

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.166/2014

Reserved on 08.04.2015

Jodhpur, this the 24th day of April, 2015

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Girdhari Lal Chaudhary S/o Shri Teja Ram, aged about 52 years, R/o Shastri Nagar, Shivkar Marg, Barmer, District Barmer. (Official Address :- working as Postal Assistant, Jaisalmer HO).

.....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 Tar Bhawan, New Delhi.
2. The Chief Postmaster General, Rajasthan Circle, Jaipur.
3. The Postmaster General, Rajasthan Western Region, Jodhpur.
4. Senior Superintendent of Post Offices, Jodhpur Division, Jodhpur.
5. Superintendent of Post offices, Barmer Division, Barmer.

.....Respondents

By Advocate : Smt. K. Parveen

ORDER

This OA has been filed under Section 19 of the Administrative

forwarded by respondent No.2 (Annexure-A/1) and Memo No. STA-WR/50-1/2011 dated 28.04.2011 (Annexure-A/2) and Memo No.B-4-1/1/Tfrs/11-12 dated 04.05.2011 (Annexure-A/3) regarding the transfer of the applicant and praying for the following relief(s):-

- “(a) The impugned order vide Memo No.Staff/44-2/2/2014 dated 21.03.2014 (Annexure-A/1) forwarded by respondent No.2 and Memo No.STA-WR/50-1/2011 dated 28.04.2011 forwarded by respondent No.3 and letter dated 04.05.2011 may kindly be declared illegal, unjust, improper and deserves to be quashed and set aside.*
- (b) The respondents may kindly be directed to issue transfer order or posting under Barmer Division.*
- (c) 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.*
- (d) That the costs of this application may be awarded to the applicant.”*

2. Brief facts of the case as averred by the applicant are that the applicant is working as Postal Assistant and has completed more than 32 years of service. The applicant was transferred from Bitu to Barmer HO in the month of May, 2009 and he has been transferred from Barmer HO to Jaisalmer HO against the statutory provision, and the applicant has been transferred from Barmer Division to Jodhpur Division even before completion of 4 years which is tenure for postal Assistant by virtue of Rule-60 P&T Vol-IV and the respondents has violated Rule 60 P&T Vol-IV. It has been averred that the respondents issued transfer order in mid academic session and longest stayee

without completion of his tenure. The applicant challenged the transfer order before this Tribunal vide OA No.513/2013 whereby, vide order dated 01.01.2013 the respondent was directed to consider the case of the applicant on humanitarian ground and posting the applicant to some convenient post so that the studies of his children do not get disturbed. The respondents challenged the order the Tribunal before the Hon'ble High Court Jodhpur vide DB Civil Writ Petition No.6833/2013 and the Hon'ble High Court vide order dated 20.11.2013 (Annexure-A/4) directed the respondents to decide the representation. However, the representation of the applicant has been rejected vide order dated 21.03.2014 (Annexure-A/1) by the respondent and the cogent ground for cancellation of transfer order was Rule 37 of P&T Vol-III and the Rule 37 is not in existence in view of letter dated 23.08.1990 (Annexure-A/5) which is admitted by the respondents vide letter dated 21.05.2013 (Annexure-A/6). The respondents cannot transfer the applicant from Barmer Division to Jodhpur Division because there is no provision to transfer officials from one division to another division. Further, it has been averred that the applicant is not longest stayee and somehow the officials who are staying at HO/DO for more than 20 years are not transferred and the frequent transfer of the applicant shows the malafide

shall be 4 years, which is evident from Rotational Transfer Policy Guideline for the year 1998-99 (Annexure-A/7), but the respondent did not extend an opportunity to the applicant to keep his position, though the daughters of the applicant are studying and transfer has been made in mid academic session and there was no administrative exigency for transfer of the applicant. The applicant is being harassed by the frequent transfers and in the present case there is gross violation of the provisions of the transfer policy and the action of the respondent department shows hostile discrimination and malafide on these grounds the applicant has prayed for allowing of the OA and providing the relief(s) as mentioned above.

