

In the Central Administrative Tribunal,

Patna Bench : Patna

Date of Order:-

Registration No. OA-649 of 1996

Ram Chandra Ram, Son of Sri Sriram, resident of village Majhua, P.S. Haldi, District Balia, at present posted as Assistant Superintendent of Post Offices, Dalmianagar in Sasaram Postal Division.

... Applicant

Versus

1. The Union of India, through the Secretary-cum-D.G., Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. The Chief Postmaster General, Bihar Circle, Patna.
3. The Postmaster General, Southern Region, Ranchi.
4. The Director Postal Services, Southern Region, Office of the Postmaster General, Southern Region, Ranchi.
5. J.N.Pandey, Son of Not known, at present posted as Assistant Superintendent, Garhwa Sub-Division, Garhwa, Assistant Superintendent Hazaribagh designate.

.... Respondents

Counsel for the applicant .. Mr. J.K.Karn
Counsel for the respondents .. 1.Mr.J.N.Pandey,
Sr. Standing Counsel
2.Mr.S.N.Tiwary

Coram:- Hon'ble Mr. Justice V.N.Mehrotra, Vice-Chairman

O R D E R

Hon'ble Mr. Justice V.N.Mehrotra, Vice-Chairman:-

1. This application has been filed by the applicant, Shri Ram Chandra Ram, under section 19 of the Administrative Tribunals Act, 1985 with the prayer that the order of transfer dated 11.12.96 (Annexure-A/1), by which he has been transferred from Dalmianagar to Hazaribagh, be quashed.

2. The applicant has alleged that he is an employee of Department of Posts. He was transferred and posted on promotion as Assistant Superintendent of Post Offices at Dalmianagar vide Memo. dated 23.5.92. He was then transferred and posted as Assistant Superintendent of Post Offices (Vigilance) at Ranchi vide Memo. dated 9.7.92. He had made a representation before the respondent No.4 on 25.8.92 submitting that his old parent were living at his native village which was nearer to Dalmianagar therefor he might be transferred and posted at Dalmianagar. The representation by the applicant was allowed and he was transferred to Dalmianagar vide Memo. dated 12.2.93. He was not allowed any TA/TP as his transfer was on his own request. He was not relieved till 18.2.94 to join at Dalmianagar.

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He ultimately joined the post at Dalmianagar on 22.2.94. The tenure of the applicant of posting at one place is 4 years. He has not completed 3 years at that place. However, in order to accommodate the respondent No.5 at his desired place the impugned order of transfer has been issued posting the respondent No.5 at Dalmianagar and transferring the applicant in his place to Hazaribagh. The applicant has asserted that as his transfer was against the statutory provisions and has been made merely to accommodate the respondent No.5, the same was mala fide and was liable to be quashed.

3. On behalf of the official respondents it has been asserted in the Written Statement that the applicant has been transferred from Dalmianagar in the interest of service and it was not in any way mala fide. It has further been alleged that a fraud ~~of~~ amounting to more than Rs.95,000 has been detected in Sohagi Branch Office under Dalmianagar Sub-Division and the applicant was found to be wanting in the task of effective supervision of the offices within the Sub-Division. It has further been alleged that the progress of police investigation and Court cases was not being monitored by the applicant satisfactorily. As such, his continuance in Dalmianagar

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Sub-Division was not considered desirable. It has also been asserted that it is wrong to say that the applicant has been transferred from Dalmianagar merely to accommodate the respondent No.5.

4. The Respondent No.5 has also contested this application. He has alleged in the Written Statement that he was due for transfer from Hazaribagh ^{Garhwa} and in the interest of service the applicant was transferred to Hazaribagh while he (Respondent No.5) was transferred to Dalmianagar. It has further been alleged that the wife and other family members of the applicant were already residing at Hazaribagh where his wife was serving. The applicant ~~also~~ ^{has} a house at that place. The distance between Dalmianagar and the village where the parent of the applicant were residing was more than 200 Kms.

