

Central Administrative Tribunal , Lucknow Bench,

Lucknow

O.A. No. 31/2007

this the ^{24th} day of April, 2007
CORUM:-

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

Atul Kumar Srivastava aged about 50 years son of late Sri Ram Chandra Srivastava resident of 4/642, Vikas Nagar, Lucknow.

..Applicant

By Advocate: Shri R.C.Singh

Versus

1. Union of India, through Chief Post Master General, U.P. Circle, Lucknow.
2. Chief Post Master General, U.P. Circle, Lucknow.
3. The C.P.M., Lucknow GOP, Lucknow.

..Respondents

By Advocate: Shri Q.H.Rizvi

ORDER

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

The O.A. 31/2007 has been filed by the applicant Atul Kumar Srivastava (of the address given in the O.A.) against the order dated 19.12.2006 (Annexure No. 1 of the O.A.) by which he has been transferred from Lucknow G.P.O. to Agra Region under Rule 37 of Postal Manual Volume IV in the interest of public service.

2. The brief facts of the case are that the applicant had been working as Postal Assistant since 4.11.1986 in the G.P.O. and according to him, his service records throughout were unblemished. Despite this, he was transferred to Agra Region under Rule 37 of Postal Manual, Volume IV which provides for transfer

either on one's own request, or due to efficiency or misconduct etc. The applicant submits that he had never made any such request for transfer. He has also never received any communication, written or oral suggesting any in-efficiency or misconduct on his part. He further submits that Group 'C' employees in the GPO are normally never transferred. Moreover, the transfer order have been issued at time when he is facing severe calamities in his personal life. His mother is admitted in the hospital as a mental case on account of head injury. Schooling of his children has also received severe set back. Applicant has challenged the impugned order of respondent No.2 on the following grounds:-

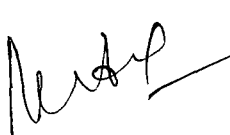
- i) That the order in question is non-speaking and suffers from the vice of non application of mind;
- ii) That the transfer order is punitive, without any basis;
- iii) That the transfer order, in question, is without jurisdiction;
- iv) That there is no provision under the rules for a deemed relieving of a transferred employees;
- v) That the applicant has been transferred from one division to another which is not permissible under rules;
- vi) That due to his mother sickness, the transfer order in question will bring untold hardship to him and his family.

On the basis of above, the applicant submits that the order, in question, is not maintainable in law. As such the same is liable to be quashed and set aside. Applicant has also cited the case of Allahabad Bench of Central Administrative Tribunal dated 15th September 2003 in O.A. No. 660 of 2003 (Sunil Kumar Singh Vs.

Union of India and others) in support of his case. He also relies upon the decision of Ahmedabad Bench of Central Administrative Tribunal dated 21.12.1995 in Case of B.N. Parmar Vs. U.O.I. and others (O.A. No. 250/94). On the basis of the above submissions, the applicant seeks the following reliefs in the O.A.

- i) That impugned order dated 19.12.2006 of respondent No.2 namely Chief Post Master General, U.P. Circle, Lucknow should be quashed and set aside .
- ii) Respondents be directed not to relieve the applicant and to give salary etc. as usual to him.
- iii) That Tribunal may pass such other order or direction as it deems fit in the circumstances of the case .
- iv) To award the cost of this petition in favour of the applicant

3. Respondents on their part have opposed the O.A. They submit that the applicant had been transferred from Lucknow to Agra Region by competent authority under Rule 37 of the P&T Manual, Volume IV. They submit that on 12.12.2006, a lady Senior Citizen produced 238 Indra Vikas Patra before the applicant, who

 at the material point of time was working as Postal Assistant at General Post Office (GPO) Lucknow for encashment but he did not allow the encashment of the aforesaid Indra Vikas Patras. On receipt of a complaint from the aforesaid lady Senior Citizen, the office of the Post Master General, U.P.Circle, Lucknow ordered an inquiry into the matter by an Assistant Superintendent of Post Offices, Office of the Post Master General, U.P. Circle, Lucknow. On conclusion of the preliminary enquiry into the matter, the

