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Reserved

Central Administrative Tribunal, Allahabad.

Registration O.A.No. 1073 of 1987 1987

Nand Lal Kushwaha ...

Applicant

Vs.

Director Postal Services and others ...

Respondents.

Hon.Ajay Johri, AM
Hon.G.S.Sharma, JM

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

The applicant in this petition under Section 19 of the Administrative Tribunals Act XIII of 1985 was posted as Sub Divisional Inspector (for short SDI) Post Office Chandauli in district Varanasi and vide order dated 6.4.1987 issued by the Director of Post Offices- respondent no.1 he was transferred to Azamgarh as supervisor in the office of the Senior Superintendent of Post Offices in the place of one H.N.Chaubey, SDI. The applicant by filing an earlier petition under Section 19 of the Act being O.A.No. 318 of 1987 got the implementation of his transfer order stayed. The said case was dismissed by a Bench of this Tribunal on 31.7.1987 and the interim order stood vacated. In the meantime, vide order dated 18.6.1987 H.N.Chaubey aforesaid was diverted to Gyanpur and one Sri S.N.Singh- respondent no.3 Inspector from Muzaffarnagar was posted to Chandauli in place of the applicant on his own request and expenses. After the interim order obtained by the applicant in his earlier petition was vacated, the respondent no.3 approached the applicant on 21.8.1987 for taking over the charge of his post but as the respondent no.3 did not produce any copy of the order of his posting or the copy of the order passed by the Tribunal in the case of the applicant, the latter did not hand over the charge to the respondent no.3 on 21.8.1987 and sought the directions of the respondent no.1 by sending letter, copy annexure 2, on the said date. The applicant is said to have received a telegram,

copy annexure 4, from the Sr. Superintendent of Post Offices- respondent no.2, for handing over the charge to the respondent no.3 immediately and on 24.8.1987 the applicant also received a letter, copy annexure 5 from the respondent no.2 asking him to hand over the charge of his office to the respondent no.3 immediately. The copies of the transfer order and the order passed in O.A.no. 338 of 1987 were also enclosed with the said letter. The applicant alleges that before 24.8.1987 he did not have any information about the transfer of the respondent no.3 in his place and the respondent no.3 met the applicant thereafter only on 26.8.1987 and went back saying to ~~have~~ over the charge on 27.8.1987 but he did not turn up on 27.8.1987 and this fact was brought to the notice of the respondent no.1 by the applicant vide his letter dated 27.8.1987, copy annexure 6. On 28.8.1987, the respondent no.3 came to Chandauli but he refused to take the proper charge after signing charge report as required under Articles 42,44 and 55 of the Posts and Telegraph Manual (hereinafter referred to as the Manual). The applicant again wrote to the respondent no.2 on 21.8.1987 vide copy of letter annexure 8 for directing the respondent no.3 to take the charge from the applicant in the prescribed manner but as there was no response, he sent a reminder, copy annexure 10, on 7.9.1987. On 9.9.1987, the applicant received a letter dated 3.9.87 copy annexure CA-5 from the respondent no.2 stating that on his refusal to hand over the charge, the respondent no.3 assumed the charge of his office on 24.8.1987 and he was performing his duties as SDI Chandauli since then and in case he wanted to hand over any records or other material to him, he could do so after obtaining a receipt from him and there was no question of taking over charge from the applicant at that time. The applicant, on enquiry thereafter, knew that the respondent no.3 had taken over the charge on 24.8.1987 and vide his letter dated 14.9.1987, copy annexure 13, the applicant requested the respondent no.1 to direct the respondent no.3 to take the proper charge from the applicant and to pay his salary and other dues. It

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is alleged that after 28.8.1987 the respondent no.3 never went to Chandauli Post Office and is not working there. The respondent no.2 vide his letter dated 24.9.1987, copy annexure 16, directed all concerned not to take any work of Chandauli Post Office from the applicant.

