

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

06.09.2013

OA No. 572/2013

Mr. P.N. Jatti, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents.

Heard learned counsel for the parties.

The OA is disposed of by a separate order.

Anil Kumar
(Anil Kumar)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 572/2013

Jaipur, the 06th day of September, 2013

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Hari Singh Kekaria son of Shri K.R. Kejana aged about 51 years, resident of Village and Post Harsora, Tehsil Bandur, District Alwar. Presently under transfer from Behror Post Office to Kherli Post Office, Alwar.

... Applicant

(By Advocate: Mr. P.N. Jatti)

Versus

1. Union of India through the Secretary to the Government of India, Department of Post, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Shri Mistry, Senior Superintendent Post Offices, Alwar Division, Alwar.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER (ORAL)

The brief facts of the case are that the applicant was posted at Behror Post Office since 25.08.2010. The applicant was suspended vide order dated 21.02.2013. However, this order of suspension was quashed by this Tribunal vide its order dated 05.07.2013 passed in OA No. 420/2013 (Hari Singh Kekaria vs. Union of India & Others).

2. The respondents vide order dated 29.07.2013 (Annexure A/1) passed the order of revocation of suspension with immediate effect and on revocation; the applicant has been

Anil Kumar

posted as PA Kherli in the interest of service. The applicant being aggrieved by this order has filed the present OA.

3. The learned counsel for the applicant submitted that the applicant has been posted at Kherli Post Office by the Senior Superintendent of Post Office with a mala fide intention. The applicant was suspended from the Behror Post Office and, therefore, he should have been posted at Behror on the revocation of his suspension. That the applicant has not completed four years' tenure at Behror, therefore, there was no reason to transfer the applicant from Behror to Kherli. He further submitted that in case it was necessary to shift the applicant from Behror, many vacant posts are lying vacant in nearby Post Offices. Therefore, the respondent no.3 be directed to post the applicant to a nearby Post Office.

4. On the other hand, the learned counsel for the respondents submitted that ^a case came to light during the P&T Audit inspection of Behror H.O. carried out from 18.08.2010 to 07.09.2010 that one Shri Umesh Gupta had opened the PPF Accounts Nos. 220284 and 220285 at Behror H.O. on 03.05.1999 in the name of his minor son & minor daughter i.e. Shri Rachit Gupta (son- DOB 05.08.1992) and Kumari Somya Gupta (Daughter - DOB 01.07.1996) under his guardianship. Account No. 220284 was converted from minor to major on 03.11.2011 by said Shri H.S. Kekaria, when he was working as APM (SB) Behror H.O. But the minor Account of Kumari Somya

Anil Kumar

Gupta was converted by him into major account before the date of majority of Kumari Somya Gupta and that too without obtaining any application from the depositor by vanishing the records pertaining to these accounts. The duplicate Pass Book of both the accounts was issued on 19.03.2012.

5. Learned counsel for the respondents further submitted that during the preliminary inquiry it has also been observed that the original documents regarding opening of accounts (SB-3 Card and Ledger Card) of both these accounts were not found available on record in the office and appears to have been vanished intentionally to save him. The depositor deposited more subscription in a financial year than the prescribed maximum limit and Shri H.S. Kekaria failed to challenge this irregularity and total excess interest credited into these accounts upto 31.03.2013 is Rs.2,97,408/- and Rs.2,06,333/- respectively in both the accounts in respect of various financial years. The departmental investigations in the case are on the way and yet to be completed.

6. He also submitted that apart from above, one more case of obtaining scholarship of his son from Social Welfare Department by way of producing false income certificate had came into light and the facts in the matter have been established in the inquiry report which proves the doubtful integrity of the applicant.

Anil Kumar

7. Learned counsel for the respondents argued that in compliance of the order dated 24.05.2013 passed in OA No. 420/2013 of this Hon'ble Tribunal, the competent authority revoked the suspension of the applicant with immediate effect and posted him as PA, Kherli in the interest of service vide order dated 29.07.2013 (Annexure A/1).

8. He further submitted that the applicant has no legal right to get posting on revocation of his suspension/reinstatement at the same place on which he was posted prior to suspension. It is the administrative prerogative of the competent authority to post the applicant in the interest of service as per functional requirement of the Department. Therefore, the present OA has no merit and it should be dismissed with costs.

9. The applicant has also filed the rejoinder. In the rejoinder, the applicant has reiterated the facts, as mentioned in the OA.

10. Heard the learned counsel for the parties and perused the documents on record. The learned counsel for the applicant mainly laid emphasis on the fact that the applicant has been transferred due to mala fide intention of respondent no. 3 but he has not been able to support his claim with any facts. On the contrary, the learned counsel for the respondents have stated that during the P&T audit inspection, certain financial irregularities were noticed for which the applicant prima-facie

Anil Kumar

appears to be responsible. Moreover, original documents regarding opening of accounts (SB-3 Card and Ledger Card) are not traceable and it appears that they have been misplaced to the save the applicant. The Departmental investigation in these cases is still pending.

11. Moreover, the applicant had produced false Income Certificate to obtain scholarship for his son which proves doubtful integrity of the applicant. In view of these facts, the applicant on revocation of his suspension has been posted to Kherli. I am inclined to agree with the averments made by the learned counsel for the respondents that the applicant has been transferred from Behror to Kherli as per the administrative exigency of the Department.

12. It is settled law that Court/Tribunals should not interfere in the transfer order unless they are issued in violation of statutory rules or by the incompetent authority or are issued with mala fide intention. In the present OA, the applicant has failed to prove that respondent no. 3 has issued this transfer order with mala fide intention. It is not disputed that the transfer order has been issued by the competent authority and there is no violation of any statutory provision in issuing the order of transfer order dated 29.07.2013 (Annexure A/1).

13. The ratio decided by the Hon'ble Supreme Court in the cases of **Union of India vs. S.L. Abbas**, 1994 SCC (L&S) 230

Anil Kumar

and State of **U.P. vs. Goverdhan Lal**, 2004 (11) SCC 402 are squarely applicable under the facts & circumstances of the present OA. The Hon'ble Supreme Court in Para No. 7 & 8 of its judgment in the case of **Union of India vs. S.L. Abbas** (supra) has held that-

"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides 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....."

14. Hon'ble Supreme Court in Para Nos. 7 & 8 of its judgment in the case of **State of U.P. vs. Goverdhan Lal**, 2004 (11) SCC 402 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 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 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

Anil Kumar

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 the 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 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."

15. The 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. Who should be transferred where, is a matter for the appropriate authority to decide. The applicant cannot claim that once he is appointed or posted in a particular place or position, he could continue in such place or position, as long as he desires.

16. Considering the above facts and discussions, I am of the view that the applicant has failed to make out any case of interference by this Tribunal.

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

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Member (A)

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