

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

28.08.2013

OA No. 556/2013

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. 556/2013

Jaipur, the 28th day of August, 2013

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISITRATIVE MEMBER

Hari Singh Meena son of Gheesa Lal Meena, by caste Meena, aged about 52 years, resident of Village Padmada Kalan, Post Karnikot, Tehsil Mandawar, District Alwar. Presently working as P.A. Behror Post Office, Alwar Dn. Alwar.

... Applicant

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

Versus

1. Union of India 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. Superintendent Post Offices, Alwar Division, Alwar.
4. Superintendent Post Offices, Sawaimadhopur Division, Sawaimadhopur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER (ORAL)

The applicant has filed the present OA being aggrieved by the transfer order dated 22.07.2013 (Annexure A/1) vide which he has been transferred from PA Behror HO (Alwar Division) to PA Karauli MDG (Sawaimadhopur Division). This transfer order has been issued in the interest of service under Rule 37 of the Postal Manual Volume IV.

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant at present working at Behror with effect from 26.04.2013. Prior to his posting at Behror,

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he was working as SPM, Rampur. From Rampur, he was posted to Behror at his own cost & request vide order dated 26.04.2013 (Annexure A/6). The applicant submitted that after a period of two months, he was again transferred under Rule 37 of the P&T Manual Volume IV. Thus the action of the respondents is quite arbitrary as the applicant has not completed the tenure period which is four years in the case of the applicant.

3. The learned counsel for the applicant submitted that according to Rule 37 of the P&T Manual Volume IV, the matter will be dealt with as per FR 15 to FR 22. According to FR 15, a transfer can be effected on account of inefficiency or misbehaviour or on his written request (Annexure A/4). He further submitted that the conduct & behaviour of the applicant has always been upto the mark since 1980.

4. Therefore, the transfer order dated 22.07.2013 (Annexure A/1) is arbitrary, illegal and against the provisions of Rule 37 of the P&T Manual Volume IV read with Rule FR 15. Therefore, it should be quashed and set aside.

5. The learned counsel for the applicant further submitted that the allegation of payment of certain bills of MGNREGA without scrutinizing the genuineness of the wage list are not correct. The applicant followed the due procedure before making the payment and he did not violate any Rule. To support his averments, he drew my attention to point no. 14 of the Circle Level Inquiry

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Report of the Director Postal Services, Jaipur Region, Jaipur (Annexure R/1), which reads as follows:-

"14. Defect in rules:-

As per modus operandi adopted by the offenders, no defect/lacuna in rules was observed."

6. He further submitted that when it was brought to the notice of the applicant that some wrong payments have been made then he immediately contacted Mat Shri Rud Mal Meena, who supplied him the list and the entire amount of Rs.1,19,000/- was deposited on the same day i.e. on 16.03.2012. There is no financial loss caused to the Government. Thus the applicant is not guilty in this entire episode of wrong payments. Therefore, the transfer order dated 22.07.2013 (Annexure A/1) be quashed and set aside.

7. To support his averments, the learned counsel for the applicant referred to the following case laws:-

- (i) Mukut Saikia vs. Union of India & Others
2012 (1) CAT S.L.J. 398
- (ii) Biplab Das vs. the Chairman, Bangiya Gramin Vikas Bank others, 2011 (4) SCT Vol. 82 Page 783
- (iii) Somesh Tiwari vs. Union of India & Others
2009 (1) SCC (L&S) 411
- (iv) Mohinder Singh Gill & Another vs. the Chief Election Commissioner, New Delhi and others
AIR 1978 SC 851

8. On the other hand, the learned counsel for the respondents submitted that the applicant was working as SPM Rampur under Bahror HO in Alwar Division w.e.f. 07.08.2010 and during his incumbency as SPM Rampur, a fake MGNREGA wage list bearing

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number 284-301418 and having signature and rubber stamp of Block Officer Panchayat Samiti Bansur & Account Assistant amounting to Rs.1,19,000/- was presented by Shri Rud Mal Meena, MAT, MGNAREGA at Rampur S.O. on 07.02.2012. The applicant accepted the MGNAREGS wage list and account for amount of Rs.1,19,000/- in Govt. account and concerned PO records without scrutinizing genuineness of the wage list. He disbursed the payment of Rs.1,11,012/- out of Rs.1,19,000/- to MGNAREGA workers (actually to Shri Rud Mal Meena, MA) on various dates i.e. on dated 08.02.2012 Rs.29,912/-, 09.02.2012 Rs.38,550/-, 10.02.2012 Rs.34,650/- and on 11.02.2012 of Rs.7,900/- (during the period from 08.02.2012 to 11.02.2012).

