

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 5.12.2014

MA No.291/00206/2014

Mr. Arun Sharma, Counsel for the applicant.

Mr. Mukesh Agarwal, Counsel for the respondents.

Heard the learned counsel for parties.

Order Reserved.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Adm/

18/12/2014

order pronounced today in the open court by the aforesaid Bench.

5/12/14.

C.O.

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 291/00206/2014

Order reserved on : 5.12.2014

Date of Order : ..18.12.2014

CORAM

HON'BLE MR.ANIL KUMAR, ADMINISTRATIVE MEMBER

Pratibha Hada W/o Shri Laxman Singh Hada, aged about 57 years, resident of 151, Ballabh Badi, Kota. Presently working as Postal Assistant, Saving Bank Control Organisation, Head Post Office, Kota.

.....Applicant

(By Advocate Mr. Arun Sharma)

VERSUS

1. Union of India through its Secretary to the Government of India, Department of Posts, Ministry of Communication and Information Technology, 20, Ashoka Road, Dak Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur-302007.
3. Post Master General, Southern, Region, Ajmer-305001.
4. Shri Dinesh Sharma, Director, Postal Services, Southern Region, Ajmer.
5. Senior Superintendent of Post Offices, Kota Postal Division, Kota.

.....Respondents

(By Advocate Mr. Mukesh Agarwal)

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ORDER

(Per Hon'ble Mr. Anil Kumar, Administrative Member)

The applicant has filed the present OA praying for the following reliefs:-

8.(a) by an appropriate order or direction the impugned orders dated 14.3.2014 Ann.A/1 issued by the Assistant Director in the office of the Post Master General Rajasthan, Southern Region, Ajmer and Ann.A/2 dated 14.3.2014 issued the Senior Superintendent of Post Offices, Kota Division, Kota may kindly be quashed and set aside.

(b) any other appropriate relief which this Hon'ble Tribunal deems fit in the interest of justice in the facts and circumstances of the case in favour of the applicant may kindly be passed.

2. The applicant is aggrieved by her transfer order dated 14.3.2014 (Ann.A/1) vide which she has been transferred from the post of PA, SBCO, Kota HO to PA, SBCO, Chittorgarh HO in the interest of service and her relieving order also dated 14.3.2014(Ann.A/2).

3. Heard the Ld. Counsel for parties and perused the documents on record and the case law referred to by the learned counsel for parties.

4. The Ld. Counsel for the applicant argued that the applicant was earlier posted at Chittorgarh. She was transferred to Kota on her own request vide order dated 21.11.2011. She joined at Kota on 1.12.2011. That the

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work which was assigned to the applicant was lying incomplete for a number of years. Weeding out of old record without carrying out the ledger agreement created hurdles in the working of the applicant. The relevant records were destroyed vide office note dated 14.1.2008 and 27.5.2011. In the absence of relevant records, Sanchay Post Agreement prepared by the applicant was not found acceptable by the P.M.G. in the meeting held on 25.10.2013. The Ld. Counsel for the applicant argued that applicant then sought guidance about agreement from the Accounts Officer, ICO (SB), Jaipur vide her letter dated 4.11.2013(Ann.A/12). The Ld. Counsel for the applicant argued that old records were weeded out against the rules. At the time when the records were destroyed vide order dated 14.1.2008 and 27.5.2011 Mr. Dinesh Sharma was the SSPO, Kota and thus records were destroyed under his orders. Mr. Dinesh Sharma is now Director, Postal Services, Southern Region, Ajmer.

5. The Ld. Counsel for the applicant further argued that when the applicant brought out the short-comings to the knowledge of higher authorities it annoyed the Post Master of the Post Offices, Kota and the respondent No.5. Applicant was then subjected to harassment. The respondents were further annoyed with the applicant because she requested to give instructions in writing regarding reconciliation of accounts in the absence of proper record.

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6. That on 5th/10th March,2014 the applicant was served with the notice alleging some vague and baseless charges on her such as non-cooperation with the C.B.S. preparation, misbehaving with C.B.S. Manager, breach of peace in office and discouraging the fellow staff members.(Ann.A/14). In response to this notice the applicant requested to respondent No.5 vide her letter dated 13.3.2014 to make her available photo copies of certain documents (Ann.A/15).

