

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No. 439/86.

Shri Maula-Ali Ahmed Bujruk,  
Bujruk Wada, Near Electric  
Power House, At & Post ;  
Miraj, District ; Sangli.

... Applicant

V/s.

1. The Union Of India through  
Secretary,  
Indian Postal Board,  
New Delhi.
2. Superintendent of R.M.S.,  
'BM' Division,  
MIRAJ-416 410.
3. Director of Postal Services,  
Pune Region,  
PUNE-411 001.

... Respondents.

Coram : Member (A), J.G.Rajadhyaksha,  
Member (J), M.B.Mujumdar.

Appearances :-

1. Shri D.V.Gangal, Advocate  
for the applicant.
2. Shri P.M.Pradhan, Counsel  
for the Respondents.

Oral Judgment :-

[ Per J.G.Rajadhyaksha, Member (A) ] Dated : 2.1.1987.

The applicant submitted an application to this Tribunal on 17-11-1986. He was advised to put that application into proper proforma as required by Administrative Tribunal (Procedure) Rules, which he did and also sought ex-parte, ad-interim reliefs. Notice was, therefore, issued to Respondents Nos. 2 and 3 for admission hearing and also for showing cause as to why the interim reliefs as prayed for should not be granted. When the matter came up for hearing on 3.12.1986, the learned advocate for the applicant was present, while Respondents were represented by Mr. Khirode, Assistant Superintendent of Post Offices from the Headquarters. After hearing Mr. Gangal and going through the application in which primarily two prayers had been raised which were as follows:-

- (a) that the transfer of the applicant from  
Miraj to Ratnagiri should be stayed or

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cancelled, as it was inconvenient to him  
from the family point of view and

(b) that the transfer was in violation of  
rules which permitted him to occupy a  
tenure post at Miraj for 4 years.

We felt inclined to consider prayer (a) above. We also considered another aspect urged before us viz. that the applicant had been deputed for training to Baroda and was required to join at Ratnagiri without resuming duties at Miraj. After hearing both the parties we came to the conclusion that some interim relief was required to be granted, inasmuch as his transfer to Ratnagiri directly on return from training, appeared to be harsh. We also found that applicant had submitted a representation to the Department which had not till then been decided. We therefore, directed that the representation which was pending should be disposed of by the 19th December, 1986 and the matter would be heard further on the point of admission as well as interim relief, if necessary, to day namely on 2nd January, 1987.

We have heard Mr. Gengal who desired to submit an Amendment Application in support of his original prayers. The Amendment Application contains precedents of the employees being retained at their stations for long periods or not being transferred after specified periods. Rules 250 and 251 of the Post & Telegraphs Manual were also cited in the Amendment Application. we feel that such Amendment Application ought not to be granted at all as it is not relevant to the prayers in the main application. We would now like to dispose of the question of admission of the application in the first instance. This is so because we have been shown an order today dated 17th December, 1986 whereby ~~the transfer of applicant from~~ transfer of applicant from Miraj to Ratnagiri has been cancelled and he is retained at Miraj. Thus one major substantive relief (as well as

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interim relief) that was sought has been granted . Because cancellation of the order of transfer any grievance that it was ordered for extraneous reasons, does not survive, any further.

