

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
Original Application No.44/2021**

Dated this the 11th day of February, 2021

CORAM:

Hon'ble Sh. Jayesh V. Bhairavia, Member (J)

Hon'ble Sh. Dr.A.K. Dubey, Member (A)

Ranjanben Maganlal Pathak,
Daughter of Maganlal Pathak,
Female, Age about 39 years,
Liliya Road, Amreli – 365601.

... Applicant

By Advocate Shri P H Pathak

v/s

1 Unioin of India,
 Notice to be served through
 The Secretary,
 Government of India,
 Department of Post,
 New Delhi – 110 001.

2 Chief Post Master General,
 Gujarat Circle, Khanpur,
 Ahmedabad – 380 001.

3 Superintendent of Post Office,
 Amreli Division, Headquarter Office,
 First Floor, Amreli – 365601.

4 Assistant Superintendent Post Office,
 Amreli Sub Division,
 Post Office Headquarter,
 Amreli – 365601.

... Respondents

By Advocate Shri H D Shukla

ORDER (ORAL)

Per Shri Jayesh V Bhairavia, Member (J)

- 1 The instant OA has been filed by the applicant aggrieved by the transfer order dated 01.12.2020 (Ann. A) whereby the applicant

on her transfer from Amreli HO has been ordered to work by reporting at Dadva(R) B/O.

2 The applicant has prayed for following reliefs:-

“8(a) The Hon’ble Tribunal be pleased to declare the impugned order at Anneuxre A/1 dated 01.12.2020 transferring the applicant to BPM, Dadva -2 BO as arbitrary, illegal, unjust and violative of Art.14 of Constitution of India and set aside the same and direct the concerned respondent to continue the applicant at nearby Branch Offices to Amreli.

B The Hon’ble Tribunal be pleased to declare that the applicant cannot be posted at Dadva-2, where she has suffered sexual harassment by BPM.

C The Hon’ble Tribunal be pleased to declare that there is no justification available to the respondents not to continue the applicant on nearby vacant post of GDS.

D Any other relief which this Hon’ble Court deems fit in the interest of justice may be granted.”

3 The brief facts of the case of applicant are as follows:-

3.1 The applicant was appointed as Extra Departmental Agent which is now re-designated a GDS on compassionate ground vide order 31.01.2003. The applicant was appointed at Dadva Ranal BO (in short Dadva (R) BO). In the year 2007 she faced sexual harassment from concerned BPM, she filed criminal complaint against him. However, on the intervention of Assistant Superintendent of Post Office, an assurance was given to Mahant and the issue was settled within 2-3 months.

3.2 Thereafter the applicant proceeded on leave on medical ground. Her request for grant of leave was not approved and subsequently the applicant was “put off” from the service and departmental inquiry under the provision of GDS (Conduct & Employment) Rules 2001 was initiated in the year 2009 for the charge of unauthorised absence. On conclusion of the inquiry the IO concluded that charges levelled against the applicant were proved. By accepting the inquiry report, the disciplinary authority had held the charge proved against the

applicant and awarded the major punishment of removal from service vide order dated 26.11.2010. Aggrieved by the said order, the applicant had preferred an appeal and the said appeal was decided on 15.03.2012 (Ann A/3) whereby the appellate authority modified the punishment of removal from service to that of debarring her from appearing in the recruitment examination of Postman for three years and the intervening period from removal from service till joining the post back was directed to be treated as deemed put off from duty with 25% subsistence allowance. Consequent upon the said order passed by appellate authority the applicant was reinstated and on her request she was posted on the vacant post of GDS MD/MC Lalavdar BO under Amreli vide order dated 02.07.2012 (Ann. A/4). By way of corrigendum the designation of applicant was corrected as GDS MD/MC.

