

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No.567/2005 with MA No.433/2005.

Jaipur, this the 20th day of January, 2006.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.

Murari Lal sharma
S/o Shri Suraj Mal Sharma
Aged about 55 years,
R/o Ward No.19, behind AXM School,
Bandikui.

... Applicant.

By Advocate : Shri P. N. Jatti.

Vs.

1. Union of India
Through Secretary to the Government of India,
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi 110 001.
2. Principal Chief Post Master General,
Rajasthan Circle,
Jaipur -7.
3. Sh. B. L. Bhati,
Superintendent, Post Offices,
Jaipur (MFL) Dn. Sastri Nagar,
Jaipur-16.
4. J. P. Sharma,
Sub Post Master,
Bandikui Mandi,
Bandikui.

... Respondents.

By Advocate : Shri V. S. Gurjar.

: O R D E R (ORAL) :

The applicant has challenged the transfer order dated 1.12.2005 whereby he was transferred from the post of Sub Post Master, Bandikui Mandi Post Office to P.A. Shahpura HO. It is averred that the transfer has been

made by the Superintendent of Post Offices, MFL Division, Jaipur, with malafide intention to adjust his own man Shri J. P. sharma, who has been impleaded as Respondent No.4 in this OA, and the charge of the applicant was taken immediately and the same was given to Shri J. P. Sharma, though the post of Bandikui Railway Station is falling vacant. The applicant has further pleaded that his transfer has been effected in violation of condition of transfer as laid down under Article 36, 37 & 38, as the same has been made in the middle of session and will affect the study of his daughter. Learned Counsel for the applicant has further stated that the applicant was posted on transfer at SPM Bandikui Mandi vide order dated 19.04.2005 (Annexure A/2) and he has also not completed his tenure. As such, the transfer has not been made in public interest but in order to adjust Respondent No.4 who has almost completed a tenure of about 4 years (as Respondent No.4 has been working in Bandikui Railway Station from the last 3 years and 6 months), thereby displacing the applicant.

2. When the matter was listed on 6.12.2005 this Tribunal issued the notices to the respondents and also stay the operation of the impugned order Annexure A/1. It will be useful to quote the relevant portion of the order which shows the reasons prevailed with this Tribunal to grant ex party stay order, which is as under :-

" The grievance of the applicant is that vide impugned order dated 1.12.2005 (Annexure A/1), the applicant has been transferred from Bandikui to Shahpura whereas Shri J.P. Sharma who was already working in Bandikui Railway Station Post Office has been accommodated in SPM, Bandikui Mandi in place of the applicant. Learned Counsel for the applicant while drawing my attention to the impugned order Annexure A/1 has argued that the said order has been passed by Respondent No.3 in most arbitrary manner inasmuch as the applicant has not even completed his tenure posting at Bandikui and has been shifted from Bandikui to Shahpura in the middle of academic session. The applicant has also leveled allegation of mala fide against Respondent No.3 inasmuch as that the order of transfer has not been passed in public interest but it has been passed by the Respondent No.3 just to accommodate Shri J. P. Sharma.

I have considered the submissions made by the Learned Counsel for the applicant. From the material placed on record, it is evident that the applicant was transferred to Bandikui where he joined on 19.4.2005 and he has been again transferred from that place to Shahpura within a period of about 8 months, that too in the middle of session and without completing the tenure. No doubt, it is true that mere departure from the transfer policy/guideline may not be a sufficient ground for interfere in transfer matter unless something more is demonstrated and in that eventuality, certainly the Court has power to intervene in the matter. From the facts, as stated above, it is clear that the applicant has been transferred within a period of 8 months. Not only that, if the reference is made to the impugned order, Respondent No.3 has specifically ordered that Shri J. P. Sharma will be relieved on the office arrangement with immediate effect. This fact coupled with the fact that the transfer order has been passed qua the applicant only and that too in the middle of session and without completion of tenure and also that the allegation of mala fide has been leveled against Respondent No.3, I am of the view that the applicant has made out a case for the grant of ex-parte stay. Accordingly, the operation of the impugned order Annexure A/1 is stayed till the next date of hearing. Respondents are also directed to keep the relevant record ready for the perusal of this Tribunal."

