

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Dated: This the 14<sup>th</sup> day of May 2006.

Original Application No. 618 of 2004

Hon'ble Mr. K.B.S. Rajan, Member (J)

K. K. Nigam,  
S/o Late Raghvir Sahai Nigam,  
R/o 180/4 Babu Purva,  
New Labour Colony,  
Kanpur Nagar.


. . . . . Applicant

By Adv: Sri A. Tripathi.

**V E R S U S**

1. Union of India through the Secretary (Posts),  
Ministry of Communication, Dak Bhawan,  
Sansad Marg,  
NEW DELHI.
2. Post Master General Kanpur Region,  
Kanpur.
3. Chief Post Master,  
Kanpur Region,  
Kanpur.
4. Superintendent of Post Offices,  
Fatehpur Division,  
Fatehpur.

. . . . . Respondents.


 By Adv: Shri S. Singh.

O R D E R

BY K. B. S. Rajan, Member-J

The application is directed against the impugned order dated 20.5.2004 and memo dated 31.05.2004 by which the applicant has been transferred from Kanpur Head Office to Fatehpur Head Office on Administrative ground during his suspension.

2. Brief facts as per applicant:-

- a) The applicant was appointed as Extra Departmental Mail Peon on 04.02.1968 and thereafter appointed as Postman on 4.2.1972. The applicant appeared in the examination of the Postal Assistant in 1981 and posted as Postal Assistant.
- b) The D.G. (Posts) on 23.4.1990 issued instruction that Postal Assistant, Postman, Postal Assistant B.C.R. Group C and D Posts are divisional Cadre and they will not be transferred from parent division to another division.
- c) While the applicant was working as Postal Assistant as I.V.P. discharge counter Assistant Kanpur Head Post Office during the period of 31.8.2003 to 3.2.2004, a case of alleged double
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Encashment came to light and the applicant was placed under suspension but later the suspension was revoked. After a short while the applicant was again placed under suspension.


- d) Respondent No.3 issued the major Penalty charge sheet under rule 14 of CCS (CCA) rule 1965.
- e) The respondent extended the suspension period for further four months.
- f) All of a sudden the respondent vide order dated 31.5.2004 transferred the applicant from the Kanpur Head Post Office parent division to Fatehpur Head Post Office another division; transferring the applicant from Kanpur Head Post Office (Division) to Fatehpur Head Post Office (Division) is not only illegal and arbitrary but the same is also against the statutory provisions of the disciplinary rules i.e. rule-66 of the Postal Volume-3.
- g) The Hon'ble C.A.T. Ahmedabad has confirmed the rule that the Group-C employee like applicant may not be transferred from one division to another division.





- h) The order was passed by the respondent only to harass the applicant.

3. Version of respondent is that:-

- a) the applicant K.K. Nigam as appointed as Postal Assistant in Kanpur (M) Division on 23.11.1981. He applied for transfer from Kanpur (M) Division to Kanpur HO under rule-38 of P&T Manual Vol. IV. His request was considered by the competent authority and transferred to Kanpur H.O.
- b) The applicant made payment of IVPs of Rs.40,000/- inspite of entry of transfer which resulted in fraudulent and double payment of Rs.40,000/-. After enquiry, he was placed under suspension vide memo dated 3.2.2004 and suspension was revoked vide memo dated 13.2.2004.
- c) The applicant was again placed under suspension vide memo dated 20.2.2004. The competent authority vide his memo dated 20.5.2004 ordered to transfer the applicant from Kanpur HO to Fatehpur HPO under the provisions of Rule 37 of Postal Man Vol IV.
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- d) The applicant has misinterpreted the spirit of Rule 66 of Postal Man Vol.III. It envisages that as far as possible such transfer should not be resorted to but it does not prohibit such transfer. He has been transferred in public interest keeping in view the racket in fake IVPs.
- e) Rule 37 of Postal - Manual Vol. IV is only concerned with Group 'C' and Group 'D' cadre and the transfer of the applicant, a Group 'C' employee, from one unit to another unit is in accordance with existing departmental rules/instructions.
- f) Whether respondent could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problem faced by the administration.
- g) In compliance of the transfer order dated 31/05/2004, the applicant has joined at his new assignment on 05.10.2004 (F.N.) at Fatehpur H.O., therefore, the O.A. has become infructuous and the same may be dismissed.
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4. Arguments were heard and documents perused. The purpose of restriction in Group C and D employees not being transferred out of the Division is that their seniority is not upset which is based on Division basis. If in the instant case the seniority of the applicant is not to be affected by posting him from Kanpur to Fatehpur, then the transfer order passed on administrative ground shall not be interfered with. In case the transfer does affect his seniority, then, the question is whether the transfer is justified and is legal.

5. On administrative grounds the authorities are competent to effect such transfer, but within the provisions of the Rules. The applicant has relied upon Rule 66 which puts an embargo for transfer when disciplinary proceedings are pending. Though this provision is qualified as "as far as possible" the case under consideration perhaps falls within the provisions of the said rule that the applicant may not be transferred as in his case the seniority may also be affected. In that event, the following aspects are to be considered:-


- (a) That a suitable order should be passed whereby the applicant's seniority in Kanpur Division shall be kept in tact.



(b) If the disciplinary proceedings are to continue and the applicant is not transferred back to Kanpur, he would be afforded necessary leave and TA/DA to attend the inquiry or in the alternative, the proceedings shall have to be transferred to this place, whichever is administratively feasible.

6. The applicant has relied upon the decision in the case of V.B. Dwivedi, which was passed after considering at length another case of Ram Autar Singh. As normally the transfer cases are dealt with on the basis of the facts and circumstances in each case, it is felt that there is no need to go into precedents.


7. The OA is therefore, disposed of with the direction to the respondents to ascertain whether the inter divisional transfer would affect the seniority and if not, the applicant be informed accordingly and observations as contained in para 5(b) above be followed. Instead, if inter divisional transfers do affect seniority of the applicant, then both para (a) and (b) above be kept in mind and suitable instructions/orders issued. In case the department feels that the applicant can be transferred to some other unit within the same Division, which may not affect his seniority, then



suitable orders may also be passed, subject however, to the condition that the applicant be asked to give three options in this regard.

8. The above order is passed under the relief claimed vide para 8 (c) of the O.A.

No cost.



Member (J)

/Neelam/