

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/13/2019

Date of Reserve:13.02.2019

Date of Order: 07.02.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)

HON'BLE MR.SWARUP KUMR MISHRA, MEMBER(J)

Ramesh Chandra Sahu, aged about 27 years, S/o. Jadumani Sahoo, resident of At/PO-Tatopara, Via-Titlagarh, PS-Muribahal, Dist-Balangir, Odisha, PIN-767 033, now working as PA, Dhanupali SO, Dist-Sambalpur, PIN-768 005.

...Applicant

By the Advocate(s)-Mr.C.P.Sahani

-VERSUS-

Union of India represented through:

1. The Secretary cum Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 116.
2. Chief Post Master General, odisha Circle, A/PO-Bhubaneswar, Dit-Khurda, Odisha-751 001.
3. Postmaster General, Sambalpur Regionl, Sambalpur-768 001.
4. Superintendent of Post Offices, Sambalpur Division, Sambalpur-768 001.

...Respondents

By the Advocate (s)-Mr.A.K.Mohapatra

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has prayed for the following reliefs:

- i) Admit the Original Application, and
- ii) After hearing the counsels for the parties be further pleased to quash the transfer Memo No.B-109 dated 21.08.2018 at Annexure-A/7, order vide No.B-109 dated 25.09.2018 at Annexure-A/11 and order vide No.ST/RO/150/12/2017 dated 14.12.2018 at Annexure-A/13. And consequently, orders may be passed directing the Departmental

Respondents to allow the applicant to complete his tenure as PA, Dhanupali SO.

And/or

- iii) Pass any other order(s) as the Hon'ble Tribunal deem just and proper in the interest of justice considering the facts and circumstances of the case and allow this O.A. with costs.

2. Brief facts leading to filing of this O.A. are thus: On being selected through a regular process of selection, applicant was appointed to the post of Postal Assistant (PA) being posted to Dhanupali SO under Sambalpur Postal Division. While working as such, he was given ad hoc promotion as Inspector of Posts(Technology) and posted to officiate as such to the Office of the Post Master General, Sambalpur Region with effect from 30.08.2016. Vide order dated 27.02.2017, he was reverted from the post of Inspector of Post Offices (Tech.) and given a regular posting as Postal Assistant, Dhanupalli SO in which post he joined on 01.03.2017. While working as such, vide order dated 7.2.2017(A/4) the applicant was deputed as In-charge Sub-Post Master of Jharuapara SO as a temporary measure till the regular posting of SPM, Jharuapara SO and accordingly, he took over the charge of Jharuapara SO on 08.12.2017. Meanwhile, vide Memo dated 17.08.2018 (A/6) the post of Sub-Post Master, Jharuapara was regularly filled by one Nirmal Pradhah, who was working as PA, Sambalpur H.O. Resultantly, vide Memo dated 21.8.2018(A/7) the applicant was transferred and posted as P.A. to Kuchinda MDG. Aggrieved by this, the applicant submitted a representation dated 23.8.2018(A/10) to the Post Master General, Sambalpur Region for cancellation of his transfer to Kuchind MDG with a request for his posting at Dhanupali SO, where he was previously working. Since there was no response, the applicant approached this Tribunal in O.A.No.502/2018. This Tribunal vide order dated 6.12.2018

disposed of the said O.A. with direction to Respondent No.3/competent authority to consider and dispose of the representation of the applicant dated 23.8.2018(A/9) by passing a speaking and reasoned order to be communicated to the applicant. This Tribunal had also directed that in the meanwhile, applicant's immediate posting at Dhanupalli shall also be considered by Respondent No.3 pending consideration of the representation. In compliance with the aforesaid direction, Respondent No.3 passed an order dated 14.12.2018(A/13) rejecting the request of the applicant for his posting as PA to Dhanupalli SO. In the fitness of things, the relevant part of the order is quoted hereunder:

"In his representation dated 23.08.2018 the applicant has submitted that he has not completed his post tenure at Dhanupali Sub Post Office and transferred to Kuchinda MDG although there is vacant post of Postal Assistant at Dhanupali SO and the work of PA is being managed on deputation of officials from other offices. The contention of the applicant is not correct. Dhanupali SO has a sanctioned establishment of 1 SPM + 2 P.As and both the PA posts have already been filled up. The temporary arrangement made against one PA post is due to leave vacancy.

