

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH,
ALLAHABAD.

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Order dated 18.7.94

O.A.No.1668/1993.

RAJENDRA CHAUBEY ::::::: Applicant

(By Shri A.B.L.
Srivastava,
Counsel)

Vs.

1. Union of India
through Secretary,
Dept. of Posts,
DAK Bhawan, New Delhi.

2. Post Master General,
Bareilly.

3. Senior Supdnt. of
Post Offices,
Moradabad Division,
Moradabad.

:::::::::: Respondents

(By Kum. Sadhana
Srivastava, Counsel)

HON'BLE MR. JUSTICE B.C. SAKSENA, VICE-CHAIRMAN.

JUDGMENT.

(By Hon. Mr. Justice B.C. Saksena, V.C.)

The applicant, feeling aggrieved by the order dated 30-7-1993 passed by the respondent No.3 transferring the applicant from the post of Sub-Post Master, Tehsil Sub-post Office to Postal Assistant Rampur City, has filed this O.A. One of the main grounds alleged by the applicant is that on 1-8-80 he was promoted from the post of Postal Assistant to the post of Sub-Post-Master. He further alleged that the scale of pay of Sub-Post-Master is Rs.1400-2300 whereas the scale of Postal Assistant is Rs.975-1660. His further case is that

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several Postal Assistants junior to him, amongst the permanent Postal Assistants are continuing to work on the post of Sub-Post-Master, and even the respondents have posted some postal Assistants as Sub-Postmaster who were Leave Reserve and Temporary Postal Assistants.

2. The order of transfer, in view of the facts indicated herein above, have been termed as an order of reversion also. A detailed counter affidavit has been filed on behalf of the respondents. It has been indicated that the said 2 posts, ^{wiz} Postal Assistant and Sub-Post-Master, carry the same scale of pay of Rs.975-1660.

The post of Sub-Postmaster is not a promotional post.

It is avered ⁱⁿ the counter-affidavit that the applicant was posted as Sub-Postmaster, Rampur Tehsil on retirement of one Shri Brahm Autar from 31-7-1990. The applicant was not promoted since the scale of pay of both the post was the same. He continued in the grade of Rs.975-1660/-, even while posted as Sub-Postmaster. It is further stated that the applicant joined as Postal Assistant, Rampur City on 1-12-1993 much before the passing of the ^{In the rejoinder affidavit for the first time B.C.R} interim order. It is ~~further~~ alleged that due to Union rivalry and on consideration of a complaint made by Shri Rajendra Sharma, sitting Member of Parliament, to the respondent No.2, the applicant's transfer from the post of Sub-Postmaster to the post of Postal Assistant was directed and the respondent No.3 ensured compliance of the said direction and passed the impugned order. The said Shri Rajendra Sharma, M.P., has not been impleaded as an opposite party.

3. It has been stated in the rejoinder affidavit that the applicant, after completion of 16 years of service, was

approved for promotion in the time bound scale of Rs.1400-2300. The applicant was appointed as Postal Assistant on 1-8-1977. Even according to the time-bound promotion, he would be eligible for the time-bound scale of Rs.1400-2300 w.e.f. 1-8-93 only. Copy of the order granting time-bound promotion-scale to the applicant has ~~not~~ been filed ^{Rs.1400-2300} along with the rejoinder. In the rejoinder affidavit, a plea has been taken that normally a senior postal assistant is posted as Sub-Postmaster in a two handed Sub-Post Office.

4. I have heard the learned counsel for the parties.

5. The learned counsel for the applicant conceded that the applicant, on the date the impugned transfer was passed, was continuing in the scale of Rs.975-1660 and was not working in the grade of Rs.1400-2300/-. The whole assumption, in fact, ^a is mis-statement is that the applicant was promoted as Sub-Postmaster on 1-8-90 and is baseless. No order of the alleged promotion has been annexed along with the O.A. In the circumstances it is correct that the applicant was neither promoted nor the order of transfer amounts to reversion. The learned counsel for the applicant cited a few decisions to support his submission that the impugned order calls for judicial review. His submission was that the impugned order has not been made in a routine manner, but for collateral purpose and by way of punishment and thus he submits that the order calls for judicial review.

6. The learned counsel for the applicant has cited the following decisions :-

(1) N.S. Bhullar and another Vs. Punjab State Electricity Board and others - 1991 (1) SLR page 378 -

This is a decision by the Division Bench of Punjab & Haryana High Court. There can be no dispute to reply, with reference to the principles laid down by the said decision, the two questions as to whether on the admitted facts, has the applicant been able to prove that the impugned order has not been made in a routine manner and has been made for collateral purpose and by way of punishment. The allegations that the respondent No.2 directed the respondent No.3 to transfer the applicant from the post of Sub-Postmaster on the complaint made by one Shri Rajendra Sharma, Sitting M.P., had been made for the first time in the rejoinder. No ground of the said allegation can, therefore, be taken. Secondly, Shri Rajendra Sharma has not been impleaded as a respondent to the petition. In his absence the said allegation deserves to be ignored.

