

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD
BENCH

AT HYDERABAD

OA.1062/99

Decided on 17-1-2000

Between

V. Ratna Babu

: Applicant

And

1. The Superintendent of Post Offices
Tenali Division, Tenali 522 201

2. The Postmaster-General
Vijayawada Region
Vijayawada 520 002

3. Sri P. Veera Reddy
Supdt. of Post Offices
Guntur Division, Guntur

4. Sri MM Reddy
Postmaster, Repalle 522265

5. The Postmaster
Repalle HO 522 265 : Respondents

Counsel for the applicant

: T.V.V.S. Murthy

Advocate

Counsel for the respondents

: V. Bhimanna

CGSC

CORAM

Hon. Mr. Justice D.H. Nasir, Vice Chairman

(Signature)

ORDER

Order (per Hon. Mr. Justice D.H. Nasir, Vice Chairman)

OA.1062/99

dt.17-1-2000

In this OA, the applicant challenges the validity of his transfer order dated 20-5-1999 by which the applicant V. Ratna Babu, LSG PA, Repalle Head Office, is transferred and posted as LSG PA, Bapatla HO. This transfer order involves transfer of 13 officials including the applicant whose name is mentioned at Sl.No.10 of the transfer order. The allegations of malafides and vindictiveness against the Respondent No.3, Sri P. Veera reddy, SPO, Tenali, have been emphatically urged by the learned counsel Mr. TVVS Murthy, for bringing home to the Tribunal that the transfer order was suffering from several vices which seriously affected the legality and validity of the transfer order. It is also pleaded by the applicant that the transfer in question, if implemented, would disturb him from the selection post with special allowance before completion of his full tenure.

2. On the question of malafides the learned counsel for the applicant Mr. Murthy submitted that Respondent No.3 (P. Veera Reddy) while he was working as Superintendent of Post Offices, Tenali, in 1993 was involved in scandals of taking bribes in making appointments to the post of EDBPMs. The counsel further points out that Bharatiya Postal Employees Union (BPEU) Class-III, Divisional Branch, Tenali Division, of which the applicant was an active worker lodged a complaint against the corrupt practices indulged into by the Respondent No3. After conducting an investigation into the allegations against him he was relieved from the independent charge of Tenali Division in

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the middle of his tenure and was posted as an Assistant Director in 1993. The applicant, who was then the Branch Secretary of BPEU Class III Repalle Branch from 1993-95, Respondent No.3 was directly questioned why he was indulging into corrupt practices in making appointments, which according to the applicant incurred for him the wrath of the Respondent No.3.

3. It is not necessary in our opinion/all allegations made against the Respondent No.3 in the OA. However, an endeavour has to be made to find out the correctness or otherwise of such allegations from the material papers on the record of this case. If only the *prima-facie* satisfaction could be obtained from such scrutiny, The effect thereof on the applicant's case may have to be looked into. A satisfaction is also required to be rendered by the applicant as to why the applicant alone was picked out by the Respondent No.3 for his wrath. The applicant's case is that in view of the fact that the Respondent No.3 was subsequently transferred from Tenali to Vijayawada on account of the allegations of illegal gratification against him, he was entertaining a grudge against the applicant and all other active workers of BPEU Class III and he wanted to settle old scores against them as Respondent No.3, now that he was placed in additional charge of Tenali Division. It was under the influence of this grudge, according to the applicant, that the impugned transfer order was passed.

4. It is also contended by the applicant that one T. Arun Kumar, who worked as Assistant Treasurer, Repalle HO from June, 1991 was still continued at Repalle HO and in his case the question of long standing did not arise. This, according to the applicant, was clearly a case of discriminatory treatment meted out to the applicant on account of the grudge, which Respondent 3 was entertaining against the applicant. The applicant also expressed his grievance that from many other officials having long standing and having completed their tenure, the SP, Tenali, called for options asking for

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the station of their choice vide letter dated 3.4.99. But no such option was called for from the applicant, as he had not completed his tenure. The applicant, therefore submitted a representation dated 22.5.1999 to PMG, Vijayawada, seeking his intervention and for his retention at Repalle HO as Treasurer. He was, however, on extraordinary leave from 17.5.1999 to 21.7.1999.

