and the respondents have not produced any documents in support of their contention. Besides, the respondents have further not considered the representation of the applicant and have made no orders in respect thereof. There is no reply in respect to the issue of representations. Otherwise, the rest of the points do not sustain as the counter reply of the respondents has been filed under oath and they stand responsible for what they have stated. Of course, the representation of the applicant should have been disposed of in due course. However, the fact that they were not disposed of did not detract from the rights of the applicant to litigate and that is how they are here.

Hence, the fact that the representation of the applicant was not disposed of in due course does not serve to vitiate the transfer nor does it serve as proof of discrimination.

Whether the transfer is hit by the procedural irregularities or misapplication of laws of natural justice.

12. As regards the 3rd issue it is well established that the matter need not be discussed in length as it has been partially covered by other issues particularly issue No. 1. Yet, I find that the applicant has not assigned any cogent reason by which procedural laches or deviation from the same could be established. The issue therefore, needs no further elaboration.

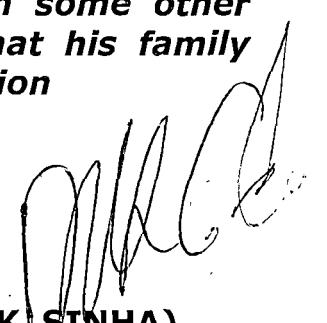
What relief, if any, could be given to the applicant?

13. As regards the 4th issue, it has to be answered based upon the discussions in the previous paragraphs. It stands to reason that the only point I find in favour of the applicant is that his representations have not been considered or disposed of and the respondents have not given any documentary proof nor they have stated to this effect. There is also a humanitarian aspect involved in the whole process that the three daughters of the applicant happen to be studying from college down to school at Barmer, their studies would get dislocated on account of this transfer. Hence, the following directives are given:

- i. ***While not holding any infirmity in the orders of transfer, the competent authority is directed to consider the representation(s) of the applicant on humanitarian grounds and perhaps pass an order posting the applicant to some convenient post so that the studies of his children do not get disturbed.***

ii. ***The competent authority may consider his representation within a period of three months. I am sure that the competent authority would appreciate that transfer to Jaisalmer is not the only way to serve the administrative purpose. It could have been equally well served perhaps by retaining the applicant in some other post in some other capacity at Barmer or nearby so that his family could be protected from such dislocation***

14. The parties are left to bear their own costs.


(B K SINHA)
ADMINISTRATIVE MEMBER

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