

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 383/2005

This the 10th day of August, 2007

HON'BLE SHRI JUSTICE KHEM KARAN, VICE CHAIRMAN

Suresh Chandra Tiwari aged about 48 years son of late Sri Ayodhya Parsed Tewari r/o Village – Multanipur, P.O. Sahebganj, Tehsil Lalganj, District-Pratapgarh.

...Applicant

By Advocate: Shri Surendra Singh

Versus

1. Union of India through Secretary, Department of Post, Sanchar Bhawan, New Delhi.
2. Post Master General, Allah bad Region, Allahabad.
3. Senior Superintendent of Post Offices, Pratapgarh.
4. Sub-Divisional Inspector, Lal Ganj, Pratapgarh.

...Respondents.

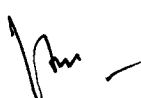
By Advocate: Shri D.P.Singh

ORDER

BY HON'BLE SHRI JUSTICE KHEM KARAN, V.C.

The applicant is challenging order dated 25.5.2005 (Annexure-1), by which he has been transferred from Sahebganj Branch Post Office to Head Post Office, Pratapgarh. He prays that opposite parties be directed to retain him as Sub Post Master, Sahebganj, District –Pratapgarh.

2. His case in brief is that he was recently posted as Sub Post Master, Sahebganj in District Pratapgarh vide order dated 21.6.2004 (Annexure 2) and hardly had he worked there for a year, this impugned order was passed transferring him from there to Head Office and posting him as Postal Assistant there. According to him, as per the transfer policy, employees like him, should not be disturbed in this way during a period of 4 year. He alleges that hoping that he will not be disturbed from Sahebganj, he got his children admitted in respective classes as mentioned in para 4.6 of the



O.A. and in doing so, spent an amount of Rs. 25,000/- or so. It is also said that his wife is patient of Asthma and atmosphere of city does not suit her, so he gave several representation dated 1.6.2005, 25.6.2005, 22.7.2005 (Annexure 3, 4 and 5) to the authorities for canceling his transfer dated 25.5.2005 and allowing him to continue as Sub Post Master, Sahebganj and when nothing was done, he knocked the doors of this Tribunal. He states that his transfer from Sahebganj to Head Office, Pratapgrh is not in public interest and the respondent No. 3 has ordered transfers on mass scale, with ulterior motive. He has also tried to say that transfer of so many officials as named in para 4.10 of O.A. was subsequently cancelled by the respondent No.3. One of the grounds taken is that his posting as P.A. at Head Post Office, Pratapgarh amounts to his reversion and so impugned order deserves to be quashed on this ground also.

3. In his reply, the respondent No.3 has tried to justify this transfer on the ground that there was acute shortage of hands at Pratapgarh Head Office as because of the ban on the recruitment, suitable hands could not be inducted and so with a view to carry on the affairs of the head Office, some hands from Sub Post Office were shifted to Head Post Office. Attempt has been made to say that in Sub Post Office, Sahebganj, besides the applicant, there was another hand, so the applicant was chosen for transfer to the Head Office. In reply to the allegations made in para 4.10 of the O.A., respondent No. 3 has stated in para -14 that only one Vijay Kumar Shukla was retained at his original post of Postal Assistant, Sagra on directions of the competent authority. As regards the complaint that posting of the applicant as P.A. amounts to reversion, it has been stated in para 17 that applicant is originally a Postal Assistant and so the question of reversion does not arise as his emoluments will not be diminished. It is also said that before the appropriate authority could pass any orders on the representations of the applicant, he rushed to this Tribunal.

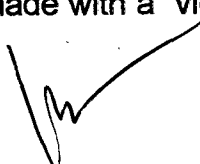
4. In his Rejoinder Reply, applicant has attempted to show that all these transfers or most of the transfers covered by the impugned order of transfer were not in public interest. It has also been said that the contention that there is shortage of hands in Head Office is totally ill-founded ..

5. Respondent No. 3 has also filed supplementary reply justifying the transfer.

6. Vide order dated 12.8.2005, this Tribunal directed the respondents to maintain status quo. That interim order is continuing till now. Vide order dated 3.3.2006, this Tribunal directed the respondents to place before it the relevant file in which the matter relating to transfer of the applicant and others was dealt with. This record could not be produced.