(2) The other decision cited by the applicant's counsel is 1993 (2) SCT page 509 - S. Rama Reddy, Petitioner Vs. Government of Andhra Pradesh, respondent.

In the said case, the Hon'ble High Court, on the facts ~~noted~~ ^{indicated} _{per} in the said case and being satisfied that the order of transfer was not made in bonafide exercise

of the administrative power, public interest, in exigencies of administration and requirements of public service, had quashed the order of transfer.

Here again, there can be no doubt regarding the proposition of law enunciated in the said decision. It was based on several Supreme Court decisions referred to therein, but the said decision turned on the particular facts of the case made out in the writ petition. As already held that in the facts of the present case it is difficult to hold for that the order of transfer has been passed/extraneous reasons, or suffers ~~anything~~ from the bias or malafides.

(3) The next decision relied upon by the learned counsel for the applicant is reported in 1994 (1) A.T.J. page 71. The said decision also turned on the facts of the said case. The enunciation of law in the said case was supported by the Supreme Court decision in the case of GUJARAT ELECTRICITY BOARD Vs. Atma Ram, A.I.R. 1989 S.C. 1433, Shilpi Bose Vs. State of Bihar, 1991 Supp. (2) S.C.C. 659, Union of India and others Vs. H.N. Kirtania, 1989 (3) S.C.C. 447, Union of India Vs. Thomas, 1993 (Supp. (1) SCC 704 and Union of India Vs. S.L. Abbas, 1993(3) Judgments Today 678. In the said case, being satisfied that the impugned order has been passed arbitrarily and was not supportable even prima-facie on principle or rule or other known on any/norms. The learned Hon'ble Member of the C.A.T. Eranakulam Bench, in a similar situation directed the D.G. to consider

the matter instead of the Tribunal dealing with it (1994 (1) ATJ page 72).

7. In this case, the challenge is based on the erroneous assumption that the two posts carry different pay scales and the applicant had been promoted to the post of Sub-Postmaster and thus of Sub-Postmaster/ the order, transferring him, amounts to reversion. Since the fallacious assumption of facts has been disputed by the respondents there is no merit in the contention advanced by the learned counsel for the applicant. The learned counsel for the applicant submitted that the respondent No. 2 was not the competent authority to transfer him. The respondents, in the counter-affidavit, has indicated that the respondent No. 2, on the basis of the letter of D.G. dated 21-4-1943, was competent to direct the transfer. a copy of the order is annexed as Annexure A-1 to the counter affidavit. The plea that the respondent is not competent is, therefore, wholly untenable.

8. The applicant, along with rejoinder affidavit, has filed Annexure R-6, and it shows that as per the recommendation of the D.P.C. the applicant was ordered to be promoted in the higher scale of Rs.1400-2300 under time-bound promotion scheme w.e.f. 22-8-93. In the said order the applicant has been shown as holding the post of Postal Assistant, Rampur City. The applicant has also filed copy of the time-bound promotion scheme contained in letter dated 22-12-83. In para 18 of the said letter, it has been indicated that "The posts of single handed and double handed sub-postmasters which

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carry charge allowance at present will henceforth be manned by officials who have completed 16 years of service and have been placed in the next higher scale of pay. In order to avoid inconveniences to the officials consequent on the introduction of the scheme in mid academic session it is not necessary to deploy such officials against the posts of single handed and double handed sub-postmaster immediately. Such deployment may be effected at the end of the academic year. Charge Allowance to these posts will, however, stand withdrawn with effect from 30-11-1983."

Paragraph 20 also indicate that :-

"The special allowance for supervisory posts mentioned in paras 14 & 15 above will not have the characteristics of Special Pay. The special allowance shall not count for any purpose other than pensionary benefits."

In paragraph 22 some clarifications have been given.

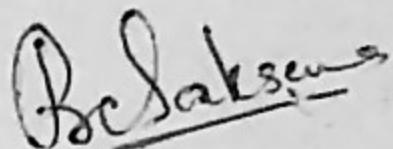
One of the clarifications is that :-

"the officials who complete 16 years of service and who are promoted to next higher scale of pay will continue to perform operative duties unless they are posted to regular supervisory posts in their turn."

9. There is no manner of doubt that the respondents will act according to the time-bound scheme and special provisions contained therein as indicated herein above and shall pass necessary orders after the academic session, in the light of the said time-bound promotion scheme and the clarifications contained therein. This

aspect of the matter has been indicated to make it clear that the dismissal of the O.A. will not prejudice the compliance of the said directions and clarifications contained in the time-bound promotion scheme as far as the applicant is concerned.

10. In view of the discussions herein above, the O.A. lacks merit and is accordingly dismissed. The interim order shall stand vacated. No order as to costs.



VICE-CHAIRMAN.

Dated: 18/7/1994, Allahabad.

(Nair)