

**Central Administrative Tribunal
Ernakulam Bench**

OA No.180/00319/2019

Thursday, this the 22nd day of August, 2019.

CORAM

**Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Judicial Member**

Smt. P.P.Prathibha, aged 56 years,
W/o late P. Ravindran,
Office Assistant, Divisional Office, Tirur 676 104,
Residing at “Reviprabha”,
Vanheri Nagar, Pottethpadi,
Thekkumuri PO, Tirur 676 105. Applicant

(Advocate: Mr.Shafik M.A.)

versus

1. The Union of India, represented 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

(Advocate: Mr. Thomas Mathew Nellimootttil, Sr.PCGC)

The OA having been heard on 20th August, 2019, this Tribunal delivered the following order on 22.08.2019:

ORDER**By Ashish Kalia, Judicial Member**

Applicant Smt. P.P.Prathibha, presently working as Office Assistant, Divisional Office, Tirur under the Postal Department, is aggrieved by her transfer as per Annexure A1, before completion of her tenure.

2. The applicant joined the Department as a Postal Assistant with effect from 19.1.1985. She was granted TBOP and BCR upgradations. The applicant has now been granted 3rd MACP upgradation also. During 2017, while the applicant was working as Postal Assistant in Tirur HO, she was transferred as Sub Postmaster at Thirunavaya, on completion of her tenure of 4 years. As per the present Transfer Policy, 3 years is the tenure at one post and 6 years at one station. However, in 2018, even before she completed one year of her tenure at Thirunavaya, the applicant was transferred back to Tirur Divisional Office as per memo dated 28.3.2018 (Annexure A4). Now as per Annexure A1, the applicant, even before she completed her tenure, has been transferred to another post. It is stated that the 3rd respondent had called for willingness from those officials who had completed their tenure for choice stations for postings. It is stated that the applicant has completed 34 years of service as Postal Assistant and she is at the fag end of her career, with only 4 years left for her superannuation from service. As grounds, it is stated that the applicant is a widow and is being subjected to frequent transfer every year from 2017 onwards in violation the transfer policy issued by the 1st respondent. As per the instructions and guidelines issued by the Circle Office at Trivandrum,

compulsory posting as SPM is to be made from among the junior most MACP-I officials. The applicant is neither junior or senior official who is having the liability for transfer from her post this year. The action of the 3rd respondent in transferring the applicant, even before completing her tenure in the present post, in violation of Annexure A3 Transfer Policy, is illegal and arbitrary, the applicant submits.

3. Notices were issued to the respondents and they put in their appearance through counsel Sri Thomas Mathew Nellimoottil, learned Sr.PCGC. It has been submitted in the reply statement that the departmental employees in the cadre of Postal Assistants in the Department of Posts are liable to be transferred to anywhere in India as per the service conditions. The applicant had been transferred on administrative grounds and in public interest as per the transfer guidelines issued by the Directorate (Annexure A3). As per the above guidelines for transferring an official on administrative grounds before completing the prescribed tenure, approval has to be obtained from the authority that is superior to the competent authority. In the case of the applicant, approval had been obtained from the superior authority i.e., Postmaster General, Northern Region, Calicut for transferring the applicant and posting as Sub Postmaster, Triprangode Sub Post office. It is submitted that most of the applicant's service was in Tirur HO and Tirur DO. The applicant's postings during the last 10 years are tabulated in a table which is extracted below:

S.No	Name of the Office	From	To
1	PA Tirur Head Office	24.6.2008	15.12.2008
2	PA Tirur Head Office deputation at Divisional Office.	16.12.2008	21.6.2013
3	PA Tirur Head Office	24.6.2013	24.9.2013
4	PA Tirur Head Office deputation at Divisional Office	25.9.2013	17.6.2014
5	PA Tirur Head Office	27.6.2014	17.82
6	SPM Tirunavaya	19.8.2017	28.2.2018
7	SPM Tirunavaya deputation at Divisional Office	01/03/18	25.3.2018
8	OA Divisional Office, Tirur	26.3.2018	

4. It is submitted that the applicant had worked for more than 9 years in the past 10 years of her service in Tirur HO and Divisional Office as deputation or otherwise (the offices are situated within a distance of half kilometer). The respondents have relied upon the judgment of the Apex Court in *Shilpi Bose and others vs. S.L. Abbas (1993)(4) SCC 357*, which held that:

“4. In our opinion, the Courts should not interfere with transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other; he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order. Instead affected party should approach the higher authorities in the department. If the Courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.”