contents of the complaint were found correct that the applicant has not cooperated with the investor and also failed to maintain Departmental courtesy towards a customer who was a lady and a senior citizen. On the basis of the enquiry report, the competent authority arrived at the conclusion that the conduct of the applicant, was unbecoming of a Govt. employee. The applicant was accordingly transferred under rule 37 of Postal Manual Volume IV to Agra Region vide Memo No. ST/189-XR/Lw/GPO/2006/7 dated 19.12.2006 in the interest of public service. They further submit that Rule 37 of Postal Manual Volume IV provides that all officials of the Department are liable to be transferred to any part of India unless it is expressly ordered otherwise for any particular class or classes of officials. Rule 37 also provides that transfer under this rule should not be ordered except when advisable in the interests of the public service. He also relies upon the decision dated 13.2.2004 of the Hon'ble Supreme Court of India in the case of Union of India Versus Janardhan Debanath and another in Civil Appeal No.1010-1011 of 2004 wherein Hon'ble Apex Court has held that the transfer to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. The apex court has further held that transfers unless they involve any such adverse impact or visits the persons concerned with any penal consequences should be left with the Department concerned for the purpose of enforcement of discipline, decency and decorum in public service which are essential to maintain quality of public




service, as well as to meet untoward administrative exigencies for ensuring smooth functioning of the administration. They further submit that there is no loss of any seniority or promotional prospects to the applicant. The applicant has been transferred to enforce discipline, decency and decorum in public service. Department had the power to transfer its employees from one place to another as transfer is an incidence of service. In view of the above, respondents submit that the O.A. No. 31 of 2007, is devoid of any merit and hence deserves to be dismissed.

4. The applicant and respondents were heard through their respective counsels on 30.3.2007. Sri R.C.Singh appeared on behalf of the applicant and Sri Q.H.Rizvi, on behalf of the respondents. In their oral submissions, both sides reiterated their arguments as above.

5. I have given my anxious consideration to the submissions made by the learned counsels on both sides and have perused the record of the case.

6. In order to appreciate the arguments made on both sides, I would like to reproduce the provisions of Fundamental Rule 15 as under:-



“(a) The President may transfer a Government servant from one post to another provided that except-

- i) on account of in-efficiency or misbehaviour, or
- ii) on his written request.

a Government servant shall not be transferred to, or except in a case covered by Rule 49, appointed to officiate in a

post carrying less pay than the pay of the post on which he holds a lien."

The provisions of Rule 37 of Postal Manual Volume IV which read as under:-

"All officials of the Department are liable to be transferred to any part of India unless it is expressly ordered otherwise for any particular class or classes of officials. Transfers should not, however, be ordered except when advisable in the interests of the public service, Postmen Village Postmen and Class IV servants should not except for very special reasons, be transferred from one district to another. All transfers must be subject to the conditions laid down in fundamental rules 15 and 22."

7. In this context, I will like to make a mention that Rule 37 thus clearly provides for an exception. The Rule provides that in case it is expressly ordered otherwise for any particular class or classes of officials, the category or categories in question will be excluded from application or operation of the rule. I find that Government of India, Ministry of Communication, Department of Post, Dak Bhawan, Sansad Marg, New Delhi-110001 vide their circular No. 20-12/90-SPB-I dated 23.8.90 have exempted Group 'C' and 'D' employees from All India Transfer Liability even under special or given circumstances. The instructions in question reads as under:-



"As per long standing practice and convention, there is a clause in the initial appointment letters of the employees to the Department of Posts to the effect that they can be transferred anywhere in the country under special circumstances."

Since in actual fact, a vast majority of Group C and Group D employees is never subjected to the transfer liability in this clause, it is felt that such a condition a condition is unnecessary in the appointment orders.

The matter has been considered carefully in consultation with the Ministry of Law. It is hereby ordered that no such condition relating to transferability anywhere in the country under special or general circumstances should be mentioned in the appointment order issued to Group C and Group D employees of the Department of Posts. Such a clause existing in the case of the employees already in service is hereby cancelled with immediate effect and their appointment order would also stand so modified with effect from the date of issue of this letter.


It is also directed that these orders may be given publicity and also got noted by all the Group C and Group D staff. Necessary entry in this behalf may also be made in their service books, in due course."

