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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 180/00417 of 2019

Monday, this the 18th day of November, 2019

CORAM

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

N.P.Rajan,
Aged 52 years,
S/o Chayichan,
Sub Post Master,
Paravanna, Tirur -676 502.
Residing at "Nayar Padickal House",
Kattingal, Kalpakanchery,
Malappuram District,
676 551. Phone 98464 20723.

...Applicant

(By Advocate Mr. Shafik M.A.)

Versus

1. 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

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(By Advocate, Shri C. Rajendran for Respondents)

This application having been heard on 14th November, 2019, the Tribunal on 18th November, 2019 delivered the following :

ORDER

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

OA No.417/2019 is filed by Shri N.P.Rajan, Postal Assistant, Paravanna PO against transfer out of his present station before his tenure is completed. The relief sought in the OA are as follows:

- i) To call for the records relating to Annexure A1 to A7 and to quash A1 to the extent it transfers the applicant to BP Angadi SO, being violative of the Transfer Guidelines, 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 A-5 policy and to direct the 3rd respondent to continue him at the present posting at Paravanna SO 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.

And

- (iv) To award costs of this proceedings.

2. The applicant had joined the Department as Gramin Dak Sevak Branch Postmaster. He was promoted as Postal Assistant from Postman and joined as Postal Assistant on 30.11.2009. He was initially posted as Postal Assistant in Paravanna PO itself and after completion of his term, was posted to Kalpakancheri PO in 2013. On completion of four years tenure, he was transferred and posted as Postal Assistant in Mangalam MLP, Sub

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Post Office by order dated 28.04.2017 of the 3rd Respondent (Annexure A2).

This was done ignoring his preferred choices which were (1) Paravanna (2) Thalakandathur and (3) Kadampuzha.

3. He filed a representation on 03.05.2017 before the 2nd Respondent pointing out that his choice stations have been ignored and there were no claimants requesting for posting to Paravanna (Annexure A3). No action was taken on the same. However, after completion of 18 months he was posted as SPM , Paravanna as per Memo dated 24.10.2018, treating it as a request transfer (Annexure A4) and he joined as SPM, Paravanna in October, 2018.

4. A copy of the Transfer Guidelines issued on 17.01.2019 is produced as Annexure A5 which stipulates that three years is a tenure at one post and six years at one station. However, Annexure A1 came to be issued even before completion of one year at Paravanna P.O transferring him to another post. The applicant's choice stations were not called for, if a transfer was on the anvil as he had not completed his tenure.

5. As grounds, the applicant maintains that the action of the 3rd Respondent in transferring him without his consent and before completion of his tenure in the present post is violative of the Transfer Policy. As per Annexure A5 Transfer Guidelines three years is the tenure in a post. He has

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already been subjected to 5 transfers in his 9 ½ years service. He has no liability for transfer, having not completed his term this year. He maintains that he has a legal right to continue in the present posting till 2021 as per the Guidelines issued by the respondents. As can be seen, the tenure at one post is three years and tenure at station is six years. This Guideline has been violated by the respondents.

6. The respondents have filed a reply statement in which the arguments of the applicant have been disputed. It is stated that the transfer had been on administrative grounds for which there is adequate provision in the Transfer Policy Guidelines issued on 17.01.2019. For effecting transfer of an official on administrative grounds, approval of the authority who is superior to the competent authority has to be obtained and in this case it has been duly obtained from Postmaster General, Northern Region, Calicut. It is maintained that the applicant had been promoted from the cadre of Postman and joined as Postal Assistant in the Department on 30.11.2009. The applicant was working at Paravanna Post office as Sub Postmaster since 30.11.2009 and continued there till 03.06.2013, i.e., for a complete tenure of four years. Then he did a full term in Kalpakancheri Post Office and on completion of that tenure, he was transferred to Mangalam Sub Post Office, during rotational transfer in the year 2017. While issuing the rotational transfer, the applicant had requested Paravanna PO as one of his choice stations and the same was not considered by the then SPOs as the

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applicant had completed one full tenure at Paravanna and it was not permissible as per Annexure A5.

7. On 24.10.2018, the SP Tirur issued an order dated 24.10.2018 transferring the applicant to Paravanna SO, a request which had been denied earlier. The then Superintendent, who issued the order is under suspension and facing the departmental inquiry for various charges of irregularities. The applicant rushed and joined the post on 24.10.2018 itself i.e., the date of transfer order. This move was violative of the Transfer Policy which states at Sub-head-(ix) -

..officials who have been posted as Sub Postmaster/Postal Assistant in a single handed or double handed Post Offices, irrespective of completion of tenure should not be posted to the same Post Office after a break. In other words, officials of single handed and double handed Post Office can have only one posting during the service period.

As it was seen, the order posting the applicant to Paravanna had been issued in violation of the above condition. Hence the Department had acted to cancel the same and post him elsewhere.

