

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. O.A. 1236 OF 2015

Date of order: 17. 11. 2017

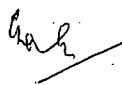
Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Sudarsan Bandyopadhyay,
Accountant,
Working at Serampore H.O. of
169, Dwarik Jungle Road,
P.O. Bhadrakali, Hooghly,
Pin - 712232.

.. Applicants

Vs.

1. Union of India,
Service through
Ministry of Tele Communication,
Dak Bhawan,
New Delhi - 110 001.
2. Director General,
Dak Bhawan,
New Delhi - 110 001.
3. The Senior Superintendent of Post,
South Hooghly Division,
Serampore,
Hooghly - 712201.
4. Assistant Director of Postal Services - I,
Office of Post Master General (SB Region),
Yogayog Bhawan,
Kolkata - 700 012.
5. Chief Post Master General,
Yogayog Bhawan,
Kolkata - 700 012.
6. Post Master General,
Yogayog Bhawan,
South Bengal Region,
Kolkata - 12.
7. Senior Postmaster,
Serampore H.O.,
Pin - 712201.
8. Director of Postal Services,
South Bengal Region,
Kolkata - 700 012.



.. Respondents

For the Applicant : Mr. D. Sur, Counsel

For the Respondents : Mr. A. Mondal, Counsel

ORDER

Dr. Nandita Chatterjee, Administrative Member:

Ld. Counsel for both sides are present and heard.

2. This application has been filed under Section 19 of the Administrative Tribunal Act, 1985 seeking the following relief:-

"(a) Your Lordships pass an order directing the Respondent no. 8 to show cause as to why the order dated 30.7.2015 should not be set-aside or quashed for transfer of the applicants from the Accountant/Accounts Line to SPM Masat S.O./General line in Serial No. 28 arising out of order dated 11.6.2015 with immediate effect.

(b) To pass such order or orders, direction or directions may deem fit and proper to the Honourable Tribunal."

3. The applicant, as represented by his Ld. Counsel, submits as follows:-

That the applicant is a qualified Accountant of the Postal Department, who has been working at Serampore Head Post Office. That he had not completed his table tenure as Accountant in Serampore H.O. and hence he was not listed in the Tenure list. That the respondent authority No. 3 had issued a transfer order transferring the applicant from Serampore H.O. to Masat, S.O. to the post of Sub-Postmaster. That the service rules call for recommendations of the concerned committee prior to any such transfer but the same were not followed and, in violation of the service rules, the applicant was transferred selectively.

4. Being aggrieved, the applicant had earlier filed an Original Application being O.A. No. 350/00918/2015 upon which the Tribunal gave liberty to submit his grievances before the authority within 15 days from receipt of a copy of the order and also directed the respondents to

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communicate their reasoned decision within 15 days thereafter. The applicant had accordingly submitted a representation dated 24.6.2015 before the concerned respondents on which an order was passed on 30.7.2015 (Annexure A-7 to the O.A.) rejecting his prayer and confirming the transfer order.

5. The applicant has assailed the said order dated 30.7.2015 (Annexure A-7 to O.A.) in the instant application. In support of his contention, the applicant has referred to an order of the Central Administrative Tribunal of the Chandigarh Bench (Circuit at Shimla).

6. Per contra, the Ld. Counsel for the respondents has argued that although the name of the applicant was inadvertently not included in the tenure list sent by the Sub-Postmaster Serampore H.O. the error having been detected by his senior officers, the name of the applicant was placed before the Transfer & Placement Committee constituted for this purpose. The committee in its meeting dated 11.6.2015 had recommended the applicant for transfer and posting at SPM, Masat S.O. Hence relevant service rules have been followed in such transfer as the post of SPM Masat S.O is not a HSG-II post.

7. During the verbal submissions, the Ld. Counsel for the applicant assailed the composition of the Transfer & Placement Committee which have been constituted vide orders dated 20.4.2015 (Rejoinder RJ-1) and the subsequent minutes of the committee on 11.6.2015 at (Annexure R-1 of the reply).

