

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**Original Application No. 290/00331/14**

Reserved on: 16.07.2015

Jodhpur, this the 07<sup>th</sup> day of August, 2015

**CORAM**

**Hon'ble Ms. Meenakshi Hooja, Administrative Member**

Manish Kumar Suwalka S/o Shri Jagdish Chander Suwalka, aged about 30 years, R/o House No. 1406, Jingaron Ki Gali Mandal, District Bhilwara.

Presently working on the post of postal Assistant at Divisional office Bhilwara, Rajasthan.

.....Applicant

By Advocate: Mr. S.K. Malik.

Versus

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. The Director Postal Services Rajasthan, Southern Region, Rajasthan.
3. The Superintendent of Posts Offices, Bhilwara Division, Bhilwara.

.....Respondents

By Advocate : Ms K. Parveen.

**ORDER**

This OA has been filed against the order No. B2/34/Trf/20141 dated 09.09.2014 (Annex. A/1) passed by the respondent No. 3 by which the applicant has been transferred, therefore, the applicant has filed this OA under Section 19 of Administrative Tribunals Act, 1985 seeking the

- (i) *By an appropriate writ order or direction impugned order dated 09.09.2014 at Annex. A/1 qua the applicant be declared illegal and be quashed and set aside.*
- (ii) *By an order or direction exemplary cost be imposed on respondents for causing undue harassment to the applicant.*
- (iii) *Any other relief which is found just and proper be passed in favour of the applicant in the interest of justice.*

2. Brief facts of the case as averred by the applicant are that the applicant was initially appointed on the post of Postal Assistant w.e.f. 17.05.2010 and posted at Head Post Office Bhilwara. The applicant was sent on deputation by respondent No. 3 to Mandalgarh post office and he remained there from 15.12.2010 to 01.01.2011. After returning to Head Office Bhilwara, the applicant raised TA Bill and respondent No. 3 alleging that TA Bill is bogus issued charge sheet under Rule 16 and ultimately imposed punishment of reduction of one grade increment for a period of six months vide order dated 30.11.2011. Thereafter the Director Postal Services issued memo under Rule 29 of CCS (CCA) Rules, 1965 and remitted the case for De Novo proceedings to respondent No. 3 to issue charge sheet under Rule 14. Lastly respondent No. 3 being prejudiced and biased against the applicant imposed the penalty of reduction of pay from Rs 8400/- to Rs 8120/- for a period of one year with cumulative effect vide order dated 26.02.2014. Against the said order the applicant filed an OA which was registered as OA No. 100/2014 and this Tribunal after notices and in presence of respondent counsel vide order dated 26.03.2014, passed interim order not to act upon the impugned order and not to deduct the salary of the applicant. Being prejudiced and biased against the applicant

Divisional Office but still the ego of respondent No. 3 was not satisfied and he again vide order dated 17.07.2014 (Annex. A/3) issued order of deputation at Bhilwara Head Office just to give harassment to the applicant other than this nothing else. Still the respondent No. 3 was not satisfied and again vide impugned order dated 09.09.2014 (Annex. A/1) issued order of transfer from Bhilwara Divisional Office to Subhash Nagar Bhilwara Post Office. Aggrieved of impugned order of transfer the applicant made representation dated 11.09.2014 (Annex. A/4) to respondent No. 2 stating therein that fact of his transfer within six months which is contrary to transfer policy dated 04.03.2014 (Annex. A/5) issued by respondent No. 1 wherein Para 4-2 (XI) provides that "Gazetted and Non-Gazetted staff will not be transferred from a post before completion of the prescribed tenure. However an officer/official may be transferred from a post in administrative interest or at his/her own request provided he/she has completed at least one year in the said post. Leave of any kind exceeding 15 days will not be counted while computing the period. Nevertheless transfer of any officer/official before completion of one year in the post may be done on public interest but the reasons for the same should be recorded." Apart from what has been stated aforesaid, the applicant is secretary of All India Postal Employees Union Class III and he took up the matter with respondent No. 3 for illegal and irregular transfer of postal employees vide letter dated 11.09.2014 (Annex. A/6) high lighting the factual position stating therein that transfer orders have been issued contrary to the provision of Rules and in an arbitrary and illegal manner.

