

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Original Application No. 290/00394/2014

Reserved on 02.01.2015

Jodhpur, this the 5 day of January, 2015

CORAM

Hon'ble Mr.Justice Kailash Chandra Joshi, Judicial Member

B.R.Bhirania s/o Late Shri Narayan Ram, aged about 57 years r/o Jagir Sadan, r/o 23/139, Chaupasani Housing Board, Near Samrat Ashok Udyan, Pal Road, Jodhpur (Office Address:- Working as ASPO Division Office, Jodhpur, Postal Department)

.....Applicant

By Advocate: Mr. S.P.Singh

Versus

1. Union of India through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi.
2. The Post Master General, Rajasthan Western Region, Jodhpur
3. Asstt. Director, Postal Service O/o Postmaster General, Western Region, Jodhpur.
4. Senior Superintendent of Post Offices, Jodhpur Division, Jodhpur
5. Sheuli Burman, PMG Rajasthan, Western Region, Jodhpur

.....Respondents

By Advocate : Ms. K.Parveen

ORDER

The applicant is aggrieved of the order dated 22.8.2014 (Ann. A/1) and Charge Report dated 9.9.2014 (Ann.A/2) whereby the applicant has been ordered to look after the charge of Postal Sub Division, Pokaran independently, therefore, he has prayed :-

- a. That the respondents may kindly be directed to cancel the transfer order vide STA/WR/9-7/2014 dated 22.8.2014 (Annexure-A/1) qua the applicant and Charge Report dated 9-9-2014 (Annexure-A/2).
- b. 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.

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c. That the costs of this application may be awarded to the applicant.

2. Brief facts of the case, as stated by the applicant, are that initially the applicant was appointed as Postal Assistant on 30.5.1978. He was further promoted to the post of Inspector in IP cadre on 30.6.1993 and to the post of Assistant Superintendent of Post Offices in ASP cadre on 24.9.2007. He rendered his services in ASP cadre from 2007 to 2011 at Nagaur and from 2011 onwards at Jodhpur. The applicant has stated that it is settle principle of law that the transfer will be in same cadre or on promotion by virtue of Rule 15 of FR, but the applicant has been transferred from Jodhpur to Pokaran on lower post, which is in violation of the above rule. The applicant has also referred FR-26 which says that all duty in a post on a time scale counts for increment in that time scale and Rule 59 of P&T Volume IV says that an Assistant Superintendent of Post Offices of R.M.S. and an Inspector of Post Offices or R.M.S. should not ordinarily remain in the same Division as the case may be or at the time same post for more than 4 years at a time. The applicant further referred Rule 37-A of P&T Vol-IV which provides that transfers should generally be made in April or each year so that the education of school going children of the staff is not dislocated. In emergent cases or cases of promotion this restriction will naturally not operate. According to the applicant, he has been transferred to a lower post without there being any administrative exigency. Further, the applicant submitted representation and apprised the authorities that he is suffering from Hypertension and Diabetes and being old age employee he is being transferred which is not a stationary post, but no human consideration is paid. The applicant has also stated that future of his studying children will adversely affect and there will be huge pecuniary loss. Further, the applicant is not longest stayee in the office but the respondents are adamant to transfer him despite of knowing the fact that he has been transferred far-off place without giving due



consideration to the facts. Therefore, aggrieved of the action of the respondent department, the applicant has filed this OA praying for the reliefs as extracted above.

3. By way of reply to the OA, the respondents have submitted that contribution of Pokaran Sub Division towards various targets, particularly, the target in respect of Postal Life Insurance and Rural Postal Life Insurance business for the year 2014-15 was negligible. Though the Inspector Posts, Jaisalmer Postal Sub Division has been given the dual charge of Pokaran Sub Division, but he is over loaded by the work of his own Sub Division, and, hence could not devote sufficient time and effort towards the work of Pokaran Sub Division. Therefore, urgent need was felt for posting a full time incumbent to the post of Inspector of Posts, Pokaran to complete the backlog of all type of work. There are three posts of Supervisors i.e. Dy. Superintendent of Post Offices, ASP (HQ) and Inspector Posts (Public Grievance) in the office of Senior Superintendent of Post Offices, Jodhpur and in view of this fact, it was thought that work of supervisors in the office of Senior Superintendent of Post Offices, Jodhpur can be managed easily if the post of ASP (HQ) is kept vacant, therefore, it was considered advisable to deploy the applicant to look after the work of Pokaran Sub Division. Accordingly, he was ordered to look after the charge of Pokaran Postal Sub Division for a period of 180 days or till further orders or until joining of regular incumbent, whichever is earlier. This arrangement is a temporary arrangement for a specified period and, therefore, it cannot be defined as a transfer. The applicant on account of this temporary arrangement is not likely to be affected adversely in any way i.e. either in the matter of pay and allowances, increments or promotion etc. However, even if there was any kind of apprehension in the mind of the applicant on the aforesaid points i.e. on the point of pay and allowances, increments, or promotion etc. the same should no longer exist because the Pokaran Sub Division has now been temporarily been upgraded to the ASP Sub Division vide order dated 30.10.2014 for a period of six

