

(6)

13-12-12

O A NO. 705/2012

Mr. S. Shrivastava, Counsel for applicant.

Mr. Mukesh Agaswal, Counsel for respondents.

Heard.

O.A. is disposed of by a separate order on the separate-sheets for the reasons recorded therein.

Anil Kumar

[Anil Kumar]

Member(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

Jaipur, the 13th day of December, 2012

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

1. **ORIGINAL APPLICATION NO. 703/2012**

Surajmal Jat son of Shri Jodhraj, aged about 54 years, resident of Plot No. 17 A, Arya Nagar, Murllipura, Jaipur. Presently posted as Postman in Shastri Nagar, Head Post Office, Jaipur.

Applicant

(By Advocate : Mr. Shailendra Srivastava)

Versus

1. Union of India through Chief Postmaster General, Rajasthan Circle, Jaipur.
2. Senior Superintendent of Post Office of the Senior Superintendent of Post Offices, Jaipur City Division, Jaipur.
3. Postmaster, Shastri Nagar, Head Post Office, Jaipur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

2. **ORIGINAL APPLICATION NO. 705/2012**

Kamlesh Kumar Sharma son of Shri Sitaram Sharma aged about 52 years, resident of 105-B, Rana Pratap Nagar, Jhotwara, Jaipur. Presently posted as Postman in Shastri Nagar, Head Post Office, Jaipur.

Applicant

(By Advocate : Mr. Shailendra Srivastava)

Versus

1. Union of India through Chief Postmaster General, Rajasthan Circle, Jaipur.
2. Senior Superintendent of Post Office of the Senior Superintendent of Post Offices, Jaipur City Division, Jaipur.
3. Postmaster, Shastri Nagar, Head Post Office, Jaipur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER (ORAL)

The facts and circumstances and legal position of OA No. 703/2012 (Surajmal Jat vs. Union of India & Others) and OA No. 705/2012 (Kamlesh Kumar Sharma vs. Union of India & Others) are similar, therefore, they are being disposed of by a common order. The facts of OA No. 703/2012 (Surajmal Jat vs. Union of India & Others) is taken as a lead case. The applicant in this OA has filed this OA thereby praying for the following reliefs:-

- “(A) That this Hon’ble Tribunal may graciously be pleased to quash and set aside the impugned order dated 21.09.2012 (Annexure A/1) and the earlier order of transfer dated 29.08.2012 (Annexure A/2) by which petitioner has arbitrarily been transferred from Shastri Nagar, Head Post Office, Jaipur to Deeg Sub Division of Bharatpur Division.
- (B) Any other order, which this Hon’ble Tribunal may deem fit and proper as per the facts and circumstances of the case be passed in favour of the petitioner.”

2. The brief facts, as stated by the learned counsel for the applicant, are that the applicant was appointed as Postman under the respondents way back in the year 1982 and at present has been working as such in Head Post Office, Shastri Nagar, Jaipur since 1985.

3. In the past, applicant alongwith other counter parts had been discharging their function very smoothly but ever since joining of Mr. M.L. Nagar (respondent no. 3) as a Postmaster, Shaster Nagar, Jaipur, Postmen are facing great problems in

Anil Kumar

discharging their functions without any stress and whenever problems were addressed to Shri M.L.Nagar, then he used to put more pressure in return without considering the problems of the postmen in day to day working. Initially, applicant wrote a letter dated 09.02.2012 (Annexure A/3) in a capacity of office bearer of "Bhartiya Dak Karmchari Sangh" wherein he made a request to Postmaster, Shastri Nagar to have a discussion through Union of the issues of the staff problems like increase in indoor duty hours, shortage of Postman in the Post Office, payment of incentive on speed post, determination of beat afresh and so many other problems but the same was not entertained by the respondent no.3 on the ground that the said "Sangh" is not recognized under CCA (RSA) Rules, 1993. Subsequently, the matter was addressed to the Sr. Superintendent through the Divisional Secretary of the Union vide letter dated 25.06.2012 (Annexure A/4) by another Union, "Akhil Bhartiya Dak Karmchari Union" wherein request was made to resolve the issue related to the payment for speed post delivery and other issues as well.

4. Subsequently employees furnished a joint representation dated 08.08.2012 (Annexure A/5) and a copy of which was also served to respondent no. 3 in advance.

