

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW DELHI~~ Hyderabad

36
CAT/J/12

O.A. No.
T.A. No.

416/- 89

198

DATE OF DECISION

Petitioner

Mr. Harichandran Reddy Advocate for the Petitioner(s)

Versus

Respondent

Mr. N. Bhaskar Rao for Advocate for the Respondent(s)

Mr. Ratna Reddy for Respondent(s)

CORAM :

The Hon'ble Mr.

B. N. Jayasimha, the

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? ~
2. To be referred to the Reporter or not? ~
3. Whether their Lordships wish to see the fair copy of the Judgement? ~
4. Whether it needs to be circulated to other Benches of the Tribunal? ~

MGIPRRND-12 CAT/86-3-12-86-15,000

B.N.J
(B.N.J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH: AT
HYDERABAD.

O.A. NO. 416 of 1989

Date of Order: 22-9-1989

Between:

A.V.Ramanaiah.

...Applicant.

and

1. The Director of Postal Services,
A.P. Northern Region, Hyderabad-1,
and three others.

...Respondents.

FOR THE APPLICANT: MR.H.HARISCHANDRA REDDY: ADVOCATE.

FOR THE RESPONDENTS 1 to 3: MR.NARAM BHASKARA RAO: ADDL.CGSC.

FOR THE RESPONDENT NO.4: MR.MRATNA REDDY: ADVOCATE

CORAM:

HON'BLE MR.B.N.JAYASIMHA: VICE CHAIRMAN:

(JUDGMENT OF THE BENCH DELIVERED BY HON'BLE
VICE CHAIRMAN: SHRI B.N.JAYASIMHA.)

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O.A.416 of 1989.

(Judgment of the Single Member Bench delivered by Hon'ble Vice-Chairman, Shri B.N.Jayasimha.)

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This is an application from a Supervisor in the Postal Department questioning the order issued by Respondent No.1 in his Memo No.RDH/ICO SB/2-10 dated 24-5-1989 in which he has been transferred from Hyderabad to Medak H.O. as SBCO.

2. The applicant states that he joined Savings Bank Control Organisation as U.D.C. on 23-10-1964 at Hyderabad G.P.O. He was promoted as Supervisor SBCO on 19-11-1981 with retrospective effect from 5-2-1977 by Respondent No.2. On 8-5-1989 he made a representation to Respondent No.2 that Operative-cum-Supervisors who are far juniors to the applicant are bringing pressure on the administration to transfer the seniormost official to other places and posting juniors as Supervisors. There are only three offices viz., Hyderabad G.P.O., Secunderabad H.P., and Circle pairing Unit Hyderabad which have purely supervisory posts in S.B.C.O's in the A.P.Northern Region.

3. The applicant contends that Respondent No.4 is a temporary Supervisor. In reply to his representation, he was informed that there was no reason to be aggrieved in the light of Director

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General letter vide letter No.78-58/76, NCG/STN dated 16--4--1977. It has therefore been decided to transfer Supervisors in the place of operative-cum-supervisors. By the impugned order, he was transferred to Medak. The applicant contends (1) that the impugned transfer order amounts to reverting back the applicant from pure supervisory post to operativecum-supervisor; (2) that the nature and functions of the supervisor and the operative cum supervisor are different and that the order of transfer is bad.

4. The respondents state that the applicant has been working in Hyderabad from the date of his joining i.e., 29--6--1959 till 29--5--1989 i.e., the date of transfer. On the recommendation of the III Pay Commission, the P & T Board by its letter No.29--5/70 PEI dated 10-4-1975 decided that there will be a post of Head Clerk in the pay scale of Rs.425--700 (pre-revised) and the number of posts in the Head Clerks will be fixed to the extent of 20% of the posts of U.D.Cs. The present posts of Selection Grade UDCS ~~xxx~~ were withdrawn. The Director General, P&T in his Lr.No.7-13/76 PEI dated 17--9--1980 changed the designation of LSG Head Clerk in SBCO and pairing Units as "Supervisor". The designation of Supervisory posts in SBCO underwent change viz., SG UDC to

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Head Clerk and from Head Clerk to Supervisor.

5. The contention of the applicant that he was confirmed and Respondent No.4 is a temporary and he being a senior, he is entitled to continue in the present post is without substance. No importance is attached to confirmation ~~in~~ ~~xxxxxxxxxx~~ ~~xxxxxxxx~~ in view of the Government Orders abolishing the confirmations in promotional posts with effect from 1--4--1988. Supervisory and Supervisory-cum-operative staff are interchangeable and are of the same cadre with common scale of pay and hence the contention that it is reversion is not valid. The nature of duties for both the posts are one and the same. The applicant cannot challenge the letter dated 16--4--1977 of the DG P&T after 12 years of operation. The transfer was made purely to meet the exigencies of services and the applicant cannot have a grievance of the same; more so as he has been working in the same station for the last 30 years.

6. We Heard the learned counsel Smt Harischandra Reddy for the applicant, learned standing counsel for respondents 1 to 3 and Shri Ratna Reddy, learned counsel for Respondent N .4.

