

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

ORIGINAL APPLICATION No.229/92

DATE OF JUDGEMENT: 23rd OCTOBER, 1992

BETWEEN

E. Narayana .. Applicant

and

1. Director General, Posts
(representing Union of India)
Dak Bhawan, New Delhi
2. The Postmaster General
Kurnool 518 005
3. The Superintendent of POS
Nandyal
4. The Postmaster, Nandyal H.O. 518501 .. Respondents

Counsel for the Applicant :: Mr. C.Suryanarayana

Counsel for the Respondent :: Mr. M.Jagan Mohan Reddy

CORAM:

HON'BLE SHRI A.B. GORTHI, MEMBER (ADMN)

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

T. C. R.

..2..

W.C.

JUDGEMENT OF THE DIVISION BENCH DELIVERED BY HON'BLE
SHRI T. CHANDRASEKHARA REDDY, MEMBER(JUDL.)

This is an application filed under Section 19 of the Administrative Tribunals Act, to quash the order dated 9.3.92 passed by the 3rd respondent transferring the applicant from Nandyal to Markapur and also the order dated 12.3.92 transferring the applicant from Markapur to Perusomula, ~~in the~~ ^{in the} ~~and a Panchayat~~ ^{and a Panchayat} District

The facts giving rise to this OA in brief are as follows:

The applicant was appointed as Postal Assistant w.e.f. 9.11.69. On account of the length of service, the applicant earned certain promotions. The applicant while functioning as Lr.Selection Grade Postal ASSISTANT, (LSG/PA) was promoted as Public Relations ~~of~~ Inspector (Postal) (PRI(P)) with supervisory duties for superivising the duties of the regular staff of Nandyal HO, w.e.f. 1.7.91. The post of PRI(P) at Nandyal carries a special allowance of Rs.40/-p.m. According to the applicant, the post of PRI(P) is a tenure post for a period of 4 years. The applicant took charge as PRI(P) on 1.7.91. According to the applicant, he is sincere, efficient and had been discharging his duties to the entire satisfaction of ~~the~~ ^{the} superiors including the third respondent herein. According to the applicant, he has got a right to continue in the said post of PRI(P) w.e.f. 1.7.91 for a period of 4 years i.e. upto 30.6.95.

While so, the applicant was transferred to the non-allowance post of LSG/PA at Markapur PO as per the order~~s~~ dated 9.3.92 and subsequently, within a period of 3 days, the said order dated 9.3.92 was modified by another order of the third respondent dated 12.3.92 posting the applicant from Markapur to Perusomula PO as ~~REXX~~ Sub-Postmaster. According to the applicant, the orders of transfer from Nandyal to Markapur

..3..

and from Markapur to Perusolmula is done with malice and to deprive the benefit of the special pay of Rs.40 and to harass the applicant. So, the present OA is filed by the applicant for the relief as already indicated above.

Counter is filed by the respondents opposing this OA.

In the counter filed by the respondents, it is maintained that the transfer of the applicant ~~was in~~ due to administrative exigencies and in public interest and there are no grounds to interfere ~~in~~ with the said transfer.

The learned counsel appearing for the applicant relies on Rule 60 of P&T Manual Vol.IV which lays down that the post of PRI(P) is a tenure post for a period of 4 years and contends that the applicant had a right to continue for 4 years in the said PRI(P) post at Nandyal as the same is a tenure post and so, there is no justification on the part of the respondents in transferring the applicant from Nandyal at which place the applicant was appointed as PRI(P) ~~fix~~ w.e.f. 1.7.91.

(Rule 60 of P&T Manual)

The said rule says that the said post of PRI(P) should not ordinarily be occupied by the same officer continuously at a time for more than 4 years. The restriction appears to be not ~~only~~ to permit a person ordinarily to continue in the said post for more than 4 years. So, from the said rule, it is rather difficult to ~~understand~~ accept that a person holding the post of PRI(P) is continued in the same post ~~and that the said post is not a~~ for four years transferable post. From the said rule, it cannot be inferred that the applicant had been working at the time of his transfer in a non-transferable post. So, the contention of the learned counsel for the applicant that the applicant is working in a non-transferable post and as the transfer being not valid cannot ~~be~~ be accepted.