Even some employees are working at the same place for more than 30 years. So there is a clear cut violation of Rules/order and requested to review the entire matter and thereafter if necessary issue transfer order. Till dated nothing has been done against the transfer order at Annex. A/1, therefore, aggrieved of impugned order dated 09.09.2014 (Annex. A/1) the applicant has filed this OA seeking reliefs as extracted above.

3. In reply, it has inter-alia been averred by the respondents that the applicant was recruited to the post of Postal Assistant under Direct Quota and appointed as Postal Assistant w.e.f. 17.05.2010 at Bhilwara HO. On completion of the prescribed post tenure as Postal Assistant Bhilwara HO, the applicant was transferred and posted as Office Assistant, Divisional Office (DO) Bhilwara vide Memo dated 04.03.2014 as per the instructions contained in the Government of India Ministry of Communication, Department of Posts, Dak Bhawan New Delhi letter dated 31.01.2014. Before issuance of transfer orders, willingness for three stations were called for from the officials, who were going to complete post tenure upto 30.09.2014 and extension of tenure, vide letter dated 31.01.2014 by fixing the last date of receipt of the application upto 15.02.2014 and 10.02.2014. The applicant submitted his application dated 08.02.2014 received on 10.02.2014 to the respondent-department requesting to retain him at Bhilwara HO on the plea that he has not completed his post tenure at Bhilwara HO stating that he was working in several Branches, Bhilwara HO otherwise he may be transferred at Divisional Office, Bhilwara as Postal Assistant at Bhilwara City Post Office. The

Rajasthan, Southern Region, Ajmer vide letter dated 18.02.2014 for approval of his extension at Bhilwar HO with specific recommendation, which was decided by the Post Master General, Rajasthan Southern Region, Ajmer vide letter dated 04.03.2014 that the case where the extension of tenure is required, it should be submitted with specific reasoned recommendation of SPO's. It was further directed to rotate the staff as per the Transfer Policy immediately. Therefore, the applicant was transferred from Postal Assistant, Bhilwara HO to Office Assistant, Divisional Office, Bhilwara vide Office Memo dated 04.03.2014. The applicant joined as Office Assistant, Divisional Office, Bhilwara on 30.04.2014 and worked up to 17.07.2014. It has been further averred that the Bhilwara HO was going to be rolled out in CBS migrated shortly and the work of data feeding and its verification was under process. Due to exigencies of services, the applicant was ordered to work on deputation vide letter dated 17.07.2014 in the interest of service for doing the work of verification of data at Bhilwara HO exclusively. Since then applicant was working as Postal Assistant on deputation w.e.f. 18.07.2014 continuously at Bhilwara HO. During the course of bi-monthly service union's meeting of the Office bearers of this Division held on 04.09.2014 at Regional HQ Ajmer, the union office bearers of BPEU and NEPEU pointed out that active representative of Service Unions are working in Divisional Office, which is against the Rules and complained to the PMG (Southern Region), Ajmer to get them shifted immediately. The matter has been reviewed by the competent authority on 05.09.2014 and as per instruction contained in the PMG (SR) Ajmer letter

constituted vide C.O. Jaipur letter dated 03.03.2014 with reference to the letter dated 10/15.01.2014 met on 09.09.2014 at Division Office, Bhilwara to consider the transfer and placement of the Postal Assistants who are active member of service unions posted at Administrative/Divisional Office and otherwise, in the interest of service and on recommendation of the said Committee vide Minutes of the meeting dated 09.09.2014, the applicant who is Secretary of AIPPU Class III, Bhilwara has been transferred from Office Assistant, Divisional Office to SPM Subhash Nagar, Bhilwara vide Memo dated 09.09.2014 (R/1), which is a local transfer. The applicant has also submitted a representation on 11.09.2014 to the Appellate Authority i.e. D.P.S. (SR) Ajmer against his transfer made vide Memo dated 09.09.2014, which has been submitted to the said Authority on 30/8.09.2014. The same has been considered and rejected by the competent authority vide Memo dated 25.11.2014 (Annex. R/2). It has also been submitted that the applicant has directly approached this Hon'ble Tribunal without waiting the fate of his representation dated 11.09.2014 from the competent authority. It has also been submitted that the transfer order issued on 09.09.2014 under the directions of the letter dated 05.09.2014, is not contrary to rotational Transfer Policy Guidelines issued vide Directorate letter dated 31.01.2014. The respondents have prayed that on the above grounds, the OA is liable to be dismissed.

