

16-1-2009

Mr. C.B. Sharma, Counsel for applicant
Mr. B.N. Sandu, Counsel for respondents

Heard learned Counsel for the parties.

CENTRAL ADMINISTRATIVE TRIBUNAL

ORDER Reserved.

ORDER SHEET

ORDER OF THE TRIBUNAL

(B.L. Khatri)

M(A)

21/1/09.

order pronounced today

in the open court by

the above said Bench

21/1/09.

C-D.

MEMBER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 21st day of January, 2009

ORIGINAL APPLICATION NO.394/2008

CORAM :

HON'BLE MR.B.L.KHATRI, ADMINISITRATIVE MEMBER

Harish Kumar Sharma,
Accountant,
Chirawa Head Post Office,
Jhunjhunu.

... Applicant

(By Advocate : Shri C.B. Sharma)

Versus

1. Union of India through
Secretary to the Govt.,
Department of Posts,
Ministry of Communication &
Information Technology,
Dak Bhawan, Sansad Marg,
New Delhi.
2. Principal Chief Post Master General,
Rajasthan Circle,
Jaipur.
3. Post Master General,
Rajasthan Western Region,
Jodhpur.
4. Sr.Suptd. of Post Offices,
Jhunjhunu Postal Division,
Jhunjhunu.

... Respondents

(By Advocate : Shri B.N.Sandu)

ORDER

PER HON'BLE MR.B.L.KHATRI

The applicant has filed this OA against rejection of his representation through order dated 8.9.2008 (Ann.A/1) and

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the order of transfer dated 2.6.2008 (Ann.A/2). Through this OA, the applicant has prayed for the following relief :

- "i) That entire record relating to the case may kindly be called for from the respondents and after perusing the same transfer order of the applicant from Chirawa Head Post Office to as Sub Post Master Tamkore be quashed and set aside by quashing letter dated 8.9.2008 (Ann.A/1) with the memo dated 2.6.2008 (Ann.A/2) qua applicant with all consequential benefits.
- ii) That the respondents may be further directed not to disturb the applicant from present place of posting i.e. Accountant Chirawa Head Post Office where applicant joined on 11.12.2006 by maintaining posting order issued vide Ann.A/3 with all consequential benefits."

2. Brief facts of the case are that vide order dated 2.6.2008 (Ann.A/2) the applicant while working as PA, Chirawa Head Post Office, was transferred as SPM, Tamkore. Representation of the applicant against the said transfer was rejected by the Chief Post Master General, Rajasthan, Jaipur, vide order dated 8.9.2008 (Ann.A/1), informing him that he had been posted at Chirawa Head Post Office since 27.6.2004 as Postal Assistant and later on he was assigned the work of Accountant in the officiating capacity but as he was not a qualified Accountant, he was not given full tenure of Accountant. He has already completed full tenure as Postal Assistant at Chirawa Head Post Office, hence his plea for transfer before completion of post tenure was not accepted.

3. Learned counsel for the applicant relied upon the pleadings made in the OA and, inter-alia, made the following submissions :

- i) That respondent No.3 without taking into consideration that applicant working as Accountant ordered for transfer from Chirawa Head Post Office to as Sub Post Master Tamkore vide memo dated 2.6.2008 to adjust certain officials at Chirawa. The applicant immediately represented before the respondent No.3 vide request dated 5.6.2008 (Ann.A/4) stating therein that he has not completed tenure as Accountant, so his transfer outside Chirawa is not at all justified. It is further submitted that respondent No.3 further issued memo

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dated 11.6.2008 (Ann.A/5) for the information that transfer orders issued vide memo dated 2.6.2008 are as per approval of Director Postal Services Rajasthan Western Region Jodhpur in spite of fact that respondent No.4 is competent for transfer being divisional head and higher authority without any base interfering in the transfer matters.