months. Further, there is no difference in the nature of duties to be performed or powers enjoyed by the Head of Sub Division in respect of Sub Divisions headed by the officer of Inspector cadre and those headed by officer of ASP cadre. Both Inspector posts as well as Assistant Superintendent of Post enjoy the same powers as Sub Divisional Heads. The respondents have further submitted that the applicant has not been transferred to the post of Inspector Posts Pokaran Sub Division on permanent basis but has only been ordered to look after the work of Pokaran Sub Division on temporary basis for a specified period of 180 days, therefore, the rules/instructions governing transfer of government servant are not attracted or applicable in this case. The Pokaran Sub Division where the applicant has been ordered to work on temporary basis has been upgraded from IP Sub Division to ASP Sub Division by the competent authority vide order dated 30.10.2013, therefore, it is no longer a case of requiring the applicant to carry out the work of lower post. As regards the contention about not touching other four Inspectors posted at Jodhpur, it is submitted that all the Inspectors and ASPs except Inspector (PG) posted at Jodhpur are holding the charge of Sub Divisions and, therefore, they could not have been deployed to look after the charge of Pokaran Sub Division because in that eventuality, the Sub Division headed by the Inspector/ASP concerned was bound to render vacant and it could not have been a wise step to get improve the work of a Sub Division at the cost of dislocation of work of some other Sub Division. Therefore, the respondents pray for dismissal of the OA.

4. The applicant has filed rejoinder to the reply reiterating the averments made in the OA and the respondents have also filed additional affidavit.

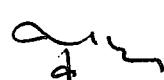
5. Heard both the parties. Counsel for the applicant contended that vide order dated 22.8.2014 (Ann.A/1), the applicant has been transferred from the post of Assistant Superintendent of Post Offices to the post of Inspector Posts, Pokaran Sub

Division for 180 days as a temporary arrangement but in fact the order Ann.A/1 amounts to transfer because it has not been mentioned in the order that the applicant has been allotted additional work of Pokaran Sub Division. Further, he submitted that as per Fundamental Rule 24 and 26 (b)(i), he cannot be transferred to a lower post because as soon as he joins the lower post, he will not get any increment for the above 180 days. He further submitted that out of malice, he has been transferred from Jodhpur to Pokaran on a lower post i.e. from the post of Assistant Superintendent of Post Offices to the post of Inspector Posts. Counsel for the applicant drew my attention towards the transfer order Ann.A/1 and promotion order at Ann.A/5 and contended that when the department came to the know the fact that the applicant has been wrongly transferred to a lower post of Inspector Posts at Pokaran, the post of Inspector has been upgraded for six months to the post of Assistant Superintendent of Post Offices, but this order has not been passed by the competent authority. He further contended that an officer from upper post cannot be transferred to a lower post, therefore, order Ann.A/1 is illegal and requires to be set-aside.

6. Per contra, counsel for the respondents contended that order Ann.A/1 clearly speaks that it is a temporary transfer and this arrangement has been made due to the fact that post of Inspector Posts, Pokaran is lying vacant and some senior officer was required to be posted there to look after the important matters. She further contended that only for 6 months, this arrangement was made which is not a transfer but a shifting because it refers that the applicant will get TA and DA that means Daily Allowance is to be paid to the applicant for the entire 180 days and in case of transfer, no such Daily Allowance is paid. Counsel for the respondents also contended that the applicant has challenged the temporary arrangement order without any legal ground. She further contended that so far as malice is concerned, there is no evidence on record to show the malice behind making this temporary arrangement order.

7. I have considered the rival contention of both the parties and also perused the material available on record. From perusal of Ann.A/1 it is clear that the applicant has been temporarily shifted to Pokaran for six months as a stop gap arrangement to regulate the work of office of Inspector Posts at Pokaran and it nowhere speaks that his salary will be lowered down or he will not get any increment for the six months' period. In my view, in a case of transfer, the provisions of Rule 26 (b)(i) of Fundamental Rules are applicable but in case of temporary arrangement or stop-gap or ad-hoc arrangement, the provisions of Rule 26 (b)(i) are not applicable and salary of such employees cannot be lowered down or it cannot be said that the applicant will not get any increment during this period.

8. In view of the discussions made hereinabove, in my considered view, Ann.A/1 is not a transfer order but a temporary arrangement to cater the urgent needs of the department. Further, it cannot be said to be passed in malice as the same has been passed by the competent authority to regulate the work of Inspector Posts at Pokaran Sub Division. Therefore, no case is made out to quash Ann.A/1 and accordingly, the OA being devoid of merit is dismissed with no order as to costs.



(JUSTICE K.C.JOSHI)
Judicial Member

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