

60

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 1076 of 1998

New Delhi. this 20th day of January, 1999.

HON'BLE MR. K. MUTHUKUMAR, MEMBER(A)

B.K. Gupta
S/o Shri H.N. Gupta
C/o Shri Sant Lal, Advocate
C-21(B), New Multan Nagar
Delhi-110056.

... Applicant

By Advocate: Shri Sant Lal

versus

1. The Union of India, through
The Secretary,
Ministry of Communication,
Department of Telecom,
Sanchay Bhawan,
New Delhi-110001.
2. The General Manager Telecom,
Distt. Ghaziabad,
Ghaziabad.
3. The Sub Divisional Engineer,
(Telegraph Traffic)
O/O the General Manager Telecom Distt.
Ghaziabad. ... Respondents

By Advocate: Shri K. R. Sachdeva

O R D E R (oral)

HON'BLE MR. K. MUTHUKUMAR, MEMBER(A)

The applicant is aggrieved that despite his long years of unblemished service, his request for being posted as Incharge of any Telegraph Office has not been considered, whereas respondents have arbitrarily appointed others including some juniors from time to time as and when vacancies arose in different Telegraph Offices in the Ghaziabad Division. The applicant strongly relies on departmental circular annexed as Annexure A-2 which deals with the policy of

posting of Incharges of DTOs under the charge of Lower Selection Grade. According to him, in terms of the aforesaid Annexure, the respondents call for volunteers from the officials who have completed 16 years of service and promoted in the LSG operative cadre for posting as Incharge of such DTOs and if no volunteers were available, the junior most LSG operative from a nearby station to be transferred to hold the Incharge posts. It is stated by the learned counsel for the applicant that the posting of Incharge does not carry out any promotional scale, but only certain perquisites like free departmental quarters, failing which some additional HRA is allowed. No such averments have been made in this application.

2. The main grievance of the applicant is that when vacancy arose in Modinagar, he was not considered and one Shri Ashok Kumar, Incharge Telegraph Centre, Loni who was senior to him has been taken against this post although he had not applied for it. Again for the post of Incharge of Sahibabad Telegraph Office, the respondents did not circulate the letter inviting for volunteers and they went about selecting another person by name Shri Rishi Pal Singh who was junior to the applicant. Learned counsel for the applicant pleads that the action of the respondents in not considering the applicant's case within the terms of the DOT's order, is arbitrary and is also with a malafide intention of denying to him the orders of posting as Incharge of Telegraph Office. He submits

that one of the prayers in this application is that he should be considered for posting as Incharge of DTO, Modinagar, Sahibabad or any other DTO on the basis of his seniority and LSG operative status in accordance with the DOT's orders.

3. The respondents in their reply have stated that the posting of Senior Telegraph Officer as Incharge is not a vested right. This is based on the administrative exigencies and also in terms of the departmental circular (Annexure A-2) on the basis of which the Senior Telegraph Officers who have volunteered were considered and appointed by the department. In the case of the applicant, he did not volunteer for Sahibabad vacancy while Shri Ashok Kumar, Incharge of Modinagar Telegraph Office had volunteered for Sahibabad vacancy and Shri Raj Pal Singh being the senior most volunteers, was posted at Sahibabad. The respondents have also denied that the copy of the circular calling for volunteers was not sent to Modinagar. It is also pointed out that Shri Ashok Kumar had volunteered only in response to this circular. The respondents point out that no right of the applicant has been violated by his not being posted as Incharge.

4. The learned counsel for the respondents has submitted that this application does not deserve any consideration on the simple ground that one of the reliefs claimed in this application is that the

(13)

posting of Shri Ashok Kumar and Shri Rishi Pal Singh as Incharge of Telegraph Offices be declared as illegal. These persons were not included as parties and this application deserves to be dismissed for non-joinder of parties.

5. As regards the merit of the case, the learned counsel for the respondents argues that the posting orders posting certain officials as Incharge is purely within the administrative exigencies and domain of the respondents subject to the general guidelines given in Annexure A-2. By no stretch of imagination it can be said that the applicant has any vested right in the posting. The department reserves the right to consider suitable volunteers to be posted as Incharge of Telegraph Offices. This cannot be taken as a matter of vested right by the applicant. The learned counsel for the respondents has submitted that there is no indication as to in what manner the applicant has been discriminated against or the action taken by the respondents is a prejudicial one. It is not as though respondents have closed the applicant's chances for consideration for any future vacancies that may arise subject to his eligibility for appointment. In view of this, the learned counsel for the respondents submits that this application is totally misconceived and the same deserves to be rejected.

6. I have heard the learned counsel for the parties and have carefully gone through the pleadings.

64

7. Ordinarily, Courts and Tribunals have very limited jurisdiction in regard to posting and transfer of officials. This is done in accordance with the administrative exigencies and also as per the requirement of the department. It is not denied that the department has brought out a circular by which volunteers are to be called for posting as Incharge of Telegraph Offices. This does not necessarily imply that the respondents have restriction in the matter of selection of persons to be Incharge of Telegraph Offices. No doubt, the respondents have invited volunteers as is evident from the facts of the case. It is also disputed by the respondents that the applicant did volunteer for this vacancy. So long as the respondents have acted in a fair manner in the matter of calling for volunteers and selecting the senior most suitable volunteer, the Courts and Tribunals cannot interfere in the matter. In this application it is nowhere established that the respondents have acted in an arbitrary and malafide manner in regard to the applicant. Besides, as the learned counsel for the respondents has submitted it is not as though the applicant's chances of being considered as Incharge is closed forever.

8. In view of the above, I find that this application is devoid of merit and the same is accordingly dismissed. There shall be no order as to costs.



(K. Muthukumar)
Member (A)