



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 15366/2024

Ganraj Bishnoi S/o Kesararam Bishnoi, Aged About 39 Years,
Dholiya, Jaisalmer (Raj.).

-----Petitioner

Versus

1. State Of Rajasthan, Through Director, Medical Health And
Family Welfare Department, Jaipur (Raj.).

2. Director, Medical And Health Services Rajasthan, Jaipur.

3. Chief Medical Health Officer, Government District Hospital,
Pokhran, District Jaisalmer.

-----Respondents



Along With

Bunch of Petitions as Per [APPENDIX 'A']

For Petitioner(s) :

Mr. Manish Patel, Mr. Mukesh Rajpurohit with Ms. Aditi Sharma, Mr. Kailash Jangid, Mr. S.K. Poonia, Mr. Suresh Kumar Bishnoi, Mr. R.D. Meena, Mr. Harish Purohit, Mr. Rakesh Jakhar, Mr. Ankur Mathur with Ms. DivyaBapna, Mr. Suniel Purohit, Mr. Manish Patel, Mr. Sanjay Raj Pandit, Mr. Ravindra Singh Champawat, Mr. Vikram Singh Rathore, Mr. Lokesh Mathur, Mr. Suresh Khadav, Mr. Hemant Singh Solanki, Mr. Priyank Kawaliya, Mr. Manoj Choudhary for Mr. C.S. Kotwani, Mr. Harshit Bhurani with Ms. Heli Pathak & Mr. Mahipal Rathore, Mr. R.S. Choudhary, Mr. Yashpal Khileree, Mr. Manjeet, Mr. Himanshu Choudhary, Mr. Mukesh Vyas, Mr. J.S. Bhaleria, Mr. Ripudaman Singh, Mr. VikasBijarnia, Mr. Suresh Charan, Mr. N.R. Choudhary, Mr. Devendra Sanwalot, Mr. Vikram Sharma, Mr. Rahul Vyas, Mr. KanishakSinghvi, Mr. Govind Lal, Mr. V.S. Bhawla, Mr. Dinesh Ojha, Mr. Anil BidanHalu, Mr. R.K. Saini, Mr. K.R. Saharan, Mr. Arjun Singh, Mr. Usman Gani, Mr. Puneet Singhvi, Mr. Pawan Singh, Mr. Sikander Khan, Mr. SaranjVij, Mr. Devesh A. Purohit, Mr. Ramesh Kumar.

For Respondent(s):

Mr. Narendra Singh Rajpurohit, AAG with Mr. Yashraj Singh Kanawat, Mr. Mahaveer Bishnoi, AAG, Mr. Vaibhav Bang for Mr. N.K. Mehta, Dy.G.C., Mr. Kuldeep Vaishnav, Dy.G.C. with Mr. Deepak Vaishnav, Ms. Dolly jaiswal for Mr. MahendraVishnoi, Mr. Samir Shrimali, AGC, Mr. Lalit Pareek, Mr. Lalit Parihar, Mr. Digvijay Singh Sodha, Mr. J.K. Mishra, Mr. Akhilesh Rajpurohit, Mr. Surendra Singh Choudhary, Mr. Ritu Raj Singh Bhati, Mr. I.R. Choudhary, AAG, Mr. S.R. Paliwal, G.C.

HON'BLE MR. JUSTICE ARUN MONGA

Judgment

17/02/2025

1. Vide instant common order, the entire bunch of petitions as detailed in Appendix 'A' is being disposed of as common controversy is involved therein.

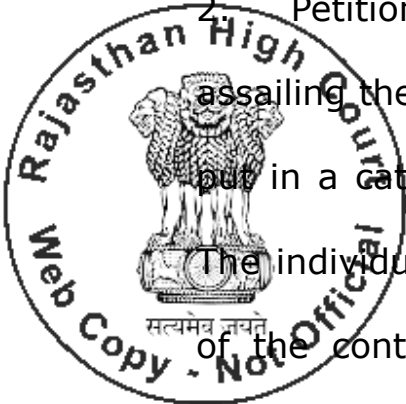
2. Petitioners herein, serving in different departments, are assailing the respective orders vide which their services have been put in a category, what is called 'Awaiting Posting Orders' (APO).

The individual facts of the cases are not relevant for adjudication of the controversy herein, as this Court is to judge upon the legality, as well as, the alleged administrative impropriety of the impugned orders (APO) passed by the respondents.

3. Common grievance of the petitioners being, that by virtue of respective impugned transfer orders of APO, as a bolt from blue, work has been withdrawn from them without assigning/conveying any reasons or if/where conveyed, the same are not tenable. Apart therefrom, under the garb of making them APO, they are being put to humiliation at their work place.

4. At this point, it would be apposite to note the stand taken by respondents in their reply filed in the captioned Writ Petition No. 15366/2024 (petitioner is a Nursing Officer), which being comprehensive one can be broadly treated as defense on law qua all petitions. The relevant of the same is as under :

"1. It is submitted that the petitioner is against the order dated 03.09.2024 and the order dated 06.09.2024, whereby the petitioner was kept on an await posting order due to negligence in performing his duties and as a primary enquiry is pending against the petitioner.



2. The petitioner is not working up to the mark and up to the satisfaction of the answering responding authorities. So, in the public interest and due to administrative reasons, the petitioner is kept on an await posting order. The order passed by the answering respondents is just, proper, and legal, which was passed in accordance with the law and the powers vested in the state government. Hence, the same is liable to be maintained, and the writ petition filed by the petitioner against the await posting order is liable to be dismissed.