5. The aforesaid step of the staff approaching to the respondent no.1 to get their grievances redressed, made the respondent no.3 much annoyed against the whole staff or to say furious to the extent that on 16.08.2012 when staff members in the morning, reached to post office then respondent no. 3

Anil Kumar

misbehaved with the staff and to some of them had pushed out of the office and because of his ill attitude, staff member came out to agitate the issue of misbehaviour done against them by the respondent no. 3. The true copy of the News Item published in News Paper "Dainik Bhaskar" dated 17.08.2012 is filed and marked as Annexure A/7.

6. It has specifically been mentioned that at present applicant does not belongs to any Union and 14 Postmen out of 18 at present belong to "Akhil Bhartiya Dak Karmchari Union" who in majority had decided to make protest against the respondent no. 3 for his misbehaviour with the staff/Postmen. The applicant just had joined them in protest for a common cause but applicant is not the person who had provoked the others for making protest.

7. For amicable solution of the problem created by respondent no. 3 and to resolve the issues of duty hours, indoor and in filled clubbed with other issues, Sr. Superintendent of Post Offices, reached to the place where agitation was going on and after discussion with the office bearers of the National Union of Postal employees and Akhil Bhartiya Dak Karmchari Sangh, he assured that action against respondent no. 3 would be taken and on the basis of said assurance, staff came back to work then and there to restore the normalcy.

8. The grievance of the applicant is that instead of taking any action against the respondent no. 3, respondent no. 2 had passed the order dated 29.08.2012 as a repercussion by which

Anil Kumar

applicant has been transferred out of division from Shastri Nagar Head Post Office, Jaipur to Deeg Sub Division of Bharatpur Division under the garb of word and expression "Interest of Service" under Rule 37 of the P&T Manual, Vol. IV, with immediate effect. Not only that but have received the signature of the applicant on relieving slip by force before which is transcribed in English and it has been done before delivering the transfer order deliberately.

9. The learned counsel for the applicant argued that the transfer order of the applicant out of Jaipur Division is punitive in nature. The respondents have conducted the unilateral inquiry against them. They should have conducted a detailed inquiry. He further argued that all the 18 Postmen were involved in the walk out. The applicant has not provoked other postmen to walk out or to stage the Dharna. Only the applicant has been made escape goat as he is not the member of any Union. He argued that, therefore, the transfer order dated 29.08.2012 (Annexure A/2) issued by the respondent department should be quashed and set aside. He further submitted that even if the applicants are to be transferred then they should be transferred within the division and not outside the Jaipur Division.

10. On the contrary, learned counsel for the respondents argued that Shri Jagdish Prashad Sharma, Assistant Postmaster, Shastri Nagar Head Post Office in the morning of 16.08.2012 ordered to Postmen Staff for helping in sorting of mail and accordingly some Postmen started their duty as facing and

Anil Kumar

sorting of the mail but Shri Kamlesh Kumar Sharma and Suraj Mal Jat stated that Postmen staff will not sort out the ordinary mail and they refused to obey the orders of Assistant Postmaster (Mail) and they left the office shouting slogans, without giving prior notice. They took all the Postmen staff out of the office to stage Dharna before the office and hampered the work of delivery.

11. When the matter was noticed by Shri M.L. Nagar, Postmaster Shastri Nagar Head Post Office, he requested them to perform their duty and also requested them that if they have any problem, the matter may be discussed with the SSPOs Jaipur City Division (Respondent no. 2), thereafter Shri M.P. Meena, ASP (W), Sub Division Jaipur reached at Shastri Nagar Head Office. He also requested Postmen Staff/Union representatives to perform duty properly. But due to adamancy of applicant, other Postmen staff refused to do so and he was adamant that Shri M.L. Nagar, Postmaster Shastri Nagar Head Post Office should be transferred immediately. Thereafter SSPOs Jaipur City reached at Shastri Nagar H.O. and suggested Postmen Staff not to gather and to perform duty. He also assured them that all problems of the staff pending at Division level, if any, will be solved shortly but the applicant was adamant that till Shri M.L. Nagar, Postmaster, Shastri Nagar, Head Post office is not transferred they will not perform duty and threatened to go any extent.

Anil Kumar

12. After assurance given by the respondent no. 2 that the matter will be inquired and any lapses/negligence found on the part of Shri M.L. Nagar, Postmaster, Shastri Nagar, Head Post Office (respondent no. 3), the matter will be submitted to the CPMG for suitable action.