[Signature]

3. Two sets of reply have been filed by the respondents. One on behalf of Respondent No.1&2 and one on behalf of Respondent No.3 against whom the allegation of malafide has been leveled. The Official respondents have justified their action. Respondent No.3 has categorically denied the allegation of malafide and stated in the reply affidavit that he is fully responsible for general administration and smooth functioning of the subordinate staff in order to provide best possible service to the public at large and achieve the targets, in the interest of the establishment and the action taken by him in that capacity was strictly in his official capacity without any ill-will towards the applicant or any body else. It is further stated that the transfer of the applicant was effected on the basis of complaint and is holding a transferable post and is liable to be transferred from one place to another and has no legal right to insist for his posting at Dausa or at any other place of his choice. It is further pleaded that having regard to the conduct of the applicant and the complaint in response to his gender behaviour as well as the communication made by the District Collector, Dausa, he was prima facie satisfied on the contemporary reports about the manner of discharge of duties by the applicant and it was on these counts, the applicant was transferred.



4. The applicant has filed rejoinder thereby reiterating the submissions made in the OA.

5. I have heard the Learned counsel for the parties and gone through the material placed on record.

6. The main contention put forth by the Learned Counsel for the applicant is that the applicant has been transferred in order to accommodate Shri J. P. Sharma, Respondent No.4, who was working in Bandikui Railway Post Office and has also completed his 3 years tenure in the month of June 2005. As Shri Sharma has completed his tenure in Bandkui Railway Station Post Office and in order to adjust him in Bandikui the applicant has been transferred within the short span. On the contrary, stand taken by the respondents is that the applicant was transferred on account of complaint which was got investigated and having prima facie been satisfied with contemporary reports about the manner of discharge of duties, the applicant was transferred.

7. In order to satisfy about the nature of complaint and in order to see whether the applicant was transferred on the basis of the complaint, the record of the case was summoned. Learned Counsel for the respondents has produced the record whereby the inquiry was held pursuant to the complaint made by Smt. Sharda Gupta, Mahila Pradhan. The complainant was examined on 18.10.2005.

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She has reiterated the allegation regarding mis behaviour of the applicant in her statement during the course of preliminary inquiry. Other witnesses were also examined who have supported the version of the complainant. From the statement made available to this Tribunal including the statement of the complainant, the competent authority on being *prima facie* satisfied that contemporary reports about the occurrence of complaint has taken place, the applicant was immediately transferred vide impugned order. Thus, the action of the respondents cannot be faulted with on this count. Further the Apex Court in the case of Union of India and others vs. Janardhan Debanath and another, 2004 SCC (L&S) 631, has categorically held that for the purpose of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the *prima facie* satisfaction of the authority concerned on the contemporary records about the occurrence complained of and if the requirement of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. Thus, the present case is squarely covered by the law laid down by the Apex Court in the case of Janardhan Debanath and another (supra).

8. The contention raised by the Learned Counsel for the applicant that the complaint which has been formed basis for the transfer of the applicant as submitted by Smt. Sharda Gupta, Mahila Pradhan, is without any basis as according to rule Smt. Sharda Gupta, who was an Agent, was required to personally present herself while depositing the amount. As such, it was under these circumstances that she was asked to attend the post office as and when required and not to send her husband was within the ambit of procedure and rules. As such, the complaint made by Smt. Sharda Gupta is without any basis and could not form basis for transferring the applicant.

9. Be that as it may, since the applicant has not pleaded the case as argued now, no finding is required on this point. The main foundation as laid down by the applicant in this OA is that he has been transferred in order to adjust Shri J. P. Sharma who has completed his tenure, as such, the aforesaid contention of Learned Counsel for the applicant cannot be accepted. Lastly, Learned Counsel for the applicant submits that keeping in view the facts and circumstances of the case and hardship which the applicant is going to suffer on account of his transfer and also that he has not completed his tenure at Bandikui, direction be given to the respondents to adjust the applicant at a nearby place to Bandikui.

10. I have given due consideration to the submission made by the Learned counsel for the applicant. I am of the view that in case the authority consider it appropriate to adjust the applicant at some nearby place, the rejection of this OA will not come in the way of the respondents to pass appropriate order and to adjust the applicant at some nearby place and for that purpose it will be open for the applicant to make proper representation to the authorities.

11. With these observations, the OA is dismissed.

12. MA No.433/2005 has been filed by the respondents for vacation of interim stay. In view of the order passed in OA, no order is required to pass in MA and the same shall stands dismissed.


(M. L. CHAUHAN)

JUDICIAL MEMBER

P.C./