8. I find that the provisions of law in this regard are crystal clear. The respondents have cited a decision of the Apex Court in support of their case. The Apex Court in the case of Ashwani Kumar Singh Vs. U.P. Public Service Commission and others [Reported in 2004 SCC (L&S) 95] have themselves held that "Judgments of the higher courts should not be construed as statutes. Blind reliance on judgments without considering the fact - situation held improper."

9. In this case, as has been pointed out above, the law on the subject is abundantly clear. All India transfer liability under Rule 37 of the Postal Manual Volume IV has been done away with. When read along with Government of India, Ministry of Communication, Department of Post's Circular No. 20-12/90-SPB-1 dated 23.8.90. The Circular specifically excludes Group C and D staff from application/ operation of the Rule 37. Rule 38 of Postal Manual Volume IV provides for transfer of an employee on his own request in Group 'C' or 'D' cadre, from one unit to

another unit. In this case, no such request on the part of the employee for such transfer have been made. I further find that no such conditions are also stipulated in their orders of appointment as per the above circular order dated 23.8.90. Hence, it is my considered view that Group 'C' employee, as in case of this applicant cannot be transferred from one unit to another. On the contrary, the conditions of recruitment provide that once appointed to a unit, a person will not be eligible for transfer to another unit. In the present case, the applicant has been transferred from one unit to another without any specific request for him. I will also like to referred to Judgment delivered by my Learned brothers of Ahmadabad Bench of CAT dated 21.12.95 in the case of B.N. Parmar Vs. UOI and others [in O.A. No. 250 of 1994] which will, no doubt, serve as a beacon light even for this law. The relevant extracts of this judgment are reproduced below:-

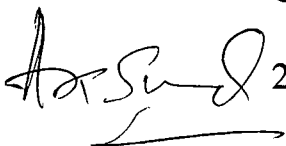
"There is considerable merit in the contention of the applicant that Rule 37 is no more in operation. At the same time, it is also true that no formal action has been taken to delete Rule 37 from the Manual. The counsel for the respondents also has not been able to show any follow up action taken by the Department to amend the Manual subsequent to the letter referred to above. It is quite understandable that the department has not chosen to formally delete Rule 37 as yet, since it might be necessary to resort to Rule 37, in cases of emergency as temporary shifting of staff for a purely limited period, might become necessary. The need for such a power to meet such a contingency in the public interest can be understood. But, at the same time it is also clear in view of the decision referred to by the Department in D.G., Posts, letter No. 20-21/90-SPB-1, dated 23.8.1990 that such a transfer under Rule 37 cannot be resorted to as a long term measure.

 In view of the reasoning above, it has to be held that Rule 37 is no more in operation when the department had decided to delete transfer liability clause from appointment letter.

In the specific cases mentioned above, though administrative reasons have been cited as the cause for transfer, it is also significant to note that in each one of the cases, some kind of

administrative irregularity has also been indicated. The proposition that administrative reasons may be called for transfer before any formal penal action for any irregularity noticed cannot be in dispute. But, in such cases, the transfer should have been within their own cadre and within the limits such as division prescribed for such a cadre so that the seniority and promotion prospects are not adversely affected merely because of transfer on or in administrative reasons. The Department has taken a conscious decision in this regard as per the letter of 1990.)..... We also quash the orders dated 29.1.2003 passed by P.M.G. Kanpur and order dated 5.2.2003 passed by Supdt. Post Office, Fatehgarh in modification of which the impugned orders were issued and are being quashed by this order. The respondents are directed to allow the applicant to work in Kanpur Head Post Office which is the parent unit of the applicant as Postal Assistant.”