The second question is whether the applicant is entitled to remain in Miraj in the so called 'tenure post' up to 1989. He claims that he was appointed to the post of Office Assistant in September, 1985 and therefore he is entitled to remain in the same position till 15.9.1989. We would like to observe here that it has been conceded by Mr. Gangel that post of Clerks Sorting Assistants and Office Assistants all fall in Group 'C' and are equivalent posts and these designations describe the duties assigned to a person. They are not separate cadres. From the application we also noticed that applicant came to be appointed in Miraj, first on the 23rd September, 1978. Turning to the exhibits attached to the application, we find that by amendment order (page 27) the applicant is posted to work as Office Assistant, HRO Miraj, for the remaining period of the tenure. The applicant, it seems submitted a representation on 13.11.1985. It is at Annexure 'B' (page.29). Page 31 Annexure 'C' is an order issued on 17.2.1986 partially modifying the order at Annexure 'A'. It reads that the applicant is posted as Office Assistant in the tenure post and it should read "He is so posted for his full tenure of 4 Years" from the date of his joining Office Assistant HRO, Miraj. This is followed by Annexure 'D' at page. 33 which is an order dated 3.11.1986 cancelling the order issued on 17.2.1986 and restoring the original order dated 31.5.1985. The applicant has been representing to his Department. On 4.11.1986, an order was issued, transferring applicant from the post of Office Assistant, Miraj to the post of Sorting Assistant, R.M.S., Ratnagiri. It was this order which was challenged and which we now find has been cancelled by the department, thus removing the grievance of the applicant.

One question argued by Mr. Gangal is the definition of the term "tenure posting", supported by Rule. 60 in the Posts & Telegraphs Manual to contend that a 'tenure post' even according to Financial Rules 30-A is one which can be held by an employee for not more than a specified limited period. Rule 60 of the Post & Telegraphs Manual lays down the maximum period for certain categories of employees as 4 years and the designation Time Scale Clerk in offices of Superintendent of Post Offices and R.M.S. figures at item No.5 in the categories described in this rule. In our views Rules.250 and 251 which were cited do not materially change the position, as they only suggest that a new entrant should first be posted in a reserve capacity before he is posted to a field job. There is no suggestion that this has been violated. As such we find that with the cancellation of the transfer and our inability to accept the construction put by Mr. Gangal on the definition of tenure post. Inasmuch as what is laid down is the maximum period which an employee may spend in a particular post as well as the fact that there is nothing to prevent the authorities from transferring him at an earlier stage during the tenure, even the second grievance is not something which deserves to be adjudicated upon. The one additional legal point raised by Mr. Gangal in his contention is that the application contains allegations of mala fides and in the absence of an affidavit or a counter affidavit /or reply by the Respondents, such allegations may have to be accepted by the Tribunal as being well founded.

As observed above, the very foundation of allegations of mala fide underlying the transfers would have been removed with the cancellation of the transfer order. Apart from this, the fact also remains that at the stage of admission, we have not called upon the Respondents to file their returns on merit. Had we issued a notice to them to file their defence in the shape of an affidavit and had they omitted to deal with the allegations of mala fides, the picture might have been different. But since they have not been called upon to do

so at this stage, we feel that this point need not be gone into in depth. Mr. Gangal quotes section 14 of the Administrative Tribunals Act, 1985 in support of his contention that a Tribunal will use all "powers, authority and jurisdiction of all Courts" except The Supreme Court. It is his contention further that, therefore, the Tribunal must go into the question of mala fides which is raised in this application. We however, feel that this particular section does not deal with procedure to be followed by the Tribunal, which matter has been dealt with in section 22 of the Administrative Tribunals Act, 1985, That section does not bind us to follow any particular procedure, but expects us to follow rules of natural justice and adopt any suitable procedure which would enable us to do justice in a particular case. The instant case, as observed earlier, was not one where we had to go fully into the question of mala fides at this stage, particularly because the transfer order has been cancelled.

In the circumstances we feel that no useful purpose would be served by admitting this application where prima facie one grievance namely the transfer has been removed and the second grievance about right to holding a tenure post does not survive in the light of interpretation of 'tenure post' as given either in the Financial Rule 30A, or elaborated in the Posts & Telegraphs Manual in Rule.60. In the circumstances we decide that the application ought not to be admitted. It is therefore not admitted, and is rejected summarily under section 19(3) of the Administrative Tribunals Act, 1985.

( J.G. RAJADHYAKSHA )  
MEMBER(A).

( M.B. MUJUMDAR )  
MEMBER(J).