7. The Ld. counsel for the applicant argued that suddenly on 14.3.2014 the applicant was summoned by the Post Master at 5.45 PM and asked to leave the office after signing the charge/order book. On enquiry from the Post Master he informed that she has been transferred but no copy of transfer order was given to the applicant. The applicant then went to meet the Senior Supdt. Of Post Offices who showed his helplessness as the orders of the transfer were issued by the higher authorities. The applicant who was already under immense mental pressure and little indisposed on that day left her office at 6.00 PM.

8. That on 15.3.2014 the applicant fell ill. That while at her home she received a letter dated 14.3.2014 from Head Post Master, Kota whereby she was asked to hand over the keys of her Section and give charge one to Shri Gopi Ram Bairwa and sign the charge report (Ann. A/16).

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9. That on 15.3.2014 she was also delivered an order dated 14.3.2014 whereby the applicant was ordered to be deemed relieved and transferred to Chittorgarh Head Office on 14.3.2014 itself(Ann.A/2).

10. The Ld. Counsel for the applicant argued that as per the transfer policy guidelines the applicant could have been transferred only after completion of tenure which is 4 years and not before but she was transferred from Kota to Chittorgarh within a span of only 2 years and 3 months.

11. The Ld. Counsel for the applicant argued that the impugned orders dated 14.3.2014(transfer order –Ann.A/1) and the relieving order dated 14.3.2014 (Ann.A/2) have been passed as a measure of punishment without there being any inquiry and without adhering to the provisions of natural justice.

12. He also argued that impugned orders are not in the interest of Administration in any way. She has not been informed of any reason for such a sudden transfer order as well as immediate relieving on being transferred. The transfer order is not in the interest of service. The applicant at the best can be said to be a whistle blower since she brought the facts about the destruction of records against the provisions of rules. Had there been a full-fledged inquiry in the matter some startling facts would have come on record. Probably it was for that reason that the applicant

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was transferred in a haste by respondent No.4 Shri Dinesh Sharma, Director Postal Services, Southern Region, Ajmer malafidely as Mr. Sharma was the SSPO, Kota when the records were destroyed. The learned counsel further submitted that the applicant has already attained the age of 57 years and the transfer at this fag end should not have been made. The Ld. Counsel for the applicant further argued that the notice dated 5th/10th March, 2014 has not been withdrawn and the applicant is to file her explanation. It would not be possible for the applicant to defend herself from Chittorgarh as all the relevant material and witnesses are available at Kota. Thus the applicant would be deprived from fair opportunity to defend her, therefore, the learned counsel for the applicant prayed that the transfer order dated 14.3.2014(Ann.A/1) and the relieving order dated 14.3.2014 (Ann.A/2) be quashed and set aside.

13. The learned counsel for the applicant referred to the following case laws in support of his arguments:-

- 1) Calcutta High Court judgment in WP Nos.21938 and 23368(W) of 2010 with CAN No.190/2011 in the case of Biplab Das Vs. The Chairman, Bangiya Gramin Vikas Bank and others 2012(1)SLR 593-598,
- 2) Punjab and Haryana High Court in CWP No.1537 of 1990 in the case of N.S.Bhullar and another Vs. The Punjab State Electricity Board and others SLR 1991(1)378-383,

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3) Allahabad High Court in Civil Mic.Writ Petition No.741 of 1977 in the case of Dinesh Chand Sharma Vs. Union of India and others AISLJ 1982(1) 443-449,

4) Himachal Pradesh High Court CWP No.3468/2011 in the case of Shyam Singh Vs. State of Himachal Pradesh and others 2011(5)SLR 207-208 and

5) Punjab and Haryana High Court CWP No.13052/1990 in the case of Tripta Malhotra Vs. State of Punjab and others 1991(1) SLR 220-221.

