

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH,
JAIPUR.

Date of Decision: June 28, 1993.

OA 156/93

HARI SHANKER SHARMA

... APPLICANT.

Vs.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

HON. MR. GOPAL KRISHNA, MEMBER (J).

HON. MR. O.P. SHARMA, MEMBER (A).

For the Applicant ... SHRI K.L. THAWANI.

For the Respondents ... SHRI U.D. SHARMA.

PER HON. MR. O.P. SHARMA, MEMBER (A).

The applicant's grievance is against the transfer as Inspector of Post Offices, from Kota to Pratapgarh. It has been claimed on behalf of the applicant that he has been working as Inspector of Post Offices, Kota, from 9.4.91. By order dated 11.2.93 he was transferred to Deoli. He made a representation dated 16.2.93 against the said transfer, also alleging inter-alia irregularities in the working of certain offices of the Postal Department. The representation was, reportedly, addressed to the Senior Supdt. of Post Offices. By a subsequent order dated 26.2.93, the applicant was transferred to Pratapgarh. Now the challenge is to transfer to Pratapgarh.

2. The learned counsel for the applicant has drawn our attention to a circular letter dated 11.2.92, issued by the D.G. Posts, New Delhi, which according to the applicant's counsel, bans routine and rotational transfers. The learned

counsel for the applicant has also drawn our attention to two judgements of the CAT, one of Jodhpur Bench, reported at (1990 (13) ATC 532) and the other of Principal Bench, New Delhi, reported at (1987 (3) ATC 311). According to the learned counsel for the applicant, the ratio of the two judgements is that the type of transfer which has been affected in this case is not permissible. He has stated that the transfer was malafide, it has seriously hurt the personal interests of the applicant and has disturbed his family life. Further, according to him, no public interest is served by the transfer and there were no exigencies of service justifying the transfer. He has also claimed that the applicant has since rejoined the duty at Kota on 29.3.93 after he was allegedly relieved on 9.3.93. It has therefore been prayed that the transfer order to Pratapgarh (Annexure A-1) may be quashed.

3. The learned counsel for the respondents has stated that the applicant has in fact been working at Kota since 15.4.88 (Annexure R-1). The order dated 11.2.93, transferring the applicant to Deoli, was passed to post the applicant in place of one Shri P.L. Sharma, who had been promoted. Since Shri P.L. Sharma did not accept the promotion, the applicant could not take over at Deoli. Thereafter he was transferred to Pratapgarh. The learned counsel for the respondents has claimed that the transfer was in the public interest and in the exigencies of service, and therefore, the contents of D.G. Posts letter dated 11.2.92, banning routine and rotational transfers do not apply. He has also cited before us the Hon'ble Supreme Court's judgement in the case of UOI & Ors. Vs. S.L. Abbas (1993 (3) JT SC 678).

The relevant portion of the said judgement, to which our attention has been drawn, reads as follows :-

"Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration."

He has further stated that the applicant was relieved on 9.3.93 and he denies that he has rejoined duty at Kota on 29.3.93. He has, therefore, prayed that the order of transfer be maintained.

4. We have carefully considered the averments made by the learned counsel for the applicant and the respondents, and have also gone through the records. We have also carefully considered the judgements cited before us by the parties.

5. The applicant has been at Kota since April, 1988, and he has been transferred eventually by order dated 26.2.93 to Pratapgarh. This transfer is after a stay of nearly five years at Kota. It can also not be said that this transfer is purely routine and rotational in view of the fact that initial posting of the applicant to Deoli was in place of a person who had been promoted, and thereafter it became necessary to transfer the applicant to another place when vacancy at Deoli was not available. The D.G. Posts letter dated 11.2.92 does not place any absolute ban on transfers. On the other hand, transfers in public interest can still be affected. Annexure R-4 is another letter dated 17.8.92, issued by the Director (Staff), Department

of Posts, which has further clarified the policy guidelines regarding rotational transfers. It has been clarified in the said letter, that the ban on transfers contemplated by the circular letter dated 11.2.92 does not apply to transfers in interest of service. The two judgements of the Tribunal cited before us do not lay down any absolute rule that there cannot be any transfers, even in the public interest. The two judgements of the Tribunal are, therefore, of no help to the applicant. The Hon'ble Supreme Court, in their judgement in the case of UOI & Ors. Vs. S.L. Abbas (supra) have clarified that who should be transferred where is a matter for the Administrative appropriate authority to decide. No doubt, where the transfers are malafide, the matter can be examined. In this case, malafides have been alleged but no evidence has been cited in support of the allegation. The learned counsel for the applicant has claimed that a representation dated 16.2.93 was made against the transfer, but there is no evidence to support this claim. Thus, it appears that even there was no representation against the said transfer.

6. Taking all the facts and circumstances of the case into account, we are of the view that there is no merit in the OA, and the same is, accordingly, dismissed. The parties shall bear their own costs. The stay order granted on 24.3.93 stands vacated.

(O.P. SHARMA)
MEMBER (A)

C.KRISHNA
(GOPAL KRISHNA)
MEMBER (J).