

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Original Application No.
~~Transfer~~ Application no.

712 of 1997

Date of Decision 16-1-98

Jawahar Singh

Applicant(s)

Sri B. Ram & Mr. Updhyaya & Sri A. Tripathi
Counsel for the Applicant

Counsel for the
Applicant(s)

V E R S U S

Union of India & Others

Respondent(s)

K. S. Srivastava / Sri K. I. Srivastava

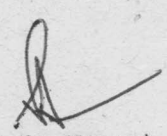
Counsel for the
Respondent(s)

C O R A M

Hon'ble Mr. S. Dayal Am

Hon'ble Mr. —

- 1.
1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether their Lordship wish to see the fair copy of the judgment ?
6. Whether to be circulated to all Benches ?


(SIGNATURE)

PIYUSH/

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 16th day of January 1998.

Original Application no. 712 of 1997.

Hon'ble Mr. S. Dayal, Administrative Member.

Jawahar Singh, S/o Shri Balbir Singh, r/o Rawli Road,
 Village-Timarpur, Distt. Bijnor.

... Applicant.

C/A Shri B. Ram, Sri M.K. Upadhyaya, Sri A. Tripathi

Versus

1. Union of India, through Secretary (Posts), Ministry of Communication, Dak Bhawan, Parliament Street, New Delhi.
2. Post Master General, Dehradun Region, Dehradun.
3. Director Postal Services, Dehradun Region, Dehradun.
4. Superintendent of Post Offices, Bijnor Division, Bijnor.
5. Sri J.N. Arora, Superintendent of Post Offices, Bijnor Division, Bijnor.
6. Shiv Dhyani Singh A.P.M. (A/c) Bijnor.

.... Respondents

C/R Km. Sadhana Srivastava
 Sri K.P. Srivastava

....2/-

ORDER

Hon'ble Mr. S. Dayal, Member-A

This is an application under section 19 of the Administrative Tribunals Act, 1985.

2. The application has been made for seeking the relief of setting aside the orders of transfer dated 22.4.97 and 9.7.97 and awarding costs of the application.

3. The facts as narrated by the applicant are that the applicant entered as Postal Assistant in Bijnore Head Office on 6.3.1984 and was promoted to the post of Accountant in Bijnore Head Office on 21.11.1992. The applicant came to know on 23.4.1997 that he was transferred as an Accountant in Dhampur Head Office by letter of Superintendent of Post Offices dated 22.4.1997. The applicant represented against the order of transfer by his representation dated 24.4.1997 and the Post Master General cancelled the transfer order by his letter dated 20.6.1997 which was endorsed by the Superintendent of Post Offices by his order dated 24.6.1997. The applicant in pursuance of this order joined his duties on 26.6.1997. The Superintendent of Post Offices again issued the transfer order dated 9.7.1997 by which the order dated 24.6.1997 was cancelled. The applicant has come to know that the order of transfer

4. The applicant has come again against the order of transfer and prayed for setting aside of this order made in July 1997 on the ground that the order was passed only to disturb the applicant since a vacancy of accountant existed in Bijnore Head Office and the request of the applicant for that post was pending consideration. Secondly the applicant had attained immunity from transfer as he had been elected as a Division Secretary of Bhartiya Dak Karamchari Sangh, Bijnore and any transfer even after the first year could only be made with the concurrence

of the Head of the Circle who is the Post Master General.

The third ground taken by the applicant is that the transferred order ^{was} against retentional policy guide-lines ~~from~~ ^{of} the year 1997-98 and his tenure was going to be terminated only on 21.11.1998. The applicant has mentioned that the order dated 9.7.1997 cancelled the order dated 24.6.1997 and this cancellation order ^{was} by the same officer and not by higher authority and hence it was ~~was~~ without jurisdiction. He has also mentioned that the order of transfer ignored the orders ^{of transfer} of the Post Master General, Dehradun and was made within a short span of the dated 24.6.1997. The applicant has also taken the plea that he was transferred in mid-academic session which would disturb the education of the children. He has stated another ground that he was a Class III employee and his maintenance of two establishments ^{on account of transfer} would impose a very heavy economic burden on him. The last plea mentioned in his ground that the balance of convenience was that he was still working on the post of A.P.M. (Accountant) at Bijnore Head Office.

5. Shri ~~Om~~ ~~more~~ Shivdhan Singh who was effected by the retention of the applicant at Bijnor, had made a prayer for being allowed to be impleaded as a respondent. His prayer was allowed and the Miscellaneous Application for this purpose became part of record of this case.

6. The arguments of Shri Avinish Tripathi counsel for the applicant, Shri K.P. Srivastava counsel for the private respondent and Km. Sadhana Srivastava, counsel for the official respondents were heard and the pleadings were taken into consideration.



