

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
Writ Petition No. 7106/2017

PETITIONERS:-

1. The Union of India,
through its Secretary,
Department of Posts,
Ministry of Communication and I. T. Dak
Bhawan, New Delhi – 110 001.
2. The Chief Post Master General,
Maharashtra Circle, Mumbai – 400 001.
3. The Post Master General,
Nagpur Region, Nagpur – 440010.
4. The Sr. Superintendent of Post Offices,
Nagpur MFL Division, Nagpur – 440 002.

VERSUS

RESPONDENT:-

Moreshwar S/o Vyankatrao Likhar,
aged about 52 years, Occ. Service,
Working as Asst. Supdt. Of Post Offices,
Pauni, Dist. Bhandara, R/o. Plot No. 81,
1st Floor, Shri Ganesha Appt, Swaroop
Nagar, Nagpur – 440 022.

Ms. Mudha R. Chandurkar, Advocate for petitioners.
Shri A. M. Dighore, Advocate for respondent.

CORAM: R. K. DESHPANDE AND
ARUN. D. UPADHYE, JJ.
Date : 19.06.2018

JUDGMENT (PER R. K. DESHPANDE, J.)

Rule made returnable forthwith. Heard finally by
consent of the learned counsels appearing for the parties.

2. The respondent working as Assistant Superintendent at Post Office, Pauni, Dist. Bhandara was transferred by an order 15.02.2016 to the Division Akola and he was posted at North Sub-division, Akot i.e. at the distance of 300 kms. This was the subject matter of challenge before the Central Administrative Tribunal in Original Application No. 211/2059/2016. The Division Bench of the Central Administrative Tribunal disposed of the original application on 28.09.2016 on the basis of the concession given by the Senior Standing Counsel of the Department that the transfer order shall be modified and the respondent shall be posted to work within distance of 100 kms. from Nagpur keeping in view the health problem of the respondent, projected before the Tribunal.

3. Paragraph Nos. 6, 7 and 8 of the judgment of the Central Administrative Tribunal being relevant which are reproduced below:-

“6. The learned counsel for the respondents submits that on instructions that considering the health ground cited by the applicant, they are willing to consider modifying the transfer of the applicant to any other place within 100 kms. from Nagpur. Therefore, he submits that the matter can be disposed of accordingly.

7. *After considering arguments on both sides and taking into consideration the submissions made by the learned counsel for the respondents which was also agreed to by the learned counsel for the applicant, as well as, the applicant who was present in person, we are of the view that the matter can be disposed of with a direction to the respondents to modify the transfer order and post the applicant to any other place within 100 kms. from Nagpur, so that he can continue with his medical treatment.*

8. *Accordingly, the OA is disposed of with a direction on the respondents to issue a fresh transfer order in place of the order of transfer dt. 15.01.2016 at Annexure-A-1 and post the applicant in any other place within 100 kms. from Nagpur. No order as to costs.”*

4. It seems that after the decision of the Tribunal, the Senior Superintendent of Post Office, Nagpur called for the explanation of the Advocate by his communication dated 16.01.2017 in respect of the statement made before the Tribunal for modification of the order of transfer. In response to such communication, the learned counsel

submitted the explanation on 27.01.2017 as under:-

“Sir,

I have gone through the contents of your letter in which you have mentioned some facts. It is submitted that the aforesaid Original Application was filed by the applicant challenging his transfer order dated 15.01.2016. He has challenged the transfer order on the basis of that same is premature and it is punitive in nature. That, the counsel for the applicant argued before the Hon'ble Tribunal on that point and he highlighted the fact that health problem of applicant who is undergoing medical treatment at Nagpur and also submitted medical documents. He also mentioned that the applicant has forgone his promotion only on the ground of health problem. The applicant has been transferred 300 km. away from Nagpur and therefore, the counsel for the applicant at a time of argument pleaded that he should be transferred at nearby place. That, during the course of argument the Hon'ble Tribunal also heard the applicant who was present before the Hon'ble Tribunal. The applicant pleaded his case and requested Hon'ble Tribunal

to show mercy as he is facing serious health problem. That after hearing the counsel for the applicant and thereafter, applicant the Hon'ble Tribunal suggested me that matter can be disposed of if applicant can be transferred within 100 km. from Nagpur. That I bonafidely accepted the suggestion coming from dais though I should not have agreed to the said suggestion. However, I bonafidely accepted it. I further submit that I have not agreed to the proposal on instructions from the respondents as the matter was heard and decided, at the same point of time no officer was present for giving instructions to me, hence I had no instructions in the matter.

