

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.431 OF 2016
MA No.551/2016 & CP No.36/2016 in above OA

Dated this Thursday, the 14th day of February, 2019

CORAM: DR. BHAGWAN SAHAI, MEMBER (ADMINISTRATIVE)
R.N.SINGH, MEMBER (JUDICIAL)

Vishwavijay Tukaram Gore,
Age : 33 years, Son of Tukaram Gore,
Postal Assistant, Malshiras Post Office,
Solapur 413 109.

R/o At post Natepute, Tal : Malshiras,
Dist : Solapur, Pin 413 109.

(By Advocate Ms. Sujatha Krishnan)

... Applicant

VERSUS

1. The Union of India, through the Secretary,
Ministry of Communication & I.T.,
Department of Posts, Parliament Street,
New Delhi 110 001.
2. The Chief Postmaster General,
General Post Office, Mumbai 400 001.
3. The Postmaster General,
General Post Office, Mumbai 411 001.
4. The Superintendent of Post Office,
Pandharpur, Dist : Solapur – 413 304. ***... Respondents***
(By Advocate Shri V.S.Masurkar)

O R D E R (ORAL)

Per : R.N.Singh, Member (Judicial)

The applicant who is working as Postal Assistant under Pandharpur Division has by way of the present OA challenged the order dated 19.05.2016 (Annex A-1) passed by the Superintendent of Post Offices, Pandharpur

Division, Pandharpur i.e. the respondent No.4 by which the applicant has been transferred to Sironcha S.O. under Chandrapur Division.

2. The learned counsel for the applicant submits that aggrieved by the aforesaid impugned transfer order dated 19.05.2016, the applicant has made a representation dated 20.05.2016 (Annex A-4) and the same is still pending for consideration before the respondents. It is the admitted case of the applicant that the impugned transfer order has been passed by the Competent Authority. It is also not the case of the applicant that the impugned transfer order has been passed on account of *malafide*. However, the learned counsel for the applicant submits that till date the applicant has not reported for the duty at the new place of posting. Be that as it may, it is the settled law that once the order of transfer has been passed by the Competent Authority, the employee concerned is expected to report for duty at the new place of posting and of course he can make representation before the Competent Authority for redressal of his

grievance, if any, on account of such order. Reliance is made on the law laid down by the Hon'ble Apex Court in the case of **S.C. Saxena Vs. Union of India and others, Civil Appeal No.280/2003 decided on 21.02.2006** that-

"...In the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed...."

3. In view of the aforesaid, without going into the merits of the claim of the applicant, we dispose of the OA with directions to the respondent No.3 i.e. Postmaster General, General Post Office, Mumbai to consider the aforesaid pending representation dated 20.05.2016 (Annex A-4) and dispose of the same by passing a reasoned and speaking order within a period of four weeks from the date of receipt of certified copy of this order.

4. **MA No.551/2016** : By way of this MA, the applicants (respondents in OA) have prayed for vacation of the exparte interim order dated 09.06.2016 in aforesaid OA. The

interim order dated 09.06.2016 reads as
under :-

The applicant in this OA has grievance about the impugned order dated 19.05.2016 (Annexure A-1) by which he was transferred from Malshiras Sub Office under Pandharpur Division to Sironcha Sub Office under Chandrapur Division as Postal Assistant. The record shows that the applicant was appointed as Postal Assistant by the order dated 12.08.2011 (Annexure A-2). After undergoing necessary training, he was asked to work at RMS Office, Pune and thereafter, he was transferred to Mangalveda Sub Office and then to Malshiras Sub Office, where he is working from 03.06.2014. It was pointed out by the learned Advocate for the applicant that as per condition No.4 of the appointment order (Annexure A-2), it is provided that "the appointee will be required to serve anywhere in Pandharpur Division and will not be eligible for transfer outside the division till he is promoted".

It is stated that applicant is yet to be promoted. Further, the Transfer Policy issued by the Ministry of Communications & IT (Annexure A-3) shows that minimum tenure of four years is prescribed before which the employee is ordinary not transferred. The applicant has been relieved on the next day and he submitted a representation for cancellation of the Transfer Policy immediately. It is also stated that nobody has been posted in place of the applicant.

Admit.

Issue notice to the respondents Nos.1 to

4.

The learned Advocate for the applicant also prayed for interim relief to stay the effect, implementation and operation of the impugned order. Considering the grounds stated above prima facie case is made out and balance of convenient is also in favour of the applicant for grant of interim relief.

In view of this, ad-interim stay is granted to the impugned order dated 19.05.2016 (Annexure A-1) till the next date of hearing.

The respondents are directed to file

reply to the OA and may also pray for vacation of stay of the impugned order.