The applicant has filed a rejoinder, reiterating the points raised in the OA & denying the points in the reply and annexed Annexure-A/7 with the

4. Heard. Counsel for the applicant, Shri S.K. Malik, submitted that the applicant was initially appointed and posted as Postal Assistant w.e.f. 17.05.2010 and posted at Head Post office Bhilwara and as brought in para No.4.2 of the OA the applicant was sent on deputation by respondent No.3 to Mandalgarh Post office where he remained there from 15.12.2010 to 01.01.2011. After coming back to Head Office Bhilwara, he raised TA bills against which respondent No.3 issued charge sheet under Rule 16 treating them as bogus and imposed a penalty of reduction of one grade increment for a period of six months and later respondent No.3 was asked by Director, Postal Services to conduct de novo proceedings and issued charge sheet under Rule 14. The respondent No.3 being prejudiced and biased against the applicant imposed a penalty of reduction of pay from Rs.8400/- to Rs.8120/- for a period of one year with cumulative effect vide order dated 26.02.2014. The applicant filed OA No.100/2014, in which an interim order dated 26.03.2014 was passed by the Tribunal. It has been averred that the respondents No.3 became prejudiced and biased and transferred the applicant from Bhilwara Head office to Bhiwara Division Office vide order dated 04.03.2014 (Annexure-A/2) and just after about four months, the applicant was issued an order of deputation at Bhilwara Head Office on 17.07.2014. (Annexure-A/3) and again on 09.09.2014 (Annexure-A/1) he has been transferred from Bhilwara Division Office to Subhash Nagar Bhilwara Post Office. Thus, these three orders dated 04.03.2014 (Annexure-A/2), 17.07.2014 (Annexure-A/3) and 09.09.2014 (Annexure-A/1) have been issued just with a view to harass the applicant. The

11.09.2014 (Annexure-A/4). Counsel for the applicant contended that the transfer of the applicant is completely contrary to the policy of the respondent department dated 31<sup>st</sup> January, 2014, circulated vide letter dated 04.03.2014 (Annexure-A/5) in which para 4.2 (XI) reads as under:-

*"XI. Gazetted and Non-Gazetted Staff will not be transferred from a post before completion of the prescribed tenure. However, an officer/official may be transferred from a post in administrative interest or at his/her own request provided he/she has completed at least one year in the said post. Leave of any kind exceeding 15 days will not be counted while computing this period. Nevertheless, transfer of any officer/official before completion of one year in the post may be done in public interest but the reasons for the same should be recorded."*

It has been contended that the applicant has been transferred before one year and no reasons have been recorded. Further as per Rule 61-A of P&T Manual Volume (IV) part I (Annexure-A/7) enclosed with the rejoinder, the maximum period of tenure is 5 years but the applicant has been transferred within less than a year. Counsel for the applicant submitted that the transfer order dated 09.09.2014 (Annexure-A/1) is an outcome of bias, prejudice and malafide because the applicant has filed an OA No.100/2014 against the orders in disciplinary proceedings, and is against the provisions of the policy of the respondents themselves. Counsel for the applicant also submitted that the applicant has been transferred out of Union rivalry and complaint by certain persons. Counsel for the applicant also referred to Swamys News page 91 and relied upon the judgment of CAT Bench Guwahati in OA No.292 of 2011 dated 04.10.2012 in P.R. Nalla v General Manager, N.F. Railway, in support of his contentions and prayed that the Annexure-A/1 qua the applicant be declared illegal and set