10. Though there is also considerable merit in the arguments of the respondents that an employee holding a transferable post cannot claim any vested right to work at a particular place nonetheless it is also an established law that transfer order should not be violative of standing instructions or policy guidelines on the subject. In other words, the transfer order in question should not be either arbitrary or perverse. In the present case, the applicant has been transferred from one unit to another in violation of guidelines and conditions of service. The law laid down by the apex court in the case of Union of India and others Vs. S.L. Abbas and others { reported in AIR (1993) SC 2444} and the observations made there under clearly provide that , a court of law can interfere in case transfer order has been issued in violation of law/policy guidelines or of any other statutory provisions, as discussed above. In the case of National Hydro Electric Power Corporation Ltd. Vs. Shri Bhagwan and another {Reported in AIR 2001 (91) FLR 259} the Hon'ble Apex Court has held that if a transfer order is out come of malafide exercise of power or stated to



be in violation of statutory provisions prohibiting any such transfer, the courts or Tribunals can interfere with the same.

11. I would like to refer to observations made by the Allahabad Bench of this Tribunal in para 12 of their order dated 15th September, 2003 in O.A. 660 of 2003, which reads as under:-

“12. The main ground for challenging the transfer order of the applicant is that he cannot be transferred to other unit as the same is de hors rules. We find substance in this submission of the applicant. Admittedly, the applicant was initially appointed as Postal Assistant in Head Post Office, Kanpur under respondent No. 3 which is an independent unit having its own establishment. Therefore, the applicant could not be transferred to Fatehgarh Division. The respondents have not been able to justify their action of transferring the applicant from Kanpur Post Office to a different division i.e. Fatehgarh Division. A group ‘C’ or Group ‘D’ employee can be transferred from one unit to another unit under rule 38 of Postal Manual Vol IV which deals with the request transfers/ mutual transfers. In the instant case, there has been no such request. Therefore, in our opinion, the transfer of the applicant from Kanpur Head Office to Fatehgarh Division is not sustainable. The order of transfer of the applicant from Kanpur Head Post Office to Fatehgarh Division has been modified by subsequent orders dated 9.4.2003 and 9.5.2003. It has not been denied in the C.A. by the respondents that the Kanpur Postal City Division under which Kanpur Cantt. Head Post Office functions is a separate division. Therefore, certainly the transfer of the applicant from Kanpur Head Post Office to Kanpur city Division is an inter divisional

transfer which is not permissible under the rules. In the same postal manual, the provision is given for interdivisional transfer under Rule 37. The following has been held by Ahmedabad Bench of this Tribunal in its judgment dated 21.12.1995 in the case of B.M. Parmar and others Vs. UOI and others in O.A. No. 250 /94 and connected OA. The order of the Tribunal further goes on to say:-

“There is consideration merit in the contention of the applicants that Rule 37 is no more in operation. At the same time, it is also true that no formal action has been taken to delete Rule 37 from the Manual. The counsel for the respondents also has not been able to show any follow up action taken by the Department to above. It is quite understandable that the department has not chosen to formally delete Rule 37, as yet, since it might be necessary to resort to Rule 37, in cases of emergency as temporary shifting of staff for a purely limited period, might become necessary. The need for such a power to meet such a contingency in the public interest can be understood. But, at the same time it is also clear in view of the decision referred to by the Department in DG, Posts, Letter No. 20-21/90-SPB-I, dated 23.08.1990, that such a transfer under Rule 37 cannot be resorted to as a long-term measure.

In view of the reasoning above, it has to be held that Rule 37 is no more in operation when the department had decided to delete transfer liability clause from appointment letter.

In the specific cases mentioned above, though administrative reasons have been cited as the cause for transfer it is also significant to note that in each one of the cases, some kind of administrative irregularity has also been indicated. The proposition that administrative reasons may be called for transfer before any formal penal action for any irregularity noticed cannot be in dispute. But, in such cases, the transfer should have been within their own cadre and within the limits such as division prescribed for such a cadre so that the seniority and promotion prospects are not adversely affected merely because of transfer on or in administrative reasons. The Department has taken a conscious decision in this regard as per the letter of 1990.”


Ax Singh

The law enunciated as per above decision fully apply to the facts of the case.

12. On the basis of the above, I find that the order dated 19.12.2006 is not maintainable in law. The same is accordingly

quashed and set aside. Respondents are directed to allow the applicant to resume his duties in G.P.O., Lucknow with immediate effect. They would, however, be at liberty to transfer the applicant within the same unit where he was posted before the issue of transfer order in question.

13. The O.A. is accordingly allowed. Parties to bear their own cost.


Member (A)

HLS/-