3. By way of reply, the respondents have stated that the applicant is working as Postal Assistant in the Department of Posts since 12.12.1986 and is presently posted at Jaisalmer HO vide memo dated 28.04.2011 issued by the Office of the Post Master General, Western Region Jodhpur and he joined his duties at Jaisalmer HO on 21.12.2011. The applicant had been transferred from Barmer Division to Jodhpur Postal Division under Rule 37 of the P&T Manual Vol IV(now called Postal Manual Vol.IV), the authenticity of which had been challenged by the applicant vide OA No.513/2011 before this

"13(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.

13 (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 (Annexure-A/3)."

The respondent department i.e. Department of Posts (particularly O/o the PMG (WR) Jodhpur and Superintendent of Post Offices, Barmer Division, Barmer) being aggrieved by the order of the CAT Jodhpur dated 01.01.2013 while disposing off OA No.513/2011 filed Writ Petition No.6833/2013 before Hon'ble High Court Jodhpur which was decided on 20.11.2013 in favour of the Department with the following modification to CAT Jodhpur Bench decision dated 01.01.2013, as under:-

"In view of the above, the observations as made in para

and the directions are given by the CAT shall read as under:-

“13(i). While not holding any infirmity in the orders of transfer, the competent authority is directed to consider the representation(s) of the applicant-respondent on humanitarian grounds; and

13(ii). It shall be expected of the Authority considered to consider the representation (s) of the applicant-respondent expeditiously and as far as possible within a period of three months (Annexure A/4).”

It has been averred that the applicant submitted his representation dated 13.12.2013 addressed to PMG Rajasthan (WR), Jodhpur in connection with the aforesaid order of the Hon'ble High Court dated 20.11.2013 and the representation of the applicant was forwarded to the office of the PMG (WR) Jodhpur on 23.12.2013 vide Superintendent of Post Offices, Barmer letter dated 23.12.2013 and the office of the PMG (WR) Jodhpur further forwarded the above representation to the office of the CPMG Rajasthan Circle, Jaipur vide letter dated 06.02.2014. The representation of the applicant was thoroughly considered at the office of the CPMG Rajasthan Circle, Jaipur and observed that “the applicant was alleged for temporary misappropriation of Government money to the tune of Rs.38,40,000/- by showing false entries of cash remittance, while

transferred under Rule 37 of the P&T Manual Vol.IV from Barmer Division to Jodhpur Division in the interest of service." The competent authority i.e. CPMG Jaipur found nothing wrong in shifting such official from his own Division (Barmer) to neighbouring Division (Jodhpur) so rejected his representation. The applicant again filed another OA No.290/00166/2014 before this Hon'ble Tribunal on the same subject matter besides that it had already been decided in his earlier OA no.513/2011 and further modified by the Hon'ble High Court, Jodhpur in DB Civil Writ Petition No.6833/2013 decided on 20.11.2013. It has been further averred in the reply that on one side the applicant has challenged the validity of P&T Manual IV and on the other side he quoted rule 60 of the P&T Manual Vol.IV, which reads that tenure of PA for particular station is about four years. In this context it has been averred that the applicant had served at Barmer HO w.e.f. 12.12.1986 to 16.05.1994 (7 years and 5 months), 08.06.1995 to 30.06.2007 (12 years) and 13.05.2009 to 04.05.2011 (2 years), thus his total stay at Barmer HO (except one deployment at Dhani Bazaar and another at Baitu SO) was near about 21 years at Barmer HO, and when he was continuously serving at Barmer HO on one or another post/ Branch he never pointed out transfer policy but now quoting the same, though that he had been prematurely

money. It has been denied that the transfer of the applicant has been done with a mala fide intention but because the applicant had misappropriated Government money amounting to Rs.38,40,000/- so he had been transferred in public interest or in administrative interest and the applicant had not been transferred after completing four years routine tenures but in public interest and administrative measures. It has been further averred that in the present case, the applicant has been transferred from one Division to another Division under the provisions of Rule 37 of the Postal Manual Vol.IV in the public interest and the provisions of Rule 60 of the Postal manual Vol.IV are not applicable. It has been further reiterated that the applicant while working as Treasurer Barmer HO had temporarily misappropriated the Government money to the Rs.38,40,000/- by showing false entries of cash remittance in Treasurer's cash book and it was for this reason that he was transferred out of Division under the provisions of Rule 37 of the Postal Manual Vol.IV which provides that all officials are liable to be transferred to any part of India unless it is expressly ordered otherwise for any particular class of classes of officials, and issues regarding non-completion of the tenure or not having longest stay at the station etc. as raised by the applicant are not relevant in the matter. It has been further submitted that as

