

CENTRAL ADMINISTRATIVE TRIBUNAL

OA No. 219/2013
Jodhpur, this the 24th September, 2013.

CORAM :

Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J)
Hon'ble Ms. Meenakshi Hooja, Member (A)

Gauri Shankar Bhatia S/o Late Shri Tiku Ram Bhatia, Aged about 45 years, by caste Meghwali (SC), Resident of Kamla Colony, Gajner Road, Bikaner (working as SPM, Pabubari Post Office).

..Applicant.

(Through Adv. Mr. S.P.Singh)

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 Director, O/o Post Master General, Western Region, Jodhpur.
4. Superintendent of Post Offices, Bikaner Division, Bikaner.

..Respondents.

(Through Adv. Smt. Kausar Parveen)

ORDER

Per K.C.Joshi, Member (J)

Brief facts of this O.A., as averred by the applicant, Sh. G.S.Bhatia are that he was appointed as Postal Assistant in the year 1996 and is at present working in the Post Office Pabubari since 18.03.2009 as Sub Post Master. It is submitted that during 17 years he has rendered unblemished service with full zeal, enthusiasm, honesty and sincerity and not a single complaint was raised ever. The applicant was thereafter promoted as LSG and MACP. It has been further averred that applicant was transferred from time to time and lastly he has been transferred from Pabubari to Bajju which is about 100 kms. more than the present place of posting. The applicant is not relieved yet because his reliever Shri Ramdev Siran is still continuing at that place. However, the order of transfer dated 27.04.2013 speaks about its

immediate compliance. The applicant has two school going daughters and the session has already been started. Not only this, his younger daughter has undergone a major operation recently and his wife requires frequent checkup of surgical specialist due to fracture in her back bone due to an accident. It is contended that applicant's wife is also a State Government employee and she is posted nearby at Khajuwala and, therefore, applicant has to look after his family. It is stated in the application that many longer stayee are still posted at Bikaner Head Office and he is being picked up for transfer frequently, therefore, the action of the respondents shows glaring example of arbitrariness and colorful exercise of power and has sought the following reliefs :-

- "a. The respondent may kindly be directed to cancel the transfer order vide B2-15/2013 dated 27.4.2013 (Annexure A-1) qua the applicant.*
- 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 the applicant."*

3. The applicant in his application contended that in the case of *Seshrao Ragorao Umap vs. State of Maharashtra* reported in (1985) II LLJ 73 the Bombay High Court propounded that frequent transfers without sufficient reasons to justify such transfers, cannot, but be held as mala fide. Further, 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, that is to accommodate another person for undisclosed reason. The applicant of the instant case is not a longest stayee. He belongs to SC category and on the one hand the policy is to upgrade the economic condition as well as to eradicate the wretched condition of poor people and uplift the condition of the weaker sections of the society and on the other hand the action of the respondent-department is completely perverse

and against the said policy. The respondents are adamant to transfer him despite knowing that he has been transferred to far off places without giving due consideration as well as without considering the case sympathetically on humanitarian grounds vis-a-vis similarly situated employees. He has specifically stated that the post on which he has been transferred is a post which requires minimum 5 years experience and the person against whom he has been posted has not yet completed 5 years besides the fact that the instant transfer is not on administrative exigencies. The respondent can very well extend the tenure in view of Director General (P) letter dated 11.04.2001 and extension of two years can be granted to LSG by virtue of Rule 60 of the Post and Telegraph Manual, Vol. IV. A copy of the Guidelines in this regard have been produced as Annexs.A/6 and A/7 respectively.

4. Apart from above, there are other specific guideline for considering the case of applicant keeping in mind to post husband and wife at one station pursuant to Department of Personnel & Training letter dated 03.04.1986 which stipulates that as far as possible and within the constraints of administrative feasibility, husband and wife should be posted at one place. The applicant therefore prays to cancel the order of transfer dated 27.04.2013 filed as Annex.A/1 qua the applicant.