3. The petitioner has challenged the discretionary order passed by the state government. The petitioner has relied on Rule 25-A of the Rajasthan Service Rules, 1958 (hereinafter referred to as the Rules of 1958). The Rules of 1958 provide in Rule 25-A about the pay during the period of the await posting order. There are no governing principles mentioned in Rule 25-A which provide that await posting orders are made only in certain situations and circumstances. The petitioner submitted that the grounds of the Government of Rajasthan's decision mentioned under Rule 25-A of the Rules of 1958 govern the field, but the term 'usually' mentioned therein provides that the mentioned conditions are illustrative and not exhaustive. So, the reliance placed by the petitioner on Rajasthan Government decisions is not sustainable, and the state government has the authority to pass await posting orders as and when the same are required in the public interest. The illustrative conditions mentioned in government orders are not exhaustive, and therefore, they cannot be considered as the only reasons under which the await posting orders can be issued. The petitioner is an employee of the state government who has to work as per the directions and supervision of the state government. The state government has the authority to place the employees under an await posting order when the same is required in the public interest and due to administrative exigency. In this matter, the public interest required that the petitioner should not be continued at the present posting and should not be permitted to continue as a Nursing Officer at Pokran. So, the order dated 21.06.2024 was passed by the answering respondents, and the same is in accordance with the domain and authority of the state government, and the same is liable to be maintained.

4. The authority to transfer and pass an await posting order squarely lies within the domain of the state government. The state government is authorized to utilize the services of the government employee at a particular place in the larger public interest, and therefore, in the administrative exigency, the order dated 06.09.2024 was passed in the present case, and the same is perfectly justified and in accordance with the law. The Hon'ble Division Bench, in the case of DB Special Appeal Writ No. 733/2022, Pushkar Lal Mali, decided on 24.11.2022, held that where an enquiry was initiated against any person, then keeping a person on APO is legal. Hence, the same is liable to



be maintained, and the writ petition, being devoid of merits, is liable to be dismissed.”

5. In the aforesaid factual backdrop, learned counsel for the petitioners argue in unison that the petitioners, despite having commendable service record, have been unexpectedly placed under awaiting posting orders. Orders have been issued hastily either due to political interference or for other malafide reasons and without proper application of mind.

5.1. It is submitted that the impugned transfer/APO orders are contrary to the provisions of Rule 25-A of the Rajasthan Service Rules, 1951(RSR), which stipulates the circumstances under which a state government servant may be placed under awaiting posting orders. These circumstances are : (1) returning from leave, (2) reversion to the parent department from deputation within India, (3) returning from abroad after completing training or a foreign assignment, (4) returning from training within India, (5) awaiting posting after handing over charge of the old post as directed by the appointing authority, (6) non-acceptance of the officer's transfer to another post, and (7) to prevent reversion of a government servant.

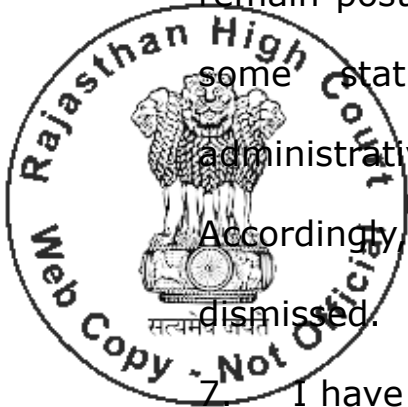
6. Learned counsel for the respondents would argue that the claim that petitioners were placed under Awaiting Posting Orders (APO) due to arbitrariness or personal bias is unfounded. The APO orders were issued in the public interest and as per administrative requirements.

6.1. They would argue that Rule 25-A of the Rajasthan Service Rules, 1951, does not impose any restriction on the issuance of APO orders. The conditions mentioned therein are illustrative and



not exhaustive, and the state government retains the authority to issue such orders in the public interest and administrative exigency.

6.2. They further submit that the transfer and posting are routine administrative matters, and employees have no vested right to remain posted at a particular place. Unless there is a violation of some statutory provision or established malafide, such administrative decisions are not open to judicial interference. Accordingly, the writ petitions are devoid of merit and liable to be dismissed.



7. I have heard the rival contentions and perused the case files.

I shall now proceed to advert to the merits of the contentions by recording my reasons and discussion thereof in the succeeding paragraphs.

8. At the very outset, I may like to observe that transfer/posting, including making an official as APO, being matter of administrative exigency, this Court generally refrains to interfere and treads cautiously, unless it is a case of patent violation of law or extreme hardship. Alleged violation of any guideline or transfer policy, unless the same is mandatory, does not warrant any indulgence under extra ordinary writ jurisdiction, as usually the same are directory in nature, framed more for administrative administrative convenience of the employer to maximise the human resource output. Moreover, to transfer or not to transfer an employee, is the sole discretion of employer and it is not due to personal convenience of an employee. Such orders are not to be treated as punishment or a promotion. Rather,

transfer/posting is an integral part of service conditions of a government employee.

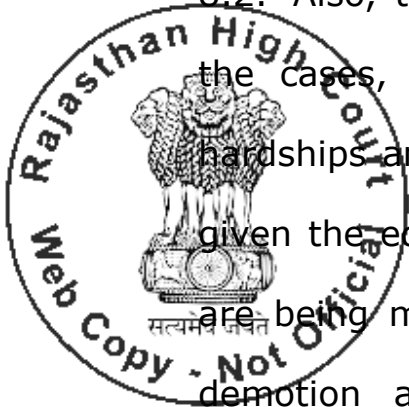
8.1. In fact, in some of the cases in hand, given the duration of the interim protection granted by this court, it's utility appears to have waned over time.

8.2. Also, this Court is not oblivious of the fact that in many of the cases, petitioners have pleaded their respective individual hardships and / or the allegations that either they have not been given the equivalent status posting or under the garb of transfer, are being meted out with punitive treatment bordering on their demotion and thus causing humiliation or in certain cases

allegations of political interference and mala fides are also there.

The merits and demerits of those cases are not being gone into for the reasons stated and the discussions contained in the succeeding paras qua the applicable provisions of law.

