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Reserved

Central Administrative Tribunal, Allahabad.

Registration O.A.No.685 of 1987

Ram Swaroop and another ... Applicant

Vs.

Prabhari Adhikari,
C.T.O, Lakhimpur Kheri
and 2 others ... Respondents.

Hon'ble G.S.Sharma, JM
Hon.K.J.Raman, AM

(By Hon'ble G.S.Sharma, JM)

In this Petition u/s.19 of the Administrative Tribunals Act XIII of 1985, the Applicants have prayed that the order dated 27.6.1987 (annexure 10) issued by the Chief Superintendent, Central Telgraph Office- Respondent no.2 stating that the services of E.D.Staff will no longer be required in different DTOs and they be repatriated to the Postal Wing as their absorption in the Traffic Wing was not possible, be quashed and in case the repatriation of the Applicants is deemed necessary, the Incharge General Post Office, Kheri be directed to relieve the Applicants from his office only when he obtains express consent from the Superintendent Posts, Kheri- Respondent no.3 to take the Applicants back for absorption in his office.

2. The case of the Applicants is that the Applicant No.1 was appointed as E.D.Messenger on 24.8.1979 and the Applicant no.2 was appointed as such on 27.12.80 by the Inspector of Post Offices, Kheri for the combined post office (for short CPD) Lakhimpur Kheri. The General Manager, Telegraphs (for short GMT) U.P. Circle Lucknow converted the Lakhimpur Kheri CPD into Departmental Telegraph Office (for short DTO) vide his order dated 25.5.1984 and it was directed at that time that the surplus class IV staff of Lakhimpur Kheri CPD is to be absorbed in the DTO as and when the vacancies arise. It is alleged by the Applicants that they were absorbed

as ED Telegraph Messangers in DTO Lakhimpur Kheri from 16.6.1984. According to the directions of the DG P&T contained in his Memo dated 20.2.1976, copy annexure 12, the Applicants had submitted their applications to the respondent no.2 for their absorption. The application was submitted to the Prabhari Adhikari GPO Lakhimpur Kheri- respondent no.1 and it was strongly recommended, whereupon the details of the services of the Applicants were called for. However, the Respondent no.2 instead of absorbing the Applicants, later on vide his impugned order dated 27.6.1987 decided to repatriate all ED staff coming from the Postal Wing of the Department. The Respondent no.3- Superintendent of Post Offices, Kheri did not agree for taking back such staff and expressed his inability vide his letter dated 20.7.87 copy annexure 11 on the ground that all such posts of ED Agents had been abolished.

3. The Respondent no.2 vide his impugned letter dated 27.6.1987 had also intimated that in case no reply was received within 15 days, the ED staff will be relieved for Postal Wing. The Applicants therefore, apprehended that as the Respondent no.3 is not prepared to take them back, they will be thrown out of employment on the expiry to the stipulated period of 15 days. The allegation of the Applicants is that they have rendered satisfactory service for a period of 4 to 6 years and on the opening of the new DTO, their services were transferred to it under the clear understanding that they would be absorbed there in regular group 'D' cadre on the arising of the vacancies and the order to relieve them is unjust and unwarranted.

4. The petition has been contested on behalf of the Respondents. One reply was filed on behalf of the Respondent no.2, in which it was stated that the General Manager Telecommunication, U.P. Circle Lucknow had ensured absorption of regular Class IV staff rendered surplus due to the conversion of the combined office into DTO and the Applicants were simply allowed to continue to work in the newly formed DTO till they are repatriated back in their recruiting unit (Postal Wing). The information called for from the office of the Respondent no.2 about the past record of the Applicants was simply to see whether they were working continuously and the question of regularising the services had, in fact, not arisen in the Department of the Respondent no.2 and they are liable to be repatriated to their recruiting unit. The inability expressed by the respondent no.3 cannot be a ground to prevent the repatriation of the Applicants as there is no post of ED Agent in the office of the Respondent no.2 and the Applicants were allowed to work there temporarily till they were repatriated and they have not acquired any right to continue there or to get themselves absorbed in the CTO. It was further stated that though the services of the Applicants are not going to be dispensed with immediately but they cannot be absorbed in the Traffic Wing and will have to go back in the Postal Wing.

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5. The other reply has been filed by the Respondent no.3 wherein it has been stated that the Applicants had worked as ED Messengers in the Combined Office of Lakhimpur Kheri from the dates of their

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respective appointments upto 15.6.1984 and thereafter their services were transferred to DTO Lakhimpur Kheri. At the time of conversion of the Combined Office into the DTO, it was specifically made clear by the PMG U.P. vide his letter dated 4.1.1984 that concurrence was being give on the condition that two ED Messangers rendered surplus will be absorbed in the DTO. The GMT had thereafter conveyed his sanction dated 25.5.1984 and he had thereby accepted the condition laid down by the PMG. Consequently, the posts of Applicants were abolished w.e.f. 15.6.1984 by the Director, Postal Services, Luckow vide his order dated 12.10.1984 and since then there is no post for the Applicants in the Postal Wing and they cannot be taken back and on 20.7.1987, the Respondent no.3 had already informed the Respondent no.2 that since the posts were abolished w.e.f.15.6.1984 and as the Applicants were working in the office of the Respondent no.1, they could not be absorbed in the Postal Wing. In this way, the Respondent no.3 has supported the claim of the Applicants for their absorption in the office of the Respondent nos.1 and 2.