5. The respondents filed a detailed reply controverting the facts stated by the applicant and stated specifically that applicant was appointed as Postal Assistant in 1997 and not in 1996 and at present he is discharging his duties as Sub Post Master,Pabubari for last four years. It is submitted that on certain occasions he has opened the office late and a document in this regard is filed as Annex.R/2. A chargesheet was also issued to him in regard to punctuality because the public had raised grievances in this context. Not only this while

performing the duties as SPM he has not entered the transactions in the accounts in the computer and had also not done the work of data entries. The register of unrelieved passbooks has also not been maintained. He has no unblemished records of 17 years and he has made the Post Office work as a mess.

6. The respondents have further asserted that the places where the applicant wants his adjustment, there is no Post Office. The applicant has not submitted any representation against the frequent transfers as narrated in the OA, although he was accommodated to join at Kutchery Post Office which is within the limit of Nagar Nigam, Bikaner at his request. Not only this the applicant has given incorrect and false service particulars of his successor i.e. Shri Ramdev Siran who has completed 4 years service and he has also completed his tenure, which is supported by the Charge Report at Annex.R/4. The applicant has also not produced the relevant documentation showing study of his daughters and the story of frequent check up also does not appear to be true in the absence of proof. As per version of the applicant that his wife is serving at Khajuwala which is at a distance of 120 kms. from Bikaner and in fact his joining at Bajju will reduce the distance by 50%. He has been working at Pabubari Post Office for last four years and has completed a tenure of four years.

7. The applicant has also filed a rejoinder reiterating his pleadings narrated in the OA.

8. Heard the parties.

9. The counsel for the applicant reiterated the facts averred in his O.A. and contended that the applicant has been transferred frequently and the fact of his family problems and education of children has been completely over-

looked. Further, many longer stayee employees are continuing at Bikaner Head Office and he has been transferred frequently and the said transfer though purported to be on Government cost and interest of service has actually been done to accommodate another person which is against the transfer policy as well as the policy to uplift the conditions of the weaker sections of the society. The action of the department in transferring him is perverse and even against the DOP&T instructions which stipulate that as far as possible husband and wife should be posted at one place. The learned counsel for the applicant thus emphatically argued that the order of transfer as at Annex.A/1 be quashed and set aside.

10.. Per contra, the respondents contended that the impugned order of transfer had been made in accordance with transfer policy and in exigencies of public service and the applicant has not submitted even an iota of evidence in support of his allegation of colorful exercise. In the case of *Union of India Vs. S.L.Abbas* reported in 1993 (2) SLR 585(1994 SCC (L&S) 230), Hon'ble the Supreme Court held that who should be transferred where, is a matter for the appropriate authority to decide and unless the offer of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Courts cannot interfere with the same. Further, while ordering there is no doubt that the authority must keep in mind the guidelines issued by the Government on the subject. In paras 6 and 7 the Hon'ble 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."

11. In an another leading judgment of Hon'ble Supreme Court reported in 1992 SCC (L&S) 127 – *Shilpe Bode (Mrs) and Ors. Vs. State of Bihar and Ors.* it was held that If Court continue to interfere with day to day transfer orders issued by the Government and its subordinate authority, there will be complete chaos in the administration which would not be conducive to public interest.

12. Further, it was also contended said that a member of Scheduled Caste community cannot be given a license or shelter for indiscipline and attending office late and not to give proper service to public for which he is being paid. As regards the posting of his wife, he has never represented to the department and more particularly the instant transfer reduces the distance between by 50% in view of his posting at Bajju. It was also contended that the applicant has misguided this Tribunal by quoting Rule 38 as this rule is not applicable and further there is no arbitrariness and if it is, then applicant should have pointed out the same, but he has in para 5 (G) of the grounds, merely called the said transfer as arbitrary.

13. We have considered the arguments put forth by the respective parties. Apparently, the applicant has been transferred in public interest from Bikaner

to Bajju which is hardly 100 Kms. from the present place of applicant's posting. The applicant is working as a Sub Post Master and in our considered view, looking to the entire scenario, we are not inclined to interfere in the order of the authorities because transfer is a necessary and essential incident of service and no case of any mala fide action or violation of policies is made out. Simply on the ground of the sickness of his daughter or wife or on the ground that educational session is ongoing, we are not inclined to interfere with the impugned order. Accordingly, the application lacks merit and therefore it is hereby dismissed with no order as to costs.


[Meesnakshi Hooja]
Administrative Member


[Justice K.C.Joshi]
Judicial Member

Jrm