9. That the programme Officer, Panchayat Samiti, Bansur addressed to SPM Rampur vide his letter No. 1609 dated 16.03.2012 and intimated that MG NAREGS list bearing no. 284-301418 was not issued by Panchayat Samiti Bansur. He also made request to deposit the said amount in rolling fund.

10. On receipt of the said letter, the applicant contacted with MAT Shri Rud Mal Meena and amount of Rs.1,19,000/- was deposited (instead of Rs.1,11,012/-) under Rampur UCR Receipt No. 2258/70 dated 16.03.2012 by Shri Rud Mal Meena voluntarily stating that the whole amount was got recovered by him from MGNAREGA on very day i.e. on 16.03.2012 which is quite ambiguous and inconsequential.

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11. That during the departmental investigations, it is apprehended that applicant did not compare the signature of Programme Officer, Panchayat Samiti Bansur and on compression of signature of MGNREGA workers, it is established that there are differences in signatures/thumb impressions of MGNREGA workers. The signatures are also available on SB-7 (withdrawal forms) of illiterate workers. The applicant is found responsible to hand over the said list to Shri Rud Mal Meena, an unauthorized person, for payment & making unauthorized/illegal correction in Letter No. 1609 dated 16.,03.2012 of Programme Officer, Panchayat Samiti Bansur to hide his mistake or without malafide intension. Thus, Shri Hari Singh Meena failed in performing his duty with devotion at Rampur & the act done by the applicant is misappropriation of money and also a criminal conspiracy.

12. That in this case, a Circle Level Inquiry (C.L.I.) was conducted by the Director Postal Services (HQ.) Rajasthan Circle, Jaipur on 11.05.2013 in which the applicant was found guilty for committing misappropriation of Government money (Annexure R/1).

13. Further on the basis of C.L.I., the competent authority i.e. Chief Postmaster General, Rajasthan Circle, Jaipur has directed to lodge FIR against the applicant, process his transfer under Rule 37 of the Postal Manual, Volume IV to Sawaimadhopur Division and to initiate disciplinary action against him (Annexure R/2).

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14. Hence as per the above directions of the competent authority, the applicant has been ordered to be transferred under Rule 37 of the Postal Manual Volume IV in public interest to Sawaimadhopur Division as PA Karauli vide C.O. Jaipur Memo No. Staff/9-22/7/2013 dated 18.07.2013 (Annexure R/3) and on receipt of posting orders of the applicant from SPOs Sawaimadhopur Memo No. B2/8/TRF/2012-13 dated 19.07.2013, covering orders in this regard were issued vide SSPOs Alwar Memo No. B2/5 dated 22.07.2013 (Annexure A/1) against which this OA has been filed by the applicant.

15. That the applicant was transferred from Rampur to Behror HO Vide Memo dated 26.04.2013 (Annexure A/6) at his cost and request before Circle level inquiry of the case. As such, nothing was wrong in his transfer from Rampur to Behror. In view of above mentioned facts, transfer of the applicant under Rule 37 of the P&T Manual Volume IV from Alwar Division to Sawaimadhopur Division been done by the competent authority in public interest.

16. The learned counsel for the respondents further submitted that law is well settled that transfer under Rule 37 of the P&T Manual Volume IV and FR 15 can be made by the competent authority. He further submitted that neither the applicant's basic pay would be affected nor his promotional avenues would be affected because of his transfer. To support his averments, he referred to the following case laws:-

- (i) Union of India vs. Janardhan Debanath
2004 SCC 245

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- (ii) Shyamsunder Patra & Others vs. Union of India & Ors.
OA No. 674, 672 & 673/1995 decided on 04.05.1998
CAT, Cuttack Bench (Full Bench).
- (iii) Bhera Ram vs. Union of India & Others
OA No. 252/2009 by CAT Jodhpur Bench
- (iv) Shri P.C. Bothra vs. Union of India & Others
OA No. 239/2009 by CAT Jodhpur Bench
- (v) Shri Deepak Verma vs. Union of India & Others
Decided on 15.01.2008 by CAT Principal Bench.
- (vi) Suraj Mal Jat vs. Union of India & Others
OA No. 703/2012 decided on 13.12.2012 by CAT,
Jaipur Bench.
- (vii) Amar Singh Dangi vs. Union of India & Others
OA No. 333/2012 decided on 02.04.2013 by CAT
Jaipur Bench

