

CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 270 OF 2008

Dated the 22, 1 October, 2008

CORAM:-

HON'BLE Dr. K.S.SUGATHAN, MEMBER (ADMINISTRATIVE)

KS Mayalakshmi,
Postal Assistant (on leave)
Kayamkulam HO,
Alleppey District.

....Applicant

[By Advocate: Mr CSG Nair]

-Versus-

1. The Superintendent of Post Offices,
Mavelikara.
2. The Post Master General,
Central Region,
Cochin-18.
3. Chief Post Master General, Trivandrum.
4. The Director General of Posts,
Sanchar Bhavan, New Delhi.
5. Union of India, represented by the Secretary,
Department of Posts, Sanchar Bhavan, New Delhi-1.

...Respondents

[By Advocates: Mr PS Biju, ACGS)

This application having been heard on 24th September, 2008 the Tribunal delivered the following -

ORDER


The applicant in this OA working as a Postal Assistant in the Kayamkulam Head Post Office. She came on transfer to the Kayamkulam Head Post office in April 2005 and would be completing her tenure of four years in April 2009. After April

2009 she would be eligible for transfer outside Kayamkulam. However just before completing her tenure of four years in Kayamkulam the respondents have transferred her to another post in Kayamkulam i.e. Kayamkulam College Post office. By virtue of this transfer the applicant will have to wait for another four years to become eligible for transfer outside Kayamkulam, because as per rotation transfer guidelines dated 30.6.2006 (A/1) there is no station tenure for non-gazetted staff. There is only 'post tenure' applicable to non-gazetted staff. The applicant is therefore aggrieved by order dated 6.5.2008 transferring her from Kayamkulam HPO to Kayamkulam College post office. The applicant has sought the following relief through this OA:

- (i) To call for the records leading to the issue of Annexure A7 and quash the same;
- (ii) To direct the respondents to retain the applicant at Kayamkulam HO, or transfer her to any other place of her choice like Haripad, or Kathikapally or Muttom or even Kareelakulangara where there is a vacancy;
- (iii) Grant such other relief or reliefs that may be Orayed for or that are found to be just and proper in the nature and circumstances of the case;
- (iv) Grant cost of this OA."

[2] The respondents have filed reply statement. It is contended in the reply that the applicant is working as Schedule Postal Assistant and her duty includes preparation of schedules and consolidation of Telephone Revenue Collections of the Head Post Office and its Sub-Offices. It has come to notice that a sum of Rs. 1490 collected as telephone revenue from four subscribers on 27.10.2007 was not accounted by Smt. B.Lalitha, Sub- postmaster Noyoranad Sanitorium P.O. which is functioning


under the Kayamkulam HPO. Smt. Lalitha is also alleged to be involved in embezzlements of cash received in connection with savings bank accounts. In connection with the preliminary enquiry against Smt. Lalitha the applicant was required to give a statement. But the applicant did not give the required statement, even though the ASP was deputed for the purpose. The reluctance of the applicant to give a statement indicates the possibility that she is also in league with Smt. Lalitha. The refusal to give a statement is an act of indiscipline, which warranted suspension but in consideration to the career of the employee it was decided to only transfer her out of the Kayamkulam HPO. The transfer is without prejudice to the right to take any disciplinary action that may be taken against the applicant. The applicant has made a representation against the transfer to Director of Postal Services, but she has not waited for the decision of the Director of Postal Services before filing this OA. This is not a transfer on the basis of the rotation transfer guidelines. The transfer is made in the interest of service for severe dereliction of duty for the purpose of maintaining discipline. The respondents have relied on the judgment of the Hon'ble Supreme Court in ***National Hydroelectric Corporation v. Bhagwan and Shiv Prakash (2002 L&S 21)*** to highlight the point that transfer is not only an incidence but a condition of service necessary too in public interest and efficiency in the Public Administration. As regards the grievance about non-availability of toilet facilities in the College Post office, the respondents have stated that a separate toilet is now available in the Post office room itself.



[3] The applicant filed a rejoinder in which she has refuted the allegation that she is in collusion with Smt. Lalitha against whom investigation is going for alleged financial misappropriation. She has also contended that she did not refuse to give a statement in connection with the investigation, but only wanted time as she wanted to consult her husband. But the first respondent issued a show cause notice on 30.4.2008. Before filing this OA, she waited for three weeks after submitting representation to the Director of Postal Services.

[4] I have heard the learned counsel for the applicant Shri CSG Nair and the learned counsel for the respondent Shri PS Biju. I have also perused the records carefully.

[5] There are several judicial pronouncements on the scope of judicial review in transfer matters. The principle laid down by the Hon'ble Supreme Court in this regard is very clear. Unless there is *mala fide* exercise of power or a violation of statutory provisions, there should be no interference in transfer matters from Courts/Tribunals. In the matter between ***State of UP v. Siya Ram & Another (2004 7 SCC 405)*** the Hon'ble Supreme Court has observed that:-

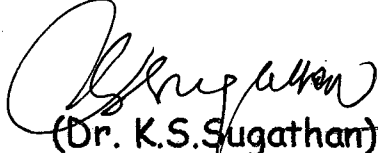


"5....Unless an order of transfer is shown to be an outcome of *mala fide* exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities 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 Corporation Ltd. vs. Shri Bhagwan.*"

[6] There is no allegation of *malafide* in the present case. There is also no violation of any statutory rules. The applicant has been transferred for not co-operating with an enquiry into a financial fraud allegedly committed by another employee Smt. Lalitha. Therefore the point for consideration is only whether the transfer per se is a punishment. It is stated in the reply that the transfer is made in the interest of service because continuance of the official in the HPO may lead to non-collection of evidence from other officials working in the office. The applicant is in charge of consolidation of the list of telephone revenue collections of sub offices/HO for issuing consolidated cheque to BSNL. The subject matter of investigation against Smt. Lalitha involved non-remittance of certain amounts paid by telephone subscribers Nooranad Sub Post Office that is functioning under the Kayamkulam HPO. The applicant could have given a written statement on the basis of available records. The material available before me indicates that she was reluctant to give a written statement. Such written statements are required for completing a preliminary enquiry. The report of the investigating officer at A/17 and A/18 clearly establishes that the applicant was not willing to give a written statement. The respondents are therefore justified in initiating a disciplinary proceeding for misconduct. But was it necessary also to transfer to the employee to another office? As per the reply statement they had the option of suspending the employee, but they chose not to exercise that option in consideration to the career of the applicant. Therefore it was decided to only shift

the employee to another office in the same town. The applicant has cited two main grounds against the transfer i.e. it may take another 4 years for her become eligible for transfer outside Kayamkulam, and secondly there are no toilet facilities in College post office. The problem of lack of toilet facility has since been solved. As regards her eligibility for getting a transfer outside Kayamkulam, this^{is} not a legally enforceable right, and it cannot bar the respondent from transferring employees in the interest of the administration. It is to be noted that the new location is within the same Municipality. There is no change of residence involved. No hardship is seen. The transfer of the applicant cannot be construed as a punishment.

[7] For the reasons stated above, this is not a fit case that calls for interference from the Tribunal. OA is therefore dismissed. The interim order stands vacated. No costs.


(Dr. K.S. Sugathan)
Member (Administrative)

Attn