14. On the other hand the learned counsel for the respondents argued that the applicant has been working as PA(SBCO)Kota HO w.e.f. 1.12.2011 and she has been transferred vide order dated 14.3.2014 along with some other employees in the interest of service. In pursuance to this order the Senior Supdt. Of Post Offices sent a communication to Post Master Kota on the same day to relieve the applicant immediately (Ann.R/2). That the Post Master, Kota H.O. where the applicant was posted , issued an order in the office order book to relieve her in the AN of 14.3.2014 and to hand over charge to Shri Gopi Lal at 5.30 PM. He also called the applicant and asked her to sign the order book but she refused to sign the order book in the presence of other officials and left saying that she is going to Senior Supdt. Of Post Offices, Kota respondent No.5 whose office is situated on the first floor of the Kota H.O. The Sr. Supdt. Of Post Offices directed her to obey the orders and get relieved on transfer and suggested that if she has any grievance she can submit representation to the competent

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authority. But the applicant left the office at 5.40 PM prior to closing hours of office.

15. The Ld. Counsel for the Respondents further argued that the applicant has raised irrelevant points in her OA only to mislead the Tribunal. That the applicant has been transferred in the interest of service on administrative ground on the recommendation of Transfer and Placement Committee (Ann.R/4). As per the latest transfer policy circular vide letter dated 31.1.2014 (Ann.R/5) an employee can be transferred after one year of posting on the present post in the administrative interest.

16. The Ld. Counsel for the respondents categorically denied that there was any malafide intention behind transferring the applicant nor any violation of statutory provision was involved. She has been transferred along with 9 PAs(SBCO) purely on administrative grounds keeping in view the forthcoming implementation of Core Banking Solution as per suitability and utility of the officials. The incumbent Shri L.N.Garg who was transferred vice her has joined at Kota HO in her place(Ann.R/6).

17. The Ld. counsel for the respondents submitted that the applicant joined the service with the respondent department on 18.10.1978 and since then she remained posted at Kota for almost 28 years in different spells.

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18. The Ld. Counsel for the respondents referred to the judgments of the Hon'ble Supreme Court in the case of Punjab National Bank & Ors. Vs. All India New Bank of India Employees Federation and Ors. (1997)10 SCC-627 and State of MP and others Vs. S.S.Kourav & others AIR 1995 SC 1056 in support of his arguments. In these judgments, it has been held that Courts/Tribunals are not appellate forums to decide on transfers of officers made on administrative grounds.

19. The Ld. Counsel for the respondents argued that the applicant refused to sign the office order book and left the office on 14.3.2014, therefore, the applicant showed gross indiscipline by refusing to sign the office-order book. The applicant if she was aggrieved from her transfer order, she could have given a representation to the higher authorities instead she approached the Hon'ble CAT, Jaipur Bench without availing the opportunity available within the rules. The applicant had earlier filed an OA No.291/00164/2014 to quash the transfer order dated 14.3.2014 which was withdrawn by her on 10.4.2014 without any reason. Now the applicant has again filed the present OA.

20. The learned counsel further submitted that as per the provisions contained in Rule 37 of Postal Manual Volume-IV any official of the department is liable to be transferred to any post in India. Thus, in view of the facts that the

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applicant has been transferred by the competent authority under the relevant rules in the interest of service without any malafide intention on the part of competent authority. The transfer order cannot be quashed and set aside. Hence, the OA of the applicant deserves to be dismissed.

21. During the arguments the main contention of the Ld. Counsel of the applicant was that the transfer order of the applicant dated 14.3.2014 (Ann.A/1) has not been issued in the interest of service as stated in the transfer order and secondly that the transfer order the applicant has been issued with malafide intention on the part of respondent No.4 i.e. Shri Dinesh Sharma, Director Postal Services, Southern Region, Ajmer. The learned counsel laid emphasis that the applicant was issued a show cause notice on 10.3.2014 and she was given time to file reply by 19.3.2014 but without waiting for the reply of the applicant she was transferred from Kota on 14.3.2014, therefore, it cannot be said that the transfer order of the applicant was made in the interest of service. Moreover, she could not complete the work assigned to her because the relevant records were destroyed and she pointed out that the records were destroyed/weeded out against the rules, therefore, she required written instructions for finalizing the closing balance of SBCO Sanchay Post and reconcile it with 85-63 registers. The respondent No.4 became annoyed because he was the

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authority who had ordered to weed out of those documents as he was posted as SSPO, Kota at that point of time and thus he became annoyed with the applicant and he was the competent authority to transfer the applicant from Kota to Chittorgarh, therefore, the transfer order issued with malafide intention. In fact the applicant acted as whistle blower and, therefore, she has been transferred by way of punishment to Chittorgarh.