Hence this is reply.”

5. It is in this background that the present writ petition has been preferred challenging the judgment of the Central Administrative Tribunal on the ground that the counsel was not authorized to make the statement.

6. We asked the learned counsel appearing for the petitioner as to any specific objection for posting the petitioner within distance of 100 kms. from Pauni place where the petitioner was working. She invited our attention to paragraph 12 of the

petition in which chart is given as under:-

Office of Posting	Head Quarters	Period
Sorting Assistant Malkapur	Malkapur	1983 to 1986
Sorting Assitt. SRO Akola	Akola	1986 to 1990
SA HRO Dn Nagpur	Nagpur	1990 to 1995
IRM F Dn Nagpur	Nagpur	1995 to 1999
IRM Aurangabad	Aurangabad	1999 to 2001
IRM F Dn Nagpur	Nagpur	2001 to 2007
ASPO MBI PC Sorting	Mumbai	2007 to 2009
ASPO Kamthi Sub Division	Kamthi	2009 to 2013
ASPO Pauni Sub Division	Pauni	2013 to till date

7. It is urged that the petitioner was working in the Nagpur in 2009 and he was working till 2013 and thereafter till this date. She has also invited our attention to the policy of transfer and has urged that the transfer being the incident of service, no complaint could have been made, particularly when the petitioner had been to his home place for the maximum period of his service tenure. She also invited our attention to para 10 of the rejoinder filed before this Court to show the medical history of the respondent and has urged that the respondent was fit and did not suffer from any health problem

8. We are surprised to find that except the ego problem, there is no reason to challenge the order passed by the Tribunal

based on the statement made by the learned counsel before the Tribunal. After going through the judgment of the tribunal, we find that the counsel made statement to accommodate the respondent to nearby place within the distance of 100 kms. from the present place of work of the respondent. Keeping in view, the explanation given by the Senior Standing Counsel for the petitioner appearing before the Tribunal, we do not find anything wrong in responding to what was expressed by the Tribunal in the open Court. There is no challenge to the bonafides of the counsel in accepting the proposal which fell from the Court, leaving apart the merits of the matter. Sometimes, such statements are required to be made in the interest of clients. We do not find any special reason to challenge the order of the Tribunal which has exercised the discretion in accepting the statement of the counsel to be bonafide. It is purely a misuse of public fund, time and energy.

9. We expressed that two options are available to this Court one is to dismiss the petition and the another to send back the matter to the Tribunal to consider the case on merits. The learned counsel for respondent expressed willingness to fight out the case on merits before the Tribunal. We therefore, for the said purpose, remit the matter back to the Tribunal to decide it on merit.

10. We would like to observe that the transfer of the respondent is tried to be linked with the penalty and the acts of misconduct said to have been committed by him and the argument of the respondent is that it is punitive in nature. The Tribunal will have to decide the question as to whether the transfer effected was mala-fide in the facts and circumstances of the case. We leave the question to be decided by the Tribunal.

11. In the result, this writ petition is allowed. The judgment and order passed by the Tribunal in Original Application No. 2059/2016 is hereby quashed and set. The matter is remitted back to the Tribunal to decide it on its own merit. The parties to appear before the Tribunal on 16.07.2018. The Tribunal to decide on its own merit. The parties to maintain status-quo in respect of transfer till the decision of the Tribunal.

12. The petitioners are directed to pay cost of Rs. 10,000/- to the respondent for fighting out this litigation. If the cost is not paid on the first date of appearance by the petitioner to the respondents, there shall be increase in the cost @ Rs. 1000/- per day till its payment. The entire cost paid shall be recovered from the salary of

the person who recommended filing of this petition.

JUDGE

JUDGE

Gohane