

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 30th day of October 1996.

Original Application no. 1078 of 1995.

Hon'ble Mr. S. Dayal, Administrative Member.

Abdul Rahim Khan, S/o Late Sri A.H. Khan, Postal Assistant  
(Group-C), Head Post Office Saharanpur.

... Applicant.

C/A Sri L.N. Pandey, Sri S.K. Pandey.

Versus

1. The Union of India through Director of General Department of Post Dak Bhawan, New Delhi.
2. Post Master General Dehradun Region, Dehradun.
3. Senior Superintendent of Post Offices, Saharanpur.
4. Senior Post Master, Head Post Office, Saharanpur.
5. Superintendent of Post Officer, Tehari Division, Tehri.
6. Chief Post Master General, U.P. Circle, Lucknow.

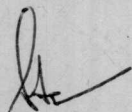
... Respondents.

C/R Km. Sadhana Srivastava.

ORDER

Hon'ble Mr. S. Dayal, Member-A.

This application under section 19 of the Administrative Tribunals Act, 1985, has been made with the prayer for the following reliefs:-



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- i. a direction to the respondents not to implement or act upon the impugned transfer order dated 21.02.95.
- ii. a direction to the respondents not to act upon impugned order dated 21.02.96.
- iii. issue a direction to the respondents to pay entire back salary of the applicant and continue to pay the salary according to law.
- iv. to award costs.

It can be seen that relief no. 1 and 2 are repetitive. <sup>who</sup>

2. The applicant was working as Postal Assistant at Saharanpur, Head Office, was transferred from Saharanpur Division to Tehri Division under rule 37 of P and T Manual Vol. IV with immediate effect. It is also mentioned in this order that suspension order will be revoked only when he joins at Tehri Division.

3. The transfer order is dated 21.02.95 and the application just filed on 12.10.95 is within time.

4. It is the claim of the applicant that rule 37 of P and T Manual Vol. IV ceased to be applicable when it was deleted by Govt. of India, Ministry of Communication vide its order dated 23.08.90.

5. Rule 37 of P and T Manual Vol. IV reads as follows:-

"37. All officials of department are liable to be transfer to any part of India unless it is expressly ordered otherwise for any particular

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classes of officials. Transfer should not however be ordered except when advisable in the interest of public service. Post man and village post man and Group-D. Servant should not, except for special reasons, be transferred from one District to an other. All transfer must be subject to conditions laid down in fundamental Rules 15 and 22."

6. Government of India wide Ministry of Communication Department of Posts letter no. 20-12/90-SPB-I dated 23.08.90 reads as follows:-

"As per long standing practice and convention, there is a clause in the initial appointment letters of the employees of the department of Posts to the effect that they can be transferred any where in the country under special circumstances.

Since in actual fact a vast majority of Group C and Group D employees is never subjected to the transfer liability implied in this clause, it is felt that such a condition is not necessary in the appointment orders.

The matter has been considered carefully in consultation with the Ministry of Law. It is hereby ordered that no clause or condition relating to transferability anywhere in the country, under special or general circumstances, should from now on be mentioned in the appointment orders issued to Group C and Group D employees of Department of posts. Such a clause existing in the case of the employees already in service also is hereby cancelled with immediate effect and their appointment order would also stand so modified with effect from the date of issue of

this letter.

Please acknowledge receipt.

Hindi version will follow."

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the department as it has to maintain the functioning of the administration of the department and transfer are one of the devices to do so. The effect of letter dated 23.08.90 would be that the department would not resort to transfer liability except in circumstances which can be considered to be unavoidable in public interest. If it intended to delete rule 37 from Vol. IV of P and T Manual, the letter dated 23.08.90 should have specifically contained the clause.

8. Learned counsel for the applicant has cited the judgement of Ahmedabad Bench of the Tribunal in O.A. nos. 250/94, 267/94, 268/94, 498/94, 551/94, 569/94, 647/94, 791/94 and 95/95 decided on 21.12.95, in which the learned bench after quoting rule 37 and order dated 23.08.90 has observed:-

"With the specification to delete the transfer liability clause in the appointment order itself, there is considerable merit in the contention of the applicants that Rule 37 is no more in operation. At the same time, it is also true that no formal action has been taken to delete Rule 37 from the Manual. The counsel for the respondents have also not been able to show any follow-up action by the department to amend the Manual subsequent to issue of the letter referred to above. It is quite understandable that the department has not chosen to formally delete Rule 37 as yet, since it might be necessary to resort to rule 37 in cases of emergency as temporary shifting of staff for a purely limited period might become necessary. The need for such power to meet such a contingency in the public interest can be understood. But at the same it is also clear in view of decision referred to by

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the department in the above letter dated 23rd August, 1990, that such a transfer under rule 37 can not be resorted to as a long term measure.

