

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION : 12.4.1990

P R E S E N T

HON'BLE SHRI N.V KRISHNAN, ADMINISTRATIVE MEMBER

&

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.28/90

P.Sarasakshy

.. Applicant

v.

1. Union of India, represented by
Secretary, Ministry of Communications,
New Delhi.

2. The Director of Postal Services,
Central Region, Ernakulam.

3. Senior Superintendent of Post Offices,
Ernakulam.

4. Assistant Superintendent of Post Offices,
Ernakulam Sub Division, Cochin-24.

5. Post Master General, Kerala Circle,
Trivandrum. .. Respondents

Mr T.Ravikumar

.. Counsel for the
applicant

Mr TPM Ibrahim Khan, ACGSC

.. Counsel for R1
to 5.

JUDGMENT

Hon'ble Shri N.Dharmadan, Judicial Member

Whether transfer of a Stamp Vendor from one Post Office
to another, within a radius of one K.M, based on public
complaints, is punitive or not, is the main question that
emerges for consideration on the facts of this case.

2. The applicant, a Departmental Stamp Vendor while
working under the second respondent, was transferred
from the M.G Road Post Office, Ernakulam to the Hindi
Prachar Sabha Post Office in the same place within
less than a kilometre. She was initially appointed
at the Banerji Road Post Office where she continued

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for about ten years till she was transferred to Hindi Prachar Sabha Post Office, Ernakulam by Annexure-A order dated 30th April, 1987. Thereafter as per Annexure-B order dated 12.6.87 she was transferred to M.G Road P.O. on request. But by a subsequent order(Annexure R1 dated 9.10.89), leading to the impugned relief memo Annexure-C, she has been posted to Hindi Prachar Sabha P.O.

3. The applicant attacks the transfer as a punitive action on two grounds; viz. (i) the order of transfer resulted in drastic deduction in the total monthly emoluments because in the major Post Offices functioning within the city limits, an incentive payment calculated at the rate of Rs.2/- for every Rs.100/- worth of stamps sold over and above the minimum target, is being given to the Stamp Vendors. According to the applicant the minimum target of the M.G Road P.O is a sale of stamps worth Rs.2500/-. Since the M.G Road P.O being a very busy Post Office, there used to be sales of stamps worth more than Rs.4,000/- to Rs.5,000/- and she used to get the incentive money at the above rate which is deprived to her on account of the present transfer. (ii) It is understood from Annexure-E communication received by the Circle Secretary of the Union from the Director of Postal Services, Central Region, Cochin that the applicant's transfer from the M.G Road P.O was effected due to some public complaints against her while working in that Post Office.

4. In the counter affidavit filed by the respondents there is denial of the allegations in the application. The respondents have stated that the transfer order has been issued in the best interest of Postal service, because M.G Road Post Office being one of the busiest Post Offices in the city, stamp vending works should be carried out smoothly without any complaints.

The following statements in the counter affidavit are relevant:-

"6. The transfer is not a punishment. After watching the work and conduct of the applicant for a considerable period, A.S.P, Ernakulam Sub Division issued the transfer order in the interest of service. The work and conduct of the applicant was not at all satisfactory. Cochin M.G Road Post Office is the busiest Post Office in the city. There are more than 30 staff members in this Post Office and a large number of customers visit this Post Office. The applicant had repeated quarrels with customers and the fellow workers. The tension created by the applicant spoiled the harmonious functioning and better image of the Department. Comparatively Hindi Prachar Sabha Post Office is a smaller Post Office having only 4 staff members, and the work load of the office is comparatively less. Both the offices are situated on either side of the same bus stop and the distance between the two offices is hardly one KM. Hence applicant will not have any inconvenience due to this transfer".

5. Admittedly the transfer is based on complaints from the public. Then the question is whether it is punitive and the course suggested by the applicant, that the respondents should have conducted an enquiry and punished her rather than transferring her from the Ernakulam Main P.O in this manner, should have been followed?

6. The Civil Service Rules which prescribe diverse punishments and which can be imposed upon Govt. servants when found guilty of charges, do not make mention about transfer as a punishment. But it may amount to a penal action on the part of the administrative authority if the circumstances under which it has been passed lead to the inference that it was not passed bonafide in the exigency of service. It will depend on the facts of each case. Transfer being an implied condition of service, the appointing authority has a wide discretion in the matter and it is an "administrative measure" depending upon the facts of each case as held in *Sangam Lal Dubey v. Director of Education, U.P* (AIR 1957 All 70). According

to the latest decision of the Supreme Court in Union of India and others v. H.N.Kertania ((1989) 2 ATC 269, "transfer of public servants made on administrative grounds on the public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of mala fides".

7. The case on hand discloses that the transfer was effected on public complaints. But it is not a singled out transfer to harass the applicant on the basis of the complaints. Annexure R-1, produced along with the statement of the counsel for the respondents dated 12th February, 1990, is the transfer order by which persons other than the applicant were also transferred. She was posted to a smaller Post Office just because her work in the busy Post Office would spoil the harmonious functioning of the Post Office and tell upon the image of the Department. In fact when complaints were received, the A.S.P., Ernakulam kept a watch over her work and conduct for a considerable period. He was satisfied that her work and conduct was not satisfactory in the best interest of the smooth working of that busiest Post Office in the city. There were more than thirty staff members and a large number of customers used to visit the place everyday for dealing with the postal articles. According to the A.S.P., the applicant's service if continued in that Post Office, the harmonious functioning of the office and better image of the Postal Department would be spoiled. Hence in the best interest of the public, she was shifted to a less busy Post Office for the time being. The satisfaction of the superior authority, who received the complaint, that it is desirable and imperative to shift the applicant from the office and post her in the nearest less busy office,

for maintaining the smooth working of the post office, is the basis for the impugned order. This is not a punishment in any view of the matter. On the facts of this case we are fully satisfied that there is no penal element in the transfer. The Orissa High Court held in Achyutananda Behera v. State of Orissa and others, 1985(2) S.L.R 16 as follows:-

"8. Allegations are sometimes made maliciously or recklessly. Sometimes they are founded on baseless gossip. With the inroad of politics into various strata of society, it is not seldom that allegations are politically motivated. Therefore, when allegations are levelled against an employee, it is desirable nay imperative, that the administrator should himself ascertain the truth and act on his own satisfaction that the circumstances warrant a transfer".

