

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH ALLAHABAD

Original Application No. 900 of 1993

( By Hon'ble Mr. V. K. Seth - A.M. )

In this application, the applicants who were employed in the Telegraph Traffic, Kanpur division have sought the following main reliefs.

(i) To issue a writ, order or direction in the nature of certiorari quashing the order dated 10.2.93, 22.5.1993, 10.5.93 making the petitioner no. 1 and 2 surplus and transferring them issued by Superintendent Incharge, Central Telegraph Office, Kanpur.

(ii) To issue a writ, order or direction against the respondents in the nature of Mandamus directing them to fix the pay of the petitioners under provisions of F.R. 22(C) (old) in the grade of L.S.G.T.M. since 17.8.1983 and to fix the seniority in the aforesaid grade since 17.8.1983 in the seniority list of L.S.G.T.M.

(iii) To issue a writ, order or direction in the nature of Mandamus to correct the seniority list of Telegraphists and petitioners' name be placed and kept on the correct place in the seniority list above the name of D.S. Tripathi, R.B. Pathak, and others shown at serial no. 159, 173 A, 176, 177 and 181A.

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(iv) To issue a writ, order or direction in the nature of Mandamus directing the respondents to comply norms/justification dated 12.9.1990 and to increase the staff and post, as has been done in Agra Division.

2. The main grounds advanced by the applicants are that they are entitled for seniority in the cadre of L.S.G.T.M. in view of the directive of the respondents since 17.8.1983 and therefore, the seniority list of Telegraphist which required to be corrected. It is also asserted that because the disciplinary proceedings are pending against the applicant no. 1 and 2, their transfer cannot be made and their transfer and declaration as surplus is on the ground of vindictiveness. It is also contended that because of circular dated 15.6.1987, the applicants are entitled to work in their own division. They have further alleged the violation of the provision of Article 14 and 15 of the Constitution.

3. The brief facts of the case are as follows :-  
The applicant no. 1, 2, 3 and 4 were appointed as Telegraphist on 1.5.1965, 1.3.1964, 16.7.1964 and 17.7.1964 respectively. They were promoted as Assistant Telegraph Master in the Central Telegraph Office, Kanpur. It is stated by the applicants that vide order dated 17.8.1983, 85% of Assistant Telegraph Master (pay-scale of 1320-2040) had been merged in the grade of Telegraph Master (L.S.G.T.M.) in the scale of 1400-2300 and remaining 15% had been reverted on account of non-availability of posts on the basis of Sareen Committee Report. The applicants' main contentions are that as a result of the S.E.P.

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(Annexure-5) preferred by them against the decision of the Central Administrative Tribunal, the Supreme Court was pleased to provide the seniority and pay to the working Assistant Telegraph Masters on the date 17.8.1983 i.e. on the date of merger of Assistant Telegraph Masters to Telegraph Masters. They further state that the judgement of the Supreme Court has not been complied with by the respondents and they have therefore, filed the contempt petition before the Hon'ble Supreme Court. It is also stated that in the seniority list of Telegraphist dated 5.10.1992(Annexure-6) while Sarva Sri R.B. Pathak serial no. 184-A and D.S. Tripathi have been shown senior to the petitioners in an illegal manner. They have also annexed copies of their representations. It is further alleged that as per circular dated 15.6.1987(Annexure-11), the L.S.G. cadre shall not be transferred out of division, but the petitioner no. 1 has been illegally transferred out of division. It is re-iterated by them that the petitioner no. 1 and 2 have been made surplus and juniors and transferred without complying the orders of the Supreme Court, and this, has been done on account of the contempt proceedings filed by them, out of prejudice and vindictiveness by the respondents. They also allege the reduction of posts on account of non-compliance of norms. The petitioners also contend that the petitioner no. 1 and 2 cannot be transferred as disciplinary proceedings are pending against them and further that there is violation of provision of Article 14 and 15 of the constitution.