9. Adverting now to the legality of the relevant provisions of Rule 25A the Rajasthan Services Rules, 1951 enabling the competent authority to issue APO orders, the position appears to be clear as day light. The same have withstood the test of time over the past few decades. The Rules were framed way back in 1951. These were amended in 1981 by inserting Rule 25-A). In fact, upon delving a little deeper into the matter, it turns that clarifications in past have been carried out not only by this Court, but also through administrative instructions issued from time to time. Retesting the legality of Rule 25A ibid would be nothing but ploughing in the sand and seemingly an exercise in futility. Let us see how.



10. First and foremost, let's us have a look at the relevant definitions as to what is meant by 'being on duty' and what constitutes a 'transfer'. Rule 7, clauses (8) and (38) contained in Chapter-II of Rajasthan Service Rules, 1951, respectively define both terms 'duty' and 'transfer'. Relevant parts thereof read as under:-



Rule 7. Definitions:-

Unless there be something repugnant in the subject or context, the terms defined in this chapter are used in the rules in the sense here explained.-

1. xxxxx xxxxx

(8) Duty

(a) xxxxx xxxxx

(b) Government may issue orders declaring that in the following circumstance, or **in circumstances similar thereto**, a Government servant may be treated as on duty.

(i) xxxxx xxxxx

(ii) xxxxx xxxxx

(iii) In the case of persons who, on their first appointment to State Service, do not, before they report themselves at the seat of Government or other specified station, in accordance with the orders of the appointing authority, receive orders to take charge of a specified post, during the interval between the date of such report and the date on which they take charge of their duties.

Note:-Period of compulsory waiting by a Government servant returning from leave or after making over charge of his old post for orders of Government posting him to a particular post falls in this clause."

9-37. x-x-x-x

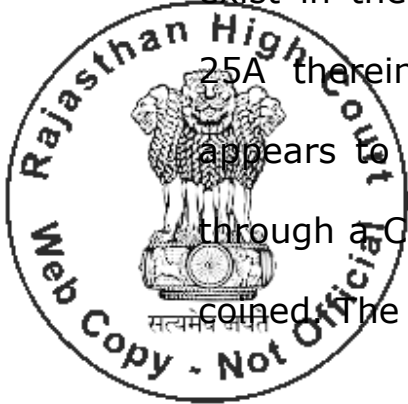
38. Transfer-

means the movement of a Government servant from one headquarter station in which he is employed to another such station, either-

(a) to take up the duties of a new post, or

(b) in consequences of a change of his headquarters."

11. What falls for consideration in the /is herein is the administrative power invoked by the competent authority to place the services of the aggrieved petitioners herein in the category of 'Awaiting Posting Orders' (hereinafter referred as 'APO'). The provision for category 'Awaiting Posting Order' as such did not exist in the Rajasthan Services Rules, 1951, till insertion of Rule 25A therein vide notification dated 14.09.1981. Till then, it appears to be a measure of administrative ingenuity devised through a Circular dated 07.05.1974, wherein, the term 'APO' was coined. The same reads as under:-



“Clarification

Attention is invited to Finance Department notification No F.I(18)FD(Gr.2)/74 dated 07.05.1974 under which administrative Departments of the Government were delegated power to issue orders treating a Government servant as on duty during the period of Awaiting Posting Orders provided the period of awaiting posting orders does not exceed 30 days.

It has been observed that officers are kept under awaiting posting orders for long periods and such cases, in which the period exceeds 30 days and thus require regularisation from Finance Department are also quite frequent. It is needless to point out that such cases of avoidable expenditure on pay and allowances of the officers for the period of 'awaiting posting orders' are commented adversely in Audit Reports; and it is necessary that steps should be taken to avoid such expenditure.

It is, therefore, enjoined on all concerned that it should be ensured that such cases in which officers have to await posting orders do not occur and even if such cases, at times, are altogether unavoidable, the period of awaiting posting orders is kept at the minimum. It is also hereby made clear that hence forth this Department would not agree to the regularisation of such cases unless weighty reasons exist for non-posting of an officer.”

(emphasis supplied)

12. It was in 1981 that vide a notification dated 14.09.1981, Rule 25-A was inserted in the Rajasthan Service Rules, 1951, which reads as under:

“25A. Pay during awaiting posting orders :-

A Government servant who is compulsorily kept under **'awaiting posting orders'** under note below Rule 7 (8) (b) (iii) shall be entitled to the pay and allowances at the rate at which he was drawing immediately before relinquishing charge in the old post. He shall not be allowed Conveyance Allowance or permanent Travelling Allowance during the period of awaiting posting order.

Government of Rajasthan's Decision

1. Government servant are kept compulsorily under awaiting posting orders usually in the following circumstances:—

- (1) On return from leave.
- (2) On reversion to parent department from deputation within India.
- (3) On return from abroad after completion of training or foreign assignment.
- (4) On return from training within India.
- (5) Awaiting posting order after making over charge of the old post under the directions of Appointing Authority.
- (6) Non-acceptance of the officer on transfer to another post.
- (7) To save a Government servant from reversion.

2. A Government servant who proceeds on leave cannot resume duties on return from leave as a matter of course on the post which he held before proceeding on leave in the absence of formal order of posting. In cases where leave sanctioning authority and appointing authority is one and the same, authority competent to grant leave should invariably indicate in the order sanctioning leave that the officer is reposted to the same post on the expiry of leave. Authority competent to grant leave can also issue orders of reposting to the same post if during the currency of leave the post was kept unfilled. Where leave has been sanctioned by an authority other than the appointing authority and the leave vacancy has been filled up under the orders of the appointing authority, the latter authority can only issue reposting orders of the officer returning from leave. In such cases the appointing authority should as far as possible issue the posting order of the Government servant before expiry of the leave so that the contingency of keeping a Government servant under posting orders on return from leave does not arise.

