

(30)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT
HYDERABAD

TRANSFERRED/ORIGINAL APPLICATION NO. 163 of 1990

DATE OF ORDER: 6.7.1990

BETWEEN:

Mr. Mohd. Ziaullah Khan

APPLICANT(S)

and

Senior Supt. of Post Offices, Hyderabad
and 2 others

RESPONDENT(S)

FOR APPLICANT(S): Mr. S.D.Kulkarni, Advocate

FOR RESPONDENT(S): Mr. Narama Bhaskar Rao, Addl. CGSC

CORAM: Hon'ble Shri B.N. Jayasimha, Vice Chairman
Hon'ble Shri D. Surya Rao, Member (Judl.)

1. Whether Reporters of local papers may be allowed to see the Judgment? *no*
2. To be referred to the Reporter or not? *no*
3. Whether their Lordships wish to see the fair copy of the Judgment? *no*
4. Whether it needs to be circulated to other Bench of the Tribunal? *no*
5. Remarks of Vice-Chairman on columns 1, 2, 4 (to be submitted to Hon'ble Vice-Chairman where he is not on the Bench)

for
HBNJ
VC

for
HOSR
M(J)

(31)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

O.A.NO. 163 of 1990

Date of Order: 6.7.90

Mohd.Ziaullah Khan

..Applicant,

Versus

Senior Supdt.of Post Offices,
Hyderabad South East Division,
Hyderabad and others

..Respondents

FOR APPLICANT: MR.S.D.KULKARNI: ADVOCATE

FOR RESPONDENTS:MR.N.BHASKAR RAO: ADDL LCGSC FOR DEPT.

C O R A M:

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

HON'BLE SHRI D.SURYA RAO: MEMBER (JUDL.)

(JUDGMENT DELIVERED BY HON'BLE SHRI D.SURYA RAO, MEMBER(J).)

1. The applicant herein is ^athe Postal Assistant working under the Director of Postal Services, Andhra Pradesh North, Hyderabad-2nd respondent. He has filed this application questioning the Transfer Order Memo No. B/II/3/8/VIII, dated 7-2-1990, passed by the 1st respondent, transferring him from Sahifa Post Office to Raipole Post Office. The applicant states that he has put in 10 years of service as Postal Assistant in the Department of Posts and that he was transferred to Sahifa Post Office nearly 8 months back. He states that even before the completion of the normal tenure of

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5 years and more particularly during the middle of the academic year he has been transferred as Sub Post Master Raipole. One Shri G.Srinivasacharyulu, SPM Raipole who is junior to the applicant requested for a transfer to Sahifa and his request had been complied with by transferring the applicant. He contends that his transfer was made only to accommodate Shri G. Srinivasacharyulu and as such the impugned order 7-2-1990 was for collateral and malafide purposes. He further contends that the order of the I respondent, though innocuous, has not been issued for the professed purposes as in public interest or administrative interest or in the exigencies of service but has been passed for other extraneous purposes. It is further contended that transfer during the middle of the academic year would adversely affect the education of the children, more particularly because the annual examinations are just approaching. The applicant made a representation on 12-2-1990 against the order of transfer, but no orders are passed. He apprehends that he is likely to be relieved at any time and direct to join at Raipole. He, therefore, filed this application to quash the impugned order dated 7-2-1990.

2. A counter has been filed by the 1st respondent on behalf of the respondents. It is stated that the applicant was transferred to Sahifa Post Office at his request, that though the normal tenure of the post is four years, it is not necessary or incumbent on the department to retain an employee for the full tenure and that it is open to the Department to transfer an

