

(2022) 11 CAT CK 0005

In the Central Administrative Tribunal

Case No : Original Application 260, 00596 Of 2021

Duryodhan Sethi

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 03-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2022) 11 CAT CK 0005

Hon'ble Judges : Swarup Kumar Mishra, Member (J)

Bench : Single Bench

Advocate : D.K. Mohanty, G.R. Verma

Final Decision : Dismissed

Judgement

Swarup Kumar Mishra, Member (J)

1. As it depicts from the record, vide order under Annexure-A/11 dated 08.10.2021, on the recommendation of the Departmental Promotion Committee (DPC in short), the applicant along with others were appointed/promoted on regular basis to HSG-I notionally w.e.f. 01.01.2021 wherein the applicant was posted as Postmaster, Keonjhar H.O. By submitting representation, applicant has prayed for his posting as Postmaster Anandapur MDG. In pursuance of the order under Annexure-A/11 dated 08.10.2021, an order was passed under Annexure-A/13 dated 20.10.2021 posting the applicant as Postmaster, Keonjhar H.O. Thereafter, applicant approached this Tribunal in OA No. 561/2021, which was disposed of on 30.11.2021 with direction to the respondent No.2 to consider his representation dated 16.10.2021 within a period of one month and till such time not to relieve the applicant. The respondents in letter under Annexure-A/19 dated 30.1.2021 intimated to the applicant that as he was promoted to HSG notionally, he is not entitled to the backwages in the grade of HSG-I as claimed by him. Insofar as posting of the applicant is concerned, it was intimated that since his posting was on promotion and in the interest of service, his request for his posting as Postmaster, Anandapur MDG, is not justified. Being aggrieved, the

applicant has filed the instant OA seeking the reliefs as under:

"i) To quash the partly impugned order of transfer & posting of the applicant dated 08.10.2021, 20.10.2021 & 30.11.2021 as per Annexure-A/11, A/13 & A/19 only to the extent of transferring the applicant from Anandapur MDG post office to Keonjhar H.O. post office for being arbitrary, fanciful, capricious and contrary to the transfer guidelines of the department & also for being violative of the provision of Article-14 and Article-16 of the constitution of India:

ii) To direct the Respondents especially Respondent No.4 to allow the applicant to continue at Anandapur MDG as the post of the regular Post Master (HSG-1) which is still vacant and the post is being now looked after by a senior clerk who is not eligible for the post.

iii) To pass any other order/orders, direction/directions as this Hon'ble Court deems fit and proper in the interest of justice and fair play for the benefit of the applicant

2. The sum and substance of the case of the respondents in the counter is that since the transfer and posting of the applicant was on promotion and on administrative requirement of the hand of the applicant as Postmaster (HSG-I) in Keonjhar H.O., which is lying vacant since 18.02.2019 and the post of Postmaster, Anandpur, MDG has been downgraded to HSG-II grade, the request of the applicant was rightly rejected. Accordingly, respondents have prayed for dismissal of this O.A.

3. Applicant has filed rejoinder by stating that similarly placed employee on promotion has been allowed in the post where they were continuing whereas different attitude has been shown to the applicant in posting to Konjhar H.O. even without considering the difficulties faced by the applicant and in violation of the transfer guidelines. It has further been stated that his transfer and posting being in violation of the transfer guidelines, the same is bad in law and to strengthen such stand, he has relied on the decision of Hon'ble Apex Court in the case of Kendraiya Vidyalaya Sangathan Vs. Damodar Prasad Pandey & Ors. [(2007) 2 SCC(L&S) 596], B.Varada Rao Vs. State of Karnataka [AIR 1986 SC 1955] and the decision of the Tribunal in the case of B.S.Verma Vs.UOI & Ors [ATR 1993(1) CAT 548] and, accordingly, reiterated the relief claimed in the O.A.

4. Ld. Counsel for the applicant has submitted that although transfer and posting falls within the domain of the authority concerned, yet the authority concerned cannot exercise such power in violation of the guidelines framed in this regard and in a discriminatory manner. The applicant submitted representation with documentation in support of illness and other personal difficulties and as a benevolent employer, the authority concerned ought to have looked into his grievance with due sympathy, if not legally permissible but in the instant case the respondents department out rightly rejected his grievance which is not sustainable in law.

5. On the other hand, Ld. Counsel for the respondents has contested the case by stating that the applicant was posted to the Keonjhar HO on his promotion to regular basis notionally w.e.f. 01.01.2021. Such posting was ordered keeping in mind the administrative exigencies and requirement. The stand of the applicant that some of the persons on promotion were retained in their place of posting is of no consequence on the face of the posting of the applicant to Keonjhar HO due to public interest/administrative exigency. Further, it has been submitted that the decision cited by the Ld. Counsel for the applicant are of no help to him because in none of the cases the posting was on promotion. Therefore, the said cases on fact are not applicable to the present case because in the instance case the applicant was posted on promotion.

6. From the record, it is established that the posting of the applicant to Keonjhar HO was on promotion to HSG-I and not a routine/periodical transfer. An order of transfer is an incidence of Government service. Who should be transferred where and at what point of time is a matter for the appropriate authority to decide. Executive instructions issued by the Government are in the nature of guidelines. They do not have statutory force. The Administrative Tribunal is not an Appellate Authority sitting in judgment over the order of transfer issued by an authority competent to do so is the law of the land. On going through the decisions, it is found that none of the decision is of any help to the applicant because in the instant case the posting of the applicant is on promotion and is not a routine/rotational one. The respondents have well justified in their counter for the posting of the applicant at Keonjhar HO in public interest, which were not the fact in the relied cases.

7. In view of the peculiar facts and circumstances of the matter, this Tribunal do not find any legal infirmity so as to come to the rescue of the applicant by interfering in the posting of the applicant on his promotion to Keonjhar HO on administrative exigency. However, if the applicant submits application for his accommodation in any nearby places, it is expected that authority concerned being a benovent employer reconsider his grievances and consider for his posting, in accordance with law/rules. Hence, this O.A. stands dismissed. There shall be no order as to costs.