

1.

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A. No.512/2005

Date of order : 29<sup>th</sup> Sept., 2005

C O R A M

Hon'ble Mr. Justice P.K.Sinha, Vice-Chairman

Ishwar Sharan Prabhakar, son of late Sadhu Sharan Singh, Sub – Postmaster, Belauri SO, P.S. - Dulhin Bazar, District – Patna, resident of Village – Paigam – Barpur, P.O. - Masauri, District – Patna.

.....

Applicant.

Vrs.

1. The Union of India through Chief Postmaster General, Bihar Circle, Patna.
2. Director, Postal Services, H.Q. O/o Chief Postmaster General, Bihar Circle, Patna.
3. Sr. Suptd. of Post Offices, Patna Division, Patna.
4. Suptd. of Post Offices, Purnea Division, Purnea.

.....

Respondents.

Counsel for the applicant : Shri M.P.Dixit

Counsel for the respondents : Shri S.C.Jha, A. S.C.

Q.M.A

2.

ORDER (ORAL)

By Justice P.K.Sinha, VC :-

The applicant when was working as Sub-Postmaster, Belhauri was transferred under orders of the Postmaster General, Bihar Circle, Patna dated 27.7.2005 vide Annexure-A/2 purportedly under Rule 37 of the P&T Manual Vol.IV, which is the reason why the applicant has filed this application praying therein for quashing the impugned order at Annexure-A/2.

2. The respondents have filed written statement and have given reason as to why the applicant was so transferred, stating that in course of All India Live Mail Survey at Patna G.P.O. on 23.6.2005, locally printed forged competition post cards, 40 to 50 in number were recovered from the mail bag of Belhauri S.O. [ Mail Bag of the S.O. Dated 22.6.2005 ]. Keeping in view the seriousness of the matter, the Senior Superintendent of Post Offices, Patna Division, rushed immediately to Belhauri S.O. and inquired into the matter. There he examined the mail bags ready for dispatch on 23.6.2005 and found 11 forged competition post cards in the bundle of ordinary letters without date and stamp of the post office though those were to be dispatched the same day. In course of inquiry, they also interrogated



3.

one Baij Nath Kumar who admitted having posted those post cards in the letter box of Belhauri on 22.6.2005 which were printed at the press of his friend. The matter then was reported to the local police which recovered many such forged post cards, rubber stamp of D.O./Head Master etc. from the house of the aforesaid Baij Nath Kumar and an F.I.R. Was also lodged. The written statement also states that such was going on for a long time but the Sub- Postmaster had not detected the mis-chief, though the locally forged post cards could easily be differentiated from the original. The respondents claim that even the applicant's connivance could not be ruled out, whereafter he was transferred under Rule 37 aforesaid, from Patna to Purnea Division. Now argument of the learned counsel for the applicant may be noted as below :-

3. Shri M.P.Dixit, learned counsel for the applicant submitted that Rule 37 aforesaid states that though officials of the department are liable to be transferred to any part of India but transfer should not be ordered except in the interest of public service. It was submitted that no interest of public service was involved in the matter and though connivance had been suspected, there was not an iota of proof that the applicant was involved in such a racket. The argument was that Rule 37 does not give a blanket power to the authorities to make an inter-divisional transfer rather the reason for



such transfer, depicting how it was in the interest of public service, should have been mentioned in the transfer order itself which was not done. It was submitted that some reasons have been mentioned in the written statement but, as held by another bench of this Tribunal in the case of Dr. Ravi Shankar vs. Union of India & Ors.; 2005 [1] ATJ 104, such non-disclosure of reasons was fatal, which could not be replaced by fresh reasons given in the affidavit. However, from a reading of that judgment it would be clear that the order was passed on certain other points such as malafide intention in transfer. Even under this observation, the Tribunal had <sup>held</sup> that giving fresh reasons in the affidavit, once the case was instituted, would not help. Here we do not find that the respondents have given <sup>any</sup> fresh reason in the written statement, rather they have based their defence on the facts which reveal how the mal-practice was detected in the past. A transfer order need not read like a passage giving a summary of the reason/reasons on which the transfer was based. It should suffice if it was mentioned in the order that the transfer order had been issued in the interest of public service and, if the matter went to a Court/Tribunal, to justify such a mention in the order by facts which already existed on official records. The transfer order at Annexure-A/2 clearly mentions that the transfer was in the interest of public service on administrative ground. As we will see, the reasons for



5.

which the applicant was transferred cannot be said is not in the interest of public service or on administrative grounds.

