

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

OA No.290/00304/2016

Pronounced on : 01.08.2019
(Reserved on : 18.07.2019)

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CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)
HON'BLE SMT. ARCHANA NIGAM, MEMBER (A)

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Fakruddin Niyargar S/o Late Shri Allabux Niyargar, aged about 54 years,
R/o Ward No.6, Behind Post Office Gangapur, District Bhilwara. Presently
working on the post of Sub Postmaster, Post Office Pur, District Bhilwara.

...APPLICANT

BY ADVOCATE : Mr. S.K. Malik

VERSUS

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. Postmaster General, Rajasthan Southern Region, Ajmer.
3. The Superintendent of Post Offices, Bhilwara Division, Bhilwara.
4. Shri S.D. Agarwal, Sub Postmaster, Sahada Post Office, District Bhilwara.

RESPONDENTS

BY ADVOCATE: Mr. K.S. Yadav for R1 to R4

ORDER

...

Hon'ble Smt. Archana Nigam, Member (A):-

1. The present Original Application (O.A.) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant is seeking the following reliefs:

- i) By an appropriate writ, order or direction impugned Memo dated 18.05.2016 (Annexure A1), impugned Memo dated 18.05.2016 (Annexure A2) and impugned order dated 23.05.2016 (Annexure A3), be declared illegal and be quashed and set aside.
- ii) By an order or direction, respondents may be directed to restore the transfer order of applicant to Sahada on the post of

SPM as ordered vide Annexure A5 with all consequential benefits.

- iii) Exemplary cost be imposed on the respondents for causing undue harassment to the applicant.
- iv) Any other relief which is found just and proper be passed in favour of the applicant in the interest of justice."

2. This OA has been made against the impugned Memo No.B2/34/Transfer/2016-17 dated 18.05.2016 (Annexure A1), impugned Memo No.B2/34/Transfer/2016-17, dated 18.05.2016 (Annexure A2) and impugned order No. Lekha-2/TA/CORR/16-17, dated 23.05.2016 (Annexure A3) passed by respondent no.3 wherein applicant's transfer has been cancelled and in his place respondent no.4 has been transferred in consequence to cancellation of transfer order to refund Transfer Advance.

3. The facts of the present case as narrated by the applicant are that the applicant is presently working as Sub Postmaster, Post Office Pur, District Bhilwara. He was transferred from the Post Office Bhilwara City to Post Office Pur in November, 2014. Shri S.D. Agarwal-respondent no.4, Sub Postmaster, was transferred from the Post Office Banera to Bhilwara Head Post Office in May, 2015. Thereafter, Superintendent of Post Offices- Respondent no.3, Bhilwara Division sent Shri S.D. Agarwal-respondent no.4 on deputation from Bhilwara Head Office to Post office Sahada in September, 2015. Respondent no.3 vide letter dated 03.02.2016 asked the options from Sub Postmasters and Postal Assistants of his Division who are completing four years of tenure upto 30.09.2016 to furnish their option for three places on request on their expenses. The last date for submission of applications was 22.02.2016 (Annexure A4). The applicant was transferred from Pur Post office to Sahada Post Office as SPM in the interest of service by respondent no.3 vide Memo dated 08.04.2016 (Annexure A5). After the transfer order, applicant applied for Transfer

Advance (TA) amounting to Rs.15,000/-, which was sanctioned by respondent no.3.

4. It is further stated that since the applicant already stood transferred to Sahada Post Office, he took a rent agreement dated 27.04.2016 with house owner for a period of 11 months and paid advance of Rs.22,000/- (Annexure A6). All of sudden without assigning any reason, respondent no.3 cancelled the transfer order of the applicant with immediate effect vide impugned Memo dated 18.05.2016 (Annexure A1). On the very same day, respondent no.3 passed a transfer order of respondent no.4 to Sahada Post Office as SPM in the interest of service on request despite the fact that there was no application from respondent no.4 for request transfer as per letter at Annexure A4. Just to accommodate respondent no.4 transfer of applicant has been cancelled to adjust two persons i.e. respondent no.4 and Shri Mool Chand Jain, who was transferred to Pur from Bilwara H.O. in place of the applicant vide impugned Memo dated 15.05.2016 (Annexure A2). Accordingly, respondent no.3 vide impugned order dated 23.05.2016 (Annexure A3) ordered to refund the transfer advance which has already been spent by the applicant on paying advance rent. The respondents issued transfer policy dated 31.01.2014 (Annexure A7) wherein it was specifically mentioned that gazette and non-gazette staff will not be transferred from a post before completion of the prescribed tenure. Aggrieved of impugned Memo dated 15.05.2016 (Annexure A1), impugned Memo dated 15.05.2016 (Annexure A2) and impugned order dated 23.05.2016 (Annexure A3), applicant has no other alternate except to approach this Tribunal for redressal of his grievance. Hence this OA.

