

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 17.11.2014

OA No. 291/00441/2014 with MA No. 291/00348/2014

Mr. Anupam Agarwal, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondents.

Heard learned counsel for the parties.

Order is reserved.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

21/11/14
Orders
Postponed
today in the
open court
by the
aforesaid
Bench

21/11/14,
C.O.

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/00441/2014
With
MISC. APPLICATION NO. 291/00348/2014

ORDER RESERVED ON: 17.11.2014

DATE OF ORDER: 21. 11. 2014

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Mahendra Kumar Sharma S/o late Shri Ramswaroop Sharma, aged about 52 years, R/o Plot No. 30, P&T Colony, Shanti Nagar, Old Hatwara Road, Jaipur-6, presently posted as HSA (HSG-1) Jaipur RMS/1.

...Applicant

Mr. Anupam Agarwal, counsel for applicant.

VERSUS

1. Union of India through the Secretary to the Government, Ministry of Communication & IT, Department of Posts, Dak Bhawan, New Delhi - 110001.
2. The Chief Post Master General, Rajasthan Circle, Jaipur-302007.
3. The Senior Superintendent, Railway Mail Service, JP Division, Jaipur-6.

...Respondents

Mr. Mukesh Agarwal, counsel for respondents.

ORDER

The applicant has filed the present Original Application being aggrieved by his transfer order dated 10.06.2014 (Annexure A/1) vide which he has been transferred from HAS (HSG-1) Jaipur RMA/1 to HAS (HSG-1) Kota Jn. RMS Set/2.

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2. The brief facts of the case, as stated by the applicant, are that the applicant was initially appointed in 1982 as Sorting Assistant. He was promoted on ad hoc basis as HSG-I followed by regularization as such by order dated 17.05.2013 (Annexure A/2).

3. The applicant while working because of his personal reasons went on leave w.e.f. 09.06.2014 to 12.06.2014. The same was duly sanctioned. While he was on leave, the respondents without there being any administrative exigency transferred the applicant by order dated 10.06.2014 (Annexure A/1) from Jaipur to Kota.

4. The applicant's younger son is a student of Engineering at Arya College of Engineering, Kukas. The applicant has an old mother. There is no else in the family except the applicant to look-after her. The applicant himself is a patient of hypertension and high blood pressure. Therefore, transfer to a far of place at Kota would cause personal difficulties to him.

5. The applicant is an office bearer of the National Union of R.M.S. & M.M.S. Employees Group 'C' Rajasthan Circle, Jaipur. He had been elected as Divisional President of the Union during elections in 2013-14. As per Constitution of the Union, the tenure of the office bearers is two years. As per Indian Trade Union Act, 1926, the office bearer of the union cannot

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be transferred as it affects its activities. However, the respondents without considering this aspect of the matter had transferred the applicant.

6. The sanctioned cadre of the post of HAS (HSG-I) in the circle is 09. In the JP Division, the sanctioned cadre is 07. Out of it 05 posts are in Jaipur itself while 02 posts are at Kota. In the entire circle there is only 06 HAS (HSG-I). Out of them, 05 were working at Jaipur and all other posts are lying vacant since long. In the Division, the two posts of Kota are lying vacant for long. So far as the post of HSA (HSG-I) Kota RMS Set/2 is concerned, the last person posted there had retired on 31.10.2010. Yet the respondents without consideration of this aspect of the matter transferred him.

7. Prior to the present transfer, applicant was transferred only on 07.02.2014. Thus, he had completed less than 6 months on that post. But the respondents in gross violation of the transfer policy and the tenure prescribed therein without recording any reason have transferred the applicant.

8. The applicant submitted a representation dated 06.07.2014 to the respondents against his transfer order but the respondents have not communicated any decision taken by them on his representation. Therefore, he submitted that the transfer order dated 10.06.2014 (Annexure A/1) being against

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the legal provisions as well as the transfer policy of the department be quashed and set aside.

9. On the other hand, the respondents have filed their written reply. In the reply, the respondents have stated that the applicant was promoted in HSG-I cadre on ad hoc basis vide respondent No. 2 Memo No. Staff/10-58/02/RMS dated 11.03.2008 w.e.f. 20.03.2008 in the pay scale of Rs. 6500-200-10500 and posted as Head Sorting Assistant, HSG-I Jaipur RMS/1 JP Division. On being regularly promoted in HSG-I (NB) w.e.f. 19.05.2013, he was posted as HSA SPC Jaipur RMS/2, Jaipur from HSA Jaipur RMS/1 vide order dated 16.05.2013 which was conveyed to him vide letter dated 17.05.2013 (Annexure A/2).