There is also strength in the contention in the O.A. no. 551 of 1995, wherein it has been pointed out that such a transfer would mean interpolation of such employees in the existing seniority list which ~~could~~ adversely affected the seniority already decided on divisional basis consequent to divisionalisation of the cadre. The respondents in their written reply to this application have stated that as per rule 32 (8) "Seniority" of Vol. IV from Swamy's Compilation of P and T manual, which states such interpolation can not be ruled out altogether.

In view of the reasoning above, it has to be held that rule 37 is no more in operation when the department had decided to delete transfer liability clause from Appointment letter.

In the specific cases mentioned above, through administrative reasons have been cited as the cause for transfer it is also significant to note that in each one of the cases, some kind of administrative irregularity has also been indicated. The proposition that administrative reasons may call for transfer before any formal penal action for any irregularity noticed can not be in dispute. But, in such cases, the transfer would have to be within their own cadre and within the limits such as division prescribed for operating such a cadre, so that seniority and promotion prospects are not adversely affected merely because of transfer in administrative reasons. The Department seems to have taken a conscious decision to this effect as per the letter of 1990.

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.....7/-



9. Thus it is quite clear from the above operative portion of the order of Ahmedabad Bench of the Tribunal that it has not ruled out that transfers could be resorted to before any formal penal action for any irregularities is proceeded with and seems to have indicated that the transfer of Group C and D employees in such cases would be within their own cadre and within the geographical limit prescribed in the cadre. Therefore, the judgement does not help the applicant.


10. The applicant has mentioned that he had highlighted character and malpractices of respondent no. 4 namely Sr. Post Master, H.P.O., Saharanpur in his capacity as Divisional Secretary of Bhartiya Postal Union class III, which annoyed the respondents no. 4 who suspended the applicant on 24.12.94. He has also alleged bias on the part of respondent no. 3 who is P.M.G, Dehradun, for alleged reason of persuasion by respondent no. 4. The order of suspension dated 23/24.12.94 shows that the applicant was suspended because disciplinary proceedings were contemplated against him. The respondents in their CA have mentioned that the applicant alongwith some of his colleagues abused respondents no. 4 and manhandled him on 30.11.94., when the latter was going to his residence after office hours. The respondent no. 4 had lodged F.I.R at police station, Sadarbazar, Saharanpur on 01.12.94, which was registered under crime case no. 471/94 under section 504 and 506 I.P.C. Respondent no. 4 had also made written report of the incident to respondents no. 2 and 3. The respondent no. 2



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got the inquiry made of the entire incident through respondent no. 3. Transfer order was passed by respondent no. 3 on 22.02.95 on administrative ground in compliance of the letter dated 21.02.95. Thus the order of suspension and order of transfer appeared to be the consequence of incident mentioned above. It is also clear that the applicant has approached the Tribunal without stating all the facts and particularly concealing this incident. The applicant has also stated that his suspension was revoked w.e.f. 21.02.95 but respondent no. 2 had passed the order of transfer in which it was mentioned that the suspension will be revoked only when the applicant joins at Tehri Division. The respondents have admitted that these two orders were passed but have stated that suspension was already revoked before order of transfer in which revocation of suspension was stated to be conditional upon applicant's joining at Tehari Division was passed. The applicant has also not mentioned that he has taken advance of transfer and pay for proceeding to Tehri or that he had received suspension allowance from Tehri. The two offices <sup>of</sup> Saharanpur and Theri are within the jurisdiction of P.M.G, Dehradun Region. Therefore, the transfer has been made within the same region and the applicant has not raised any question of loss of seniority.

11. Under the circumstances, there is no merit in the application made by the applicant which is dismissed. There shall be no order as to costs.

  
Member-A

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