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Reserved
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL: ALLD BENCH
ALLAHABAD

DATED: ALLD. on this 17/4 Day of ^{April} March, 1998.

CORAM: HON'BLE MR D S BAWEJA, A.M.

ORIGINAL APPLICATION NO.401 OF 1997

Padam Narain Dwivedi
S/o Late Shri Lalman Dwivedi
R/o Kakrahi Bazar, P.O. Dibiapur
District: ETAWAH

.....Applicant

C/A Shri Bechu Ram and
Shri Avanish Tripathi.

Versus

1) Union of India, through the
Secretary, Department of Posts
Ministry of Communications,
JAK Bhawan, Sansad Marg
NEW DELHI

2) Post Master General
Agra Region, Agra

3) Superintendent of Post Offices
Etawah Division, Etawah.

4) The Sub Divisional Inspector (Postal)
Dibiapur Sub Division
Dibiapur, Etawah.

.... Respondents.

C/R Km Sashana Srivastava

ORDER

By Hon'ble Mr D S Bawaja, A.M.

The applicant has filed this application while working as C.P. Chaukidar under Dibiapur Post Office under Etawah District. The facts of the applications are as follows:-

2. The applicant was engaged as C P Chaukidar as per order dated 19.12.1993 as a stop gap arrangement. Subsequently, the process of regular appointment was initiated by calling names from Employment Exchange. The name of the applicant was included in the names sponsored by the Employment Exchange.

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The applicant was finally selected and given regular appointment as per the order dated 21.10.1987. The applicant was granted temporary status as per order dated 30.04.91. The applicant after getting ^{of} temporary status has been given all the benefits as admissible in terms of circular dated 12.4.91 issued by Director General (Posts). As per letter dated 2.12.96, the applicant was informed that the post of C P Chaukidar, Jibiapur is not justified and the same is going to be abolished. The applicant as per his representation dated 6.12.96. In reply to letter dated 2.12.96, indicated that the post of C P Chaukidar is continuing for the last more than 16 years and the applicant having worked on temporary status on 1.5.91 is entitled for regularisation in Group 'D' post. The applicant was, however, transferred as per order dated 13.3.1987 from Jibiapur to Barakpur which is about 100 Km away from Jibiapur. Being aggrieved by this transfer order the applicant has filed present application on 7.4.1997.

3. In the background of the above facts, the applicant has sought the following reliefs:-

- (a) To quash impugned orders dated 10.12.96 & 18.3.97;
- (b) To set aside the impugned order dated 2.12.96 through which respondents are going to abolish the post of C P Chaukidar, at Jibiapur.

4. During the hearing the learned counsel for the applicant made a statement at BAR that he does not press for relief with regard to relief (b) as detailed above. In view of this averments of applicant made in the original application with regard to relief (a) only have been considered.

5. The applicant has challenged the transfer order mainly on the grounds that he is not holding civil post therefore and not subject to transfer liability and as such cannot be

transferred from one office to another office.

6. The respondents have contested the application through the counter affidavit. The respondents have refuted the contention of the applicant being regularly appointed from 21.10.1987. The respondents submit that the applicant was appointed as C P Chaukidar on daily wages from 21.10.87 purely on contract basis and on temporary basis. The applicant was allowed temporary status in ~~the line~~ ^{terms} of the instructions laid down in the circular dated 12.4.91 issued by Director General (Posts). During the inspection of the Post Master General (Agra Region) Agra, respondent No.2 in the year 1994 directed superintendence of Post Office, Itawa ^h Division to review the ~~Security~~ ^h safety arrangement of the Post Office and Identify the post offices where the post of C P Chaukidar is not necessary or is necessary. On 9.12.95 during the visit of Respondent No.2, ^h Jibisupur Post Office, it was observed by him that the post of C P Chaukidar at Jibisupur is not justified. In compliance of this inspection report, review of the deployment of the C P Chaukidar, Jibisupur to some other post Office where C P Chaukidar is necessary was done. A proposal for deployment was sent on 14.8.96 by respondent No.3 to respondent No.2. The Post Master General Agra as per order dated 10.12.96 approved the proposal for posting of C P Chaukidar, Jibisupur to Barlek Post Office where it was necessary to provide C P Chaukidar. In the meantime, applicant as per letter dated 2.12.96 was advised that there is no justification in continuing as C P Chaukidar at Jibisupur and applicant is to be shifted. The applicant was also asked to indicate if he is ready to work anywhere else. The applicant as per his letter dated 3.12.96 indicated his willingness to work nearby if there is no justification for continuing C P Chaukidar at Jibisupur. Thereafter applicant has been directed to work at ^Q Barlek Post Office as per order dated 18.3.97.

7. In view of these submissions, the respondents ~~are~~ ^{are} not contented that the applicant has been shifted to Barlekpur sub Post Office as C P Chowkidar in the ^{interest of} interest of administration and therefore the present application lacks merit and deserves to be dismissed.

8. The applicant has filed rejoinder affidavit ⁹ counterverting the submissions of the respondents and reiterating his grounds taken in the O.A.

9. I have heard Shri Avnish Tripathi, counsel for the applicant and Km Sadhana Srivastava, counsel for the respondents. The material brought on record has been carefully considered.