10. The applicant was transferred from HSA SPC Jaipur RMS/2 to HSA Jaipur RMS/1 vide respondent no. 2 Memo No. Staff/10-58/RMS/2013 dated 07.02.2014 (Annexure A/3) in the interest of services.

11. Now the applicant has been transferred from HSA (HSG-I) Jaipur RMS/1 to HSA (HSG-I) Kota JN. RMS Set/2 in the interest of services vide respondent no. 2 Memo No. Staff/10-58/RMS/2013 dated 10.06.2014 and order conveyed by respondent no. 3 Memo No. B1/HSG I (NB) / 09-12 dated 10.06.2014 (Annex. A/1) wherein it is mentioned that the

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official is deemed to have been relieved and directed to join the new assignment on expiry of his leave.

12. The respondents have also given the details of the postings of the applicant since 1982 till date in para 9 of their written reply. The respondents in their written reply have stated that the applicant has always been posted at Jaipur since 10.01.1982 on different posts. Thus, the applicant has been posted at Jaipur for 32 years. Further, the applicant is working in HSG-I cadre w.e.f. 20.03.2008 at Jaipur station, hence, no question of completion of tenure arises. The applicant has been transferred in the interest of service and his official status has not been adversely affected either by way of seniority or pay.

13. As per Rule 37 of P&T Manual Vol. IV, all the officials of the department are liable to be transferred to any part of India. The respondents have also submitted that since the applicant has been working in Jaipur City for more than 30 years, therefore, there is no question of violation of the transfer policy guidelines dated 31.01.2014 (Annexure A/6) where the station tenure of 04 years has been provided.

14. The respondents have relied on the judgment of the Hon'ble Supreme Court in the case of Mrs. Shilpi Bose vs. State of Bihar 1995 (71) F.L.R. 1011, wherein it has been held

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that a Govt. servant holding 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 other. Even if transfer order is passed in violation of executive instruction or orders, the Courts ordinarily should not interfere with the order instead the affected party should approach the higher authorities in the department. The respondents have further relied on the judgment of the Hon'ble Supreme Court in the case of Union of India vs. Janardan Debanath, 2004 (4) SCC 245 wherein it has been held that no Govt. servant has any legal right to be posted for ever at one particular place, and such transfer order shall not be interfered with unless the power of transfer has been exercised mala fide or statutory rules have been violated.

15. The respondents in their written reply have also relied on the judgment of the Hon'ble Supreme Court in the case of State of U.P. & Others vs. Gobardhan Lal, 2005 SCC (L&S) 55, para 7 of the said judgment has been quoted, which reads as -

"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 terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, 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

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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 or denying the competent authority to transfer a particular officer/servant to any place in public interest 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."

16. The respondents have also stated that on receipt of a complaint of Sexual Harassment at work place against the applicant by a woman employee, a preliminary enquiry in the matter was conducted by the respondent no. 3 and on receipt of the preliminary enquiry report and recommendation of the respondent no. 3, the competent authority i.e. the Chief Postmaster General, Rajasthan Circle, Jaipur decided to transfer the applicant from present place of posting to Kota. The competent authority has forwarded the complaint to Sexual Harassment Committee to enquire into the matter on 12.06.2014.

17. In the written reply, the respondents have also stated that the contention of the applicant that he is working with the entire satisfaction of the respondents is not correct. Earlier, the applicant was punished with the penalty of Censor and subsequently he was awarded a penalty of withholding of one

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increment for six months without cumulative effect and recovery of Rs. 200/- from his next month's pay. Thus, it cannot be said that the record of the applicant has been clean throughout his service career. The respondents have no malice against the applicant.

18. With regard to contention of the applicant that the applicant being the President of the National Union cannot be transferred, the respondents have stated in their reply that the concession of immunity from transfer is applicable to the office bearers during the year of their election. The applicant was elected in 2013-14 and, therefore, he can be transferred. He cannot claim any immunity from transfer. Two posts of HSG-I cadre are lying vacant at Kota, therefore, the applicant has been transferred in the interest of service. His so called representation dated 06.07.2014 against the transfer order is addressed to the same authority who transferred him. Such a representation / appeal should have been preferred to the next higher authority. Hence, no action is required to be taken on the representation of the applicant dated 06.07.2014.

19. The respondents have stated that the impugned order of transfer dated 10.06.2014 (Annexure A/1) is just and proper and as per law on the subject and, therefore, the Original Application has no merit and it should be dismissed with costs.

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20. The applicant has also filed a rejoinder.

21. Heard the learned counsel for the parties, perused the documents available on record and the case law as referred to by the learned counsel for the respondents.