17. He further submitted that in view of the law laid down by the Hon'ble Supreme Court and by this Tribunal, the action of the respondents regarding the transfer of the applicant from Alwar Division to Swaimadhopur Divison as PA Karauli MDG (Sawaimadhopur Division) is according to the rules. Hence this OA has no merit and it should be dismissed.

18. Heard the learned counsel for the parties, perused the documents on record and the case law referred to by the learned counsel for the parties.

19. The learned counsel for the applicant argued that the applicant was not responsible for wrong payments made under MGNREGA. The applicant followed the proper procedure and the rules. Moreover when it was brought to the notice on 16.03.2013

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that wrong payments have been made, he immediately contacted Shri Rud Mal Meena, MAT and the entire amount of Rs.1,19,000/- was collected from the concerned persons whom the payment was made earlier and it was deposited on the same day i.e. 16.03.2013. The Government has not suffered any financial loss. However, on the other hand the learned counsel for the respondents drew my attention to the Preliminary Circle Level Inquiry Report of the Director Postal Services (HQ) (Annexure R/1) in which it has been specifically held that Shri Hari Singh Meena, SPM, Rampur appears to be fully involved in the fraud case and facilitated Shri Rud Mal Meena and Uttam Saini in commission of the fraud. The act done by Shri Hari Singh Meena is also a criminal conspiracy. He had cheated with Department as well as State authorities. Based on this detailed report, the Chief Post Master General made the following observations:-

- "(1) FIR of the case has yet not been registered. Total amount involved in the case is Rs. 1,19,000/-. Therefore, take up the case with concerned state authorities and lodge FIR as per rule.
- (2) Process transfer of Shri Hari Singh Meena, SPM, Rampur under Rule 37 to Sawaimadhopur Division.
- (3) To initiate disciplinary action against Shri Hari Singh Meena, SPM Rampur.
- (4) To identify subsidiary offenders at Head Post Office level within 15 days and also initiate disciplinary action against them with 30 days.

20. Based on these directions of the Chief Postmaster General, the applicant was transferred from Alwar Division to Sawaimadhopur division in the interest of service under Rule 37 of the P&T Manual Volume IV vide order dated 18.07.2013

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(Annexure R/3). In pursuance of these orders issued on behalf of the Postmaster General, Rajasthan Circle, Jaipur, the impugned order dated 22.07.203 was issued by the Senior Superintendent of Post Office, Alwar Divison.

21. Now the law is well settled that an employee of Postal Department can be transferred from one division to another division under the provisions of Rule 37 of the P&T Manual Volume IV. This Rule is quoted by the applicant in Para 5.2 of the OA, which is reproduced below:-

"37. All officials of the Department are liable to be transferred to any part of India unless it is expressly ordered otherwise for any particular class or classes of officials. Transfers should not, however, be ordered except when advisable in the interest of Public Service. Postmen, Village postmen and Class IV servants should not, except for very special reasons, be transferred from one district to another. All transfers must be subject to the conditions laid down in Fundamental Rules 15 and 22."

This also clearly lays down that all officials of the Department are liable to be transferred to any part of India unless it is expressly ordered otherwise for any particular class or classes of officials. In this case, as stated earlier, a preliminary Circle Level Inquiry was conducted by the Director Postal Services (HQ) (Annexure R/1) and on the basis of the report submitted by the Director Postal Services (HQ), the Postmaster General, who is the competent authority, ordered that the applicant be transferred from SPM Rampur under Rule 37 of the P&T Manual Volume IV to Sawaimadhopur Division (Annexure R/2) and I find no infirmity/illegality in the order passed by the respondents dated 22.07.2013 (Annexure A/1).

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22. With regard to the submission of the learned counsel for the applicant that the applicant had no role in the alleged fraud and he followed the rules and the procedure on the subject, it is for him to put up his case before the competent authority whenever the respondents initiate the disciplinary proceedings against the applicant.