The submissions of the applicant that he is staying at Budharaja, Sambalpur to fulfil the education needs of his unmarried sister and to make proper care of his old and ill parents, being the only earning member of his family, are quite general in nature which does not justify his retention at Dhanupali Sub Post Office. The applicant can take care of his family members and education of his sister staying at Kuchinda also, which is a Sub Divisional headquarter having all facilities.

The applicant has submitted that he is continuing his higher studies i.e., M.A. in English in Gangadhar Meher University (G.M.College), Sambalpur through distance mode in IGNOU. For pursuing Post Graduation (MA) under distant mode it is not necessary to stay at Sambalpur. In fact he can pursue his higher studies through distant mode even staying at Kuchinda also.

The applicant has further submitted that he is suffering from lumbar soloist since 2011 and undergoing treatment at VIMSAR, Burla which is the one of the proper treatment at right time. The submission of the applicant is not correct. It is a general problem now a days and medical facilities are available everywhere. Since Kuchinda is a Sub-divisional Headquarters Town, treatment of all

such types of diseases are available there. His treatment at VIMSAR, Burla can continue as per provisions of Central Services (Medical Attendance) Rules, 1944.

The submission of the applicant that he always maintains punctuality and devotion to his duty in work place and serves the public and country with full devotion and sincerity is not factually correct. In fact the applicant is not punctual in his duties and a habitual late comer for which he has been proceeded against under Rule-16 of CCS(CC&A) Rules, 1965 vide Superintendent of Post Offices, Sambalpur Division, Sabalpur vide Memo No.B-109 dated 28.06.2018 and 17.08.2018.

The submission of the applicant that the transfer has been done intentionally to harass him despite his dedicated service to public is not correct. In fact the applicant is an under performer, habitual late comer and negative campaigner for which his transfer has been made purely on administrative ground in the interest of public service.

In view of the foregoing discussions, I find that there is no merit in the representation of the applicant and hence reject the request of the applicant".

3. In support of the reliefs sought for, the applicant has mainly taken the following grounds in the O.A.

- i) Transfer of the applicant is not on public interest – rather it has been made as a punitive measure.
- ii) Applicant being the regular Postal Assistant of Dhanupalli SO joined on 01.03.2017 and while working as such he was sent on deputation as SPM Incharge to nearby Jharuapara SO on temporary arrangement, i.e., till a regular incumbent joins there. After joining of Shri Nirmal Pradhan, SPM, Jharuapara in pursuance of Memo dated 17.08.2018 (A/6), the applicant should have been directed to join against his original post of PA at Dhanupalli. Instead of doing so, the applicant was transferred as PA to Kuchinda MDG vide Memo dated 21.8.2018(A/7) and therefore, his transfer to Kuchinda arises out of bias and mala fide.
- iii) Before completion of his tenure at Dhanupalli, applicant has been transferred and therefore, the said transfer is against the transfer guidelines.

4. Respondents have filed a detailed counter opposing the prayer of the applicant. The grounds as mentioned by the respondents while rejecting his request for his posting as PA to Dhanupalli (A/13) are almost the same as

averred in the counter-rely. However, according to respondents, while working as PA at Dhanupali SO applicant was in a habit of coming late to office and exhibiting negative attitude towards public, staffs and as such the duties assigned to him affected badly. Many complaints were also received from the members of public as well as the Sub Postmaster, Dhanupali SO. In view of this, the applicant was shifted to work as SPM, Jharupapara SO within the same station with a hope that he will mend himself. However, the applicant repeated his earlier practice, as a result of which, he was proceeded against under Rule-16 of CCS(CC&A) Rules, 1965 and awarded the punishment of censure. Despite this, the applicant came to office late and therefore, he was proceeded against and on conclusion of the departmental proceedings, he was imposed punishment of reduction of one stage of pay for a period of three years without cumulative effect with effect from 13.12.2018. In the meantime, regular SPM was posted at Jharuapara SO and the applicant was transferred and posted as PA, Kuchinda MDG since there were many complaints against the applicant at Dhanupali SO.

5. With these submissions, the respondents have prayed that the O.A. being devoid of merit is liable to be rejected.

6. Heard the learned counsels for both the sides and perused the records. We have also gone through the written notes of argument filed by the applicant.

7. Respondents in their counter have pointed out that because of applicant's late coming to office at Dhanupalli and disposition of negative attitude, besides public complaints, he was shifted to work as SPM, Jharuapara S.O. A perusal of order dated 07.12.2017 (A/4) whereby the applicant was shifted as SPM, Jharuapara reads as under:

"The following orders of temporary arrangement are hereby issued on administrative grounds in the interest of public service to have immediate effect.