5. In the written statement filed on behalf of the respondents, the preliminary objection has been taken that the OA has been filed against

the order dated 18.05.2016, whereby, the transfer of the applicant from SPM, Pur to SPM Sahada effected vide order dated 08.04.2016, has been cancelled. The applicant further stated that he has acted upon in furtherance of the transfer dated 08.04.2016, by getting the advance TA of Rs.15,000/- on transfer from Pur to Sahada and spent the same while taking a house on rent. It is further stated that one Shri K.C. Dargar, was transferred from Bhilwada to Mandal vide order dated 08.04.2016, but he challenged the same before this Tribunal, by way of filing OA No.232/2016, which was allowed vide order dated 26.04.2016, by quashing the order dated 08.04.2016, qua the applicant K.C. Dargar. Apart of this One Shri M.C. Jain was transferred from Bhilwara to SPM, Pur at the place of applicant, who was not willing to join at Pur, therefore, the requests and desires of Shri M.c. Jain, was under consideration meanwhile this Tribunal set aside the transfer of K.C. Darger as affected to Mandal, therefore, the competent authority while implementing the judgment dated 26.04.2016 passed in K.C. Darger's case and desire of Shri Mulchan Jain, who was transferred at the place of applicant, and the request of the applicant vide application Annexure R1 considered the administrative exigencies and settle the issue of all three cases in the shape of order dated 18.05.2016 whereby Shri M.C. Jain, has been transferred to Mandal at the place of K.C. Darger and request of applicant to maintain at Pur, has been acceded.

6. It is further stated that the applicant was never relieved in pursuance of order dated 08.04.2016, thus, the same was never implemented so far as applicant is concerned. Secondly, Shri S.D. Agrawal has already been joined at Sahada on 19.05.2016 much prior to filing the instant OA, thus, the relief prayed for in the OA should not be granted as the same amounts to direct the respondents to issue a transfer order of the applicant a fresh and such relief cannot be granted. In the

case of Shilpi Bose, Hon'ble Apex Court has held that the transfer is in incident of service and thus, the same cannot be challenged for the sake of inconvenience to join at next place but the same can be challenged only on limited available grounds viz. infringement of any statutory rules, adversely affecting the seniority etc or if the same is an outcome of malafide. None of the grounds is available to the applicant in the case but in fact the impugned order dated 18.05.2016, has been passed by the competent authority in pursuance of request made by the applicant himself by way of Annexure R1 and after considering the facts of the case which does not require any interference.

7. In the rejoinder filed on behalf of the applicant, wherein it has been stated that there was no request of respondent no.4 as asked for. If there would have been any request then respondent no.4 would have been transferred as usual as the persons who have submitted request as per Annexure A4 all stand transferred vide Annexure A5. The applicant has not made any request in the year 2016 as asked for. The transfer of the applicant vide Annexure A5 is in the interest of service that is why he has been given advance TA of Rs.15000/- on transfer. On request No TA/DA granted. It is on the employee's cost. Applicant made request on 02.02.2015 but was not accepted, thereafter same was withdrawn on 24.07.2015 (Annexure R1). Further the applicant's transfer at Annexure A5 in the interest of service and not on request. The chapter of request in the year 2015 was closed in the year 2015. It is further stated that Shri M.C. Jain was transferred from Bhilwara H.O. to SPM Pur on completion of tenure and not on request. Cancellation of transfer is totally outcome of colorable exercise of power and not on administrative exigencies. Respondent no.4 was already on deputation to Sahada Post Office. He was already working at Sahada Post office. There was no question of his joining at Sahada Post office from anywhere. The transfer order at

Annexure A5 stand already implemented which cannot be cancelled later on just to accommodate respondent no.4 which is totally illegal and not sustainable in the eyes of law. The judgment cited by the respondents is not applicable in the facts and circumstances stated supra. Therefore, the relief claimed in the OA may be allowed throughout with heavy costs.