7. The main contention of Sri Surendra Singh is that the impugned transfer of the applicant from Sahebganj to Head Post Office, Pratapgarh is in breach of the policy of the transfer as he has been disturbed just after a year of his posting there. He says that normal tenure of Sub Post Master at a Sub Post office is 4 years and it is not known as to why the applicant was disturbed just after a year of his posting at Sahebganj. He contends that such transfer on mass scale, were ordered with oblique motive

8. Sri D.P. Singh appearing for the respondents has tried to say that in view of letter dated 24.4.2000 of Govt. of India, Ministry of Communications, Department of Post, Dak Bhawan, Sansad Marg, New Delhi, transfers could be effected at any time in exigencies of service and in the public interest. The learned counsel says that if the respondent No. 3 was of the view that there was shortage of hands in the Head Office, Pratapgarh, there was nothing wrong on his part in shifting the applicant from Sahebganj to Head Office, Pratapgarh. According to him, transfer made with a view to cope with the load



of work in Head Post office, Pratapgarh cannot be interfered with by this Tribunal unless it is shown that the same is malafide or is punitive or is in breach of any statutory rules. The learned counsel goes on to argue that even if the transfer is in breach of so called transfer policy, the Tribunal should not interfere with it.

9. After a catena of decisions of the Apex Court, such as **Rajendra Roy Vs. Union of India and others 91993) 23 Administrative Tribunal Cases 426, B. Vardha Rao Vs. State of Karnataka (1986) 4SCC 131 = AIR 1986 SC 1955 and Smt. Shilpi Bose Vs. State of Bihar AIR 1991 SC 532**, it stands well settled that transfer being incident of service, the Court or Tribunal should be slow enough to interfere with the same and these can be interfered with only if the same are actuated by malice or are perversity in nature or are in breach of any statutory rules or regulations. The Apex Court has observed that even if the transfer is found to be in breach of any executive instructions or transfer policy, the Tribunal need not interfere with the same but should leave it to the higher authority to look into the same. In other words, in such matters, where a servant is challenging transfer, scope of interference is limited one. The Tribunal or the Court will not be justified in undertaking an exercise as to whether there was a shortage of hands at Head Office, Pratapgarh so as to bring hands from Sub Post Office. In that regard, the decision of the administrative authority, competent to make such transfer will not be open to judicial review. Allegation that transfers were not in public interest but were made with oblique motive need not be gone into by the Tribunal or the Court but should be looked into by the higher authorities. In case, the Tribunal will start looking into such type of allegations and counter allegations, administration will stand shifted to the Tribunal, which perhaps will not be in public interest. I am of the view that the transfer in question cannot be interfered with on the ground that it was made just after a year of the applicant's stay at Sahebganj or before the expiry of the



normal tenure of 4 years, as the respondent No. 3 says that there was shortage of hands in Head Post Office, Pratapgarh and hands were to be shifted from Sub Post Office to the Head Office with a view to pull on the affairs. Whether there was a shortage or not, justifying transfer in question can be looked into by the superior authority and necessary orders may be passed by him.

10. The second main argument of Sri Surendra Singh is that, posting of the applicant as Postal Assistant amounts to his reversion. It is never the submission of Sri Singh that as Postal Assistant, the applicant will be getting less salary or will be working under any junior to him. So, this ground is not one, which can be accepted for interfering with the transfer.

11. In so far as, the grievance of the applicant that his children are getting education in Sahebganj or his wife is being asthmatic will not be having congenial atmosphere at Head Quarter of the district is concerned, the same can be looked into by the respondent No. 2

12. In the result, this O.A. is finally disposed of with a direction that in case applicant gives a self contained representation to the respondent No. 2, within a period of 15 days from today, the respondent No. 2 shall consider and dispose of the same by passing a speaking order, within a period of one month from the date, such representation is so received and till such representation is so disposed of, the applicant shall be allowed to continue at Sahebganj Sub Post Office. In case, the applicant does not give any representation as mentioned above within the said period, he will not be entitled to the benefits of this order. No costs.


Vice Chairman

HLS/-