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4. In the short counter-affidavit filed by the respondents the prayer of the applicant~~s~~ has been resisted on various grounds. It is stated that in ~~against~~ of the order dated 27.1.1993 (Annexure C-A.2) issued by the respondents no. 4 i.e. Senior Superintendent Telegraphic Traffic Kanpur Division and order dated 10.2.1993 issued by the respondent no. 5 i.e. Superintendent Incharge, Central Telegraph office, Kanpur Nagar, the petitioner no.1 submitted a representation dated 15.2.1993 (Annexure S.C.A-3) requesting that the order promoting him on the post of L.S.G.T.M and transferring him to the departmental telegraph office Mainpuri under Agra Telegraph Traffic Division may be cancelled/held in abeyance till August, 1983. It is also asserted that the applicants have also given undertaking in the said representation that he shall not claimed any promotion from 11.2.1993 till the date. The photocopy of the undertaking given by the applicant no.1 has been enclosed as Annexure S.C.A.-5. It is further asserted that after receipt of the undertaking vide interim order dated 26.2.1993 joining of the applicant no. 1 has been notified as on appearing on 18.2.1993 at C.T.O. Kanpur. The respondents have also pointed out that before promotion on the post of L.S.G.T.M.(T) the assistant Telegraph Masters are required to under-go training and accordingly, the applicant no. 1 has taken the said training on government expense. It is also averted that the telegraphist who are working as Assistant Telegraph Masters are given and chance for working as Telegraph Masters / the applicant no.1 was working as Assistant Telegraph Master. It is further asserted that in the seniority list dated 5.10.92 issued by the senior Superintendent P.T.T. Kanpur Division (Annexure-A-6) Sarva Sri D.S. Tripathi and R.B. Pathak <sup>been</sup> who have ~~been~~ named by the applicant are shown at serial no.2 and 7 while the applicant no. 1 is at serial no. 20 and is therefore not senior to S/S Tripathi and Pathak likewise.

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the applicant no. 2 figures at serial no. 16 of the said seniority list and being junior has been posted at Telegraph office, Jhansi. It is added that the individuals in the order have been promoted to the post of L.S.G.T.M.(T) from the post of A.T.M. according to the existing vacancies. However, as the applicant no. 2 is facing the disciplinary proceeding, he has been transferred on the same post i.e. A.T.M. under the control of respondent no. 4 i.e. S.S.T.T. Kanpur and direct control of D.T.O., Jhansi and his promotion has not been given effect to, though, he was named in the order dated 25.11.92, because of the pendency of the disciplinary case. It is also contended that there is no policy that junior most persons shall be transferred out of Kanpur and the circular dated 15.6.87 does not speak to that effect. As regards the applicant no. 3 and 4, it has been stated that they are already working at their respective place where they have been promoted and posted vide order dated 25.11.1992.

5. We have carefully considered the records of the case and the arguments of the learned counsels for the parties.

6. It would facilitate proper appreciation of the facts of the case if we re-capitulate chronologically and in brief the orders issued and other correspondence concerning the applicants in the Original Application.

The same is as follows :-

On 25.11.1992 the Chief G.M. Lucknow upgraded certain posts of A.T.Ms to L.S.G. T.Ms in the pay-scale of Rs. 1400-2300/ and transferred the applicants to the upgraded posts as follows :-

(i) The applicant no. 1 Sri S.M. Tripathi Kanpur T.T. Division to Agra Division.

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(ii) <sup>(Applicant No. 1)</sup> L O P Mishra Lucknow TT Division to Lucknow T.T. Division.

(iii) <sup>(Applicant No. 3)</sup> L M.P. Sharma Kanpur T.T. Division to Kanpur T.T. Division

<sup>(Applicant No. 4)</sup>

(iv) L R.S. Tripathi Kanpur T.T. Division to Kanpur T.T. Division.

The order also contains directions to the Head of the division to issue posting orders of the applicants alongwith the others listed in the orders against the vacancies of L.S..G.T.Ms. in their division. It was also directed that they will ensure that no vigilance/ disciplinary case is pending or contemplated against them before giving effect to this orders. (Annexure A-1)

7. In compliance to these orders S.S.T. Kanpur Division on 27.1.1993 in respect of the applicant no. 1 Sri S M Tripathi posted him at D.T.O. Mainpuri under A.T.T. Division with reference to the later letters of 18.12.1993. On 10.2.1993 Superintendent incharge C.T.O. Kanpur ordered posting of Sri S M Tripathi to D.T.O. Mainpuri under Agra T.T. Division. In the said order it was also stated that the his struck off the strength of this office on the after-noon of 10.2.1993, <sup>(Annexure A-1)</sup> L It was further stated that since disciplinary case was contemplated against Sri S M Tripathi, the promotion will take effect on its clearance.