- ii) That at one stage Post Master Chirawa Head Post Office also made request to the respondent No.4 vide letter dated 12.6.2008 (Ann.A/6) stating therein that services of the applicant is necessary in the interest of department as well as in the interest of employees as Accountant in Chirawa Head Post Office, but respondents not considered the same in spite of the fact that respondent No.4 modified the transfer orders in respect of one Shri Umed Singh who earlier posted at Chirawa and modified for posting at Malsisar vide memo dated 31.7.2008 (Ann.A/7) and similarly transfer of Shri Vidyadhar Soda also modified to Mukandgarh and further transfer of one Shri Shish Ram Mehla also modified from Dunglod to Jhunjhunu and applicant not allowed to work at Jhunjhunu and also not called for any request.
- iii) That respondent No.3 taking into consideration of working at Chirawa Head Post Office since 27.6.2004 ordered for transfer and not taken into account that applicant working as Accountant from 11.12.2006 and his period of tenure should be counted from 11.12.2006 as tenure to the post of Postal Assistant as well as Accountant has been prescribed separately. Besides, respondent No.3 also not considered the request of the applicant and further modification made by respondent No.4 as per directions of respondent No.3 and rejected the request of the applicant vide letter dated 8.7.2008 (Ann.A/8).

[Signature]

- iv) That the applicant further represented before respondent No.2 vide request dated 6.8.2008 (Ann.A/9) stating therein facts and circumstances as regards to education of children, as no educational facilities are available at Tamkore and applicant got admitted his children at Surajgarh which is nearer to Chirawa and applicant also belongs to Surajgarh where post is lying vacant because vide memo dated 2.6.2008 (Ann.A/2) one Shri Vidyadhar Soda has been posted as Sub Post Master Surajgarh and his transfer order has been modified vide memo dated 31.7.2008 (Ann.A/7) and nobody has been posted as Sub Post Master Surajgarh.
- v) That request of the applicant also rejected vide letter dated 8.9.2008 (Ann.A/1) by respondent No.2 taking into consideration that applicant posted as Chirawa Head Post Office on 27.6.2004 without due consideration that applicant holding the post of Accountant since 11.12.2006 and entitled to hold the post atleast 4 years in absence of regular incumbent and when services of the applicant is necessary in the interest of department as recommended by the Post Master concerned. Besides, respondent No.2 also allowed modification of transfer orders of certain employees which is evident from Ann.A/7.
- vi) That Rule-60 of P&T Manual Vol.IV provides period beyond which no officials should be allowed to hold the post and in Account Branches 4 years period has been prescribed and when the applicant posted as Accountant by the competent authority in the interest of administration then he can not be shifted prior to the period of four years. Besides, the post at Surajgarh is lying vacant where the applicant can be allowed to hold the post of Sub Post Master and children of the applicant also studying there. In view of this position, transfer of the applicant is not at all justified and requires reconsideration.

4. Learned counsel for the applicant also contended that applicant's prayer for transfer to Jhunjhunu or Surajgarh may be considered having regard to the difficulties being faced by him, already mentioned in this order, as he was not able to give his willingness for change of station.

5. Learned counsel for the respondents relied upon the reply filed and, inter-alia, submitted as under :

i) That the applicant was transferred from Chirawa and posted as Sub Post Master Tamkore on completion of his full four years post tenure in the interest of service vide Supdt. Of Post Office Jhunjhunu Memo No.B-1/Tr/Ch.III dated 2.6.2008 and corrigendum dated 1.6.2008. Applicant was working as Postal Assistant at Chirawa HO w.e.f. 27.6.2004 who was completing his full four years post tenure by 30.9.2008 as per transfer policy. All the Postmasters/SPMs of Jhunjhunu Postal Division were also directed to get noted from all the concerned officials for sending their willingness/request for choice stations who are completing their four years post tenure by 30.9.2008 which is the last crucial date of the year in which tenure transfer is effected vide Supdt. Of Post Offices Jhunjhunu letter No.B-1.Tfr/08-09 dated 10/12.3.08 (Ann.R/1). But the applicant did not submit any application of his willingness of transfer at any place in the Jhunjhunu Division and the tenure transfer orders were issued in pursuance of Director Postal Service Office of the PMG Raj. (W) Region Jodhpur letter No.STA/WR/51-20/08 dated 29.5.08, vide Supdt. Of Post Office Jhunjhunu Memo No.B-1/Tfr/Ch.III/08 dated 2.6.08 and Corrigendum dated 11.6.08.

ii) The applicant made a representation dated 5.6.08 to the PMG Raj. (W) Region Jodhpur against the order dated 2.6.08 which has also been rejected by the PMG Raj. (W) Region Jodhpur vide letter No.STA/WR/51-20/07 dated 8.7.08. Thereafter, the applicant also made a representation directly to the Chief Postmaster General,

Raj.Circle, Jaipur, which also has been rejected vide their Memo No.Staff/9-9/3/KW dated 8.9.08. As stated above the applicant has been transferred upon completion of full four years as such his transfer is as per policy, guidelines, rules and regulations and therefore there is no substance in the OA and the same is liable to be dismissed.

