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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00365/2019

Wednesday, this the 12th day of June, 2019

CORAM:

HON'BLE Mr.E.K.BHARAT BHUSHAN,	...ADMINISTRATIVE MEMBER
HON'BLE MR.ASHISH KALIA,	...JUDICIAL MEMBER

Shri Vinodkumar, V.K.T.,
Aged 46 years,
Office Assistant, Divisional Office,
Tirur – 676 104.
Residing at “Sreepadam”,
Perassanur PO, Kuttipuram,
Malappuram – 679 571.

....Applicant

(By Advocate Mr.Shafik M.A.)

V e r s u s

1. The Union of India,
Rep. By the Secretary to Government of
India/Director General of Posts,
Department of Posts,
Ministry of Communications,
Sanchar Bhavan,
New Delhi – 110 001.
2. The Postmaster General,
Northern Region,
Kozhikode 673 011.
3. The Superintendent of Post Offices,
Tirur Division,
Tirur 676 104.

....Respondents

(By Advocate Mr. S.R.K.Pratap, ACGSC for Respondents)

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This application having been heard on 10th June, 2019, the Tribunal on 12th June, 2019 delivered the following :

ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER

OA No.365/2019 is filed by Shri Vinodkumar V.K.T., Office Assistant working in Divisional Office of the Postal Department at Tirur against his transfer ordered as per Annexure A1 as SPM, Irimbiliyam. The relief sought in the OA are as follows:

- (i) To call for the Records relating to Annexure A1 to A9 and to quash A1 to the extent it transfers the applicant as SPM, Irimbiliyam SO, being illegal and arbitrary.
- (ii) To declare that the applicant is entitled to be continued in his present posting till the end of his tenure fixed as per A3 policy and to direct the 3rd Respondent to continue him at the present posting at Divisional Office at Tirur till he completes his tenure.
- (iii) To pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2. The applicant is an Ex-Serviceman who is on re-employment in the Postal Department. After having worked for more than 17 years in the Defence service, he joined as Postal Assistant under Manjeri Postal Division with effect from 27.01.2009 and was transferred to Tirur Postal Division on mutual transfer basis in 2013, where he joined as Postal Assistant. He states that he worked as a Marketing Executive in Tirur Postal Division from

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19.06.2014 to 20.02.2017. Subsequently, he was transferred as Office Assistant in the office of the SPOs, Tirur, as per the order dated 09.01.2018 issued by the 3rd Respondent. On the ground, he had not completed his tenure, a request was made seeking retention in his earlier post. But this was declined and he had to join the present post on 26.10.2018.

3. As per Transfer Guidelines circulated by the Department of Posts on 17.01.2019, copy of which is at Annexure A3, rotational transfer of employees is to be regulated by tenure as under:

“(i) Post tenure of an employee shall be 3 years and station tenure shall be 6 years. However, an employee may be transferred before completion of post/station tenure on administrative grounds for reasons to be recorded in writing by an authority who is superior to the authority competent to order such transfer. The Authority Competent to approve the rotational transfer in normal course will initiate the proposal with proper justification for approval of the Superior Authority.”

4. The applicant submits that impugned order at Annexure A1 has been issued even before he could complete one year in his present post much less than his tenure of three years. By convention willingness of officers who had completed their tenure is sought before rotation of posts and this year such a circular was sent, copy of which is at Annexure A4. However, in view of the fact that he had not completed his tenure, he was never asked to register his choice. Aggrieved by the transfer order, the applicant submitted a detailed representation dated 14.05.2019, a copy of which is at Annexure A5.

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5. It is seen that the proposal for transferring the applicant before completion of even one year was approved as per the letter dated 11.04.2019 (Annexure A7) issued by the Assistant Director under the second Respondent. A defence has been taken by the respondents that his present transfer before completion of his tenure is on account of first financial upgradation under the MACP Scheme . However, it can be seen that he is the only one among seven PAs, granted first financial upgradation who has been transferred. None of the others have been disturbed. In response to Annexure A7 the 3rd Respondent had clarified that the applicant had joined the present post only on 26.10.2018 and is one of the junior most PAs, who had been granted MACP benefits and for this reason he may be retained in his present post (Annexure A8). However, the Assistant Director under the second Respondent rejected the said recommendation, as can be seen at Annexure A9 with the endorsement “the official has not worked in other offices other than HO since 2013”.