5. Apart from what is stated above with regard to the applicant's plea that his transfer was motivated by malafide considerations, the applicant earlier filed OA.788/99 regarding his transfer which was disposed of by this Tribunal by an order dated 27.5.1999 with a direction to the PMG, Vijayawada (Respondent No.2) to consider the applicant's case in accordance with law taking due note of various contentions raised by him in the said OA. Immediately after disposal of the said OA, the SP, Tenali, addressed him a letter dated 29.5.1999 stating that his (applicant's) transfer to Bapatla HO was approved by the DPS, Vijayawada, and therefore the PMG, Vijayawada, also affixed his stamp of approval and rejected the applicant's representation dated 22.5.1999 by a non-speaking order merely stating that the transfer was ordered in the interest of service and he found no reason to modify the same.

6. An instance is also cited by the applicant in which a shortage of Rs.10,000 was noted by the applicant which was immediately brought to the notice of the Postmaster, who in turn informed the SP, Tenali, at about 2200 hrs. on 30.3.1999 about the shortage. The SP, Tenali, directed the ASP, Repalle, to investigate into the matter. He arrived at HO at about 2300 hrs. and confirmed the shortage of cash by about 2.30 am on 31.3.1999 after verification of records. At about 1.00 am on 31.3.1999 the ASP, Repalle, spoke to the SP, Tenali on telephone, who in turn contacted the applicant on phone. The applicant told him to report the matter to the police or permit him to report the matter to police as he suspected that some staff members in the

office itself were responsible for the shortage. But the matter was not reported to police. Neither the postmaster nor the ASP checked the persons present physically nor reported the matter to the police. At about 3.00 am on 31.3.1999 the ASP, Repalli, recorded the statement of the applicant in which he stated that he suspected office staff alone for the shortage. The SP, Tenali, directed him to credit the amount of shortage at once. When the applicant requested the SP, Tenali, to report the matter to the police and to give him a week's time for crediting the amount, the SP, Tenali, declined by stating that it would create unnecessary problems ^{and} ~~than~~ complications. Accordingly, the applicant credited the amount of Rs.10,000 on 31.3.1999 under "un classified receipts" vide receipt No.00081/Book No.0129 dated 31.3.1999.

7. From the above allegations in relation to the shortage of cash ^{and} also I believe that no prima-facie conclusion could be arrived at that any malafide treatment was given to the applicant at the instance of Respondent No.3. The respondent No.3 ^{should} have immediately reported the matter to the police and would not have lost the opportunity to malign the applicant by reporting the matter to the police instantaneously if he was harboring any grievance against the applicant. This instance of the shortage of cash therefore does not go to the rescue of the applicant to infer a prima-facie case of vindictiveness against the ^{him} applicant.

8. It is also alleged by the applicant against the Respondent No.3 that Respondent No.3 obtained reports from the Postmaster, Repalle, in connection with the applicant's attendance and called for his explanation vide letter dated 18.5.1999. The Respondent No.3 also called for the applicant's explanation for his leave on 17.5.1999 and 18.5.1999 which was extended up to 30.5.1999 vide his office letter dated 31.5.1999. The applicant submitted that he was an asthma patient and had been suffering from bronchitis. According to the applicant he had no leave to his credit and he had been on extraordinary leave

on MC from 17.5.1999 to 21.7.1999. The applicant further submitted that although the Tribunal directed that the leave be granted in view of the applicant's transfer till his representation was disposed by the PMG, Vijayawada, but no leave orders were issued to him so far. This allegation can indeed not be considered in support of the applicant's allegation that his transfer was malafide firstly in view of the fact that this instance of leave order not issued had occurred subsequent to the issuance of the impugned transfer order and secondly in view of the fact that these are matters of day today *as no male files could be attributed to the same.*

9. It is argued on behalf of the applicant that irregular transfer of the applicant from a tenure post of Treasurer carrying special allowance was deliberately done by the Respondent No.3 under the guise of "interest of service" and amounted to colourable exercise of power. It is also alleged that the transfer was punitive. Relying on a decision of Ernakulam Bench of this Tribunal, in Y. Kurikessu Vs. SSTM, Trivandrum (598 Swamy's C&D 1993 Vol.VI, pp.930-931), the learned counsel for the applicant submitted that the transfer could only be in public interest and for no other reasons except when it was made by way of disciplinary action. Quoting from the said decision, the learned counsel Mr. Murthy submitted that the expression "Public interest" was not a magic or check serving for anything in any situation nor was it a carpet under which anything could be swept. The expression "Public Interest" like the expression "Exigencies of Public Service" was often made and apology for the same that could not be justified.