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7. A look at the facts given in the O.A. and the counter reply of the official respondents show that the applicant has made a series of misrepresentations. He has stated in para 4 of the application that he was posted as A.P.M. Accountant Bijnor in pursuance of P.M.G. Dehradun letter dated 20-06.96 and 24.06.96. The counter reply of the official respondents shows that no letters dated 20.06.96 and 24.06.97 were issued by the Post Master General, Dehradun for posting of the applicant as Assistant Post Master (Accounts). The applicant has produced no order dated 20.06.96 while the respondents have produced order dated 20.06.97 with their counter reply and this order is for posting of Shri Shivdhayan Singh, A.P.M. (Accounts) Bijnour to Barant H.O. The order dated 24.06.97 has been issued not by P.M.G. but by Senior Supdt. of Post Offices in order to give effect to letter dated 20.06.97 and the letter dated 24.06.97 clearly shows that the applicant is Accountant (Designate) Dhampur and has only been given officiating charge as Asstt. Post Master (Accounts) Bijnor Head Office. His right to hold officiating charge ended when Shri Shiv Dhyan Singh's order of transfer was cancelled by the Post Master General, Dehradun. After cancellation of the transfer, the applicant ceased to have any right to hold the post of A.P.M. Accounts which was a post to be manned by LSG/BCR (Supervisory) cadre and belonged to a higher pay scale as is clear from the facts given in the Miscellaneous Application of Shri Shiv Dhyan Singh. Yet the applicant made it appear in his application as if it was the post meant for Accountant. This deliberate misrepresentation of facts disentitles the applicant to get any relief from the Tribunal.

8. The applicant has averred that he continued to work as Accountant H.O. Bijnor and was not relieved in pursuance of his transfer to Dhamper by order dated 22.04.97. This is

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another misrepresentation as the official Respondents have stated in their counter reply that Shri Kalloo Singh had taken over charge of Accountant Bijnor Head office on 15.05.97. The applicant has compounded his misrepresentation by stating that Shri Kallan Singh was Postal Assistant and not Accountant and was working as Postal Assistant. He has tried to prove this by giving a reference to some documents. It can not be assumed that the applicant did not know that Shri Kalloo Singh was working on the post of Accountant Bijnor H.O. which was earlier occupied by him.

9. The applicant has averred that his transfer was against rotational guidelines because he had not completed his tenure. He has made another misrepresentation in his O.A. by mentioning that his tenure would be completed on 21.11.98. As a matter of fact the applicant's tenure as Accountant was only four years and his transfer on 22.04.97 was after 4½ years of his working as Accountant, Bijnor H.O. Besides administrative guidelines do not confer any right to the applicant to continue on a particular post as transfer is an incident of service and administrative guidelines on transfer only provide for practicable norms violation of which would confer no right on the applicant to get his transfer order set aside. This law has clearly been laid down by the apex court in S.L. Abbas Vs. Union of India.

10. The applicant's averment that there is a clear vacancy of Accountant at Bijnor Head Office is yet another misrepresentation. The official respondents have clearly stated in their counter reply that there was only one post of Accountant at Bijnor H.O. and Shri Kalloo Singh was working

on that post since 15.05.97.

11. The applicant has tried to show that there was a statutory immunity from transfer in his case as he was working as Divisional Secretary. It is clear from order dated 01.02.88 annexed by the applicant as Annexure A-9, the concession is an administrative one and not a statutory concession and it is available for only the first year of the office. The first year in office in case of the applicant was 1992 and, therefore, transfer order dated 24.04.97 was not covered by the administrative concession. The applicant has mentioned that permission of Head of Circle was not obtained before transferring. This is applicable to those office Bearers who were entitled to immunity prior to orders dated 22.05.82 and the applicant has not shown that he was so entitled by producing the order. Besides the concession is available to him under administrative guidelines conferring no legal right on the applicant to challenge his transfer for violation of these guidelines.

12. The applicant has stated that transfer order dated 09.07.97 was a mid-academic session transfer which was not permissible in terms of the law laid down by the Apex Court in Director, School Education, Madras Vs. O Karippa Tahvan, 1994 SCC (L&S) 1180. This is not correct because the transfer of the applicant was made in April but the applicant applied for retention. He was allowed to continue at Bijnor on a higher post on officiating basis which was necessarily a stop-gap arrangement and the applicant would have known it to be so. Yet he accepted temporary officiation. Besides the month of July is not mid academic session. The interpretation of the applicant that transfer after admission of children for a particular

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session is midacademic session transfer is not correct. The learned counsel for the applicant has stated that the order dated 24.06.97 posting the applicant as Officiating Asstt. post Master (Accounts) was cancelled by the same officer by his order dated 09.07.97 is without jurisdiction. This contention can not be accepted because officiating arrangement was made by the same officer who terminated this arrangement. The officer had full authority to do so. Another plea of the applicant of frequent transfer is specious as the applicant has continued to work in Bijnor from 06.03.84 as mentioned by him in the application.

13. The learned counsel for the applicant has made a strong plea that since the applicant was a qualified Accountant, he should be posted on the important post of Accountant in the Head Office at Bijnor. The applicant has, however, been transferred to the post of Accountant at Dhampur and it is the prerogative of the respondents to utilise his services on a post for which they consider him as best suited. This court will, therefore, not accept this plea.

14. It has been brought to my notice by learned counsel for Shri Shivdhan Singh, who was pleaded as a respondent later, that has remained without his posting as A.P.M. (Accounts) Bijnor for quite some time. If he has been given no alternative posting he shall be treated to be on duty for this period. The respondents are directed to pay him the arrears of his salary upto 31.01.98 within one month from the date of communication of this order and salary from month to month, thereafter, till he is given posting. Subject to the condition that he was given no alternate posting during this period which he may have declined to join.

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15. The applicant has resorted to deliberate misrepresentation in order to make out a case for cancellation of his order. The application is thus totally without merit and is dismissed as such.

16. The applicant shall pay the cost of the application amounting to Rs. one thousand to the impleaded Respondent no. 6 Mr. Shivdhyan Singh within two month from the date of this order.


Member-A

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