5. Per contra, counsel for the respondents, Smt. K. Parveen, submitted that the applicant worked as Postal Assistant in the Bhilwara Head Office from 17.05.2010 to 04.03.2014. She contended that the applicant while working on deputation at Mandagarh from 15.12.2010 to 01.01.2011 raised bogus TA bills and after conduct of disciplinary proceedings, he was given the penalty order. It was further contended that the allegations regarding malafide and bias made by the counsel for the applicant are baseless because the action in the disciplinary cases has been taken by the respondent department with reference to the bogus TA Bills and the same have been challenged in the OA No.100/2014 which is a separate matter. She further contended that vide order Annexure-A/1, the applicant whose name appears at serial No.5 has been transferred to SPM Subhash Nagar, Bhilwara which is a very local transfer and the same has been made in the interest of service and referred to Annexure-R1, in which Transfer and Placement Committee made the recommendations and the reasons have been recorded and also referred to Annexure-R/2 by which the representation of the applicant dated 11.09.2014 has been decided on 25.11.2014 (Annexure-R/2) after considering the representation. She further contended that SPM Subhash Nagar is just 3 kilometres from Divisional Office, Bhilwara and the transfer is local and earlier also the applicant has worked in HO and DO Bhilwara and no malafide has been established or proved and therefore prayed for dismissal of the OA.

6. Considered the aforesaid contentions and perused the record. It is

11.11.2014 Considered dated 04.02.2014 in which the applicant's

been transferred from Bhilwara Head Office to Bhilwara Division Office is local in nature and as explained in the para No.1 of brief history of the case in the reply, that this transfer was made on completion of the prescribed/tenure at Bhilwara HO as per the instructions of the department dated 31.01.2014, and as part of rotation of staff as per transfer policy and even willingness for three stations were called from the officials. The applicant had requested to be retained at Bhilwara HO on plea that he has not completed tenure at that post because he was working at several branches but otherwise he may be transferred on Divisional Office, Bhilwara. Accordingly he was posted at Divisional Office, Bhilwara. As far as Annexure-A/3 dated 17.07.2014 is concerned, the applicant has merely been asked to go on deputation to Bhilwara HO in view of work relating to CBS for verification of data's at HO and this appears to be simply deputation for administrative requirements and that too in Bhilwara itself. The main objection of the counsel for the applicant was with regard to transfer order dated 09.09.2014 (Annexure-A/1) wherein the applicant has been transferred from DO Bhilwara to SPM Subhash Nagar, Bhilwara. It was contended that the applicant had not completed his tenure and not even a year and the transfer is against the policies and no reasons have been recorded and the applicant is being transferred frequently out of prejudice, bias and malafide. In this context, it is seen that as per Annexure-R/1 the transfers were recommended by a Transfer Placement Committee set up by the respondents and reasons have also been recorded and accordingly transfer order dated 09.09.2014 (Annexure-A/1) was issued. It is further

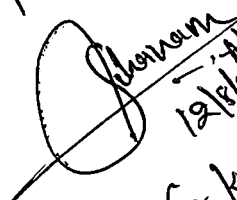
11.09.2014 was decided on 25.11.2014 (Annexure-R/2) but the applicant did not wait for decision of his representation and filed this OA on 22.09.2014 itself.


7. It is settled law that Courts and Tribunals should not ordinarily interfere in transfer and postings being incidence of service unless there is gross violation of statutory rules or proven malafide. In the present case, no gross violation of statutory rules has been established because Rule 61 A (Annexure-A/7) refers only to maximum tenure. Further even policy, which has only persuasive value, with reference to para 4.2 (XI) (Annexure-A/5), referred by the applicant counsel for applicant does not appear to have been violated, because the transfer of applicant vide order dated 09.09.2014 as at Annexure-A/1, made in less than one year, has been made on the recommendations of a Transfer & Placement Committee which has recorded the reasons as at Annexure-R/1. In the judgment of CAT Bench Guwahati in OA No.292 of 2011 dated 04.10.2012 in P.R. Nalla v General Manager, N.F. Railway, on which counsel for applicant has relied upon, matter related to posting on sensitive posts with reference to vigilance cases but the facts in the case are very different. Moreover, the transfer in local and no case of proven malafide has been established. Therefore, on the above basis there appears no ground to interfere with the order dated 09.09.2014 (Annexure-A/1).

In view of the above analysis, the OA is dismissed with no order as to costs and IR granted on 22.09.2014 and since continued, also stands vacated.



Rk by

  
for K. Parveen  
12/8/15

Ree  
  
S. K. Lalik  
12/8/15