5. In his rejoinder the applicant has not disputed that his wife and other family members were residing at Hazaribagh, but he has asserted that in order to look after his old parents he was posted at Dalmianagar on his request. He has also asserted that his transfer from Dalmianagar to Hazaribagh was merely to accommodate the respondent No.5.

6. I have heard the learned counsels for the parties and have perused the material facts on

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record. In this case it is not disputed that the applicant is serving in a cadre of transferable posts. He could be transferred from one place to another as transfer is an ordinary incident of service and no Government servant can claim to remain at a particular post unless his appointment itself is to a specified non-transferable post. Further, jurisdiction of the Central Administrative Tribunal in the matter of transfer is quite limited. It cannot act as appellate authority sitting in judgment over the orders of transfer as held in the case of Union of India Vs. S.L. Abbas (AIR 1993 Supreme Court 2444). The Hon'ble Supreme Court observed that the Administrative Tribunal is not an appellate authority sitting in judgment over the orders of transfer. It cannot substitute its own judgment for that of the authority competent to transfer. In this case it was further observed that "Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it."

7. In the present case this Bench can interfere with the order of transfer only if it is established that the order of transfer was mala fide or

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was made in violation of any statutory provision.

8. The learned counsel for the applicant has argued that the applicant was posted at Dalmianagar in February, 1994 and he has not completed 4 years at that place and so under Rule 59 of the Posts and Telegraphs Manual the order transferring him before completion of 4 years was invalid.

9. I have examined the provision of Rule 59. This provision nowhere says that an Assistant Superintendent of Post Offices should not be transferred before completion of 4 years at one place. On the contrary it provides that such a person should not ordinarily remain in the same Division, or Sub-Division for more than 4 years at a time. This Rule does not in any way prohibit the transfer of the incumbent before ^{the} expiry of 4 years of posting at one place. No other provision has been brought to my notice by the learned counsel for the applicant which could indicate that there was any statutory Rule which prohibited the transfer of the applicant before the completion of period of 4 years. So, it cannot be said that the impugned transfer order violates any statutory provision.

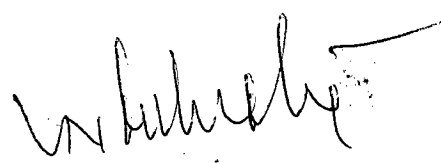
10. The next point raised on behalf of the applicant is that the transfer order in question was mala fide

as it was passed mala fide to accommodate the respondent No.5. It appears from the material on record that the respondent No.5 had completed 4 years ^{Craving} at ~~Hazaribagh~~ and he was due for transfer. It also appears that earlier he was transferred to some other place, but on his representation and on request he was transferred to Dalmianagar and the applicant was posted at Hazaribagh in his place. The transfer order (Annexure-A/1) shows that the order has been issued in the interest of service. The applicant was posted at Dalmianagar for nearly 3 years and it is not a case in which the applicant might have been posted at Dalmianagar only a few months back and the respondent No.5 was sent to Dalmianagar on his request even though his transfer from Hazaribagh was not due i.e. it cannot be said that merely to accommodate the respondent No.5 the applicant was sent off from Dalmianagar. According to official respondents there was some lack of supervision on the part of the applicant to prevent the fraud committed in a Branch Post Office which lays within the Sub-Division of Dalmianagar. The applicant has on the contrary asserted that it was he who detected the fraud and lodged the F.I.R. This matter cannot obviously be considered by this Bench nor any view can be expressed on

the question as to whether there was any lack of supervision on the part of the applicant in the matter. But as observed in S.L.Abbas's case (Supra) the question as who should be transferred where is a matter for appropriate authority to decide. So, if the appropriate authority was of the view that the applicant be transferred from Dalmianagar to Hazaribagh the same cannot be examined by this Bench as if it was sitting in appeal over that decision.

11. On a consideration of the entire materials I am unable to accept the assertions on behalf of the applicant that the order of transfer in this case was mala fide or in breach of some statutory provisions. This application has no force and is hereby dismissed. No order as to costs.

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(V.N.Mehrotra)
Vice-Chairman

27.01.1997