2. The present petition was filed by the applicant on 10.11.1987 for quashing the order dated 24.8.1987 issued by the respondent no.2 asking respondent no.3 to take over charge of the post of SDI Chandauli in the forenoon and to start working and for a direction to the respondents to allow the applicant to work as SDI Chandauli till the proper charge is taken over from him by the respondent no.3. He also sought a direction to the respondent nos. 1 and 2 to direct the respondent no.3 to take over charge of his post from the applicant and to pay the salary of the applicant from Aug. onwards, bonus, T.A.Bills etc., on the grounds that under the rules the applicant is not supposed to leave the station without handing over charge of his office and respondent no.3 could not assume the charge as SDI Chandauli unilaterally.

3. The petition has been contested on behalf of the respondents and in the reply filed on their behalf by the respondent no.2, it has been stated that vide memo dated 19.8.1987, copy annexure CA-2, the respondent no.2 had asked the respondent no.3 to take over charge as SDI Chandauli and when the respondent no.3 met the applicant on 20.8.1987 for taking the charge, the applicant refused to hand over the charge on the pretext that he had no such information. On 21.8.87, the instructions were issued to the applicant by post as well as telegraphically and the copy of the judgment dated 21.7.1987 of the Tribunal in his case O.A.No. 338 of 1987 was also sent to him but as the applicant was bent upon not to hand over the charge and as there was no other option, the respondent no.3 was ordered to assume the charge and in this way the charge was taken over by the respondent no.3 on 24.8.1987 and the relevant records and other articles of the office are still with the applicant. As the applicant was still trying

to pose himself as SDI Chandauli, he was asked to hand over the records to the respondent no.3 after obtaining receipt and the concerned officers were also informed for not treating the applicant as SDI Chandauli. On the failure of the applicant to hand over the charge of his office to respondent no.3 after repeated and clear instructions the applicant himself violated the provisions of rule 44 of the Manual. The applicant was informed vide letter dated 21.9.1987 ^{marked} after handing over the charge, his other grievances shall be considered but the applicant has still not complied with the directions of the respondent nos. 1 and 2. The applicant was already relieved on assuming the charge of his office by his successor and he is not entitled to the reliefs claimed by him and his petition is misuse of the process of law.

4. In the rejoinder filed by the applicant it was stated by him that he did not receive the letter dated 19.8.1987 alleged to have been issued by the respondent no.2 to him nor the respondent no.3 ever met him on 20.8.1987. As the respondent no.3 is not attending ~~to~~ Chandauli Post Office, the applicant could not hand over the charge to him and the charge assumed by the respondent no.3 is illegal and malafide.

5. Most of the facts of this case as narrated above in detail are not in dispute. The only material question arising for determination in this case appears to be whether the respondent no.3 could assume charge of the post of SDI Chandauli unilaterally without handing over the charge to him by the applicant or in other words whether without doing the necessary formality of preparing the charge report, there could be a transfer of charge of the post held by the applicant. In support of his contention, the applicant has placed his reliance on certain rules of the Manual. Rule 42 provides that the orders of transfer must in each case specify in detail how the transfer is to be carried out. As a general rule when two officers are to exchange charges, the officer to be first relieved should be ordered to make over charge to one of the next senior officer who will hold charge temporarily until relieved. This rule thus suggests that in the absence of the successor the transferred officer may hand over the charge

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to the next senior officer. A direction has, however, to be issued in this connection by the authority making the transfer or by some other competent authority. Rule 43 provides that in cases where an officer is relieved of a charge without making it over to any one, he should sign the charge report alone as having relinquished charge. This rule clearly suggests that the charge can be handed over unilaterally without actually handing it over to any officer. Rule 44 provides that an officer transferred may not, without urgent necessity, leave the station before the arrival of the permanent successor. This is a general rule and has to be read subject to preceding rules 42 and 43. Rule 45 provides that when the charge of an office is transferred from one officer to another, the relieving officer must before signing the charge report check the several books, registers and accounts of the office etc., and verify the balance in hand. In our opinion, this rule is also subject to rule 43 and it will not come into operation if the charge is transferred unilaterally.

