

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No.620 of 2004

Allahabad this the 21st day of February, 2005

Hon'ble Mr.A.K. Bhatnagar, Member (J)

Vishnu Bihari Dwivedi, S/o Late S.G. Dwivedi, R/o
117/Q/3-A Sharda Nagar, Kanpur Nagar.

Applicant

By Advocate Shri Avnish Tripathi

Versus

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 Head Office, Kanpur.
4. Superintendent of Post Offices, Fatehgarh
Division, Fatehgarh.

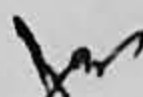
Respondents

By Advocate Shri Saumitra Singh

O R D E R

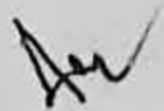
Mr. A.K. Bhatnagar, Member (J)

By this O.A., the applicant has prayed for direction to quash and set aside the impugned order dated 20.05.2004 and 31.05.2004 passed by respondent no.2 and 3 by which the applicant has been transferred from Kanpur Head Post Office parent division/unit to Fatehgarh Head Post Office Division/Unit on the post of Postal Assistant(B.C.R.) (Annexure No.A-1 in Compilation II). He has also sought a direction to the respondents to allow him to work on the post of Postal Assistant(B.C.R.) officiating Deputy Post Master at Kanpur Head Post Office as usual and also pay the salary as and when it becomes due.



2. Counsel for the applicant has challenged the orders on the ground that the applicant is posted as Postal Assistant (BCR) is also holding a Group 'C' post, which has been declared as a divisional cadre by D.G. Post Instruction issued vide letter dated 23.08.1990, which prohibits the inter divisional transfers (annexure-2). As the impugned order (annexure A-1) has been passed by transferring the applicant from Kanpur Division to Fatehgarh Division, he has also assailed the impugned order that he may suffer loss of seniority and promotional prospects. It is also submitted by the applicant's counsel that the applicant was transferred from Kanpur Head Post Office during his suspension period. The applicant was charge sheeted under Rule 14 C.C.S. (C.C.A) Rules, 1965 by the respondent no.3 vide order dated 18.03.2004. In spite of that the applicant has been transferred by respondent no.3 from Kanpur division to Fatehgarh division, which is against the rules and D.G. (Instructions). Learned counsel for the applicant submitted that Rule 66 of Postal Volume-3 provides that the person should not be transferred during the contemplation of disciplinary proceedings, as it is out of jurisdiction of disciplinary authorities. Learned counsel for the applicant finally submitted that the applicant is a holder of the elected post of Divisional President of All India Postal Employee Association (Class III) at Kanpur Head Post Office and as per the instructions of D.G. (Posts) he is not supposed to be transferred till the completion of his tenure on the elected post. Learned counsel for the applicant submitted that the same controversy has been decided on 08.10.2004 in O.A. No.273 of 2004 Ram Autar Sharma Vs. Union of India and others, and the present case is also squarely covered by the above mentioned order.

3. Resisting the claim of the applicant, the respondents filed counter affidavit. Learned counsel for the respondents submitted that the applicant had



remained in Jail in a Criminal Case No.491 Under Section 468/420 and 409 I.P.C. He was charge sheeted for different charges and awarded punishment, as stated in paragraph no.6 of the counter affidavit. The applicant in fact is in BCR(HSG-II), which belongs to circle cadre. Other group 'C' and 'D' official are in divisional cadre. Therefore, the applicant can be transferred from one division to another according to administrative exigencies and public interest. Learned counsel for the respondents invited my attention on paragraph no.14 of the counter affidavit and submitted that the applicant is holding the Charge of President which does not come within the purview of prevailing instructions and immunity from transfer is not available to the President of the Union, which the applicant belongs. In support of his pleadings, learned counsel for the respondents placed reliance on the case of Union of India and others Vs Shri Janardhan Dev Nath and others. Learned counsel finally submitted that the impugned order of transfer has been passed on administrative ground, which is not done as a measure of punishment, therefore, warrants no interference by this Tribunal.

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4. ~~We~~ have heard the counsel for the parties and perused the record.

5. I have perused the order passed on 08.10.04 in O.A. No.273 of 2004. Paragraph no.4 of the Order is reproduced as below:-

"4. We have given our anxious consideration to the submissions made by the counsel appearing for the parties. A perusal of the circular dated 23.08.1990, issued by the Director General (SPN), Ministry of Communications, Department of Posts, New Delhi addressed to all Post Master General and other concerned would indicate that though Group 'C' and Group 'D' employees hold transferable post but in actual practice a vast majority belonging to these categories were never subjected to the transfer liability stipulated in the appointment order issued in favour of such employee and accordingly in consultation with the Ministry of

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Law, it was ordered that no clause or condition relating to transfer liability anywhere in the country in the special or general circumstances should be mentioned in the appointment order issued in favour of group 'C' and group 'D' employees of the concerned posts and as such the clause existing in case of employees already in service 'is hereby cancelled with immediate effect' and their appointment order should also stand so modified with effect from the date of this letter. So far as Rule 37 of the Postal Manual is concerned it provides that 'All officials of the Department are liable to be transferred to any part of India unless, it is expressly ordered otherwise for any particular class or classes of officials.' In view of the circular aforesaid, Group 'C' and Group 'D' employees stands excluded in view of the exclusionary clause contained in Rule 37 which expressly provides that the transfer liability to any part of India would be attracted "unless it is expressly ordered otherwise for any particular class or classes of officials". The Hon'ble Supreme Court of India in Civil Appeal Nos.1010-1011/04 Union of India & others has held, relying upon the provisions of Rule 37 of the Posts of Telegraph Manual, that officials of department are liable to be transferred to any part of India unless it is expressly ordered otherwise for any particular class or classes of officials. Since the circular referred to above carves out an exception in favour of group 'C' and 'D' employees, we are of the view that provisions of Rule 37 of the Postal Manual providing for transfer of group 'C' employee outside the division cannot be invoked. The order impugned herein is liable to be quashed also on the ground that while an employee is facing disciplinary proceedings he should not be transferred out of the jurisdiction of the Disciplinary Authority who is to conduct the departmental proceedings. In view of what is provided in paragraph 66 of Postal Manual Vol.III it is true that the expression as far as possible gives an element of discretion in the concerned authority to decide whether during the pendency of disciplinary proceedings an employee should or should not be transferred out of the jurisdiction of Disciplinary Authority but in the instant case, the Disciplinary Authority has not directed itself to this aspect of the matter nor has it given any cogent reason as to why it is not possible to retain the applicant within the Division."

5. In view of the above discussion and in respectful agreement with the Order in Ram Autar Sharma's case(supra) I am of the view that this case can be

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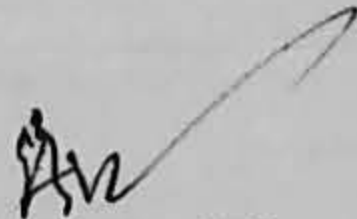
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decided in terms and conditions of the order passed in the above mentioned case.

6. Accordingly the O.A. is allowed to the extent that the impugned order dated 31.05.2004 is quashed in respect of the applicant only, with liberty to the disciplinary authority to transfer the applicant at any station other than Fatehgarh, within his jurisdiction. No order as to costs.


Member (J)

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