3. In the case of Government servants placed in the circumstances mentioned at items No. 2, 3, and 4 in para 1 above, the competent authority should invariably issue orders of posting atleast 15 days in advance of the return of Government servant from deputation/training or foreign assignment in order to eliminate keeping of a Government servant under awaiting posting orders. With a view to watch and effectively control the situation in this regard, the authority competent to send an officer on deputation, training or foreign assignment should maintain registers to ensure that proposal



for posting of Government servants due to return from deputation within India or from deputation abroad on foreign assignment terms of training are moved well in time for issue of posting orders.

4. Sometimes Government servant are required to make over charge of the post and await posting orders under the direction of the appointing authority. Such situation should, as far as possible be avoided, and if it is absolutely necessary in some cases, the orders of posting should be 'issued within a week. In case of promotion of an officer against vacant post, the posting order should invariably be issued simultaneously.

5. Government servants transferred from one post to another post should not be prevented from assuming charge of the post and the practice of non- acceptance of an officer reporting for duty in consequence of his posting/transfer being an unhealthy one, should be scrupulously avoided.

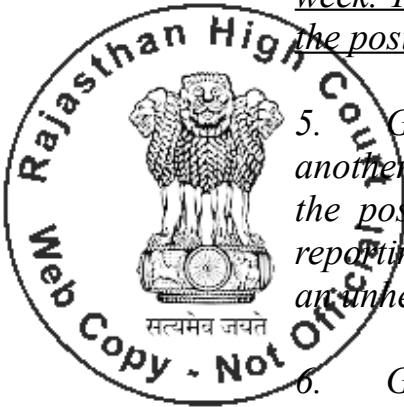
6. Government servants are some times placed under awaiting posting orders in the following circumstances:—

(1) Reversion of a Government servant to a lower post held by him in officiating capacity pending approval or regularisation of his appointment by Departmental Promotion Committee/ Rajasthan Public Service Commission.

(2) Reversion to a lower post as a result of abolition of the post held by him.

7. It is against the spirit of rules to treat a Government servant as awaiting posting orders till he can be reappointed to an identical post in the same time scale of pay on occurrence of vacancy or otherwise. In such cases a Government servant shall not be treated as awaiting posting orders, and he shall not be entitled to pay and allowances under Rule 25A of Rajasthan Service Rules. The orders issued by the authority reverting a Government servant should be carried out. A Government servant shall be treated to have been reverted from the date of issue of orders or from the date specified in the order as the case may be and his reversion becomes effective from that date irrespective of whether he proceeds on leave immediately after reversion or not. In such cases even if a Government servant is kept under awaiting posting orders to save him from reversion of any other junior person to him in the cadre; the time so passed in such circumstances shall be regularised by grant of leave as may be due and admissible as in no-circumstances it will be treated as awaiting posting orders.

8. Under the existing delegation the Administrative Department of Government have power to keep a government servant under posting orders for a period not exceeding 30



days, and cases involving the period exceeding 30 days require the concurrence of the Finance Department. Keeping a Government servant under awaiting posting orders for unduly long period (s) without any justification involves infructuous expenditure as the Government servant remains idle during awaiting posting orders. It is, therefore, enjoined upon all concerned authorities to scrupulously follow these instructions with a view to eliminate the cases of awaiting posting orders and thereby avoid wasteful expenditure. Every case of awaiting posting orders in which a Government servant has been kept under awaiting posting orders for unduly long period without adequate reasons and justifications should be enquired into by the administrative department first at their own level and necessary action may be taken against the delinquent Government servant who are responsible for delay in issuing posting orders in infringement of these instructions or any other instruction issued by the Government from time to time in this behalf.”

(emphasis supplied)



By way of aforesaid statutory addition, a Government servant to be compulsorily kept under 'awaiting posting orders' was thus for the first time mandated in 1981 vide Rule 25-A.

12.1. An amendment on 02.07.2024 was subsequently carried out in Rule 25-A of the Rajasthan Service Rules, 1951, as under:

Xx xx xx

"2. Amendment of Rule 25A.-

The existing Rule 25A of Rajasthan Service Rules, 1951, excluding the 'Government of Rajasthan's Decision' and 'Government of Rajasthan's instructions appearing thereunder shall be substituted by the following, namely.-

25A. Pay during Awaiting Posting Orders.-

A Government servant who is compulsorily kept under awaiting posting orders under note below Rule 7(8)(b)(iii) shall be entitled to the pay and allowances at the rate at which he was drawing immediately before relinquishing charge of the old post.

He shall not be allowed Conveyance Allowance or Permanent Travelling Allowance during the period of awaiting posting order.

Provided that where a Government servant is kept under awaiting posting order at a particular place he will be entitled to House Rent Allowance and Compensatory (City) Allowance of that particular place as per terms and conditions

of House Rent Allowance Rules, 1989 and Compensatory (City) Allowance Rules.”

12.2. Violation of Rule 13 of Rajasthan Civil Services (Classification, Control & Appeal Rules, 1958 is since alleged by many petitioners, same may also be seen at this stage itself before proceeding further. It reads as under :-



“13. Suspension.—

1. The Appointing Authority or any authority to which it is subordinate or any other authority empowered by the Government in that behalf may place a Government servant under suspension.

(a) Where a disciplinary proceedings against him is contemplated or is pending, or

(b) Where a case against him in respect of any criminal offence is under investigation or trial:

Provided that where the order of suspension is made by an authority lower than the Appointing Authority, such authority shall forthwith report to the Appointing Authority the circumstances in which the order was made.