8. <sup>6</sup> L Vide CA-3, on 15.2.1993, the applicant no. 1 Sri S.M. Tripathi in his application addressed to Director Telegraph Service Lucknow in his request for cancellation/ holding in abeyance of the transfer orders, <sup>academic</sup> inter-alia, stated that due mid/session and sickness of his wife, he was not in a position to leave Kanpur

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before 31.5.1993. He also asserted that he was senior to D.S. Tripathi and R.B. Tripathi A.T.Ms. working at C.T.O. Kanpur and ~~though~~ requested that the case was pending against him. ~~be decided by 31.5.93~~ He further stated that he shall not claim any promotion from 11.2.1993 till the date. On 18.2.1993, the Chief G.M. Lucknow on the request of the applicant ordered the transfer of the applicant alongwith some others to be held in abeyance upto 31.5.1993 on their own request provided they were willing to work as Telegraphists at their parent station and did not claim any promotion for this period. ~~before further~~ It was further directed that these officials should be relieved in the after-noon of 31.5.1993. without awaiting further orders. On the same date i.e. 18.2.1993, the applicant no. 1 Sri S M Tripathi gave undertaking at C.T.O. Kanpur that he was willing to work as Telegraphist and shall not claim promotion to the post of L.S.G.T.M. The S.S.T. Kanpur agains on 28.4.1993 in accordance with partial modification made by the Chief Superintendent C.T.O. Agra changed the station of the applicant Sri S.M. Tripathi from Mainpuri to Hathras. On 5.5.1993, the S.S.T.T. Kanpur in his letter addressed to Superintendent incharge C.T.O. Kanpur and others transferred the applicant no. 2 Sri O M Mishra Junior most A.T.M. C.T.O. Kanpur to D.T.O. Jhansi with immediate effect. On 10.5.1993, in complaince ~~to~~ the orders of the S.S.T.T. Kanpur <sup>he</sup> struck off applicant no. 2 from the strength of the C.T.O. Kanpur on the after-noon of 10.5.1993. It would appear that the applicants have mainly challenged their transfer to Hathras station ~~merely~~ on <sup>mainly</sup> ~~claim to be~~ the ground that they ~~are~~ senior to some others, who have

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been retained at their own station. In this connection they have sought the support of the judgement of the Hon'ble Supreme Court dated 20.12.1991 in civil appeal No. 2033/91 (Annexure A-5) against Annexure A-4 which is judgement of this Hon'ble Tribunal dated 28.2.1989.

It has been repeatedly held by the Hon'ble Supreme Court as also by this Hon'ble Tribunal that transfer of a government servant from one place to other is an incident and condition of service and however, no government servant or employees has legal right for being posted at any particular place. We also do not find any element of unfairness or malafide in so far as the transfer cited in the cases of the applicant No. 2,3 & 4. The case of the applicant no. 1 is however on a different footing. The applicant Sri S.M.Tripathi while being denied promotion on account of pendency of a disciplinary proceedings has still been transferred out which is likely to hamper him, in the defence of the disciplinary proceedings initiated against him. This order of transfer therefore, deserves to be set aside. Even if it is conceded that by virtue of the judgement of the Hon'ble Supreme Court cited by the applicants, they will rank senior to some others, who have been transferred out, the learned counsel for the applicants was unable to cite any rules or instructions enjoining upon the administration to transfer out only the junior most officials.

9. Considering the conspectus of facts and circumstances of the case, we decide as follows:

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(1) We direct that the applicant no. 1 Sri S M Tripathi if he has not already assumed charge at the new station and vacancy is still available to retain him ~~on~~ the ~~old~~ station namely Kanpur, he shall be allowed to rejoin duty at Kanpur till the finalisation of the disciplinary proceedings. The respondents thereafter are free to consider his transfer on the basis of the circumstances prevailing at that time.

(2) In so far as the applicant no. 2, 3, 4 are concerned we do not find any merit in ~~their~~ <sup>claims</sup> and their petition is accordingly dismissed. // The orders in respect of the applicant no. 1 ~~will~~ be implemented within a period of 2 months from the date of communication of this order. In the facts and circumstances of the case, ~~there~~ will be no order as to costs.

  
Member (A)

  
Member (J)

Allahabad Dated: 18-7-1993

(RKA)