10. The applicant through M.A. had prayed for directing the respondents to furnish copies of some of the documents which are considered necessary by him in support of his case. The respondents were directed to produce the documents to the extent available as mentioned in the M.A. Some of the documents as available with the respondents were produced in original during the hearing.

11. As per order dated 17.4.97, it was provided that status quo as on date shall be maintained till next date. This interim stay order was extended from time to time and remained operative till pronouncement of the order.

12. From the averments of the either side, it is admitted fact that the applicant was employed as a casual C.P. Chowkidar and was subsequently granted temporary status from 01.5.91 in terms of letter dated 12.4.91 of Director General, Department of Posts, New Delhi. The respondents have brought out that in the year 1994, Post Master General during inspection of Etawah Division had directed to review the requirement of C.P. Chowkidar in the various Post Offices keeping in view the safety arrangement ^{available} and to re-deploy the

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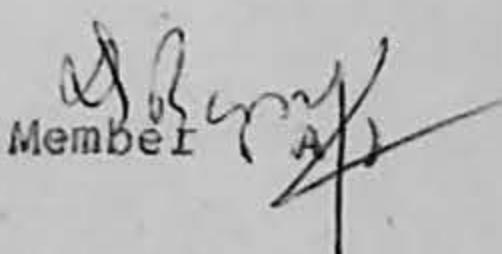
Chowkidars where required and at present not available. Based on this review, re-deployment of the Chowkidars were carried out. ^{It is also noted that the} However Post Master General inspected the Dibiapur Post Office on 09.12.95 and observed that post of C.P. Chowkidar is not justified in view of the ~~safety~~ ^{Security} arrangement available. In compliance with these directions, the respondent no.3 submitted a proposal to Post Master General as per letter dated 14.8.96 for re-deployment of Chowkidar to Dibiapur Post Office at Baralokapur Post Office. The proposal was approved by the Post Master General as per letter dated 10.12.96. In the meantime, the applicant was also advised as per letter dated 02.12.96 indicating that there is no justification for continuing C.P. Chowkidar in Dibiapur Post Office and he was asked to indicate if he is ready to work anywhere else. Subsequent to this, as per letter dated 18.3.97, the applicant has been transferred to Baralokapur Post Office. From these facts it is obvious that the transfer of the applicant to Baralokapur was the outcome of the review of requirement of C.P. Chowkidar keeping in view the availability of the ~~safety~~ ^{Security} arrangement. The issue, therefore, is whether such a decision taken by the administration can be legally interfered with. In my opinion this is a matter which is within the domain of the competent authority. Whether a particular post is required or not, is the matter to be decided by the competent authority. However, if such a matter is challenged, the only point to be examined is whether such a decision ^{has been} ~~is not~~ actuated by malafide or colourable exercise of power. In the present case, the applicant has not alleged any malafide in taking the decision that post of C.P. Chowkidar at Dibiapur, is not justified.

The applicant has made a feeble attempt to highlight that there are certain Post Offices where inspite of the Police Station being available, C.P. Chowkidar is being continued. This argument of the applicant does not carry weight as it is for the administration to decide the need for the Chowkidar even if a Police station is available depending on the circumstances prevailing at a particular Post Office. In the absence of any alleged malafide in taking a decision that the post of Chowkidar is not required at Dibipur, I consider that the decision taken by the Post Master General is a purely an administrative decision within his domain and ⁴ does not call for any judicial interference.

13. After recording findings with regard to need of C.P. Chowkidar at Dibipur, the next issue which needs to be considered whether the applicant could be transferred to Baralokpur Post Office. The applicant has taken a plea that he is not holding any civil post and, therefore, not subjected to the liability of transfer. This contention of the applicant is not tenable considering that the applicant is a temporary status holder casual labour and, therefore, he will be governed by the rules concerning the deployment of casual labour. The applicant has brought on record the copy of the letter dated 12.4.91 at A-5 dealing with grant of temporary status to the casual labourers. On perusal of this scheme, it is noted that as per para 14 casual labourers can be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work. In the present case, as indicated earlier, there was no need for continuing C.P. Chowkidar at Dibipur Post Office. The

option with the administration was to terminate the services of the applicant and the other option was to re-deploy the applicant to the Post Office where C.P. Chowkidar was necessary to be provided. The respondents have ~~been for~~ chosen the second option and applicant was asked to indicate if he is ready to go anywhere else. On receipt of the confirmation from the applicant, he has been shifted to Baralokpur Post Office under the control of the same Superintendent, Post Offices Etawah division. There is no averment from the applicant that he has been shifted out of the recruitment unit/territorial circle. ~~Further~~ However, from para 15 of the scheme at A-5 it is noted that conferment of temporary status has no relation to the liability of sanctioned regular group 'D' posts. This would imply that the applicant was not posted against any group 'D' post and was working on casual basis. Keeping these facts in view, I am unable to find any illegality in deployment of the applicant at Baralokpur Post Office.

13. In the result of the above, the O.A. is devoid of merits and the same is dismissed accordingly. No order as to costs. The interim order granted on 17.4.97, stands vacated.


Member