- 3.3 Thereafter the applicant got married. Her husband is working at Amreli. She submitted an application to allow her to work nearby Amreli. She had worked continuously at Lalavdar BO for five years on vacant post. Subsequently, she was transferred from Lalavdar BO to Keriyanagas BO vide order dated 24.10.2017. (Ann. A/5).
- 3.4 Thereafter vide order dated 10.06.2020 (Ann. A/6), she was transferred from Keriyanagas BO to Amreli HQ office.
- 3.5 Since the applicant was frequently transferred she has submitted her representation before respondent no.4. i.e. Assistant Superintendent of Post Office, Amreli Sub Division. However, her request was not adhered to and taken up for her transfer. Therefore, she addressed a representation on 01.11.2020 (Ann. A/7), to the Superintendent of Post Office, Amreli wherein she pointed out that her husband is working in CNG Gas company, Amreli, she had a daughter and the competent authority is not aware about the past situation of Dadva Division.

- 3.6 Thereafter, vide order dated 27.11.2020 (Ann.A/8), the applicant was transferred to her original place at Dadva R, Ramal BO attached with Lunidhar SO with immediate effect.
- 3.7 Pursuant to the aforesaid transfer order dated 27.11.2020, the respondent no.4 have issued impugned order dated 01.12.2020 (Ann. A/1) whereby applicant has been directed to hand over her charge attached with Keriyamagas BO/ Amreli HO to Shri B G Rathore, ABPM Lakapadhar BO/Lunidhar SO presently attached with Babapur SO. Hence, this OA.
- 4 The learned counsel Mr P H Pathak for the applicant mainly submitted that frequent transfer of class III and IV are deprecated by the Hon'ble Supreme Court. There is no complaint against the applicant. Applicant is not against her transfer from Keriyamagas BO/Amreli HO but at the same time she requested the competent authority that due to past bad experience and incident which had taken place with her at Dadva BO, she may not again be posted to the same office. It is submitted that there are vacant posts at other Branch Offices which are nearer to Amreli, namely Fatehpura, Lalavadhar, Nagavfad, Ishvariya, etc. As such there is no justification available to respondent no.4 to transfer the applicant to Dadva BO which is more than 35 kms away from Amreli. The competent authority ignored the fact that applicant is having minor child of hardly six years. It is argued that after the appellate authority reduced the major punishment imposed on her from removal from service to debarring the applicant for appearing in recruitment examination of postman for three years, the request of the applicant to reinstate and post her to a place other than the Dadva BO was accepted and she was posted at Lalavdar BO. Therefore, the respondents ought to have re-considered their decision on her representation. However, by communication dated 04.02.2021 during the pendency of this OA the respondents

have rejected her request and reiterated that she should join her duty at Dadva-(R) BO.

The learned counsel for the applicant placed reliance on the judgment passed by Hon'ble Apex Court in the case of Ramadhar Pandey v/s State of UP and Ors reported in 1993 SCC (L&S) 918 and submitted that the respondents failed to disclose any reason to establish that the transfer of the applicant is in public interest. In absence of "the public interest" the impugned order requires to be set aside. It is also submitted that the transfer order of the applicant is passed by the respondents with mala-fide intention and with a view to harass the applicant. Therefore, same is required to be set aside. Lastly, it is submitted that respondents be restrained from implementing the impugned transfer order till they re-examine the representation of the applicant.

- 5 On the other hand on receipt of advance copy of OA standing counsel Shri H D Shukla appeared and on oral instruction he submitted that applicant do not possess any indefeasible right to claim to be posted at particular BO. It is stated that under the provision of Rule 3-A (iv) of GDS (Conduct & Engagement) Rules 2011 (as amended till date), stipulate the condition that "a sevak can be transferred from one post/unit to another post/unit in public interest."

It is also submitted that even otherwise the engagement of the Sevak is liable to be transferred in administrative exigency from one place to other. Transfer of an employee in the present case, the Sevak is not only an incidence inherent in the terms of appointment but also implicit as an essential condition of service.

The counsel for the respondents placed reliance on the judgment passed by Hon'ble Supreme Court in the case of Gujarat Electricity Board & Anr v/s Atmaram Sungomal Poshani reported in AIR 1989 SC 1433 and submitted that since the

engagement of Sevak is transferable post and whenever a public servant is transferred he must comply with the order.