1. Shri Ramesh Chandra Sahu, PA, Dhanupali SO is directed to join and work as SPM, Jharuapara SO vice Shri Ganesh Ram Kuanr transferred to Mudipara SO until further orders".

8. In this order, there is no iota of allegation against the applicant as averred by the respondents in their counter which formed the basis of his transfer to Jharuapara. Therefore, it goes without saying that in order to meet the administrative need, the applicant has been transferred to Jharuapara on a temporary basis till the vacancy is filled by a regular incumbent.

9. Secondly, since the posting of applicant to Jharuapara SO was as a temporary measure, it implies that in case a regular incumbent is posted to Jharpara SO, the applicant has to be brought to his former place of posting, i.e., Dhanupalli wherefrom he has been transferred to Jharuapara as a temporary arrangement.

10. It is a settled principle of law that the Courts/Tribunals should not interfere in the orders of transfer unless the said transfer arises out of mala fide or bias, apart from transfer being made in violation of statutory mandatory rules. If at all the applicant was a late comer at Dhanupalli and his attitude and approach was unbecoming of a Government servant, the respondents could have initiated appropriate departmental proceedings against him. But the manner in which the applicant was transferred to Jharuapara SO and again from Jharuapara SO to Kuchinda MDG does not bring about transparency in the sphere of administration. On the other hand, it gives a hints that the administration which has to work as a model employer was somehow or the other bent upon to get rid of the applicant

from Dhanupali SO. This, in our considered view, does not show a healthy personnel administration in the Department.

11. Applicant in support of his case has relied on the decision of Hon'ble Supreme Court in *Somesh Tiwari vs. Union of India & ors.* (2009) 2 SCC 592 in which it has been held that:

- "19. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds – one malice in fact and the second malice in law.
- 20. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e., on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal".

12. He has also brought to the notice of this Tribunal a decision of Hon'ble Patna High Court in *Sheikh Kalam vs. The Union of India & ors.* WP (C) No.21860 of 2013 disposed of on 25.04.2014 wherein it has been held as follows:

- "22. There could be no doubt that a transfer order shall not be, ordinarily, interfered with in the absence of strong and compelling grounds. When, however, an order of transfer is found penal or stigmatic in nature, such a transfer order ought to be interfered with if no opportunity of hearing has preceded such an order of transfer before the transfer order was made.
- 23. No doubt, a transfer, if made, as a measure of penalty, sticks as stigma on the transferred employee. In such circumstances, the transfer order would be illegal if no opportunity was given to the employee concerned to have his say in the matter before the transfer was made. In the present case, the impugned transfer order had, admittedly, not been preceded by an enquiry nor was the petitioner

given an opportunity to have his say in the matter before the transfer order was made".

13. It is the categorical submission of the respondents in their counter that because of complaints against the applicant, he has been transferred to Kuchinda MDG from Jharuapura SO where he had been posted on temporary arrangement basis. From this, it is quite clear that the transfer of the applicant is not in accordance with the guidelines set out in this regard and conversely, it was made due to complaint made against the applicant, which is yet to be enquired into. The background and circumstances in which such a transfer has been made clearly shows that it is a punitive measure, which the respondents should have done only after conducting an inquiry about the veracity or other wise of the allegations.

14. As regards the sanctioned strength of the post of PA at Dhanupalli, respondents have not clarified the position as to whether the applicant has been posted as PA over and above the sanctioned strength of two posts of PA consequent upon termination of his ad hoc arrangement as Inspector of Posts(Tech.) and his posting as PA to Dhanupalli S.O. In the absence of any such materials, the submission of the respondents in this regard does not stand to reason.

15. From the facts and circumstances as narrated above, we are of the view that the even if the respondents resorted to transfer of the applicant on grounds other than rules governing such transfer, the same should have been made after following the due process of law/rules and in such a situation, the applicant should have been allowed to join at his former post, whereafter decision to transfer him to Kuchinda MDG or to any other place could have been taken. Thus, the order of transfer of the applicant to Kuchinda MDG

from Jhariarpura SO where he has been directed to manage the work of SPM temporarily is clearly a punitive measure. In view of this, the impugned order of transfer dated 21.08.2018 (A/7), communication dated 25.09.2018(A/11) and the speaking order dated 14.12.2018(A/13) are quashed and set aside. Respondents are directed to allow the applicant to join as PA, Dhanupalli SO forthwith.

16. In the result, the O.A. is allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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