

**Central Administrative Tribunal Lucknow Bench,
Lucknow.**

O.A. No. 555/2006

This, the 12th th day of January 2007

Hon'ble Mr. A. K. Singh, Member (A)

**Kamta Prasad Pandey, aged 59 years, Son of Shri Dharam
Narain Pandey, Postmaster Sultanpur (HSG.I on leave),
resident of Village Bhadoiyare Post Office, Distt. Sultanpur.**

Applicant.

By Advocate Shri R.S. Gupta.

Versus

- 1. Union of India through the Secretary & D.G., Deptt. Of
Posts, Dak Bhawan, New Delhi.**
- 2. Chief P.M.G. U.P. Lucknow.**
- 3. Director Postal Services, O/O Chief P.M.G. Lucknow.**
- 4. Superintendent of Post Offices, Sultanpur.**
- 5. Shri Kailash, SPOs Sultanpur.**

Respondents.

By Advocate Shri S.P. Singh for Sri S.K. Singh.

Order


By Hon'ble Mr. A. K. Singh, Member(A)

**The O.A. 555/2006 has been filed by the applicant Shri
Kamta Prasad Pandey (address given in O.A.) against the
following orders:**

- (a) Order No. STA/19-XA/06/02 and B/Corr-
I/HSG/Gazetted/ Ch. I.
- (b) Date 16.11.2006 and 17.11.2006
- (c) Passed by CPMG, DPS and SPOs Sultanpur
- (d) Subject in brief: transfer from Sultanpur to Bareilly.

2. The applicant submits that he joined the (P&T Department) as Postal Assistant on 14.6.1969 and was promoted to LSG against 1/3rd quota in the year 1981. He was further promoted to the cadre of HSG II in the year 2001 as per order dated 13/20.7.2001. He was subsequently promoted as Postmaster in Sultanpur Division and has continued on the aforesaid post since then. He submits that he has not completed even one year of service on the aforesaid post, in the District Sultanpur but has been transferred from Lucknow to Bareilly region vide Memo No. STA/19-XA/06/02 dated 16.11.2006 issued by the Chief Post Master General U.P. Circle Lucknow. In pursuance of the aforesaid order of the Chief Postmaster General U.P. Lucknow, Supdt. Post Offices, Sultanpur Division, issued another order vide his Memo No. B-Corr-1/HSG-I/ Gazatted/Chap-II at Sultanpur dated 17.11.2006 as per which he was posted to Bareilly Division. The applicant submits that

- (i) The applicant is 59 years and one month old and will retire from service after 11 months on 30.11.2007.



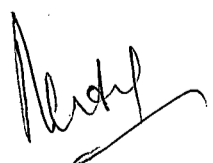
- (ii) The applicant has not completed his normal tenure on the aforesaid post, which is normally of four years.
- (iii) As per establishment order of the Department of P&T dated 7.12.98, the applicant is exempt from transfer liability as he has less than one-year service for retirement, on superannuation. In view of this, the applicant submits that the impugned orders of the Chief Postmaster General issued vide Memo No. STA-19-XA/06/02 dated 16.11.2006 allocating/transferring his service from Lucknow Region to Bareilly Region and the order of Superintendent of Post Offices Sultanpur Division, issued vide Memo No. B-Corr/1/HSG-I/Gazatted /Chap-II dated 17.11.2006 posting, the applicant from Sultanpur to Bareilly Region is, consequently, not maintainable in law and deserves to be set aside.

3. The applicant seeks the following relief in the O.A.

(i) That the order dated 16.11.2006 and 17.11.2006 passed by respondent No. 2 and 4 respectively be quashed and set aside with all consequential reliefs in favour of the applicant and (ii) to grant any other relief which this Hon'ble Tribunal deems just and proper in the circumstances of the case.

(iii) The applicant also seeks relief in the form of cost of the O.A. in question.


4. The respondents have opposed the O.A.



They submit that the applicant was transferred from Sultanapur to Bareilly on administrative grounds. A complaint had been received against the applicant from the public through Ministry of Communication and Tech. Govt. of India vide office letter dated 23.5.2006. The complaint, in question, was enquired into. The result of the enquiry revealed that the applicant misappropriated the Govt. money by charging the amount in lump sum instead of day-to-day basis, as required under the rules, in respect of IMTS transaction, refreshment to customers etc.

That the applicant has been continuously working at Sultanpur, Head Office w.e.f. 23.7.90 to 18.11.2006 i.e. for over as 15 years which is not in keeping with the policy of transfer as envisaged by Govt. of India.

That in the capacity of Postmaster, Sultanpur Office, the applicant was required to operationalise all modules of Meghdoot software for proper functioning of the Post Office in a fully computerized environment but he had failed to operationalised the Modules relating to (i) Treasury (ii) Sub-Account (iii) Postman (iv) Accountant.

 That the delinquent official also made irregular payment of Rs. 3770/- towards overtime allowance, which was shown as paid to Sri Dunia Prasad Mishra, a pensioner of Department of Posts. When this fact, came to the light, the same was disallowed by him.

5. The respondents also submit that as per principle enunciated by Apex Court in a number of cases, the transfer is an incident of service. It is also an implied condition of service and government servants holding a transferable post have no vested right to remain posted at one place or the other.