the mid academic session, the same is totally false and misleading because his transfer was ordered in April, 2011 which was appropriate time for ordering transfer as per Rules/ instructions of the Government on the subject. With regard to Rule 37 of the Postal manual Vol.IV, it has been submitted that accordingly to Annexure-A/7 attached with the present OA, the CAT Ahmedabad Bench decision dated 21.05.1995 itself reveals the following facts about Rule 37 of the Postal Manual Volume IV. *“At the same time, it is also true that no formal action has been taken to delete Rule 37 from the Manual. It is quite understandable that the Department has not chosen to formally delete Rule 37 in case of emergency/ temporary as shifting of staff for a purely limited period might become necessary. The need for such power to meet such a contingency in the public interest can be understood.”* The provision in this case had been applied in the above sense only. It is further submitted that this contention of the applicant is not acceptable that Rule 37 of the Postal Manual Vol.IV is not in operation, Rule 37 of the Postal Manual Vol. IV continues to be in operation. There are a number of judicial pronouncements in which the transfers under Rule 37 of the Postal Manual Vol.IV have been held to be permissible and justified. The Hon'ble Supreme Court, in the case of Union of India v. Sri Janardhan

decided on 13.02.2004, the Hon'ble Cuttack Bench of the CAT (Full Bench) in the case of Shyam Sunder Patra and others v. Union of India and others (OA No.674, 872 and 673 of 1995 decided on 04.05.1998) and thereafter the Hon'ble CAT Bench Jodhpur has held transfer under this Rule, which was ordered by respondent No.3 to be justified in the case of Shri P.C. Bothra v. UOI and others (OA No.239/2009). The Hon'ble Principal Bench of the CAT, New Delhi has also, while placing reliance on the aforesaid judgments of the Hon'ble Supreme Court in the case of Union of India and other vs. Sri Janardhan Debanath and another and Cuttack Bench of the CAT held in the case of Deepak Verma v. Union of India, decided on 15.01.2008 that after referring to different provisions, transfer orders under Rule 37 by the Posts and Telegraphs was upheld by the Hon'ble Supreme Court and therefore this question is no longer res integra and that, it is now settled that transfer under Rule 37 of the P&T Manual can be made. Moreover, according to the latest 'Transfer Policy issued by the Ministry of Communication and IT Department of Posts, New Delhi dated 31.01.2014, Rule 37 of the Postal Manual Vol.IV still exists.

It has also been submitted that Hon'ble Supreme Court has repeatedly held that in the matter of transfer so long as there is

of the department otherwise it be become difficult to run the administration smoothly and they will not be able to perform their duties, and who should be posted where, are the matters, which are to be left to the authorities concerned to decide unless orders passed are arbitrary or contrary to any statutory rules. In the instant case, proper justification has been given by the respondents therefore no case has been made out for interference and the respondents have prayed for dismissal of the OA.

4. Heard both the parties. Counsel for the applicant referred to Annexure-A/2 dated 28th April, 2011 and submitted that the applicant, who was Postal Assistant was transferred from Barmer Division to Jodhpur Division under the provision of Rule 37 of P&T Manual Volume IV ibid in the interest of service with immediate effect and his name was treated as struck off from the strength of the Barmer Division vide Annexure-A/3 dated 04.05.2011. He further referred to Annexure-A/4 dated 23.08.1990 by which the Rule 37 has been deleted and also referred to Annexure-A/5 dated 21st May, 2013, which is information supplied by the Department under Right to Information Act to another person, in which the copy of DG Posts letter No.20-12/90-SPB-I dated 23.08.1990 asked for vide which Rule

