

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

ALLAHABAD, THIS THE 28th DAY OF Sept, 2005.

QUORUM : HON. MR. K.B.S. RAJAN, J.M.

ORIGINAL APPLICATION NO. 701 OF 2004

Hazari Lal, son of Sri Shiv Balak, Resident of Village Ramjpur, Post Bhauri, District Chitrakoot.

.....Applicant.

Counsel for applicant : Sri D.S. Srivastava.

Versus

1. Union of India through Director General (Posts) Dak Bhawan, Sansad Marg, New Delhi.
2. Superintendent of Post Offices, Banda Division Banda.
3. Sri Dinesh Singh, Superintendent of Post Offices, Banda Division, Banda.
4. Sri B.R. Pandey, Postal Assistant Headquarter, Head Post Office Banda, District Banda.

..... Respondents.

Counsel for respondents : Sri S. Singh.

O R D E R

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The applicant, a Postal Assistant of Banda Head Office, was selected as Treasurer at Karvi Head Office in June, 2003 for a period of two years. However, as the Respondents had observed that earlier he was involved in some misappropriation of funds, he was repatriated to his original post of Postal Assistant in June, 2004 itself before completion of his full tenure of two years and the applicant had challenged the said transfer. At the time of admission of the OA the applicant submitted that he was not relieved and hence a "status quo" order was passed. The applicant received his pay for the month of July, 2004 from Karvi only.



2. The respondent contested the OA. According to them, when the applicant was found to have misappropriated some funds earlier as Postal Assistant there is no question of retaining the applicant in the post of Treasurer wherein transaction is heavier. (Prevention is better than cure!)

3. Since August, 2004 the applicant had not been paid any pay and allowances as according to the respondents, the applicant stood relieved from Karvi on the day he obtained the interim status quo order and hence he was not paid any salary as he did not join the duties at Banda.

4. Arguments were heard and the documents perused. The period of deputation is for two years and there was a requirement of furnishing security before being allowed to function as treasurer. The applicant would have as such entertained to function only on his furnishing the security. His expectation was that he would not be shifted from Karvi for two years and would have made certain domestic arrangements. Thus, notwithstanding the fact that the respondents would have come to the conclusion that the applicant was not a desirable person to be kept as Treasurer, once having selected they should not have transferred him without due notice to the applicant for his posting back as Postal Assistant. This transfer cannot be taken as a normal transfer since it is one on application, selection as Treasurer, necessity to furnish securities, with a specific tenure for two months and as such, in the event of one being relieved of this post, one should be put to due notice. As such, the departmental action is not legally sustainable. The transfer order is liable to be quashed.



5. The applicant asserted that he had not been relieved from duties when he moved the OA and it is an admitted fact that the applicant was paid his pay and allowances for the period of July, 2004 from Karvi itself. The question now is whether the status quo order permitted the applicant to continue at Karvi or he was by then relieved from Karvi to take up his post as Postal Assistant at Banda. The Respondents contend that he had been relieved from Karvi on 24-06-2004. But there has been no evidence that was produced. The post of Treasurer is not such that one could be relieved *in absentia*. After all, there would be cash transactions, account books etc., which were to be duly handed over and taken over and the mere assertion that the applicant was relieved cannot mean that the applicant stood relieved. Had the applicant been relieved, then there would have been a response to his representation dated 01-09-2004 with a copy of the order dated 07-07-2004 to that effect and further, there would have even been an application to the Tribunal from the Respondents reflecting the correct position on the date of interim order even stating that in his place someone had joined with effect from a particular date etc. No such effort had been made. In all expectation even the security would not have been returned. The fact that the applicant was paid his salary for the month of July, 2004 from Karvi is a concrete proof for his not having been relieved. The answer to this question was that the applicant had requested on telephone for payment and his salary was asked to be paid at Karvi. This answer is far from being accepted. Thus, there is no option but to hold that the applicant had not been relieved.

6. The applicant is therefore, entitled to pay and allowances for the entire period upto the period of June, 2005 as the applicant was ready to function

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but it was the respondents who have refused to utilize his services as Treasurer.

7. Thus, the O.A. succeeds. The impugned order dated 23-06-2004 is quashed. The applicant is deemed to have served at Karvi till June, 2005. The respondents are directed to make available the pay and allowances for the month of August, 2004 till June 2005 to the applicant from the Post Office at Karvi. As regards the period from July, 2005 onwards, if provisions exists for extension of the period of two years, the respondents shall pass suitable orders accordingly and if not, fresh order shall be passed for the transfer of the applicant from Karvi to any place as per the general instructions. The applicant shall report to the Post Office at Karvi immediately on receipt of the copy of the order and the respondents shall pass suitable orders for his positioning as mentioned above. Salary for the month of July 2005 till the date of his future posting shall be made as treasurer if extension is granted and as a postal assistant if no such extension is granted. Security amount if any should also be refunded to the applicant while relieving from Karvi.

8. The arrears of pay and allowances shall be paid within two months, while resumption of duties shall be forthwith, i.e. on production of certified copy of this order by the applicant or receipt by the respondents of copy of this order which ever is earlier.

No cost.


MEMBER-J

Asthana/