22. Learned counsel for the applicant reiterated the facts as mentioned in the O.A. He also drew my attention to the provisions of Para 60 of the Postal Manual Volume-IV which deals with Rotation of Charges. He argued that according to this provision, the tenure of the post, which the applicant is occupying is 04 years and the applicant has not completed even one year on the present post. This provision is for a particular post and not for a particular station. Therefore, the transfer of the applicant is in violation of the provisions of the said Postal Manual.

23. On the other hand, learned counsel for the respondents submitted that the applicant was promoted on ad hoc basis w.e.f. 20.03.2008 in HSG-I grade and was posted as Head Sorting Assistant, HSG-I Jaipur RMS/1 JP Division. Therefore, he has completed six years in HSG-I grade and, thus, there is no violation even of tenure period as provided in the Postal Manual. Moreover, the applicant has been posted at Jaipur station since 1982 i.e. for 32 long years.

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24. Having considered the submissions made on behalf of the respective parties, it is clear that the applicant has been posted at Jaipur since 1982 and this fact has not been denied by the applicant. During these 32 years, the applicant was posted at Jaipur on different posts even on the post of HSG-I cadre. The applicant was promoted on ad hoc basis in March, 2008; though he was regularized on the same HSG-I grade w.e.f. 19.05.2013. Therefore, I am of the opinion that the applicant has completed his tenure of four years as provided in Para 60 of the Postal Manual Volume-IV. Moreover, he has been working at Jaipur for last 32 years. Any employee cannot claim to be posted at a particular place or at a particular post as long as he wishes.

25. In the present Original Application, the respondents have stated that there was a complaint by a lady employee regarding Sexual Harassment at work place against the applicant and an enquiry under the relevant Act has been ordered to be conducted. Learned counsel for the applicant submitted that he has not been supplied with a copy of the complaint. The complainant is working more than one Kilometre away in another office; therefore, the complaint is false. However, I am of the opinion that the administrative reason given by the respondents in their reply is enough to transfer the applicant from Jaipur to Kota. Moreover, the respondents have stated that the official status of the

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applicant so far it relates to his seniority or pay scale etc. is concerned will not be adversely affected.

26. With regard to the contention of the learned counsel for the applicant that the applicant being the President of the National Union has immunity from transfer, the respondents have stated that the applicant who is President of the National Union can be transferred because he was elected as the President in the year 2013-14. The concession of the immunity from transfer from Headquarters of the recognized service association is applicable to their office bearers during the year of the election. Since it is admitted that the election was conducted during 2013-14, therefore, this immunity is not available now to the applicant. I am of the opinion that even if there is any immunity from transfer for the first year of his election as President, the applicant's transfer in the present case cannot be interfered with because there is a complaint of sexual harassment of a woman employee at the work place.

27. Learned counsel for the applicant also argued that the applicant has some family problems; therefore, he is not in a position to move out from Jaipur. I am of the opinion that on the ground of personal inconvenience as stated by the applicant in the Original Application, the respondents cannot be directed to cancel the transfer order of the applicant. An employee can be transferred by the employer in the interest of



service or for administrative exigency. There are two sanctioned posts of HSA (HSG-I) grade at Kota and both the posts are lying vacant for long. Therefore, if the respondents have posted the applicant at Kota where the posts are lying vacant since long, it cannot be said that there was no administrative exigency to transfer the applicant. Thus, even on this ground, the applicant has not been able to make out any case for interference by this Tribunal.

28. I have carefully perused the case law referred to by the learned counsel for the respondents in their written reply and I am of the view that under the facts and circumstances of the present case, the ratio decided by the Hon'ble Supreme Court in the case of **Shilpi Bose (Mrs.) and Others vs. State of Bihar and Others**, 1995 (71) F.L.R. 1011 : 1992 SCC (L&S) 127, **Union of India & Others vs. Janardhan Debanath and another**, 2004 (4) SCC 245 : AIR 2004 SC 1632, **Union of India and others vs. S.L. Abbas**, AIR 1993 SC 2444, **State of U.P. and Others vs. Gobardhan Lal**, 2005 SCC (L&S) 55, and **Rajendra Singh and others vs. State of Uttar Pradesh and others**, (2009) 15 SCC 178, are squarely applicable in the present case.

29. The transfer of an employee is not only an incident inherent in terms of appointment but also implicit as an essential condition of service. It is for the employer to post an

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employee to a particular station or to a particular post. In the instant case, the respondents have no malice against the applicant. The transfer order has not been issued in violation of any statutory Rules/Act. The transfer order has been issued by the competent authority. Therefore, in the present Original Application, the applicant is not entitled for any relief from this Tribunal.

30. Consequently, the Original Application being devoid of merit is dismissed with no order as to costs.

31. In view of the order passed in the Original Application, no further order is required to be passed in the Misc. Application No. 291/00348/2014 filed on behalf of the applicant praying for interim relief / early hearing and, accordingly, the same is disposed of.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

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