11 ✓

37 of P&T Manual Volume IV in respect of C&D Group Employees was

in the order of the Central Administrative Tribunal, Ahmedabd Bench, passed in 9 OAs, dated 21.12.1995 it has been held that "in view of the reasoning above, and in view of the fact that the department itself has kept in abeyance operation of Rule 37 itself, the transfers involved in each one the above OA's will have to be declared as illegal as it would mean loss of seniority and can adversely affect the promotion prospects merely because of the transfers." He further referred to Annexure-A/9, i.e. Rule 60 which prescribes that the tenure of the Postal Assistant should be at least 4 years whereas the applicant has been transferred before 4 years in pursuance of Rule 37 which already stands deleted. Counsel for applicant further submitted that the applicant earlier also filed an OA No.513/2011 against the transfer order dated 28th April 2011 (Annexure-A/2) which was decided by this Tribunal vide order dated 01st January, 2013 and against the said order, the respondents went to the Hon'ble High Court and in pursuance of the directions of the Hon'ble High Court, the Annexure-A/1 order dated 21.03.2014 has been issued in which his plea regarding Rule 37 having been already deleted and is not applicable has been rejected. Counsel for applicant emphatically contended that as Rule 37 of P&T Manual Vol.IV stands deleted, the order Annexure-A/1 dated 21.03.2014 has no legal validity and

28th April, 2011 (annexure-A/2) and relieving order dated 04.05.2011 (Annexure-A/3).

5. Per contra, counsel for the respondents contended that Annexure-A/1 dated 21.03.2014 has been passed in pursuance of the directions issued by the Hon'ble High Court in DB Civil Writ Petition No.6833/2013, which was decided on 20.11.2013 in favour of the department with the following modification of CAT Jodhpur Bench decision dated 01.01.2013 passed in OA No.513/2011, which are furnished as below:

"In view of the above, the observations as made in para 13 (i) and (ii) (supra) in the CAT's order stand modified and the directions are given by the CAT shall read as under:-

13(i). While not holding any infirmity in the orders of transfer, the competent authority is directed to consider the representation(s) of the applicant-respondent on humanitarian grounds; and

13(ii). It shall be expected of the Authority considered to consider the representation (s) of the applicant-respondent expeditiously and as far as possible within a period of three months (Annexure A/4)."

In pursuance of the above mentioned directions, the representation of the applicant was decided by the department vide

for the respondents contended that the OA No.513/2011 was filed against the order dated 20th April, 2011 (Annexure-A/2) and 04.05.2011 (Annexure-A/3) and all matters including applicability of Rule 37 were raised and considered in the judgment of the Tribunal dated 01.01.2013 as well as by the Hon'ble High Court in its order dated 20.11.2013 in DB Civil Writ Petition No.6833 of 2013 and after due consideration, the Tribunal or the Hon'ble High Court did not hold any infirmity in the order of the transfer and the Hon'ble High Court after slightly modifying the order of the Tribunal only directed the respondent/ competent authority to consider the representation (s) of the applicant on humanitarian ground. The competent authority duly considered the representation and justly rejected the same vide Memo dated 21.03.2014 as his transfer order was made in public interest because the applicant had made temporary misappropriation to the tune of Rs.38,40,000/-. As far as question of Rule 37 being deleted or not being applicable any more, it was contended that the matter already stands decided and the validity of the Rule 37 of the P&T Manual (now Postal Manual) had already been looked into by the Hon'ble Apex Court in the case of *Uol and Other v. Sri Janardhan Debanath and Another (supra)*, and this judgment has already been discussed in the order of the Tribunal dated 01.01.2013 passed in OA



order dated 28th April 2011 was also under challenge, no infirmity was found in the transfer order and the Hon'ble high Court also in its order dated 20.11.2013 in DB Civil Writ Petition No.6833/2013 did not hold any infirmities in the transfer order. Further, Rule 37 of Postal Manual Vol.IV (earlier P&T Manual) very much still exists as may be seen from latest Transfer Policy attached with the reply. Further, Counsel for respondents also contended that the applicant had served in Barmer for 21 years as may be seen from chart at para 5E of the reply and tenure of Rule 60 does not apply when transfer is made in administrative interest. She thus prayed for the dismissal of the OA.