13. The matter was enquired by the Assistant Superintendent of Post Offices, East and West Sub Division, Jaipur. The SSPOs (respondent no. 2) submitted his report to the office of the Chief Post Master General, Rajasthan Circle, Jaipur in this regard. The competent authority after considering the inquiry report and other relevant record found that in the public interest to maintain discipline in the office/department, transfer of the applicant is necessary, therefore, the competent authority by exercising the power conferred under Rule 37 of the P&T Manual Volume IV vide letter dated 29.08.2012 transferred the applicant from Shastri Nagar HO, Jaipur City Dn. Jaipur to Bharatpur Division in the interest of service. It is pertinent to mention here that the applicant has been relieved on 29.08.2012 after noon from Shastri Nagar HO Jaipur in pursuance of order dated 29.08.2012.

14. Learned counsel for the respondents referred to Para No. 14 of the judgment of the Hon'ble Supreme Court in the case of **Union of India & Others vs. Janardhan Debanath & Another**, 2004 SCC (L&S) 631, which reads as under:-

"14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly

Anil Kumar

unbecoming. Whether there was any misbehaviour is a question which can be gone into in a departmental proceeding. 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 reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, 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. The question whether the respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs."

15. He further submitted that the applicant has been transferred in the interest of service to maintain decorum and discipline in the department and has been issued without any malafide. The transfer of the applicant issued under Rule 37 of the P&T Manual, Volume IV is justified and legal. He denied that the Postmaster ever harassed the staff. The allegations of the applicant regarding Shri M.L. Nagar are totally wrong and baseless.

16. He further argued that if the applicants had any problem, they could have represented through proper channel and the same does not provide any right to the applicant to create nuisance and hampered the work of the department, which creates lot of inconvenience to the public. The postmen staff absented themselves from duty from 09.00 AM to 02.00 PM and

Anil Kumar

resorted to unauthorized agitation before the office. They returned back in the office on 02.15 PM and as such, ultimately the public work suffered. The matter was got inquired by ASPOs and the statement of the applicant as well as other postmen staff were obtained. The inquiry report did not reveal that Shri M.L. Nagar, Postmaster, Shastri Nagar Head Office used unparliamentary language, filthy comments that resulted in nuisance. He further submitted that Shri M.L. Nagar has not been impleaded as a party by name in the OA, therefore, behind him the applicant has no right to make allegation against him.

17. It has come out in the inquiry report, which was conducted by ASPOs as well as in statements of Shri Kailashi Lal Meena and Shri Suresh Kumar Sharma that the applicant, Suraj Mal Jat and Kamlesh Kumar Sharma were leading the Postmen staff and played main role to take the staff out to stage Dharna without any genuine cause and created nuisance and hampered the delivery of mail and government work and the applicant diminished the image of the department in the eyes of the public.

18. The transfer order under Rule 37 of the P&T Manual Vol. IV was issued by respondent no. 2 in the interest of service. He also denied that the signature of the applicant was obtained by force. On the contrary, he submitted that the applicant have signed the order voluntarily after being delivered the said transfer order to them.

Anil Kumar

19. With regard to the statement of the learned counsel for the applicant that there were 18 postmen who staged walk out but action has been taken only against these two postmen, the learned counsel for the respondents submitted that suitable instructions have been issued to concerned disciplinary authority vide SSPOs letter No. SSP/Con/12-13 dated 12.09.2012 (Annexure R/4) to take disciplinary action under CCS (CCA) Rules against participating staff who resorted to unauthorized agitation. Since the applicant provoked the employees not to work and disobey the order of superiors, therefore, in administrative exigency to maintain discipline and smooth working, they have been transferred.

20. He further argued that the representation submitted by the applicant against the transfer order has been rejected by Chief Postmaster General by a reasoned and speaking order dated 21.09.2012 (Annexure A/1). Therefore, he argued that the OA has no merit and it should be dismissed with costs.