6. They rely on the Apex Court judgment in the case of *Shilpi Bose and Others Vs. State of Bihar and Others* as also on *State Bank of India Vs. Anjan Sanyal & Others*. (Judgment delivered on 12.4.2001). On the basis of the above, the respondents submit that O.A. bearing No. 555/2006 is devoid of any merit and deserves to be dismissed. Accordingly, they pray for dismissal of the O.A. in question.

7. The applicant and respondents were heard through their respective counsels on 27.11.2006. Shri R.S.Gupta counsel, represented the applicant while the respondents were represented by Shri S.P. Singh holding brief for Shri S. K. Singh Central Government counsel. Both the counsels reiterated their submissions as above in support of their respective case.

8. I have carefully considered the submissions made by the learned counsels on behalf of the applicant as well as the

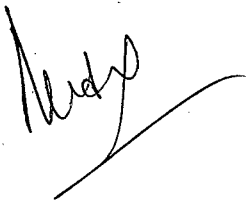
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respondents and have also perused the record. I find that the main ground on which the applicant is assailing the orders dated 16.11.2006 of the Chief Post Master General and order dated 17.11.2006 of Superintendent of Post Offices Sultanpur Division is that he is 59 years and one month old and that he will retire after 11 months on 13.11.2001. Hence he is exempt from any transfer liability as per instructions of the Department of Post, Ministry of Communication No. 141-4/48 SPB II D dated 7.12.98. According to the respondents, the applicant has been transferred on administrative grounds and hence, the instructions of the Ministry of Communication dated 17.12.98 will not be relevant to this case. They submit that the conduct of the applicant was enquired into in pursuance to a complaint received from Minister of State for Communications and Tech., Govt. of India. The allegations contained in the complaint, were found correct on enquiry. It was revealed on enquiry that the applicant had misappropriated Govt. Money by charging the amount in lump sum instead of on day to day basis, as required under the rules, in respect of IMTS transaction, refreshment to customers etc. (ii) In the second place, he also failed to operationalise all modules of software for proper functioning of the post office and that he made an irregular payment of Rs. 3770/- as overtime allowance to Shri Dunia Prasad Mishra, pensioner of Department of

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Posts. When this fact, came to light, the overtime allowance, in question, was disallowed.

9. We have examined the allegations of misappropriation of Government money, as levelled above, as well as irregular sanction of O.T.A. amount of Rs. 3770/- levelled against the applicant. These are cases of misconduct on the part of the applicant for which a separate course of action is provided under CCS (CCA) Rules 1965. It is a trite law that any misconduct committed by a delinquent employee can not form the basis for ordering transfer of an employee which, in turn, will render the order, in question punitive in nature. Principles of natural justice in that eventuality will be required to be observed in that case. Hence, the transfer of the applicant on this basis may not be justified. However, there is a substantial force in the say of the respondents that the applicant was posted in Head office Sultanpur as Postmaster w.e.f. 23.7.90 and has continued on the post till 18.11.2006. Consequently, he has completed a period of over 15 years, at the same station, which is not desirable, as a public servant tends to develop unhealthy roots due to such long continuance at a particular station. Hence transfer of the employee on this ground is clearly maintainable in law. The other ground that applicant was inefficient in operationalising the modules of software for proper functioning of the post office can not also form an administrative ground for



transfer of the applicant to a far-off station like Bareilly Division. Hence on the basis of long continuance of the employee at Sultanpur for over 15 years, the above mentioned transfer orders issued by the Chief Post Master General Lucknow, and Superintendent of Post Offices is justified and accordingly maintainable in law.

10. Moreover, it has been held by the Apex Court in the case of U.O.I. and Others Vs. S.L. Abbas (reported in AIR (1993) SC 2444) that *"Transfer is an incident of Service. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order is vitiated by malafides or is made in violation of statutory provisions, the court cannot interfere with it."*

In the case of Mrs. Shilpi Bose and others Vs. State of Bihar and Others reported in AIR (1991) SC 53. the Apex Court held that - *"A Government Servant holding a transferable post has no vested right to remain posted at one place or the other. He is liable to be transferred from one place to another. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions/ orders, the court ordinarily should not interfere with the order, instead the affected party should approach the higher authorities in the department. If the courts continue to interfere with day to day transfer orders issued by the government and its subordinate*

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authorities, there will be complete chaos in the administration, which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

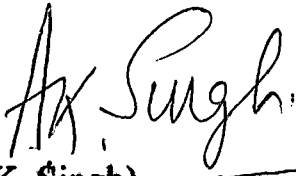
11. In the case of National Hydro Electric Power Corporation Lt. Vs. Shri Bhagwan and another AIR 2001 , the Apex Court held that

"It is now well settled and often reiterated by this Court that no government servant or employee of public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too, in the public interest and efficiency in public and administration. Unless an order of transfer is shown to be a outcome of malafide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or tribunals cannot interfere with such orders, as a matter of routine as though they were the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned."

12. While I agree that transfer of an employee from one station to the other is an exclusive prerogative of the authorities of, the transfer of the applicant from Sultanpur

to a far off station like Bareilly does not appeal to reason in view of the advanced age of the employee and also in view of the fact that he is likely to retire within a period of less than one year only. It will be magnanimous on the part of the respondents to consider this aspect and make suitable amendments in the transfer order, in question, in so far it relates to the station of transfer.

13. Subject to the above, I uphold the impugned order of transfers as maintainable in law. O.A. bearing No. 555/2006 is disposed of in the above matter.


(A.K. Singh)
Member (A)