8. A rejoinder has been filed by the applicant wherein the administrative grounds cited as reason for his transfer have been questioned. It is stated that as per the decision of the Apex Court in **T.S.R.Subramanian & others**

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vs. Union of India & Others – (2013) 15 SCC 732, the respondent department had issued orders constituting Transfer and Placement Committees and these Committees were expected to consider all transfers which were to be effected only after due recommendation by the committee. However, In this case, careful examination was not extended and the applicant was transferred out of Paravanna well before completion of tenure under cloak of administrative exigency. The applicant also calls to his assistance the decision of the Apex Court in **Somesh Tiwari vs. Union of India - (2009 2 SCC 992),** which decried the use of transfer as a substitute for punishment. In so far as the prohibition in posting of an employee to the same single handed or doubled handed office, after he has spent full period of tenure there is concerned, the applicant states that the same guidelines also provide for the Divisional Heads to post them to such stations, if a need arises.

9. The contention of the applicant that his present posting is more convenient being closer to his residence is challenged stating that this is a extraneous argument that the respondents are bringing into the case. He had not sought for posting to BP Angadi PO as any of his three choices. Being a promotee, the applicant complains that he is being unduly harassed by his frequent transfers .

10. The respondents have filed additional reply statement to the rejoinder

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filed by the applicant, further disputing the contentions raised in the rejoinder. It is stated that Transfer and Placement Committee had met on 09.05.2019 and had fully examined all connected records relating to the applicant. The posting of the applicant to BP Angadi has been thus in full compliance of the orders of the Apex Court in **T.S.R. Subramanaian**. The second posting of the applicant to Paravanna, which is a single handedly managed Post Office, was in grave violation of the transfer policy and had been issued by an officer who is currently under a cloud and is under suspension. The anxiety of the applicant to work in Paravanna Post Office, as is evidenced from the fact that he joined there on 24.10.2018, the date the transfer order was issued, is questionable. The officer who issued the order was specifically proceeded against for issuing irregular transfer orders.

11. Heard Shri Shafik M.A., learned Counsel for the applicant and Shri C.Rajendran, Standing Counsel for the respondents. Shri Shafik's arguments were to the effect that the applicant had been disturbed from his present station before completion of his tenure and thereby the respondents have violated the Transfer Policy. Secondly, no statement regarding choice station was called for from him before he was served with the abrupt order of transfer. He stated that the move of the respondents is patently a harassment. Shri C.Rajendran, Standing Counsel for the department submitted that the transfer had been made for administrative reasons as it

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was found that posting the applicant back to Paravanna where he had completed his full term was forbidden as per the Transfer Policy. He stated that there is a suspicion that he wanted to work in this Post Office, which is a single handedly managed office, with ulterior motives. His anxiety as reflected in the alacrity with which he joined the post after the earlier order was issued and the keenness with which he is pursuing his demand for retention at Paravanna raise genuine doubts about his motives.

12. We have examined the case in detail and considered all pleadings made. The applicant's primary grievance is that he had been posted out of his present station after having spent only a part of his tenure there. Thus he accuses the respondents of violating their own Transfer Policy. The Policy as it stands is a guideline, which also leaves enough room for transfers which are variance with the policy if there are administrative grounds to support the same. The respondents have successfully brought out that posting the applicant back to the same post where he had already completed his term was the actual violation and his transfer out of that station is an attempted correction of the patently wrong order. This would clearly amount to an administrative reason, valid enough for issuance of the impugned order. The learned Counsel for the applicant referred to our own judgment in OA No.319/2019 wherein the applicant in the case had been allowed to complete his tenure, but the circumstances of that case is entirely different from what we see here.

13. The Transfer and Placement Committee had approved the transfer of the applicant and no impropriety can be claimed on that count. Further a contention was raised by the learned Counsel for the applicant that the restriction on an employee going back to the single handed or double handed office, a second time could be dispensed with by the respondents. However, the appropriate authority did not seek to exercise any such dispensation.

14. We are of the view that posting the applicant back to the same station where he had completed his tenure was in contravention of the Transfer Policy and had not been validated at appropriate level. Thus the issuance of Annexure A1 was more in the nature of a correction of an earlier mistake. We see no impropriety in the same. OA is dismissed as being devoid of merit. The interim order staying the operation of Annexure A1 is also hereby vacated. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/00417/2019

- 1.** Annexure A1 - True copy of the Order No.B1/Rotation/2019 dated 9.5.2019 issued by the 3rd Respondent.
 - 2.** Annexure A2 - True copy of the Memo No.B1/Rotation/2017 dated 28.04.2017 issued for the 3rd Respondent.
 - 3.** Annexure A3 - True copy of the Representation dated 03.05.2017 submitted before the 2nd Respondent.
 - 4.** Annexure A4 - True copy of the Memo No.B1/Transfer dated 24.10.2018 issued by the 3rd Respondent.
 - 5.** Annexure A5 - 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.
 - 6.** Annexure A6 - True copy of the memos issued by the 3rd Respondent.
 - 7.** Annexure A7 - True copy of the representation dated 15.5.2019 submitted before the 2nd Respondent.
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