

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS

WRIT PETITION No.28762 of 2016

ORDER: (Per Justice Sanjay Kumar)

The Union of India and its postal authorities filed this writ petition aggrieved by the order dated 29.04.2016 passed by the Central Administrative Tribunal, Hyderabad Bench, allowing O.A.No.020/1243 of 2015. The said O.A. was filed by the first respondent herein assailing the proceedings dated 08.12.2014 of the Assistant Director General (INV-I), Department of Posts, Ministry of Communications & IT, Government of India, transferring her under Rule 37 of the Postal Manual Volume-IV from Anantapur Division to Nellore Division.

By the order under challenge, the Tribunal held that Rule 37 of the Postal Manual Volume-IV is no more in operation in the light of the letter of the Director General (Posts) bearing No.20-12/90-SPB.I dated 23.08.1990. The Tribunal also placed reliance on the judgment of the Ahmedabad Bench of the Tribunal in O.A.No.250 of 1994 and batch wherein this letter was considered. On this short ground, the Tribunal held that the transfer of the first respondent was illegal and accordingly set it aside.

By order dated 26.08.2016, this Court granted interim suspension of the order passed by the Tribunal which is under challenge, having perused the order passed by the Ahmedabad Bench of the Tribunal in O.A.No.250 of 1994 and batch and being of the opinion that the understanding of the said Bench that Rule 37 contained in Postal Manual Volume-IV would no longer be in operation merely because the transfer

liability clause was deleted in terms of the instructions contained in the letter dated 23.08.1990 required further examination.

W.V.M.P.No.3909 of 2016 was filed by the first respondent to vacate the aforestated order.

Heard Sri B. Narayana Reddy, learned Assistant Solicitor General for India, appearing for the petitioners and Sri M. Venkanna, learned counsel for the first respondent.

Rule 37 of the Postal Manual Volume-IV states in no uncertain terms that all officials of the Department are liable to be transferred to any part of India unless it is expressly ordered otherwise for any particular class or class of officials.

Sri M. Venkanna, learned counsel, would contend that as this Rule itself contemplates that a class or class of officials can be exempted from its ambit, the letter dated 23.08.1990 issued by the Director General (Posts) would have to be interpreted to mean that Group-C and Group-D employees stood excluded from the reach of the said Rule.

The letter dated 23.08.1990 reads as under:

“As per long standing practice and convention there is a clause in the initial appointment letters of the employees of the Department of Posts to the effect that they can be transferred anywhere in the country and special circumstances.

2. Since in actual fact a vast majority of Group C and Group D employees is never subjected to the transfer liability implied in this clause 2 is felt that such a condition is not necessary in the appointment orders.

3. The matter has been considered carefully in consultation with the Ministry of Law. It is hereby ordered that no clause of condition relating to transferability anywhere in the country under special or general circumstances, should form now on be mentioned in the appointment orders issued

to Group C and Group D employees of the Department of Posts. Such a clause existing in the case of the employees already in service also is hereby cancelled with immediate effect and their appointment order would also stand so modified with effect from the date of issue of this letter.

4. It is also directed that these orders may be given wide publicity and also got noted by all the Group C and Group D staff. Necessary entry in this behalf may also be made in their Service Books in due course.

5. Please acknowledge the receipt.

6. Hindi version will follow.”

It is relevant to note that the aforestated letter does not even mention Rule 37 of the Postal Manual Volume-IV. All that it states is that the clause/condition relating to transferability to anywhere in the country need not be mentioned in the appointment letters of Group-C and Group-D employees. Merely because such a clause is not mentioned in the appointment letters or is excluded from the appointment letters already issued, it would not have the effect of exempting Group-C and Group-D employees from the reach of Rule 37 of the Postal Manual Volume-IV. The Ahmedabad Bench of the Tribunal seems to have held otherwise and opined that the aforestated letter would have the effect of keeping Rule 37 of the Postal Manual Volume-IV in abeyance.

We are however disinclined to accept such an interpretation on a reading of the letter. A Rule cannot be excluded or kept in abeyance by implication. As already stated supra, the letter dated 23.08.1990 issued by the Director General (Posts) does not even mention Rule 37 of the Postal Manual Volume-IV and by directing deletion of a clause/condition as to the transferability of the post in the appointment order, it cannot be construed that the authorities desired to exempt Group-C and Group-D employees from the purview of Rule 37. That apart, it appears that the

Department of Posts, Ministry of Communications & IT, Government of India, thereafter issued Circular dated 31.01.2014 setting out the transfer policy in relation to all officers/officials other than officers of Indian Postal Service, Group-A, Department of Posts. Therein, the Director (SPN), Department of Posts, stated that the rules/policy/guidelines mentioned thereunder would regulate the transfers of officers/officials other than Group-A officers of Indian Postal service. One of the Rules mentioned is Rule 37 of the Postal Manual Volume-IV. The Circular also records that the transfer policy issued thereunder was in supercession of the earlier orders and guidelines on the subject.

This being the situation, even if the letter dated 23.08.1990 is to be interpreted to mean that Group-C and Group-D employees were exempted from Rule 37 of the Postal Manual Volume-IV, they would now stand included by virtue of the policy set out in the Circular dated 31.01.2014.

Be it viewed from any angle, the opinion of the Tribunal that Rule 37 of the Postal Manual Volume-IV was kept in abeyance so far as Group-C officers, the category to which the first respondent belongs, is concerned cannot be accepted.

Unfortunately, the Tribunal merely restricted its adjudication to this aspect of the matter and held in favour of the first respondent on this short ground. Para 3 of the order passed by the Tribunal reflects that apart from this issue, the first respondent also raised other issues in support of her attack against the transfer order dated 08.12.2014. She contended that the transfer order was liable to be set aside on the ground that it had not been recommended by the Transfer and Placement Committee in accordance with the rules. She also contended that the transfer order was illegal and not sustainable in law as it was issued as a

measure of penalty. These two aspects were not even looked into by the Tribunal.

However, as the short ground on which the Tribunal granted relief to the first respondent is now found to be unsustainable, the order under challenge is set aside and the matter is remitted to the Tribunal for consideration afresh of the other aspects raised by the first respondent against the transfer order dated 08.12.2014. As the matter has been kept pending unnecessarily for no fault of the first respondent, the Tribunal shall endeavour to dispose of the O.A. expeditiously, keeping in mind the fact that the first respondent is under an order of transfer.

The writ petition is accordingly allowed to the extent indicated above.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.



SANJAY KUMAR, J

ANIS, J

15th February, 2017.
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