8. In the additional reply filed on behalf of the respondents, wherein it has been stated that Shri M.C. Jain has been transferred from HO, SPM Pur at one of the place of choice by him as per policy, thus, the allegation of the applicant that the impugned order has been passed only to accommodate respondent no.4 is categorically denied. The amount of TA was given to the applicant to carry on his bag and baggage and households and to move his family to transfer place but such a situation has not been arisen. As per rules advance of TA cannot be spent to pay the rent in advance as done by the applicant, thus, the action of the respondents being against the rules cannot turn equity in his favour to set aside the impugned order. The applicant has never been relieved from SPM Pur, therefore, there is no question to join the duties at Sahada, therefore, the order at Annexure A5 dated 08.04.2016 was implemented in regard to the applicant is denied being false. More so, after cancellation of the impugned order and settling down the vacant positions, if relief prayed for is granted, the same amounts to direct the respondents to issue a fresh transfer order which admittedly lies under the powers of judicial review of this Tribunal, especially in the cases of transfer.

9. Arguments advanced by Shri S.K. Malik, learned counsel for the applicant and Shri K.S. Yadav, learned counsel for respondents no.1 to 4 were heard and perused the material available on record.

10. During the final hearing, learned counsel for the applicant submitted that the applicant Shri Fakruddin Niyargar has been transferred from SPM

Pur to SPM Sahada vide order dated 08.04.2016, it was specifically mentioned that this transfer was being made in the interest of service. It was also very clear from the order that the transfer posting orders issued vide letter dated 08.04.2016 would take place "with immediate effect" (Annexure A5). In compliance thereof, the applicant proceeded on transfer to join at SPM Sahada, as it was the transfer in the interest of service, he was also sanctioned the transfer advance of TA of Rs.15000/-. Vide order dated 18.05.2016 that is within a month of his transfer, the applicant was issued a memo No.B2/34/Transfer/2016 cancelling the transfer order dated 08.04.2016 with immediate effect.

11. It is this order which the applicant challenges. In support of this, the applicant's counsel drew our attention to Para 11 of the Consolidated Transfer Policy to regulate transfers of officers/officials of the Department of Posts other than the officers of Indian Postal Service Group 'A' wherein it has clearly been stated that "Gazetted and Non-Gazetted Staff will not be transferred from a post before completion of the prescribed tenure. However, an officer/official may be transferred from a post in administrative interest or at his/her own request provided he/she has completed at least one year in the said post".

12. Learned counsel for the applicant submits that respondents are stopped on the principle of promissory and equitable estoppels to cancel his transfer and recover the Transfer Advance. Colourable exercise of power by the department was also alleged in the cancellation of the transfers and subsequent transfer to accommodate respondent no.4 and Shri Mool Chand Jain.

13. Per contra, the respondents counsel stated that the applicant was never relieved in pursuance of the order dated 08.04.2016 and thus the same has never been implemented as the applicant is concerned. He also

submitted that the applicant had made a request for transfer from Pur to Sahada, but immediately afterwards have moved an application requesting withdrawing such request as applicant had not remained transferred to Sahada for some personal reasons. Respondents also mentioned that by some error on the part of the department, this request of the applicant escaped consideration while passing the order dated 08.04.2016.

14. Respondents relied upon the judgment of the Hon'ble Apex Court in the case of Shilpi Bose wherein it has been held in clear terms that transfer incidence of service and thus cannot be challenged for the sake of inconvenience but can only be challenged on limited available grounds including infringement of statutory rules.

15. Honorable Supreme Court in the case Bhagwan Das Mittal vs State Of Rajasthan And Ors. on 12 April, 2007 have stated as below:

"In our opinion, the courts should not interfere with a transfer order 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 mala fide. 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 over looked these aspects in interfering with the transfer orders."

16. Again in the case of Union of India vs S L Abbas 1994 SCC (L&S) 230

The Honorable Supreme Court has stated as follows:

"An order of transfer is an incident of Government service. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any

representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. An order of transfer is an incident of Government service. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration.”

17. It is quite clear from the submissions made by the learned counsels that the applicant was transferred in public interest vide transfer order. However, it is also a fact that the Relieving order had not been issued and therefore the transfer was not implemented as far as the Applicant was concerned. In the absence of a relieving order the actions of the applicant were premature.

18. In this view of the matter the OA lacks merit and deserves to be dismissed. It is accordingly dismissed. No costs

(ARCHANA NIGAM)
MEMBER (A)

(HINA P. SHAH)
MEMBER (J)

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