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"It, therefore, behoved the administrator to bring to bear his independent mind on the facts and circumstances of the case. That would have been fair play in action. If the administrator was satisfied that the petitioner had indulged in undesirable activities or was negligent in discharge of the functions or that his presence at the station was detrimental to the interests of the administration and was not in public interest, he had undoubted jurisdiction to shift the petitioner. Here, the administrator did not apply his mind at all. No endeavour was made to ascertain the truth. He acted on the prodding of the legislator who had in turn acted on the complaint of some villagers. There was, therefore, absence of exercise of jurisdiction by way of abdication thereof. He even acted on the dotted lines. The petitioner was shifted to Jeypore in Koraput District (a distant place as suggested by Mr. Jena) about 830 K.Ms away. The transfer was, therefore mala fide and we quash the same. We make it clear that our quashing of the order of transfer aforesaid, does not prevent the authorities from taking such action as they consider proper if they are satisfied that the continuance of the petitioner at Bahanaga is not in public interest or in the interest of administration.

It has been held by Warrington L.J. in Short vs. Poole Corporation (1926) 1 Ch 66 at page 90:-

"No public body can be regarded as having statutory authority to act in bad faith or from corrupt motives ..."

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Relying on this passage Justice Ayyangar observed in S. Pratap Singh vs. State of Punjab, (1964) 4 SCR 733 that

"Courts have, on occasions, resolved the difficulty by finding out the dominant purpose which impelled the action" and after satisfaction that such action had been done for bonafide purpose in the interest of public benefit upheld the action. The dominant purpose for the transfer in this case is to maintain proper working of the M.G Road P.O. Chief Justice Ray held in Bhiwandi Municipality v. K.S Works, AIR 1975 SC 529, "The legal presumption is drawn through the well known hypothetical reasonable man". Such a reasonable man's assessment of the facts in this case would lead him to the irresistible conclusion that the order of transfer in the instant case had been passed for a bonafide public purpose and it has not been effected by *mala fides* or oblique motive. Hence we are satisfied that there is no merit or substance in the first ground.

8. Regarding the second ground we are of the view that this also is bound to fail. The statement that the applicant is deprived of the financial benefits of the incentive scheme introduced from 1987, because of his transfer, is not correct. As indicated by the respondents in the counter affidavit, the applicant can earn the benefit of incentive payments by increasing the sale of stamps while working in the Hindi Prachar Sabha Post Office also, since the aforesaid scheme is equally applicable to the said Post Office. Such income may be a little less than the income she used to get while she was working in the M.G Road Post Office before her transfer. But this is not a part of the salary and hence it cannot be considered as a drop in emoluments as alleged/
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So there is no merit in the case that the transfer resulted in the reduction of emoluments.

9. The applicant's learned counsel has cited some decisions in support of his arguments. We have examined these decisions. In Syndicate Bank Ltd v. The Workmen, AIR 1966 SC 1283, the transfer of a bank employee, though alleged to be malafide, could not be established to be a transfer on extraneous consideration before the Supreme Court. But the Court held "if an order of transfer is made mala fide or for some ulterior purpose, like punishing an employee for his trade union activities", the Courts or the Tribunal should interfere. But there is no such evidence in this case. Hence this decision is not applicable. The other two decisions, Municipality of Bhiwandi v. M/s. Kailash Works (AIR 1975 SC 529) and K.K Jindal v. General Manager, Northern Railway and others, (1986 (2) SLJ 27) are also distinguishable on facts. In the latter case the Tribunal observed that "the record placed is that the authority which ordered the petitioner's transfer had not at all applied its mind" and hence the impugned order was quashed. The Kerala High Court in Babu v. State of Kerala, 1988(2) KLT 258 has very emphatically rejected a writ petition challenging a transfer and held as follows:-

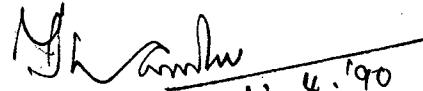
"Orders of transfer made in exercise of administrative discretion should not ordinarily be interfered with under Art. 226 of the Constitution Transfer is an incidence of service and the Govt. servant has no legal right in this behalf".

10. In the instant case the A.S.P., Ernakulam applied his mind to the issue and watched the applicant's conduct for quite sometime and he was satisfied that in the best

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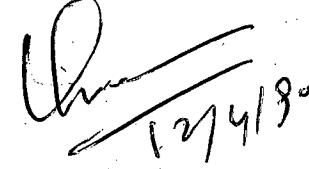
interest of the smooth working of a busiest Post Office in the city, the shifting of the applicant is necessary. Accordingly the present transfer had been effected. This appears to be a correct and bonafide decision. So it cannot be illegal and a penal action as alleged by the applicant.

11. Having considered the matter in the light of the principles laid down by the Supreme Court, we see no merit in the application. It is only to be dismissed. Accordingly we dismiss the same. There will be no order as to costs.


(N. DHARMADAN)

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JUDICIAL MEMBER


(N.V. KRISHNAN)

ADMINISTRATIVE MEMBER

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