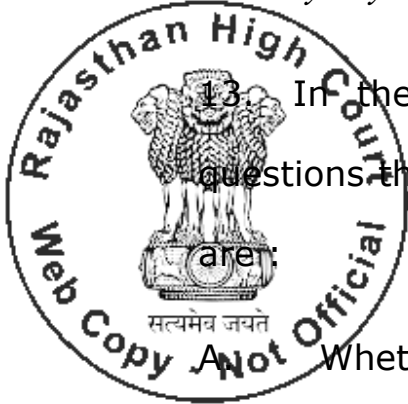
2. A Government Servant who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours shall be deemed to have been suspended with effect from the date of detention, by an order of the Authority competent to place a Government Servant under suspension under sub-rule (1) and shall remain under suspension until further orders.

3. Where a penalty of dismissal, removal or compulsory retirement from Service imposed upon a Government Servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continue in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

4. Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government Servant is set aside or declared or rendered void in consequence or by a decision of a Court of Law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on allegations in which the penalty

of dismissal, removal or compulsory retirement was originally imposed, the Government Servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

5. *Any order of suspension made or deemed to have been made under this rule may at any time be revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.”*



13. In the light of aforesaid position law, the two relevant questions that necessarily arise for consideration before this Court are:

Whether, Rules i.e. 7(8)(b)(iii) read with Rule 25-A of the Rajasthan Service Rules, 1951 can be invoked in cases where in public interest it is felt that instead of placing an official under suspension, rather a lenient view be taken by simply withdrawing work from him by putting him in the category of 'Awaiting Posting Orders' until further decision is taken?

B. Whether placing the services of an employee/official under 'Awaiting Posting Orders' category is merely a euphemism to avoid passing an order of 'transfer' and/or a ruse to overcome the rigors of Rule-13 of Rajasthan Civil Services (Classification, Control & Appeal Rules, 1958 and/or to overreach the ban on the transfer orders, which may be /is imposed from time to time ?

14. Let us deal with the question 'B' first. In all the cases of bunch in hand herein, it so transpires that there are either of the two categories of the officials; viz. :-

(i) where they have not been assigned any duty by putting them under Awaiting Posting Orders category without changing their headquarters;

and

(ii) where the employees have not only been assigned any duty, but at the same time their headquarter has been changed.



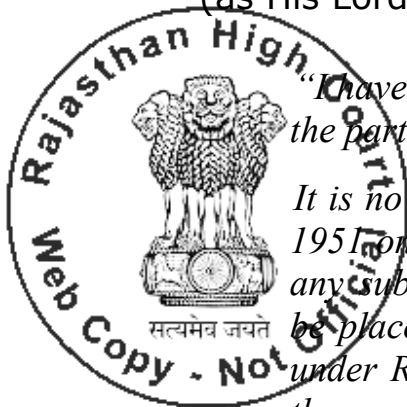
15. When an administrative order, as in the latter category (ii) is tested on the definition of transfer contained in Rule 7(38) of the 1951 Rules, it leaves no room for doubt that the same amounts to transfer. In such cases, mere use of the word 'Awaiting Posting

Orders' would not exclude the order from the ambit of transfer of an official under the garb of APO. Accordingly, such actions cannot be sustained on the legislative parameters envisaged by the Rule makers. Such a recourse is being noted only to be rejected.

Moving on to the category where the headquarters have not been changed, the same appear to fall outside the contours of the definition of transfer. Therefore, in such cases, no doubt, the administrative authority will be well justified to pass the orders of APO until further decision is taken to actually transfer such an official. Question 'B' is answered accordingly.

16. Adverting now to the question 'A' [Whether, Rules i.e. 7(8)(b) (iii) read with Rule 25-A of the Rajasthan Service Rules, 1951 can be invoked in cases where in public interest it is felt that instead of placing an official under suspension, rather a lenient view be taken by simply withdrawing work from him by putting him in the category of 'Awaiting Posting Orders' until further decision is

taken?]. It transpires that same is not *res integra*. Question 'A' has since already been answered in the negative by a Coordinate Bench of this Court in judgment rendered in **Sukumar Kashyap Vs. State of Rajasthan**¹. I may, at this stage, gainfully quote the observations made therein by my learned brother ArunBhansali, J. (as His Lordship was then in this Court), which reads as under:



“I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

It is no doubt true that the provisions of Rule 25A of the Rules, 1951 only deal with the 'pay during A.P.O.' and do not indicate any substantive provision/parameters for which an officer can be placed A.P.O. However, Government of Rajasthan decisions under Rule 25A of the Rules, 1951 have elaborately dealt with the practice of placing government servants under A.P.O., which inter alia has referred to the previous instructions and has emphasized that the Administrative Department should avoid keeping government employees A.P.O. as a routine or as an option to disciplinary action, besides indicating the circumstances in which the orders can be passed. The circumstances indicated essentially deal with the cases where an employee, who was on leave, deputation, had gone abroad, was on training etc., when joins back, can be placed A.P.O.

Learned AAG, despite specific query, failed to point out any substantive provision dealing with placing a government servant 'A.P.O.' The entire emphasis in reply and in the note sheet produced pertains to various allegations against the petitioner pertaining to alleged misconduct and the fact that he was being investigated by the respondent Department and to ensure that inquiry is fair, he was being placed A.P.O.

As noticed hereinbefore, the instructions under Rule 25A of the Rules, 1951 have taken note of the practice of placing an officer A.P.O. as an option to disciplinary action and has deprecated the said practice. Even otherwise, it is well settled that no administrative action in the nature of punishment can be taken against a Government servant in the guise of passing some other order like transfer and/or placing A.P.O. In view thereof, based on the specific admission of the respondents regarding the order having been passed on account of alleged conduct of the petitioner, the action of the respondents in placing the petitioner A.P.O. cannot be sustained.