In the counter of the respondents, it is maintained that the post of PRI(P) at Nandyal being a standard supervisor post was upgraded to the next higher grade withdrawing the special allowance of Rs.40/- w.e.f. 1.10.91 onwards

and as the applicant did not satisfy the requirement of 26 years of service that the applicant, could not be continued in the said post of PRI(P) at Nandyal. So, it is quite evident that due to the administrative exigencies that the applicant has been transferred from Nandyal to Markapur and as there was no vacancy at Markapur the applicant had been transferred to Perusomula as Sub-Postmaster. ^{under which} Under which the circumstances the transfer of the applicant is effected, we are of the opinion that no malafides can be attributed to the respondents. It is vehemently contended by the counsel for the applicant that Perusomula is a remote area in Cuddappah District without any facilities and that, the said Sub-Postmaster post at Perusomula is filled only on deputation basis for every two or three years months once and the employee so deputed is paid daily allowance for the duration of his stay at that place which is not allowed to exceed six months (180 days) in any case, and as a measure of punishment for no fault of his, that the applicant has been transferred to Perusomula which according to the ^{is treatment to a servant who} applicant is brandishing him that he is guilty of crime.

No material is placed before us to show that the said place is (Perusomula) is a remote area without any basic amenities. At this stage we may refer to certain decisions of the Supreme Court. In Gujarat Electricity Board Vs Atma Rao (1989 (3) JT20) the Supreme Court had observed that transfer of a Govt. servant appointed to a particular cadre of transferrable posts from one place to another is an incident of service, and that, no Govt. servant has a legal right for being posted at any

particular place. The following observations were made by the Supreme Court in that case.

Whenever a public servant is transferred, he must comply with the order; but if there be any genuine difficulty in proceeding on transfer, it is open to him to make a representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled, the concerned public servant must carry out the order of transfer."

In *Union of India Vs HN Kirtnia* (1989(3)SCC 455), the Supreme Court observed as follows:

The respondent being a Central Govt. employee, held a transferable post and he was liable to be transferred from one place another in the country. He has no legal right to insist for his posting at Calcutta or any other place of his choice. We do not approve of the cavalier manner in which the unsigned orders have been issued without considering the correct legal position. Transfer of public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order ~~is~~ illegal on the ground of violation of statutory rules or on grounds of malafides....."

Again in Shilpa Bose Vs State of Bihar and others respondents.

It will be pertinent to extract para 4 of the Judgement of the Hon'ble Supreme Court which is as follows:

"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made of violation of any mandatory statutory rule or on the ground of malafide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day-to-day transfer orders issued by the Government and its sub-ordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest.

.....

T. S. M/T

...

In view of the ~~xxxxxx~~ above said decisions of the Supreme Court, we are of the opinion, that it is not open for us to interfere with the said order of transfer of the applicant from Nandyal. In the counter of the respondents it is pleaded that there was a complaint from one Sri Kasayya, which was received by the Supdt. of Post Offices ^{alleging} Nandyal/that the applicant collected Rs.4000/- as against a promise of Rs.5,000/- for securing appointment of Branch Postmaster Sanjeevaraopet for his son. An enquiry was conducted in this behalf in the course of which, it came to light that although there was no documentary evidence warranting the department to take a departmental action yet there was a strong suspicion about the conduct of the applicant and it was felt desirable to transfer the applicant from Nandyal.