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7. The first point urged by the learned counsel for the applicant is that the transfer amounts to reversion. He relies on *Madan Gopal Singh Vs. Union of India* (Vol.3.1969 SLR 576), wherein the Delhi High Court dealing with Article 311(2) - Transfer . Loss of Power, privileges and status as a result of transfer held that "Transfer amounts to reduction in rank and operates as a penalty". In this case, the petitioner who was serving as Inspector General of Police, Himachal Pradesh Government in scale of Rs.1600-1800 was transferred to the post of Dy. Inspector General of Police, Central Reserve Police which carries the same scale. The petitioner contended that he lost privileges and status attached to the post of Inspector General of Police which amounts to reduction in rank. The Delhi High Court held that the transfer amounts to reduction in rank and operates as penalty.

In the case before me, the applicant and Respondent no.4 belong to the same cadre. The D.G.P & T in his memo no.78-58/76-NCO/STN dated 66-4-1977 stated that when officials in supervisory cum operative selection grade posts refuse to work on purely supervisory S.G.posts or vice versa resulting in administrative difficulties such refusal should be taken as refusal to comply

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with the orders and dealt with under the relevant disciplinary rules. It is also not disputed that these posts are interchangeable. The facts and circumstances of Madan Gopal Singh's case are different and the decision therein would not apply to this case. I do not therefore see any merit in this contention.

8. The next point urged by the learned counsel for the applicant is that the applicant's transfer order has been made to accommodate respondent no.4 and it is a colourable exercise of power.

1973 (12) (1) SLR 1153
He relies on N.N. Singh Vs. General Manager, where the Calcutta High Court held that 'Court can scrutinise the administrative order if mala fide and passed in colourable exercise of power even though it may be free from violation of any Constitutional or statutory provision.' He states that respondent no.4 has been working in Medak for only a short duration and he has been brought to Hyderabad before he has completed his tenure. He also states that the applicant has not completed the four years' tenure in the present post held by him. According to Rule 60 of the P & T Manual Volume IV Establishments Office Supervisors, Office Superintendents, Investiga-

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ting Inspectors and Sorting Inspectors in Circle Offices, Postal Assistants in General Post Offices or First Class Head Post Offices dealing with staff cases, Office Assistants in offices of the Suptdts. of Post Offices and Railway Main Service except sorting Assistants in offices of Superintendents, RMS and Postal Assistants working in the correspondence and Accounts Branches of Head Post Office, have four years tenure. He, therefore, contends that this is a colourable exercise of power.

Shri Ratna Reddy, counsel for respondent no.4 states that the applicant has been in Hyderabad all along and that respondent no.4 has been serving in the out stations for a long time. To concede the request of res.no.4 by transferring him to Hyderabad, would not be a colourable exercise of power. Transfer is an incident of service and no employee can have a right to remain at a particular station. He, therefore, contends that a transfer made to accommodate the request of another employee by itself, in all cases, be termed as malafide. When the request of another employee is accepted on bonafide consideration, it would not be malafide. Shri Bhaskar Rao, learned Standing counsel for the dept., states that the tenure of an employee in a particular post is ordinary for a period of four years. This is rule prescribing the maximum period and not minimum period. There is no rule which prohibits transfer of an employee before he

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has completed four years tenure. Apart from this, he states that the applicant's transfer to the present post in Hyderabad was from another post in Hyderabad. The tenure concept has been introduced only for the purpose of ensuring that the persons do not stay in the same post for more than four years and to rotate them in different offices in the interest of work. There is no right given to an employee to continue in the tenure post for four years. The department is at liberty to continue the period and transfer the applicant to another post. He, therefore, states that the Department was well within its right to consider the request of respondent no.4 and transfer the applicant from Hyderabad to another place, particularly in view of the fact that the applicant has been in Hyderabad all along.

9. On a consideration of the above submissions, I am unable to accept the view of the learned counsel for the applicant that the order of transfer is mala fide or is passed in colourable exercise of power. It is not disputed that the applicant has been in Hyderabad for a long time and respondent no.4 has been serving in outstations. There is no rule which prohibits transfer of an employee from one place to another before he has completed four years tenure. Rule 60 reads "the following posts should not ordinarily be occupied by the same officials continuously at a time for more than the period mentioned against each". Thus, the rule only enjoins that an individual should not be kept for more than four years, ordinarily. In view of this,

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I do not find any merit in this contention also.

10. In the result, the application of the applicant fails and is dismissed accordingly. No order as to costs.

B.N.Jayasimha

(B.N.JAYASIMHA)
Vice Chairman

Dated: 22nd September, 1989.

S. Venkata
DEPUTY REGISTRAR
7/11/89

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TO

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- ① The Director of Postal Services,
A.P. Northern Region, Hyderabad-1.
- ② The Chief Postmaster General,
A.P. Circle, Hyderabad-1.
- ③ The Director General of Posts,
Dak-Tar Bhawan, New Delhi.
- ④ one copy to Mr. H. Harikrishna Reddy, Advocate,
H.No. 3-4-340/2, Barkatpura, Hyderabad-500027.
- ⑤ one copy to Mr. N. Bhaskar Rao, Addl. C.G.S., C.A., Hyderabad
- ⑥ one copy to Mr. M. Ratna Reddy, Advocate, Advocate's Association
High Court Building, Hyderabad.
- ⑦ one spare copy.

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