10. There can be no doubt about the fact that the Court or the Tribunal should not underscore the necessity of ascertaining whether the transfer of a Government employee was made under any malafide consideration or out of any vindictiveness or whether the transfer was punitive in nature. If it is punitive in nature the same could not be allowed to be resorted to unless the

misconduct was proved. If it is motivated by malafide considerations or out of any vindictiveness, sufficient material should come on record for the Tribunal to derive satisfaction that there were grounds for arriving at a *prima-facie* conclusion on that aspect. In the instant case, however, I am afraid the learned counsel for the applicant has not succeeded in giving even a semblance of satisfaction in that direction.

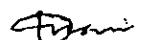
11. It is true that the Respondent No.3 against whom allegations have been made has been impleaded in this OA by his personal name. It is also true that the said Respondent (R-3) has not filed any separate affidavit in reply dealing with the allegations of malafides made by the applicant against him. However, I believe that no reliable material has come on record except the allegations made in the OA, which could enable us to record a finding that the applicant's transfer was vindictive and was initiated at the instance of Respondent No.3 on account of malafide considerations. The applicant alleges that Respondent No.3 was involved in scandals of taking bribes and in making appointment to the post of EDBPMs.

12. It is also alleged that the Respondent No.3 also faced an allegation that he was transferred from Tenali to Vijayawada on account of allegations of illegal gratification made by him (the applicant). And that Respondent No.3 was entertaining a grudge against the applicant and by other active members of BPEU Class III and that Respondent No.3 wanted to settled old scores against them. The incident of cash having been found short by a sum of Rs.10,000/- from the custody of the applicant is also dragged into the controversy by the applicant but it could be easily discerned from the sequence of events of the said incident that everything proceeded in a straight forward manner as it ought to have proceeded. All these allegations of Respondent No.3 accepting illegal gratification and following corrupt practices etc. are not substantiated by any material papers on the record of this case. No third party affidavit has also

come on record in support of the allegations made by the applicant against Respondent No.3. It would, therefore, be not in order for us to draw any conclusion that the applicant's transfer was induced by any malafide consideration on behalf of the respondents, more particularly the Respondent No.3.

12. A note is also required to be taken of the fact that the impugned order of transfer dated 20.5.99 is not a singular order transferring the applicant. As many as 12 officials in addition to the applicant whose name appears at SI No.10 in the said transfer order, ^{indicating a chain of transfer} have been made to move on transfer. No presumption could be raised from the contents of the said transfer order that ^{authorities} the parties were influenced by any extraneous considerations in issuing the transfer order. If it was true that the applicant was targeted under the influence of any malafide considerations, it would be presumptuous to believe that 12 officials along with the applicant would have been made the victim of such vindictive action against the applicant.

13. 14. For all the above reasons, therefore, I do not find any substance in the allegations made by the applicant which could enable me to accept the truth of the allegations made by the applicant. Hence, the OA is dismissed, however, with no order as to costs.


(D.H. Nasir)
Vice Chairman

Dated : 17-01-2000.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

1ST AND 2ND COURT

HYDERABAD

12/2000

COPY TO:

1. HON. J.
2. HON. M. (ADMN.)
3. HON. M. (JUDL.)
4. D. R. A (ADMN.)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

TYPED BY
COMPILED BY

CHECKED BY
APPROVED BY

THE HON'BLE MR. JUSTICE D.H. NASIR
VICE CHAIRMAN

THE HON'BLE MR. R. RANGARAJAN
MEMBER (ADMN.)

THE HON'BLE MR. B. S. JAI PARAMESWAR
MEMBER (JUDL.)

* * *

DATE OF ORDER: 17/1/2000

MA/RAY/CP.NO.

IN

OA. NO. 1062/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

CP. CLOSED

RA. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

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against sum 5/-

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