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employee on administrative grounds within the four years period. It is further stated that there were several cases of pilferage of BPOs/IPOs and other contents from articles passing through post and there was a serious case of this type, involving abstraction and encashment of BPOs at Sahifa Post Office in 1987 which is still under investigation of CBI. It is further stated that recently a case of abstraction of BPOs from RLs and their fraudulent encashment at Sahifa Post Office came to light during the month of December, 1989. A BPO No.0515/460053, dated 10-11-1989 of West Sussex (London) for 20£ was paid at Sahifa Post Office on 30-11-1989. The original name of the payee on the BPO was found erased and name 'Kareem' was substituted with a different ink. A person representing himself as 'Kareem' presented the BPO at Sahifa Post Office on 30-11-1989 and the BPO was paid to him on the strength of the identification given by the applicant. On enquiry, it revealed that the BPO did not belong to the said Kareem and it was presented by him at the instance of the applicant. It is stated that a prima facie case was made out against the applicant on matters pending investigation. Though the applicant could have been placed under suspension, he was only transferred to Raipole Sub Post Office in order to avoid tampering of the original records. The transfer was, therefore, made in public interest and not at the request of Shri G.Srinivasacharyulu. It is stated that the transfer of Sri G.Srinivasacharyulu whose request for Sahifa PO pending since 25-1-1990 was only consequential to the transfer of the applicant on administrative grounds. It is stated that on his

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representation dated 12-2-1990 the applicant was informed vide office letter dated 15-2-1990 that his transfer was in the interest of service and directed to join at Raipole on expiry of leave. It is ~~further~~^{also} contended that the applicant ought to have complied with the order of transfer and thereafter made a representation if he had any grievance, and that it is not open for him to abate the transfer order merely on the ground that he had made representation. So far as the interim relief is concerned, it is stated that the applicant has not mentioned in the original application that he is on leave till 12-3-1990 and the counsel for the applicant stated that he will be relieved any movement. Hence the Tribunal granted interim directions not to relieve him if he has not already been relieved. It is contended that the applicant has not stated the facts correctly. For these reasons, the respondents oppose this application.

3. Thereafter the applicant has also filed a reply counter denying the various contentions raised in the counter filed by the respondents.

4. We have heard the learned counsel for the applicant, Shri S.D.Kulkarni and the learned Counsel for the respondents, Shri Naram Bhaskar Rao, Addl.CGSC. The main point urged by Shri Kulkarni is that although the alleged misconduct which is under investigation took place in December 1989, the transfer order was issued only on 7.2.1990 only with a view to accommodate ~~Mr~~ Shri G.Srinivasa Charyulu who is made as respondent-3 to this application. He also states that so far only a statement from the applicant has been recorded and to

To

1. Senior Superintendent of Post Offices, Hyderabad South East Division Hyderabad-500027.
2. Director of Postal Services, A.P. North, Hyderabad-500001.
3. G. Srinivasacharyulu, S.P.M., Raipole.
4. One copy to Mr. S.D. Kulkarni, Advocate, Neel Rekha, 99 Postal Colony, Trimulgherry, Hyderabad.
5. One copy to Mr. N. Bhaskara Rao, Addl. CGSC, CAT, Hyderabad.
6. One spare copy.

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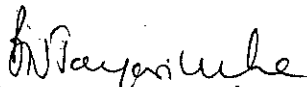
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the knowledge of the applicant there is no further investigation taking place. He, therefore, contends that the transfer has been made in colourable exercise of powers, only for the purpose of accommodating the 3rd respondent and not because of any ^{misconduct} ~~material~~ being under investigation in regard to the British Postal orders. Shri Bhaskar Rao contends that the transfer of the 3rd respondent in his place was consequential to the decision to transfer the applicant in public interest. After consideration of the facts, it appears to us that the transfer of the applicant is on the ground of enquiry into certain misconduct of the applicant, ~~by them~~. The respondents could have suspended him but instead transferred him where he could not interfere with the investigation. The transfer under such circumstances is proper and these principles have been enunciated by a Full Bench of this Tribunal in Kamlesh Trivedi's case (1988)7 ATC 253 (Kamlesh Trivedi Vs. Indian Council for Agricultural Research and others). In the circumstances, we see no merit in the application and the application is accordingly dismissed. There will be no order as to costs.

(Dictated in the open Court).


(B.N. JAYASIMHA)
Vice Chairman


(D. SURYA RAO)
Member (Judl.)

Dated: 6th July, 1990.


DEPUTY REGISTRAR (J).