6. Considered the rival contentions and perused the record. It is seen that in OA No.513/2011, the applicant had already challenged the order dated 20th April 2011 (Annexure-A/2) as well as the relieving order dated 04.05.2011 (Annexure-A/3) and further the issue of Rule 37 of P&T Manual Vol.IV was also considered in the order of the Tribunal dated 01.01.2013 and after due consideration, the Tribunal did not hold the transfer order as infirm. Thereafter when the matter went up to the Hon'ble High Court in DB Civil Writ Petition No.6833/2013, which was decided on 20.11.2013, the Hon'ble High Court also did not consider the transfer order of the

pursuance of the directions of the Hon'ble High Court, the respondent department decided the representation of the applicant vide Memo dated 21.03.2014 Annexure-A/1 and with regard to Rule 37, it has been discussed in the impugned order as under:-

"The representationist was alleged for temporary misappropriation of Government money to the tune of Rs.38,40,000/- by showing false entries of cash remittance, while working as treasurer Barmer HO. The case was reviewed by the competent authority with reference to alleged temporary misappropriation of Government money by the representationist and he was transferred under Rule-37 of P&T Manual (now Postal Manual) Volume IV from Barmer Division to Jodhpur Division in the interest of service. The plea put forth by the representationist that his transfer in the interest of service under Rule037 was made despite satisfactory record of service is not tenable. The representationist was identified as main-offender for temporary misappropriation of Government money to the tune of Rs.38,40,000/- by showing false remittances. Although, the Telecom Department had been bifurcated from the department of Posts the orders issued under Rule 37 of P&T Manual (now Postal Manual) Volume-IV cannot be regarded as baseless. Therefore, the plea put forth by the representationist that the orders issued under Rule 37 of P&T Manual should not be base of any kind of action is not maintainable."

7. As far as Rule 37 of P&T Manual Vol.IV is concerned, the main argument of the counsel for the applicant was that this Rule is no longer in force as may be seen from Annexure-A/7, which is the judgment of CAT Ahmedabad Bench dated 21.12.1995 and from information given in RTI vide letter dated 21st May, 2013 (Annexure-A/5) enclosing the copy of letter dated 23.08.1990. In this connection it is seen that even in the judgment of the Ahmedabad Bench, it has been held *that at the same time, it is also true that no formal action has been taken to delete Rule 37 from the Manual. The counsel or the respondents have also not been able to show any follow-up action taken by the department to amend the Manual subsequent to the issue of the letter referred to above. It is quite understandable that the department has not chosen to formally delete Rule 37 in cases of emergency as temporary shifting of staff for a purely limited period might become necessary. The need of such power to meet such a contingency in the public interest can be understood. But, at the same it is also clear in view of the decision referred to by the department in the above letter dated 23rd August, 1980, that such a transfer under Rule 37 cannot be resorted to as a long term measure.* Further, as noted above, the Rule 37 of the P&T Volume IV (now Postal Manual Volume IV) has also be analyzed in the decision of the



consideration no infirmity has been found in the order dated 28.04.2011 (Annexure-A/2) and 04.05.2011 (Annexure-A/3), which were challenged in that OA and the Hon'ble High Court of Rajasthan also did not find the above transfer orders infirm. Moreover, it is seen from the Annexure attached with the reply, which is the latest order regarding Transfer Policy that Rule 37 of the Postal Manual Vol.IV is currently in force. Therefore from the perusal of the aforesaid orders and documents, it cannot be said that the Rule 37 stands deleted and the contention of the counsel for the applicant that the Rule 37 stands deleted, thus, does not carry force. Further, the rejection of the representation of transfer order vide Memo dated 21.03.2014 Annexure-A/1 is based on sound reasoning regarding temporary misappropriation of Rs.38,40,000/- and the same cannot be said to be illegal or discriminatory. It is also seen that the applicant from the beginning of his career in 1986 has stayed at Barmer for about 21 years. In view of the above, his transfer orders Ann.A/2 and A/3 (also adjudicated upon earlier by this Tribunal in OA No.513/2013 and Hon'ble High Court of Rajasthan in DB Civil Writ Petition No. 6833/2013) and the rejection of his representation, filed in pursuance of the order of the Hon'ble High Court of Rajasthan in DB Civil Writ Petition No.6833/2013, vide Memo dated 21.03.2014

(Annexure-A/1) by the respondents cannot be said to be illegal, malafide or arbitrary.

Accordingly, in view of the above discussions, the OA lacks merit and is dismissed with no order as to costs.



(MEENAKSHI HOOJA)
Administrative Member

Rss