23. With regard to the submissions of the learned counsel for the applicant that the applicant has recently posted to Behror at his own request, it would not make any difference because Behror is also under the Alwar Division and Rampur where the applicant was working prior to his posting at Behror is also under the Alwar Division.

24. With regard to the case laws, as referred to by the learned counsel for the applicant, is concerned, I am of the opinion that these are not applicable under the facts & circumstances of the present case. In the case of **Mukut Saikia vs. Union of India & Others** (supra), the transfer was issued on the basis of some complaint but the nature of the complaint and the name of the complainant were not disclosed to the applicant. Therefore, it was held that the transfer order being penal in nature was liable to be quashed whereas in this case, a detailed circle level inquiry has been conducted by the Director, Postal Service (HQ) and on the basis of this inquiry, the applicant has been transferred by the competent authority. Therefore, the ratio decided by the CAT

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Guwahati Bench in **Mukut Saikia vs. Union of India & Others** (supra) is not applicable under the facts & circumstances of the present OA.

25. With regard to the order of the Calcutta High Court in the case **Biplab Das vs. the Chairman, Bangiya Gramin Vikas Bank others** (supra), the Hon'ble High Court in Para No. 8 has held that:-

"8. Having considered the aforementioned facts and circumstances, this Court is of the view that transfer of an employee in the interest of administration cannot be interfered with. However, in the instant case, this Court notices that the Respondents in their Counter-Affidavit, have opened up a "Pandora's Box" and the portion quoted above clearly shows that the Bank was advised to "remove the Petitioner" to the Head Office where there was no monetary transaction....."

Thus the facts of **Biplab Das vs. the Chairman, Bangiya Gramin Vikas Bank others** (supra) are quite different from the facts & circumstances of the present case. Therefore, the judgment of the Hon'ble High court in this case is not applicable under the facts & circumstances of the present case. Even in this judgment, the Hon'ble High Court has held that this Court is of the view that the transfer of an employee in the interest of administration cannot be interfered with.

26. I have gone through the judgment of the Hon'ble Supreme Court in the case of **Somesh Tiwari vs. Union of India & Others** (supra). In this judgment, the Hon'ble Supreme Court has held that transfer of an employee if based on malice or non application of mind then it can be quashed and set aside

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otherwise transfer in administrative exigency ought not to be interfered with by Courts. In the present OA, there is no mala fide on the part of the respondents. Therefore, the ratio decided by the Hon'ble Supreme Court in **Somesh Tiwari vs. Union of India & Others** would not be applicable in the facts & circumstances of the present OA.

27. I have also carefully gone through the case of **Mohinder Singh Gill & Another vs. the Chief Election Commissioner, New Delhi and others** (supra) but this does not relate to the transfer of an employee and, therefore, the judgment in this case is not applicable in the case of the present OA.

28. On the contrary, the law laid down in the cases, referred to by the learned counsel for the respondents, is squarely applicable in the present OA.

29. There are serious allegations against the applicant in the present OA. Whether he is actually guilty of fraud or not is a matter which can be concluded only after the criminal case is decided, if a FIR is filed or any departmental inquiry, if initiated. However, the facts remain that in the circumstances where authorities have a doubt on the basis of preliminary inquiry, that the applicant is involved in fraud and they have decided to post him in some other circle, it definitely cannot be said to be arbitrary or illegal. The justification given by the respondents is sufficient for transferring the applicant from one circle to another.

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I find no illegality in the order passed by the respondents. The respondents have clearly stated that neither the applicant's pay nor his promotional avenues would be adversely affected because of this transfer. Therefore, I do not find any reason to interfere with the transfer order passed by the respondents.

30. Moreover, the Hon'ble Supreme Court has repeatedly held that in the matter of transfer, the Tribunal/Courts should not normally interfere unless the transfer orders are passed by the incompetent authority or orders are based on malafide or are contrary to the statutory provisions (Act or Rules). In the instant case, the transfer order has been issued by the competent authority and there is no malafide alleged against the respondents. This order is not passed in an arbitrary manner or in violation of any statutory provisions. In fact Rule 37 of the P&T Manual Volume IV provides for inter circle transfer of an employee.

31. The applicant has not been able to make out any case where interference by this Tribunal is required.

32. Consequently the OA being bereft of merit is dismissed with no order as to costs. Interim Relief granted on 06.08.2013 stands vacated.

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(Anil Kumar)
Member (A)