So far as the submissions made that the conduct of the petitioner is such that he does not deserve to remain posted at the present place of posting is concerned, if the respondents find the conduct

¹ S.B. Civil Writ Petition No.7010/2020, decided on 14.10.2020

of the petitioner so objectionable, then they may take appropriate proceedings as per the provisions of various service Rules and the practice of placing an officer A.P.O. cannot be resorted to by way of an alternative, to such action.

The respondents as appointing authority / disciplinary authority are always free to take action in accordance with law.

Consequently, the writ petition filed by the petitioner is allowed. The order dated 7/8/2020 (Annex.3) passed by the respondents is quashed and set aside qua the petitioner. However, the respondents would be free to take appropriate action against the petitioner, if deemed necessary, in accordance with law.

No order as to costs.”

The aforesaid position in fact was further enunciated vide another coordinate Bench’s judgment rendered in **Dr. Mahesh Kumar Panwar Vs. State of Rajasthan**², wherein speaking for this Court, my learned brother Vinit Kumar Mathur, J., observed as under:-

“In the opinion of this Court, the decisions are only illustrative and the same cannot be exhaustive, therefore, the inference which can be gathered from Rule 25A & Govt. of Rajasthan Decisions is that the Awaiting Posting Order should usually be passed only to meet certain contingencies and not in a routine matter as a substitute of transfer order. The awaiting posting order cannot be used as a tool to bypass the orders of transfer for adjustment/ accommodation of certain persons.

The order of APO cannot be used in place of disciplinary action for penalizing a person. If a Government Servant has committed any wrong then the appropriate disciplinary action is required to be initiated against that person in accordance with the Rules and, therefore, passing of awaiting posting order in such cases are not sustainable.

Learned counsel for the State has tried to justify the awaiting posting order bringing the same within the ambit of decision No.5 of the Government of Rajasthan’s decision under Rule 25A but in the opinion of this Court, the present case is not even remotely covered under decision No.5 of the State Government’s Decision under Rule 25A of the Rules of 1951.

This Court, therefore, is firmly of the view that the awaiting posting order cannot be passed in a casual and mechanical manner, more particularly when the ban was

imposed by the State Government. The sanctity of the ban is required to be adhered to by the State Functionaries.”

18. I am in respectful agreement with the view taken in these two judgments.

19. From a conjoint reading of Rules 7 and 25A of Rajasthan Service Rules, 1951, it is no doubt evident that for passing an A.P.O. order, the seven contingencies outlined in Rule 25A are illustrative rather than exhaustive. However, this should not be interpreted to mean that the Rule 25A may be used to circumvent the safeguards enshrined in Rule 13, which restricts suspension only under certain specific conditions. If an A.P.O. order is issued without disclosing a valid contingency—or if the disclosed reason contravenes Rule 13—it amounts to violation of the legislative intent, under the garb of an administrative exigency. Such a course is clearly not permissible under the law. Accordingly, whenever power under Rule 7(8)(b)(iii) is invoked in conjunction with Rule 25A, the administrative authority must explicitly state the reasons for invoking contingencies beyond the seven specified in the Rule. Thus, in all cases, the administrative authority must articulate the rationale behind an awaiting posting order—whether it falls within the enumerated contingencies or stems from an administrative exigency.

19.1. While interpreting Rules 7(8)(b)(iii) and 25A, principle of *Ejusdem Generis* shall necessarily apply and thus other non-exhaustive circumstances must have similar cognitive meaning. Illustratively, if a provision of law refers to “cars, trucks, motorcycles, and other vehicles,” the phrase “other vehicles” would be interpreted only to include similar modes of transport (e.g., buses, vans) but not airplanes or boats. When we Apply



Ejusdem Generis to Rule 25A, it is borne out that the rule provides a list of specific circumstances where it applies viz. Returning from leave; Repatriation from deputation within India; Completion of training or foreign assignment; Returning from training within India or Relinquishing charge of a previous post under orders of the appointing authority and awaiting new posting orders. Rule 7(8)(b) specifically provides that *Government may issue orders declaring that in the circumstances specified therein, or in circumstances similar thereto, a Government servant may be treated as on duty.* It indicates that the rule applies to "other similar situations" where an employee is awaiting posting orders. The phrase "other similar situations" must be interpreted in the same category as the listed circumstances.



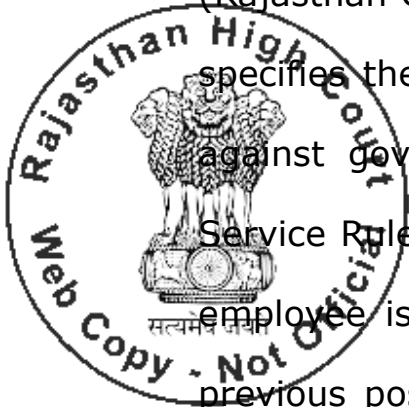
19.2. Resultantly, the Rule *ibid* or Rule 25A do not apply to any contemplated disciplinary actions, suspension, or cases where posting is deliberately withheld as a punitive measure. Rule 7(8) (b) and Rule 25A can only apply to employees who are awaiting posting due to contingencies specified therein (such as transfer, repatriation, or return from training) or similar other contingencies. It cannot be expanded to cover situations where either it is proposed to initiate disciplinary proceedings or an official is to be suspended pending an inquiry or contemplated removal from a post under the guise of "awaiting posting orders."

19.3. Disciplinary proceedings must be dealt with under relevant provisions of Rajasthan Civil Services (Classification, Control & Appeal Rules, 1958 and not Rule 25A of the Rajasthan Service Rules, 1951. Thus, Rule 25A must not be invoked as a means to avoid disciplinary procedures. If an administrative authority

misuses Rule 25A to delay postings for punitive reasons, such an action would be legally not tenable.