22. On the other hand the respondents denied the allegations. The Ld. Counsel for the respondents submitted that the records were destroyed as per rules under the order of the then Senior Supdt. Post Offices (Respondent No.4) on the recommendation of concerned officers. He also pointed out that there is no malice against the applicant. He also referred to applications submitted by the applicant with regard to the weeding out certain documents and records but from the perusal of those applications it cannot be said that she has leveled any allegation against the respondent No.4, therefore, there is no question of any malice against the applicant. In fact she was issued a notice on 10.3.2014 (Ann.A/14) which she has not yet replied. He further submitted that the applicant cannot judge whether her transfer is in the interest of service or not. It is for the competent authority to decide where an employee is to be posted in the best interest of the organization. Transfer is an

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incidence of service. That the applicant has an all India transfer liability. That she has been posted to Chittorgarh even earlier. Shri N.L.Garg who was posted in her place has already joined at Kota, therefore, OA has no merit.

23. After hearing the rival submissions of the parties and after careful perusal of the documents and case laws referred by the learned counsel for parties I am of the opinion that the applicant has failed to make out any case for relief in the present OA. I inclined to agree with the arguments of the Ld. Counsel for the respondents that an employee cannot judge whether his/her transfer is in the interest of service or not. It is for the employer to judge the suitability of an employee for a particular post. The Hon'ble Supreme Court in the case of Punjab National Bank & others Vs. All India New Bank of India Employees Federation and others (1997) 10 SCC 627 has held in Para 15 that "*the management is in the best position to judge how to distribute its employees between the different branches*". Under the facts and circumstances of the present OA the ratio decided by the Hon'ble Supreme Court in this judgment is squarely applicable in the present OA. Similarly the Hon'ble Supreme Court in the case of State of M.P. & others Vs. S.S.Kourav & others (Supra) have held that "*The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working*

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of the administrative system by transferring the officers to proper place". Therefore, in view of the ratio decided by the Hon'ble Supreme Court in this judgment, the Tribunal cannot interfere in the transfer order issued by the respondents unless it is based on malafide or is against to the statutory rules. Therefore, the argument of the learned counsel for the applicant that the transfer order of the applicant is not in the interest of service cannot be accepted. Moreover, as stated by the Ld. Counsel for the respondents that the applicant has been posted at Kota more than 28 years during her service career and this fact has not been denied by the applicant.

24. With regard to the contention of the Ld. Counsel for the applicant that the transfer order of the applicant has been issued due to the malafide intention on the part of respondent No.4, the respondents have denied the allegation. I have carefully perused the letters written by the applicant dated 4.11.2013 (Ann.A/12) and letter dated 29.1.2014(Ann.A/13) regarding the weeding out of certain documents after obtaining of the orders of the then Senior Supdt. of Post offices and I am of the opinion that no allegation has been leveled against the respondent No.4 in these two letters. In fact in the letter dated 4.11.2013 the Accounts Officer I.C.O.(SB) has been informed that the then Branch Incharge weeded out the records after obtaining

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the approval of the SSPO thus, there is no allegation against the then Senior Supdt. Of Post Offices, Kota(respondent No.4 in the present OA) that the records were weeded out at his instance against the rules thus there appears to be no reason for the respondent No.4 to be annoyed with the applicant on the basis of this letter.

25. I have carefully perused the case law referred to by the learned counsel for the applicant.

(i) The ratio decided by the Hon'ble High Court, Calcutta in the case of Biplab Das Vs. The Chairman, Bangiya Gramin Vikash Bank and others (Supra) as referred to by the learned counsel for the applicant is not applicable in the present OA. In the case before Hon'ble High Court the petitioner had filed an appeal against the transfer order which was not considered by the Bank but in the present case the applicant has not filed any appeal nor any representation before the respondents, therefore, the ratio decided in this judgment would not be applicable in the present OA.