5. On the basis of the said MA, the learned counsel for the respondents submits that as per the order dated 19.05.2016, the applicant has handed over the charge of his post to the Superintendent of Post Office on 20.05.2016 and to this effect he also invited our attention to the signature of the applicant and also the signature of the officer[✓], who took the charge.

6. The learned counsel for the applicant in MA (original respondents) Shri V.S.Masurkar further submits that this fact has been deliberately suppressed by the applicant before this Tribunal by pressing for interim relief on 09.06.2016 and he further relies on the law laid down by the Supreme Court in the cases of *S.P.Chingalvaraya Vs. Jagannath, AIR 1994 SC 853* and in *Vijay Syal Vs. S/o Punjab (2003) 9 SCC 401 = 2003 (2) SCSLJ 134* to argue that a person who has not approached the Court with clean hands is not entitled for any relief. To the present OA, the respondents in MA ha[✓]s filed reply and on the basis of

such reply, the learned counsel for the applicant submits that on 19.05.2016 the applicant was on causal leave and when the two officers of the Department visited the applicant's residence to serve a copy of the impugned transfer order dated 19.05.2016, he was not present at his residence and the officers insisted the father of the applicant for receiving a copy of the impugned transfer order on behalf of the applicant but the father of the applicant did not accept the order dated 19.05.2016.

7. The learned counsel further submits that when the applicant went to his office on 20.05.2016 as usual, when he was asked to hand over the charge of his post to the Superintendent of Post Office and the impugned transfer order dated 19.05.2016 was served on him and the charge of Postal Assistant, Malshiras was taken over by the Superintendent of Post Office from the applicant. He further submits that the applicant handed over the charge on 20.05.2016 as ordered by Superintendent of Post Office and he stood relieved on 20.05.2016 (afternoon).

8. In the aforesaid facts, the learned Counsel for the applicant in the aforesaid MA further reiterates the contentions made by the respondents in the OA that the applicant stood relieved on 20.05.2016 i.e. well before the applicant has approached this Tribunal and this has been concealed by the applicant from this Tribunal when the interim order dated 09.06.2016 was passed.

9. In the aforesaid facts and circumstances and the law referred as above, the interim order dated 09.06.2016 deserves to be vacated. We order accordingly.

10. The other MAs, if any, stand disposed of as having become infructuous keeping in view the aforesaid order in the OA. We were inclined to impose a cost on the applicant. However, keeping in view the fact that the applicant is a group 'C' employee, we are restraining ourselves from imposing the cost on the applicant.

11. In the present CP, the applicant has alleged willful violation of the interim order dated 09.06.2016 passed by this Tribunal in the aforesaid OA which reads as under :-

“The applicant in this OA has grievance about the impugned order dated 19.05.2016 (Annexure A-1) by which he was transferred from Malshiras Sub Office under Pandharpur Division to Sironcha Sub Office under Chandrapur Division as Postal Assistant. The record shows that the applicant was appointed as Postal Assistant by the order dated 12.08.2011 (Annexure A-2). After undergoing necessary training, he was asked to work at RMS Office, Pune and thereafter, he was transferred to Mangalveda Sub Office and then to Malshiras Sub Office, where he is working from 03.06.2014. It was pointed out by the learned Advocate for the applicant that as per condition No.4 of the appointment order (Annexure A-2), it is provided that “the appointee will be required to serve anywhere in Pandharpur Division and will not be eligible for transfer outside the division till he is promoted”.

It is stated that applicant is yet to be promoted. Further, the Transfer Policy issued by the Ministry of Communications & IT (Annexure A-3) shows that minimum tenure of four years is prescribed before which the employee is ordinary not transferred. The applicant has been relieved on the next day and he submitted a representation for cancellation of the Transfer Policy immediately. It is also stated that nobody has been posted in place of the applicant.

Admit.

Issue notice to the respondents Nos.1 to 4.

The learned Advocate for the applicant also prayed for interim relief to stay the effect, implementation and operation of the impugned order. Considering the grounds stated above prima facie case is made out and balance of convenient is also in favour of the applicant for grant of interim relief.

In view of this, ad-interim stay is granted to the impugned order dated 19.05.2016 (Annexure A-1) till the next date of hearing.

The respondents are directed to file reply to the OA and may also pray for vacation of stay of the impugned order.”

12. Today, we have passed order disposing

of the OA with a direction to the respondents to consider the pending representation of the applicant against the impugned transfer order dated 19.05.2016 and we have also vacated the interim order dated 09.06.2016 passed by this Tribunal as above.

13. In the facts and circumstances, CP is closed.

(R.N.Singh)
Member (Judicial)

(Dr. Bhagwan Sahai)
Member (Administrative)

kmg*

Judgment.
12/11/13