19.4. I am thus of the opinion that Rule 25A of the Rajasthan Service Rules, 1951, cannot be invoked to bypass Rule 13 of the Rajasthan CCA Rules, 1958. Reasons are obvious. Rule 13 (Rajasthan CCA Rules, 1958) governs disciplinary proceedings and specifies the proper authority and procedure for initiating actions against government employees. Whereas, Rule 25A (Rajasthan Service Rules, 1951) deals only with pay and allowances when an employee is awaiting a new posting after being relieved from a previous post. Since Rule 25A is not applicable for disciplinary proceedings, it cannot be used to circumvent or bypass the procedural safeguards under Rule 13. If an employee is accused of misconduct, incompetence, or other delinquency warranting disciplinary proceedings, Rule 13 of Rajasthan Civil Services (Classification, Control & Appeal Rules, 1958 must be followed to ensure procedural fairness.

19.5. To sum up, Rule 25A of Rajasthan Service Rules, 1951 is purely an administrative provision for pay continuity—it does not confer any power for disciplinary proceedings. Rule 13 of Rajasthan Civil Services (Classification, Control & Appeal Rules, 1958 is applicable for disciplinary proceedings—bypassing it through Rule 25A would be illegal. If an employee is being kept on "awaiting posting orders" for an extended period without formal disciplinary proceedings under Rajasthan Civil Services (Classification, Control & Appeal Rules, 1958, it would amount a malafide exercise of power. Also, to prevent abuse of power, in cases where either the contingencies under Rule 7(8) and/or Rule



25-A have not been disclosed and/or if disclosed, are other than similar thereto, APO orders would be falling foul of those Rules. Such an action is clearly not permissible in law.

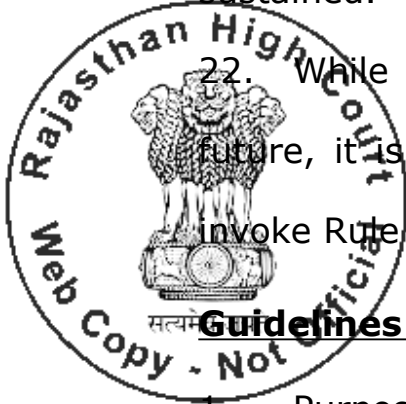
20. Accordingly, it is held that as and when an order of APO can be passed only in the contingencies specified in Rule 7(8)(b)(iii) and/or Rule 25-A of Rajasthan Service Rules, 1951 or in other similar contingencies the competent administrative authority shall be under mandate to record and convey the relevant applicable contingency to the concerned employee. Failure to record and convey the relevant applicable contingency to the concerned employee would amount to violation of intent, letter and spirit of Rule 7(8)(b)(iii) read with Rule 25-A *ibid* and smack of colorable and mala fide exercise of power.

21. Before parting, I may hasten to add there that the reliance placed by learned counsel for the respondent-State on an obiter of Division Bench judgment rendered in ***Pushkar Lal Mali Vs. State of Rajasthan***³, seems to be slightly out of context. Moreover, the observation that the contingencies provided in Rule 25 are not exhaustive was made *sub silentio* on a matter pertaining to disciplinary proceedings by not directly either addressing any specific argument or the issue being directly discussed, effectively allowing it to be assumed without formal reasoning thereof. At the cost of reiteration, an administrative authority should not normally traverse beyond the contours of contingencies provided under Rule 25-A, but fortified with the obiter, *ibid*, to accept that in all those cases which may be termed as 'unusual' and, therefore, Rule 13 can be given a short shrift would be a travesty of justice

3 D.B. Special Appeal Writ No.733/2022, decided on 24.11.2022

and also misinterpretation of the entire scheme of service jurisprudence. Rule 13 precedes and stands on much stronger footing vis-à-vis Rule 25-A. Necessarily, therefore, as an upshot, where the reasons of awaiting posting orders are contemplated departmental inquiry, such administrative orders cannot be sustained.

22. While concluding, in order to avoid needless litigation in future, it is deemed appropriate to frame following guidelines to invoke Rule 25-A of Rajasthan Service Rules, 1951:-



Guidelines on Awaiting Posting Orders (APO)

1. Purpose and Justification of APO Orders:

- (i). It must be issued based on administrative necessity or public interest and not as a punitive measure.
- (ii). The reason for placing an employee under APO must be explicitly stated in writing.
- (iii). APO should not be used as a substitute or ruse for disciplinary action.

2. Conditions for Issuing APO Orders:

2.1. APO orders are "usually" to be passed in the following circumstances under Rule 25-A of Rajasthan Service Rules, 1951:

- (i). Returning from leave.
- (ii). Reverting to the parent department after deputation.
- (iii). Returning from training (domestic or foreign).
- (iv). Awaiting posting after relinquishing a previous post.
- (v). Non-acceptance of the officer's transfer to another post.
- (vi). Preventing the reversion of a government servant.

2.2. Though the conditions mentioned in Rule 25-A are illustrative, but any other condition proposed to be invoked must align with similar administrative necessity (principle of ejusdem generis).

3. Limitations and Restrictions:

(i). APO orders cannot be used to circumvent Rule 13 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958, which governs suspensions.

(ii). APO should not exceed 30 days unless approved by the Finance Department with valid justification.

(iii). Prolonged APO status without proper cause is misuse of authority.

4. Administrative Accountability:

(i). Reason for an APO order to the concerned employee/official must be conveyed.

(ii). Ensure timely issuance of future posting orders to prevent unnecessary financial burden on the government.

(iii). APO orders that amount to de facto suspension or serve as a means to delay the proposed disciplinary action should be avoided.

23. The State of Rajasthan (respondent in all the petitions) is directed (through its Chief Secretary) to issue necessary administrative instructions to all the Head of Departments / Administrative Secretaries and other competent Administrative Officers so as to sensitize them about the aforesaid guidelines framed by this Court along with copy of the instant judgment. Registry of this Court to convey the instant order to the Chief



Secretary of the State through Email for his kind information and necessary compliance thereof.