4. Shri M.P. Dixit, learned counsel for the applicant argued that on transfer from one division to another, seniority of the applicant might be adversely affected. Shri S.C.Jha, learned ASC refuted this, submitting that such inter divisional transfer have always been made and the transferee keeps intact his existing seniority which never is adversely affected.

Shri M.P.Dixit, learned counsel for the applicant also very strongly argued that there was nothing on the record to show that the applicant was in any way actively or passively involved in the transaction of forged competition post cards. It is submitted that if he was suspected to have been involved in such a transaction, the authorities were bound to initiate a departmental proceeding against him, not resting with just a transfer order. It was argued that even if there was an involvement, the applicant should not have been transferred in view of the P&T Manual Vol.III, Rule 66.

5. Rule 66 provides that as far possible, after irregularities on the part of an official is detected and disciplinary proceedings against him are contemplated, he should not be transferred out of the jurisdiction of the disciplinary authority who is to conduct the departmental proceedings .....



6.

Obviously, this rule will not be applicable because no departmental proceeding has been initiated against him nor is shown to have been contemplated.

6. Obviously, the applicant was working as Sub-Postmaster and was supervisory officer. Shri Dixit has also argued that such post cards were dropped in the postal boxes and collected by subordinate staff who put date stamp upon those letters, then sealing those in a bag, to be sent to the Patna G.P.O.

7. It would be worthwhile to take a look of Rule 67 of the P&T Manual Vol.III which runs as follows : -

"67 – The laxity on the part of the supervisory officials should be viewed as seriously as the negligence on the part of the operative staff. Sometimes, the laxity on the part of the supervisory officials may have to be viewed more seriously as there may be extenuating circumstances like the pressure of crowd waiting at the counter, insufficiency of light etc., in the case of an operative staff. A supervisory official who works in the comparative seclusion of the inner sanctuary of an office cannot complain of such difficulties. The failure on the part of supervisory official to go round the office and exercise a personal watch over the operative staff should also be given due consideration in cases of frauds etc."

A handwritten signature in black ink, appearing to read "B.M.D." followed by a stylized surname.

8. Shri S.C.Jha, ld. ASC for the respondents has argued that the element of gross negligence on the part of the applicant cannot be swept under the carpet. Because of his negligence, this racket was going on for quite some time causing huge loss to the department. In this view of the matter also it is difficult to accept the argument that this transfer was not in the interest of public service.

9. Shri M.P.Dixit, ld. counsel for the applicant has relied upon a decision of the Apex Court in the case of Ramadhar Pandey vs. State of U.P. and others; 1993 [9] Supreme Court Rulings 317. It was held by the Apex Court that in a case of transfer, it was necessary to adhere to such conditions which laid down certain conditions on the ground of which transfer could be ordered. A transfer in the absence of such adherence of given conditions, could not be sustained.

10. This decision obviously is not applicable in the circumstances of the case. The applicant was working on a transferable post and was transferred under an extant rule, which order, as already seen, had specified the reason attached to the transfer.

10. Shri S.C.Jha, ld. ASC for the respondents on the other hand has relied upon a decision of the Apex Court in the case of State of U.P. and Another vs. Siya Ram and Another; 2004 SCC [L&S] 1009 in which, under what



circumstances, a Court/Tribunal can interfere in a transfer order, has been clearly defined in para 5 of this judgment which runs as under :-

**"The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed 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 public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of malafide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management , as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corp. Ltd. v. Shri Bhagwan."**

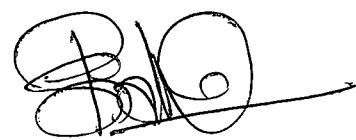
11. Lastly, Shri Dixit argued that, if at all transfer was necessary to



another division, the applicant could have been transferred to G.P.O. , Patna which was a separate division in itself or to a nearby division, not to Purnea division which was far away.

12. When a transfer order has been found to be legally maintainable , this Tribunal would not interfere in the discretion of the concerned postal authority to determine the place where the applicant should be transferred.

13. From the foregoing discussion it is clear that this transfer order was made by a competent authority in accordance with extant rules; there being nothing on the on the records to show that it was punitive or malafide exercise of power by the authorities. In such circumstances, this Tribunal would not interfere with such an order. The application, therefore, is dismissed. No cost. Interim order that was granted by this Tribunal earlier stands vacated.



[ P.K.Sinha ]  
Vice-Chairman

mps.