6. Learned counsel for the respondents also invited attention of the Bench to para 4.1 of the reply, which reads as under :

"4.1 That version of the applicant of this para is not admitted and replied in terms of manner that the applicant had worked at Chirawa Head Post Office from 8.9.81 to 26.7.89, 5.9.89 to 1.1.94, 6.7.96 to 3.6.99 and 27.6.2004 to 20.6.2008 and at Surajgarh so from 4.6.99 to 26.6.2004, which is the native place of the applicant and at Sultana Sub Office from 2.2.94 to 5.7.94 hardly 5 months only. Thus, the applicant had mostly worked at Chirawa HO in his entire service except Surajgarh which is also the native place of the applicant."

7. Learned counsel for the respondents also relied upon para 4.2 and 4.3 of the reply, which also read as under :

"4.2 That the contents of this para are not admitted and replied in the terms of manner that the Postmaster Chirawa was directed to get noted from the applicant for manning the work of incharge of accounts branch temporarily due to non-availability of regular incumbent vide Supdt. Of Post Office letter No.B-96 dated 11.12.06 as the applicant had worked almost service in accounts branch at Chirawa HO and has the long experience of work of the accounts branch at Chirawa HO as mentioned details in foregoing para 4(1). It is also submitted that nowhere in the letter No.B-96 dated 11.12.06 it was mentioned that the applicant is hereby posted as Accountant at Chirawa HO and the applicant cannot be transferred till joining of regular incumbent or on completion of his full post tenure as Postal Assistant Chirawa HO. It is also submitted that the applicant was directed by the Postmaster Chirawa HO to work in officiating capacity as Incharge of accounts branch to man the work of accounts branch temporarily due to non-availability of regular incumbent. Thus, the charge of accountant Chirawa HO was not taken over by the applicant as stated in this para by the applicant.

4.3 That the contents of this para are not admitted and replied in the terms of manner that the transfer orders of the applicant was issued on completion of his four years post tenure at Chirawa HO as per rotational post tenure transfer policy/instructions issued time to time as the applicant was working as P.A. Chirawa HO since 27.6.04 continuously. The version of the applicant that respondent No.4 adjusted certain officials at Chirawa is not admitted and replied that transfer orders have been issued as per the existing rotational four year post tenure policy/instructions. The representation of the applicant have also been rejected by the concerned competent authorities on the grounds and facts that the applicant was not posted as accountant Chirawa HO. The


applicant was only assigned the work of incharge of accounts branch at Chirawa HO in officiating capacity as the applicant was not a qualified accountant and accordingly the posting of regular accountant at Chirawa HO was not given to the applicant. The applicant was holding the post of Postal Assistant since 27.6.04 at Chirawa HO and on completion of four years post tenure as Postal Assistant at Chirawa HO the applicant was transferred from Chirawa HO to Sub Postmaster Tamkore.

8. I have heard learned counsel for the parties and gone through the material available on record. In the reply the respondents have specifically submitted in para 4.4 that the applicant had not submitted his willingness/request for posting at Jhunjhunu or elsewhere on completion of his four years tenure posting. It was also submitted in para 4.6 of the reply that in his representation dated 6.8.2008 the applicant had not made any request for changing the posting order from Tamkore to Surajgarh but only made request for cancellation of his transfer order.

9. It was held in the case of **Abani Kanta Ray v. State of Orissa** [1995 (Supp.) 4 SCC 169], in para-10, that; "It is settled law that a transfer which is an incident of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer."

10. In the circumstances, it is considered necessary to direct the applicant to make a self contained/detailed representation to the respondent No.2 within a period of 15 days from the date of receipt of a copy of this order for seeking transfer to Surajgarh or Jhunjhunu and respondent No.2 is directed to consider and decide his representation within a period of two months from the date of receipt thereof subject to the terms and conditions of the transfer policy, if any, and also subject to the rules and regulations, if any, regarding rotational transfer or as per his own discretionary powers.

11. With these observations, the OA stands disposed of. No order as to costs.


(B.L. KHATRI)
MEMBER (A)

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