6. The Applicants have reiterated their allegations in the two rejoinders filed by them and at the time of arguments before us it was further contended on their behalf that in case the Applicants cannot be absorbed by the Respondent nos.1 and 2 and they cannot be repatriated to their parent unit due to the abolition of their posts, we should issue a direction to the Respondent no.3 to re-employ the Applicants as ED Messangers.

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7. The facts of this case, as stated above, go to show that there is a clash between the Postal Department and the Tele Communication Department over the absorption of the Applicants. In his reply the Superintendent of the Post Offices, Kheri- Respondent no.3 under whom the Applicants were initially working before the office of the CO Kheri was converted into DTO, has stated that the PMG U.P. Circle vide his letter dated 4.1.1984 had given him his concurrence for this conversion on the specific condition that the two ED Messengers rendered surplus will be absorbed in the said DTO and the General Manager Telecom U.P.Circle vide his memo dated 25.4.84 had conveyed his sanction to open DTO at lakhimpurkheri accepting this condition of the PMG. The copy of the concurrence of the PMG U.P. has been placed on record as CA-1 to the reply of Respondent no.3. For the sake of convenience, it is reproduced below in verbatim :-

" Concurrence of the PMG UP Circle lucknow for conversion of lakhimpur Kheri l.S.G. combined office into a DTO is hereby conveyed subject to the conditions that two ED messengers rendered surplus will be absorbed in the said DTO and the DTO will be opened in a separate rented building."

(Emphasis supplied)

8. The copy of the order dated 25.5.1984 of the General Manager Telecommunication U.P., annexure A-5 to the petition contains the permission of the GMT UP for opening DTO at lakhimpur Kheri by terminating the existing Combined Head Office. Para 6 of this order is relevant for the purposes of this case and is accordingly reproduced below :-

" The class IV surplus staff of C.O will be absorbed in DTO as and when the vacancies arises but not before ban orders are lifted. Class III postal staff will be on deputation till such time the mutual arrangement between Chief Supdt. CTO lucknow and Supdt.of Posts Offices Kheri continued."

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9. The Chief Superintendent, CTO Lucknow- Respondent no.2 has tried to interpret the aforesaid para 6 in a different way and according to his contention, only the regular class IV employees of the C.O. rendered surplus by conversion of C.O. into DTO were to be absorbed in the DTO and this order did not contain any provision for absorbing the ED messengers and the Applicants were allowed to continue in the DTO for the time being till they were accommodated in the Postal Wing.

10. The Respondent no. 3 has further stated in his reply that in accordance with the aforesaid condition of his concurrence for converting Kheri C.O. into DTO the Director Postal Service abolished two posts of messengers and two posts of ED messengers w.e.f. 15.6.1984, the date of conversion of Kheri C.O. into DTO. A copy of this sanction dated 12.10.1984 has been filed as Annexure CA-2 to the reply by the Respondent no.3. The contention of the Respondent no.3 is that now there is no post for the Applicants at Kheri and the posts held by them have already been abolished and they are now to be absorbed in the Telecommunication Department. The impugned order dated 27.6.1987, copy annexure ~~CA~~ 10, passed by the Respondent no.2 states that the Applicants be repatriated to the Postal Wing and their posting be intimated to his office for their information as their absorption in the Traffic Wing is not possible. A copy of this order was endorsed to the Respondent no.3 with a direction that in case no reply was received within 15 days, the Applicants will be relieved for Postal Wing and will be directed to report ^{there} ~~here~~ for their further duty. In our opinion, this order is not in consonance with the spirit of the concurrence of the PMG U.P. Circle Lucknow, copy annexure CA-1 as stated above.

11. The Respondent no.2 has filed the copy of letter no.253/41/78 -STN dated 15.2.1985 of the Director General P&T New Delhi dealing with the absorption of ED messengers in a DTO after conversion of CO. The relevant directions of the DG contained in this letter are also reproduced below for the sake of proper appreciation :-

"The case has been considered and it has been decided that till a policy decision is taken on the issues against the vacancies of messengers in a DTO, ED messengers whose services are likely to be terminated consequently on conversion of C.O. into DTO may be posted on deputation till they can be absorbed in the Postal Branch."

(emphasis supplied)

12. 12. Perhaps, being reminded of this letter, the Respondent no.2 after having issued the impugned order of repatriation, annexure ~~10~~ 10 has stated in para 9 of his reply that though the services of the Applicants are not going to be dispensed with immediately but they cannot be absorbed in Telegraph wing. We are of the view that the Respondents are bound to obey the instructions of DG P&T contained in his letter dated 15.2.1985 aforesaid and the Applicants cannot be repatriated or thrown on the roads by the Respondent no.2 till they can be absorbed in Postal Branch or till a policy decision is taken by the Director General. As the posts of the Applicants in the Postal Wing have already been abolished by the Director ~~General~~ Postal Services, Lucknow, the question of their absorption ^{in Postal wing} at present cannot ~~be arisen~~ arise till new posts are created ~~for~~ ^{by} them in accordance with the policy decision contemplated by the Director General in his letter dated 15.2.1985. In any case, due to this anomalous position, the Applicants have a right to continue in the DTO Kheri till a policy decision in similar matters is taken or till

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they can be absorbed in the Postal Branch, whichever is earlier. If so desired, the Respondent no.2 may make a reference to the DG P&T New Delhi in this connection to expedite the decision.

13. The Application is disposed of accordingly without any order as to costs.

[Signature]

MEMBER(A)

Dated: 16th Aug. 1989
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[Signature]

MEMBER(J)