24. In the light of the guidelines, as above, since in none of the petitioners were conveyed reasons in writing to place their services under APO category (though subsequently in the pleadings-reply they were disclosed in some cases), all the impugned orders (APO) in the bunch, as per Appendix-'A', are set aside qua them, with consequences to follow. The impugned orders where the reasons conveyed is "contemplated or pending departmental action" or dereliction of duty or receipt of complaint or wherever, the headquarter was changed amounting to change of place/transfer, the same are thus liable to be quashed for those additional reasons. It is accordingly so ordered.

25. However, if administrative exigency so warrants, the competent authority of the State shall be at liberty to pass fresh orders of APO under Rule 25-A of the 1951 Rules, by conveying the reasons in writing, in accordance with law. Instant order shall also not preclude respondents to pass fresh transfer/posting orders in general qua the petitioners.

26. All the writ petitions stand disposed of as above.

27. All pending application (s) shall also stand disposed of.

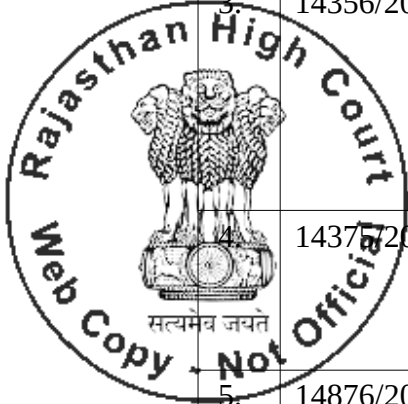
(ARUN MONGA),J

Whether Fit for Reporting:- Yes / No

Jitender Rana - Sumit Sharma

Appendix-A

Sr. No.	Case No.	Title / Post & Department	Date of APO	Reason	Headquarter changed
1.	10380/2024	Sewaram Vs State (VDO) Panchayati Raj Department	18.06.2024	Administrative Reasons	No
2.	13421/2024	PramendraKulhar Vs. State (Lecturer) Education Department	05.08.2024	Misbehaviour and Administrative Reasons.	Yes
3.	14356/2024	Ashok Kumar Pareek Vs. State (Chief Block Education Officer) Dept. Secondary Education	24.07.2024	Reason not mentioned	Yes
4.	14377/2024	Ratana Kumari Vs. State (Female Health Worker) Medical Department	23.08.2024	Dereliction of Duty	No
5.	14876/2024	Bharat Singh Choudhary Vs. State (Inspector Land Revenue)	28.08.2024	Administrative Reasons	No
6.	15007/2024	Om Prakash Vs. State (Patwari) Dept. Land Record	02.09.2024	Reason not mentioned	No
7.	15029/2024	Bhupendra Kumar Vs. State (Nursing Officer) Medical Department	03.09.2024	Dereliction of Duty	Yes
8.	15366/2024	GanrajBishnoi Vs. State (Nursing Officer) Medical Department	03.09.2024	Dereliction of duty and pending inquiry	Yes
9.	16368/2024	Ranjeet Singh Vs. State (Senior Teacher Science) Dept. Secondary Education	20.09.2024	Reason not mentioned	No
10.	16549/2024	Bharti Samariya Vs. State (Principal) Education Department	21.09.2024	On Complaint by students	No
11.	17068/2024	Vijay Kumar Vs. State (Lecturer Gr.I) Dept. Secondary Education	09.10.2024	Misbehave and Indiscipline	No
12.	17227/2024	Saroj Bishnoi Vs. State (Principal) Education Department	09.10.2024	Dispute and Discrimination with co-workers	No
13.	17546/2024	Gangaram Vs. State (Jr. Assistant) Panchayati Raj	15.10.2024	Reason not mentioned	No





		Department			
14.	17923/2024	Gokul Chand Meena Vs. State (Inspector) Department of Food Supply and Consumer Affair	29.08.2024	Administrative Reasons	Yes
15.	18369/2024	Rajesh Kumar Ramwat Vs. State (VDO) Dept. Panchayat Samiti	17.09.2024	On posting of another VDO	No
16.	18480/2024	Usha Choudhary Vs. State (Inspector Audit Grade-I) Cooperative Department	29.10.2024	Reason not mentioned	Yes
	19721/2024	Lokesh Kumar Fageria Vs. State (Jr. Assistant) Panchayati Raj Department	06.11.2024	Reason not mentioned	No
	20479/2024	Poonam Kumari Vs. State (VDO) Panchayat Samiti	04.12.2024	Reason not mentioned	No
19.	20736/2024	Surendra Kumar Poonia Vs. State (Dy. Director) Social Justice and Empowerment	03.12.2024	Reason not mentioned	Yes
20.	21343/2024	Sumitra Panwar Vs. State (Dy. DEO) Education Department	13.12.2024	Deputation cancelled.	Yes
21.	21405/2024	Chitresh Patel Vs. State (VDO) Dept. Panchayat Samiti	13.12.2024	Reason not mentioned	No
22.	21725/2024	BhuraRam VS. State (VDO) Dept. Panchayat Samiti	14.12.2024	Dereliction of Duty	No
23.	21728/2024	Narender &Ors. Vs. State (PTI) Education Department	07.12.2024	Administrative Reason	No
24.	796/2025	Jeewan Ram Vs. State (ADO) Dept. Panchayat Samiti	03.01.2025	Reason not mentioned	Yes
25.	2525/2025	Pawan Kumar Vs. State (Tehsildar) Dept. Board of Revenue	21.01.2025	Reason not mentioned	Yes
26.	3368/2025	Jay Prakash Pandiya Vs. State (VDO) Dept. Panchayati Samiti	28.01.2025	Home town Panchayat Samiti	No

27.	4247/2025	Mohammad Salim Vs. State (Teacher Level-II) Education Department	07.01.2025	Reason not mentioned	No
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