21. Heard the rival submissions of the parties, perused the documents on record and the case law referred to by the learned counsel for the respondents. It is not disputed that postmen staff of Shastri Nagar Head Post office, walked out of the office and staged dharna before the office which hampered the work of delivery. When SSPO, Jaipur City (respondent no. 2) reached at Shastri Nagar Head Office and suggested Postman staff not to gather and perform duty but the applicants were adamant that till Shri M.L. Nagar, Postmaster Shastri Nagar Head Post Office is

Anil Kumar

not transferred, they will not perform duty and threatened to go to any extent. It was only when an assurance was given by respondent no. 2 that the matter will be inquired and any lapse/negligence found on the part of Shri M.L. Nagar, Postmaster Shastri Nagar, Head Post Office (respondent no. 3), the matter would be submitted to the CPMG for suitable action, the agitating staff resumed work. The matter was inquired by the Assistant Superintendent of Post Offices and SSPO (respondent no. 2) submitted his report to the Postmaster General, Rajasthan Circle, Jaipur in this regard. The competent authority after considering the inquiry report and other relevant record found that in the public interest and to maintain discipline in the office, the transfer of the applicants is necessary. Therefore, the competent authority by exercising the power conferred under Rule 37 of the P&T Manual Vol. IV vide letter dated 29.08.2012 (Annexure A/2) transferred the applicant (Surajmal Jat) from Shastri Nagar HO, Jaipur City Division, Jaipur to Bharatpur Division in the interest of service. Similarly, Shri Kamlesh Kumar Sharma (applicant in GA No. 705/2012) was transferred from Shastri Nagar HO, Jaipur City Division, Jaipur to Dholpur Division Head Post Office in the interest of service.

22. I have carefully gone through the judgment of the Hon'ble Supreme Court in the case of **Union of India & Others vs. Janardhan Debanath & Another**, 2004 SCC (L&S) 631, and I am of the view that the ratio decided by the Hon'ble Supreme Court in this case is squarely applicable in the present case. With

Anil Kumar

regard to the averment of the learned counsel for the applicant that a detailed inquiry should have been conducted before transferring the applicants, the Hon'ble Supreme Court has held in Para No. 14 of the judgment as under:-

"14 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 reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, 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....."

Therefore, I hold that there was no necessity of holding a detailed inquiry before transferring the applicants in the interest of service.

23. With regard to the averment of the learned counsel for the applicant that even if they were to be transferred, they should have been transferred within the division and not outside the division, the Hon'ble Supreme Court in the said judgment in Para No. 14 has held as under:-

"14 The question whether the respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs."

Therefore, I hold that it is for the competent authority to decide the place of posting of an employee and this Tribunal

Anil Kumar

cannot issue any direction to the respondents to change the transfer order of the applicants.

24. With regard to the averments of the learned counsel for the applicant that only these persons namely S/Shri Surajmal Jat and Kamlesh Kumar Sharma have been made scape goat as they do not belong to any Union, the respondents have categorically stated that Vide order dated 12.09.2012 (Annexure R/6), orders have been issued to initiate disciplinary action against other employees. Therefore, it cannot be said that these two employees only have been made scape goat. This transfer order cannot be said as punitive in nature. It is not the case of the applicants that the transfer order has been issued by an incompetent authority or in violation of any rule or is issued with malafide intent on the part of the competent authority. Therefore, I find no reason to interfere in the transfer order dated 29.02.2012 (Annexure A/2).

25. Moreover, the Hon'ble Supreme Court in the case of **State of U.P. and others vs. Gobardhan Lal**, 2005 SCC (L&S) 55 has observed that transfer is prerogative of the authorities concerned and court should not normally interfere therewith, except when (i) transfer order shown to be vitiated by malafides, or (ii) in violation of any statutory provisions, or (iii) having been passed by an authority not competent to pass such an order.

26. I have also carefully gone through the letter dated 21.09.2012 (Annexure A/1) vide which the representation of the

Anil Kumar

applicant has been rejected by the competent authority, which is very detailed, speaking and reasoned order. All the aspect have been dealt with in this order. I do not find any infirmity/illegality/irregularity in this order.

27. Thus on the basis of the above discussion, I of the view that the applicant has failed to make out any case for interference by this Tribunal. Thus this OA has no merit.

28. Consequently, the OA being devoid of merit is dismissed with no order as to costs.

29. A copy of this order be placed in the file of OA No. 705/2012 (Kamlesh Kumar Sharma vs. Union of India & Others).

(Anil Kumar)
Member (A)

AHQ

copy given vide
No 1496 To 1499
17/12/12
Y