5. The applicant has filed a rejoinder, citing the judgment of the Hon'ble High Court of Kerala in O.P.(CAT) No.4278 of 2012, the operative portion of which reads as follows:

“We are unable to appreciate the stand of the Department that none of the general procedure required for general transfer would apply to the present case. As a matter of fact, if it was general transfer or rotational transfer he has the option of choosing three choices which was denied to him and there is no

justification in the stand of the Department that he was allowed to work in the same place for the last 9 years from 2002 onwards. It is not even the case of the Department that by virtue of any court orders they stopped such recourse to the respondent. In the absence of any positive direction sending him out of Tirur Division, there is no justification in the action of the Department to send him to Ponnani on the very same day he took charge at Tirur as Postal Assistant.

In view of the matter, by opining that through general transfer or rotational transfer effected annually the Department is required to transfer their employees as per norms and conditions prescribed for transfers, the petition is dismissed.”

6. Our attention has been drawn to Annexure R1 in order to show that the applicant is inefficient to achieve the target set by the department. In the additional reply to the rejoinder, the respondents averred that the applicant is transferred due to her inefficiency to work in administrative office.

7. Heard the learned counsel for the parties at length. Transfer is an incident of service. As per the guidelines issued by the Apex Court in *Shilpi Bose and Others vs. S.L.Ahbas* (1993) (4) SCC 357, the transferred employee has to join the post first and then a representation is to be filed for accommodation. On a perusal of the guidelines issued by the respondents, it appears that a tenure of three year is to be there, whereas in the present case, the applicant has been transferred within one year from the last transfer. As detailed in the OA, the applicant was transferred on several occasions, though within the same station. This is not a case of routine transfer as alleged by the respondents. The transfer of the applicant has been for the reason of inefficiency and lack of responsibility. In other words, this transfer is not in public interest, as stated by the respondents. It is punitive in nature because of the fact that the applicant is at the fag end of her service and she being a widow needs some consideration in the matter of accommodation by the department. Learned counsel for the

applicant has cited the judgment in *Somesh Tiwari vs. Union of India and others* (2009) 2 SCC 592, para 16 of which is reproduced hereunder:

"16. 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. 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 on 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."

8. Transfer which is made in lieu of punishment is not tenable in the eyes of law. The present case is squarely covered by the aforesaid judgment. The impugned order is set aside. The applicant is entitled to work at her present station till her tenure is complete at the present station. OA stands allowed. No order as to costs.

(Ashish Kalia)
Judicial Member

(E.K.Bharat Bhushan)
Administrative Member

aa.

Annexures filed by the applicant:

Annexure A1 - True copy of the Order No.B1/Rotation/2019 dated 9.5.2019 issued by the 3rd Respondent.

Annexure A2 - True copy of the Memo No.B1/Rotation/2017 dated 28.04.2017 issued for the 3rd Respondent.

Annexure A3 - True copy of the Transfer Guidelines Letter F.No.141-141/2013-SPB-II dated 17.1.2019 issued by the Director (SPN) of the 1st Respondent.

Annexure A4 - True copy of Memo No.B1/Transfer dated 28.3.2018 issued by the 3rd respondent.

Annexure A5 - True copy of the Letter No.B1/Rotation/2019 dated 4.2.2019 issued by the 3rd Respondent.

Annexure A6 - True copy of the representation dated 10.5.2019 submitted before the 2nd Respondent submitted by the applicants.

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.

Annexure A8 - True copy of the Judgment of Hon'ble High Court of Kerala dated 11.12.2012 in OP (CAT) 4278 of 2012.

Annexure A9 - True copy of the APAR of the Applicant for the year 2015-16.

Annexure A10 - True copy of the APAR of the applicant for the year 2016-17.

Annexure A11 - True copy of APAR of the Applicant for the year 2017 dated 21.06.2017 to 28.12.2017.

Annexure A12 - True copy of the letter No.ST/9-2/SR/2011 dated 25.08.2011 of the CPMG, Trivandrum.

Annexure A13: True copy of the RTI request dated 27.5.2019 submitted by the applicant.

Annexure A14: True copy of the letter No.RTI/57/2019 dated 25.6.2019 issued by the 3rd respondent.

Annexure A15: True copy of the letter No.RTI/57/2019 dated 31.5.2019 issued by the 3rd respondent.

Annexure A16: True copy of the letter No.Staff/29-7/2018 dated 11.4.2019 addressed to the 3rd respondent.

Annexures filed by the respondents:

Annexure R1 - True copy of email received from ADM, RPLI, O/o PMG, Nothern Region, Calicut on 11.06.2018.

Annexure R2 - True copy of the email received from OSD, O/o PMG, Northern Region, Calicut on 29.03.2019.