(ii) In the case of N.S.Bhullar and another Vs. Punjab State Electricity Board and others(Supra) the transfer of the petitioner was cancelled by the Hon'ble Punjab and Haryana High Court on the ground that the transfer of the petitioner was not made in a routine manner but for collateral purpose and by way of punishment. But in

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the present case the transfer of the applicant has been made in the interest of service. The transfer of the applicant has not been made for any collateral purpose and by way of punishment, therefore, the ratio decided by the Hon'ble Punjab and Haryana High Court in this judgment will not be applicable under the facts and circumstances of the present OA.

(iii) In the case of Dinesh Chandra Sharma Vs. Union of India and others(supra), the Hon'ble Allahabad High Court has cancelled the transfer order of the petitioner on the ground that he was not transferred in the normal course in the interest of service but for some extraneous considerations. However, in the present case the applicant has been transferred in the interest of service and there is no extraneous consideration, therefore, the ratio decided by the Hon'ble Allahabad High Court will not be applicable under the facts and circumstances of the present OA.

(iv) In the case of Shyam Singh Vs. State of Himachal Pradesh and others (Supra) the Hon'ble Himachal Pradesh High Court has quashed and set aside the transfer order of the petitioner because no reason was mentioned by the respondents necessitating the transfer of the petitioner before permitting him to complete the normal tenure of 3 years at G.P.S.Bajhoa.

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However, in the present OA the applicant has been transferred in the interest of service and this has been mentioned in the transfer order of the applicant. Therefore, the ratio decided by the Hon'ble Himachal Pradesh High Court would not be applicable under the facts circumstances of the present OA.

(v) In the case of Tripta Malhotra Vs. State of Punjab and others (supra) the transfer orders of the petitioner were quashed on the ground that it is essential that orders once passed are allowed to stand and remain in force for a considerable long period. However, in the present case the applicant had been posted at Kota since November, 2011 and she was transferred vide order dated 14.3.2014(Ann.A/1) i.e. after a lapse of more than 2 years. The applicant has been transferred in the interest of service. The Hon'ble Supreme Court in the case of Union of India and others Vs. S.L.Abbas reported in 1993(2) SLR 585 has held that guidelines issued by the Government in regard to transfer of employees does not confer upon the Government employee a legally enforceable right. The Court cannot interfere in the order of transfer unless the same is vitiated by mala fide or is made in violation of any statutory provisions. In Para 7 & 8 of the said

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judgment, the Hon'ble Supreme Court has held, the operative portion of which reads as under:-

"7. Who should be transferred where, is a matter for 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....."

8.The Administrative Tribunal is not an Appellate Authority sitting in judgment over the orders of transfer. It cannot substitute its own judgment for that of the authority competent to transfer....."

Therefore, in view of the ratio decided by the Hon'ble Supreme Court, the ratio decided by the Hon'ble Punjab and Haryana High Court in the case of Tripta Malhotra is not applicable in the present OA.

26. The Hon'ble Supreme Court in the case of State of U.P. Vs. Gobardhan Lal in Para 7 and 8 [2005-SCC(L & S)-55] has held that:-

"7. It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving

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or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

In the present case the applicant has failed to prove malafide beyond reasonable doubt nor the allegation of malafide is based on the concrete material against the respondent No.4. Merely on the basis of surmises or conjectures, malafide cannot be proved.

27. Moreover, the Hon'ble Supreme Court in the case of Rajendra Singh and Others Vs. State of Uttar Pradesh and Others reported in (2010) 1 SCC (L&S) 503: (2009) 15 SCC 178, in Para 8 has held that a Government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the

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other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific direction to the contrary. No Government can function if the Government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires.

28. The Ld. Counsel for the applicant also argued that the transfer order of the applicant has been issued by way of punishment. From the perusal of records it cannot be said that the transfer order of the applicant is in the nature of punishment. The applicant's seniority and pay has not been reduced. The transfer is incident in service. Shri L.N.Garg has already joined in place of the applicant at Kota.

29. On the basis of above discussion I do not find any ground to interfere in the transfer order dated 14.3.2014 (Ann.A/1) and the relieving order dated 14.3.2014 (Ann.A/2). Consequently, the OA being devoid of merits is dismissed with no order as to costs.

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(ANIL KUMAR)
ADMINISTRATIVE MEMBER