6. As grounds it is submitted that the 3rd Respondent's action in transferring the applicant without his consent amounts to violation of Annexure A3 Transfer Policy and is demonstrably arbitrary. The applicant submits that he has been subjected to transfer every year from 2017 onwards. While the applicant has been transferred, others who are placed in the same category have been spared on the ground that they are women,

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whereas the Transfer Policy provides for no such concession.

7. The respondents have filed an MA No.510/2019 seeking vacation of the stay order issued on 29.05.2019, wherein contentions disputing the arguments of the applicant have been submitted. It is maintained that it has not been feasible to implement the interim order dated 29.05.2019, as the incoming incumbent ordered as per Annexure A1 has already joined on 28.05.2019 at Tirur Divisional Office. When the matter was heard today, Shri Shafik appearing on behalf of the applicant disputed this by stating that no one has been posted to the position occupied by the applicant and hence there is no question of someone else taking charge. Shri S.R.K.Pratap, learned ACGSC disputed this fact.

8. The respondents filed a detailed reply statement in which the contentions made in the OA have been opposed. It is maintained that the applicant has already been relieved from the post on 27.05.2019 FN and the new incumbent has joined on 28.05.2019, resulting in no vacancy being available at Tirur Divisional Office at present. It is stated that Annexure A1 transfer order effects 47 Postal Assistants who are transferred to various offices in the interest of service and the applicant is only one of them. The applicant had been transferred on administrative grounds with due approval from higher authority as is seen by the document at Annexure A7. The posting at Irimbiliyam in no way works to detriment of the applicant as he

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resides in the surrounding area.

9. As per Annexure A3 transfer policy, it is given that an employee in the cadre of Postal Assistant is liable to be transferred anywhere in India as per service conditions. Irimbiliyam is one of the 16 single handedly managed offices and it was found necessary to shift the applicant there, as the earlier incumbent had completed his prescribed tenure. The contention the applicant makes that he is being shuttled every year is false. During 2009 to 2013 he had worked under Manjeri Division, thereafter the applicant joined Tirur on 27.05.2013 and has continued to work there till 26.10.2018. The contention that he was working as a Marketing Executive from 19.06.2014 to 20.02.2017 and it constitutes a different post, is strongly disputed. There is no established nomenclature for Marketing Executive in the Division and the Postal Assistant, in this case, the applicant, had been given the duty of Marketing Executive. He continued at Tirur HO all through.

10. In the conditions of rotational transfer quoted in Annexure A3 transfer guidelines, it is also stated that an employee may be transferred before completion of post/station tenure on administrative grounds to be recorded in writing by an authority who is superior to the authority competent to order such transfer. In this case the higher authority, PMG, Northern Region as per letter dated 11.04.2019 had intimated approval for posting the officer at Irimbiliyam Post Office. Thus there is no violation of any Rule. It is further

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stated that the applicant has approached this Tribunal with unclean hands. He states that he was on casual leave on 24.05.2019 and on medical leave from 27.05.2019 to 05.06.2019, but there is no mention of the same in the OA when he filed it on 29.05.2019. Now he is playing truant and refusing to receive his orders.

11. When the OA was heard for the first time on 29.05.2019, this Tribunal was pleased to stay the operation of the order of transfer till the next posting date. The contending parties, the applicant as well as the respondents, filed MA Nos.509/2019 and 510/2019 respectively seeking implementation of the order and vacation of the stay. It appears that before the stay order was issued on 29.05.2019, the applicant had been replaced and relieved and we see no reason to doubt the averment made in the reply statement particularly after considering Annexure MA2.