6. We have carefully considered the relevant provisions of the Manual and are of the opinion that though the general rule is that on transfer one officer should hand over the charge to another and the charge report should be prepared, it is not a rule of universal application and there can be deviation from this rule according to requirement of situation. In this case, admittedly the respondent no.3 had approached the applicant atleast on 21.3.1987 for handing over charge to him but the applicant did not hand over the charge to him on the ground that he was not aware of any order of handing over charge to him. The applicant on his own showing received necessary orders in this connection on 24.8.1987 but even on that date he did not hand over the charge to the respondent no.3 and it is alleged that 22.7.1987 (22.8.87) and 23.7.87 (23.8.87) were holidays and on 24.8.87 he was on casual leave. The applicant has conveniently stated himself on casual leave on 24.8.87 as according to the respondents, the respondent no.3 had unilaterally assumed the charge of the office

on that date. This was done by him with the permission of the senior officer, namely, the respondent no.2. On the further correspondence of the applicant, he was directed by the respondent no.2 to hand over the books and other articles of the Post Office with him to the respondent no.3 and there was no question of taking over charge from him formally. The applicant has stated that as the respondent no.3 was not available he could not do so.

7. Ahmedabad Bench of this Tribunal in N.D.Vasava Vs. Union of India and others (1987(2) SLJ-581) has held that the administration has to decide as in what manner the charge should be transferred and if it is made clear to the employee by the administration that the applicant has been treated as relieved on a certain date and the reliever has joined, the employee cannot force himself on the employer at a particular station by merely delaying or frustrating the formality of handing over the charge and taking protection under the cover of such formalities in assuming the position that he continued to be in his charge. We fully agree with the view taken by the said Bench and hold that the respondent no. 2 amply made clear to the applicant that the charge of ~~his~~ post stood transferred to the respondent no.3 on 24.8.1987. Merely on the ground that the applicant was in physical possession of some records etc., of Chandauli Post Office with him, it cannot be held that the applicant was also holding the charge of the post of SDI Chandauli after 24.8.1987 as there cannot be two incumbents on one post. Even on the refusal of the respondent no.3 to take over the charge from him as alleged by the applicant he could hand over the charge in the manner provided by rule 43 of the Manual and we are unable to uphold his contention that the charge of the post of SDI Chandauli is still with him and has not been transferred and we should pass any order for handing over his charge.

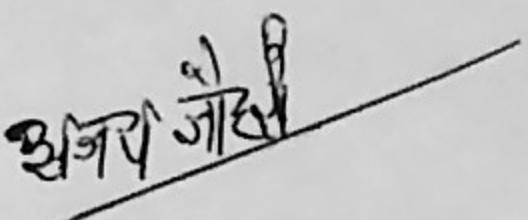
8. As the applicant impliedly stood relieved of his charge w.e.f 24.8.1987, he can hardly be entitled to claim any salary from that date. We are, however, not deciding this question finally and

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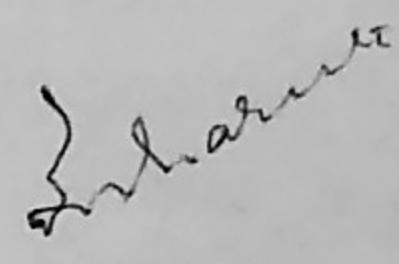
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leave it to be decided by the respondent nos. 1 and 2 on his complying with the transfer order in accordance with the relevant rules. The claim of the applicant regarding T.A., Bonus etc., is vague and we are sure that the respondent no. 1 and 2 shall not deny his legal dues to him. The applicant is, therefore, not entitled to any relief.

9. The petition is accordingly dismissed without any order as to costs.


MEMBER (A)

Dated April 18th 1988
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MEMBER (J)