Further, if the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. The public servant cannot avoid or evade the transfer order merely on the ground of having made a representation or on the ground of difficulty in moving from one place to the other. It is submitted that the Hon'ble Apex Court held that if he/she claims to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant rules.

It is further submitted that subsequent to the said judgment in catena of judgments the Hon'ble Apex Court held that the Court/Tribunal should not interfere in the administrative function and decisions i.e. transfer of an employee which was taken according to the need and exigency of the concerned department.

Further, it is argued that it is not correct on the part of the applicant to state that due to alleged past incident at Dadva –R BO, the appellate authority has modified or reduced the punishment. In fact the charges levelled against the applicant about the misconduct was proved and the said finding and conclusion of the disciplinary authority in this regard was accepted by the appellate authority in its order dated 15.03.2012 and also held that the charges levelled against the appellant are proved beyond doubt and appellant deserves punishment. Since punishment was not found commensurate with the offence and same was found excess punishment, the appellate authority by exercising power under Rule 18 of GDS Rules 2011, modified the punishment of removal from service. However, at the time of reinstatement, the competent authority accepted the request of the applicant and was posted on the vacant post Lalavdar BO.

Infact the applicant was appointed on compassionate ground at Dadva –R BO i.e. her original place of posting and subsequently she was allowed to work at other BOs.

Lastly, the counsel for the respondents submitted that the impugned order has been passed in accordance with administrative exigency and under the power of judicial review, the Tribunal may not interfere with the same.

Therefore, he submits that applicant is not entitled to the relief prayed for in this OA.

- 6 Heard the counsel for parties and perused the materials on record.
- 7 The Hon'ble Supreme Court, in the case of Rajendra Singhand Ors. Vs. State of Uttar Pradesh & Ors., [2009] 15 Supreme Court Cases 178, has held that –

“8. A Government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires.

9. The Courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides.

In Shilpi Bose v. State of Bihar, this Court held :

“4. In our opinion, the courts should not interfere with a transfer order which is 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.
.....”***

- 8 Admittedly, the engagement of the applicant as GDS-ABPM is governed by GDS (Conduct & Engagement) Rules 2011. Said engagement is transferable from one post/unit to another post/unit in the public interest. Even otherwise it is settled law that Court/Tribunal are reluctant to interfere with the transfer order of an employee unless the transfer is vitiated by violation of statutory provision or suffers from mala-fide. In the present case as noted hereinabove, the applicant has raised the grievance against her transfer to Dadva-R BO and requested for a posting any other BO nearby Amreli as her husband is working at Amreli and she has got a minor child of six years along-with the other ground that while the competent authority had not taken into consideration while re-posting her to Dadva –R BO, that applicant had originally been posted at the same place and in the year 2007, she had complained of sexual harassment against her superior and subsequently the said incident was settled. Therefore, she requested the authority to transfer her to any other BO near Amreli. It is noticed that except the said submissions, there is no other material on record which can substantiate the submission of counsel for the applicant that the impugned transfer order passed by the respondents is with mala-fide intention. In our considered view, the judgment relied upon by the applicant is of no help in the facts and circumstances of the present case.
- 9 Considering the aforesaid factual matrix and taking note of the rule position i.e. Rule 3-A(iv) of GDS (Conduct & Engagement) Rules 2011 as the service of Sevak is transferrable to any

post/unit, as also law laid down by Hon'ble Apex Court in the case of Rajendrasingh & Ors v/s State of UP & Ors (supra), in our considered opinion it cannot be said that the impugned transfer order suffers from any infirmity and hence we are not inclined to interfere with the impugned order.

Lastly, considering the request of the learned counsel for the applicant Sh. Pathak that since there are vacant posts nearby Amreli BO, the respondents be directed to re-consider her request as she has a minor daughter and her husband is working at Amreli., it is open to the applicant to submit a representation within a week of receipt of copy of this order, the respondents are at liberty to re-consider such a request in accordance with the extant rules and exigency of the department.

10 OA is accordingly disposed of. No costs.

(Dr A K Dubey)
Member(A)

(Jayesh V Bhairavia)
Member(J)

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