8. In *Union of India v. S.L. Abbas* (1993) 4 SCC 357 as well as in *State of Haryana v. Kashmir Singh* 2010 (10) Scale 417, the Hon'ble Apex Court has held that unless the order of transfer is vitiated by malafies or is made in violation of any statutory provisions, the Court cannot interfere

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with it.

In **Rajendra Roy v. Union of India 1993 (1) SCC 148** it was held that when the appellant has not been able to substantiate that the impugned order was passed mala fide against him or in violation of the rules of service and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer.

In the instant application, two issues are relevant for resolution:-

(1) Was the impugned order passed in violation of service rules.

(2) Was malafide established in the context of issue of the impugned transfer order.

Regarding (1), the respondents have categorically stated in their reply that the post of an Accountant is not a Special Line post; nor is the post of a Sub-Post Master a General Line post. Most significantly, the Respondents have confirmed that the post of Sub-Post Master at Masat S.O. is not a HSG II post.

The applicant, in his grounds for relief has stated that respondent No. 3 deliberately and intentionally violated the order of the posts New Delhi regarding the posting of an official having PO & RMS qualification in general line as laid down in 44-28/95SPB.ii dated 23.6.1995. The said order is recorded as under:-

" DG Posts, New Delhi letter No. 44-28/95-SPB ii dated 23.6.1995 A/T Chief PMG Chandigarh.

Sub:- Regarding posting of BCR(A/Cs line) official against standard LSG Posts.

I am directed to refer your office letter No. STA/1018-148 dated 2.3.1995 on the above mentioned subject and to invite your attention to para "4" of our letter No. 4-54/91-SPB-II dated 15.9.1992 and to clarify that BCR officials with PO & RMS Accountants qualification cannot be posted against HSG II."

The respondents have confirmed in their reply that neither is the applicant a "BCR official" nor is the office of Sub Post Master, MASAT S.O.

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an "HSG II" post. The contention of the respondents has not been countered by the applicant in his rejoinder. Hence, the applicant has not been able to prove any violation of Statute or Service Rules in the issue of the impugned transfer order.

2) The applicant has hinted at malafide intent of respondents in that Shri R.L. Hembram, SSP of Howrah Postal Division had been included in the Transfer & Placement Committee at the instance of Shri Bidhan Ch. Das, the then SSP of the relevant division. Attributing illegalities and corruption to Shri Das, the applicant has questioned the composition of the Transfer & Placement Committee that had met on 11.6.2015. It is perused from the minutes of the meeting (Annexure R-1 to the reply) that Sk. Samim Mehmud, ASPOS (HQ), South Hooghly Division was present as a Third Member in the Committee about whom the applicant is silent.

Further, the Committee recommended transfer postings of 63 incumbents including that of the applicant at Srl. No. 28.

The recommendations of the Transfer & Placement Committee was upheld by respondent no. 8 i.e. the Director Postal Services, South Bengal Region, to whom no malice has been attributed by the applicant. Hence, the allegation of mala fide against the Committee could not be proved conclusively by the applicant apart from levelling charges against Shri Bidhan Ch. Das, SSP, whose matter is being dealt with at another forum.

As laid down in the **State of MP v. Shri S.S. Kourav, 1995 (1) LBESR 669 (SC)**, the Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by malafides or by extraneous considerations without any factual background foundation. In the instant matter, neither has malafide

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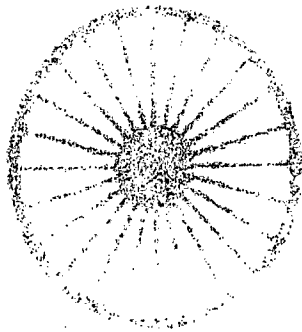
been exclusively established against the Transfer & Placement Committee or Respondent No. 8 nor have considerations leading to issue of the impugned transfer order proved to be in violation of service rules as the post to which applicant has been transferred is not an "HSG post" as claimed by him.

The order of the Chandigarh Circuit Bench at Shimla in O.A. 398-HP of 2005 dated 6.9.2005 deals with a BCR staff. The respondents have clarified in their reply that the applicant is not a BCR official.

9. Thus the O.A. is dismissed on merit. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

SP



(Bidisha Banerjee)
Judicial Member