~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~

So, it is the contention of the learned counsel for the applicant that purely, as administrative measure that the transfer is ^{not} effect and so is not valid. The learned counsel also relied on a decision reported in ATR(1992)20 ATC 87 Yaminkant Verma Vs Union of India wherein it ~~was~~ held as follows:

"The respondents' contention implies that they had become convinced of the allegation against the applicant, and if so, a proper departmental enquiry would have been the appropriate course of action and not a transfer. The authorities came to an adverse conclusion regarding the applicant in regard to his conduct prematurely without giving an opportunity to him to state his case which is against the principles of natural justice....."

Whatever might be the observations in the said case relied by the counsel for the applicant, we are convinced of the fact that the transfer of the applicant is due to administrative exigencies and in public interest. Further, in view of the Supreme Court decisions ^{referred to above} ~~also~~ we are not prepared to rely on the decision of the Yaminkant Verma Vs Union of India ^{referred to} ~~reported above~~.

: 8 :

Copy to:-

1. Director General, Posts (representing Union of India), Dak Bhavan, New Delhi.
2. The Postmaster General Kurnool-005.
3. The Superintendent of Post Offices, Nandyal.
4. The Postmaster, Nandyal HO 518501.
5. One copy to Sri. C.Suryanarayana, advocate, CAT, Hyd.
6. One copy to Sri. M.Jagan Mohan Reddy, Addl. CGSC, CAT, Hyd.
7. One spare copy.

Rsm/-

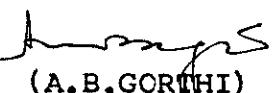
Post Date 11/10/

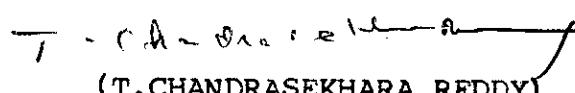
Even though, there is a loss of Rs.40/- special pay, for applicant, which he was drawing in the post of PRI(P) at Nandyal, as the transfer of the applicant is from one place to another in the same cadre, it is not open to the applicant to contend that due to monetary loss that the said transfer is not valid.

The applicant admittedly had not joined either at Markapur or at the new station Perusomala. The applicant had applied for leave and approached this Tribunal for the relief already indicated. A single Member Bench consisting of Hon'ble Shri C.J.Roy on 20.3.1992 has passed an order to maintain status-quo. So, the same position as on 20.3.1992 with regard to the transfer of the applicant is maintained as on date. The applicant even on today continues to be on leave. If Perusomala station is such a difficult station which the applicant wants to avoid, it would have been proper on the part of the applicant to have reported for ~~the~~ duty first at Perusomala and then approach the competent authority to transfer him to some other station from Perusomala. The Applicant has not chosen to do so.

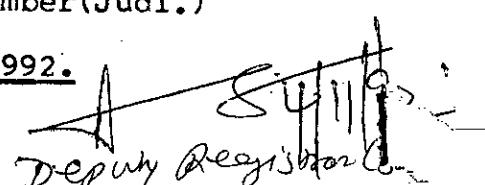
We see no merits in this OA and this OA is liable to be dismissed and is accordingly dismissed leaving the parties to bear their own costs.

As the OA is dismissed, the interim order dated 20.3.1992, of the Single Member Bench to maintain status-quo with regard to the transfer of the applicant stands vacated.


(A.B.GORTHI)
Member(Admn.)


(T.CHANDRASEKHARA REDDY)
Member(Judl.)

Dated: 23 October, 1992.


Deputy Registrar

(8)

O.A. 229/92

TYPED BY *S/*
CHECKED BY *S/*

COMPARED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD

THE HON'BLE MR. *A. B. Gorai, Am*
AND

THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)
AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY:
M(JUDL)

AND

THE HON'BLE MR. C. J. ROY : MEMBER(JUDL)

Dated: *23/10/1992*

ORDER/JUDGMENT:

R.A. /C.A. /M.A. No.

in

O.A. No.

229/92

T.A. No.

(wp. No.)

Admitted and interim directions
issued.

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default

M.A. Ordered/Rejected

No orders as to costs.

DR. B. Gorai
u/l/c

pvm