12. Shri Shafik, learned Counsel for the applicant and Shri S.R.K.Pratap, learned ACGSC were heard on behalf of the applicant as well as the respondents. The applicant is a Ex-serviceman who joined as Postal Assistant on re-employment basis and has been working at Tirur HO from 2013 onwards. He contends that he was initially working as Postal Assistant and thereafter as a Marketing Executive from 19.06.2014 to 20.02.2017, returning as Postal Assistant at the same station from that day onwards. As we have

learnt from the proceedings before us, there is no specific post of Marketing Executive and a Postal Assistant has been asked to handle that charge. Thus technically the applicant has been working as a Postal Assistant at Tirur HO from 2013 onwards. Shri Shafik reinforced his argument that the applicant had not completed his term as he was never supplied with the rotational transfer choice form (Annexure A4). This is disputed by Shri Pratap, learned ACGSC who stated that the applicant had also been issued with the same but he did not care to submit it, duly filled in. In any case, the applicant was transferred by the competent authority and the order to that effect states that the officer had not worked in any other office other than HO since 2013. We feel this is an acceptable and valid reason.

13. The applicant has submitted that there were others who had been granted first MACP, who had not been disturbed and there is no provision to absolve women employees from transfer, as appears to have been done. We do not agree with this premise; if certain concession is afforded to women employees this cannot be accused as discrimination against the other sex. In any case the applicant has been transferred to a place which admittedly is only a short distance from Tirur and is close to his own residence.

14. After appreciating the facts of the case and arguments raised by the contending Counsel, we are of the view that the OA lacks merit and is liable

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to be dismissed. We do so. MA No.509/2019 and OA No.510/2019 are also disposed of. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/00365/2019

- 1. Annexure A1:** True copy of the Order No.B1/Rotation/2019 dated 09.05.2019 issued by the 3rd respondent.
- 2. Annexure A2:** True copy of the Memo No.B1/MACPS/Dlg dated 16.01.2019 issued by the 3rd Respondent.
- 3. Annexure A3:** True copy of the Transfer Guidelines f.No.141-141/2013-SPB-II dated 17.01.2019 issued by the Director (SPN) of the 1st Respondent.
- 4. Annexure A4:** True copy of the Memo No.B1/Transfer dated 04.02.2019 issued by the 3rd Respondent.
- 5. Annexure A5:** True copy of the Representation dated 14.05.2019 submitted before the 2nd Respondent.
- 6. Annexure A6:** True copy of the RTI request dated 22.05.2019 submitted by the applicant.
- 7. Annexure A7:** True copy of the letter No.Staff/29-7/2018 dated 11.04.2019 issued by the Asst. Director of the 2nd Respondent.
- 8. Annexure A8:** True copy of the letter No.B1/Rotation/2019 dated 18.04.2019 of the 3rd Respondent.
- 9. Annexure A9:** True copy of the letter No.Staff/29-7/2018 dated 24.04.2019 of the Asst. Director of the 2nd Respondent.
- 10. Annexure MA1:** True copy of the Order dated 29.05.2019 of this Hon'ble Tribunal in O.A. No.180/00365/2019.
- 11. Annexure MA2:** True copy of the order Book showing the refusal to accept the order.
- 12. Annexure R1:** True copy of the extract of Order Book.
- 13. Annexure R2:** True copy of the letter No.BV-22 dated 28.05.2019 issued by the 3rd respondent.
- 14. Annexure R3:** True copy of the Charge Report signed by Sri Santhosh Kumar V, Office Assistant, O/o SPOs Tirur Division.
- 15. Annexure R4:** True copy of the leave application submitted by the applicant

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on 24.12.2014 showing the designation as Postal Assistant,

16. Annexure R5: True copy of the Memo No.B1/Transfer dated 09.01.2018 issued by former SPOs, Tirur Division.

17. Annexure R6: True copy of the tracking report of Registered Letter No.RL878984145IN booked on 28.05.2019.
