

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Applications No.588 and 589 of 1995

Allahabad this the 21st day of Dec 1995

Hon'ble Dr. R.K. Saxena, Member (J)

Original Application No.588 of 1995

R.K. Dubey, A/a 47 years, Sub-Divisional Inspector (West),
based at Bareilly. S/o Late Shri Ram Shanker Dubey,
R/o Mohalla Nekpur, Bareilly.

APPLICANT

BY Advocate Shri Anupam Shukla

Versus

1. Union of India through its Secretary, Ministry of
Communication, Department of Posts, Dak Bhawan,
New Delhi.
2. Post Master General, Bareilly Region. Bareilly.
3. Assistant Post Master General, Bareilly Region,
Bareilly.
4. Directory Postal Services, Bareilly Region, Bareilly.
5. B.C. Dixit, S.D.I. Mainpuri, Agra Region, Agra.

RESPONDENTS.

By Advocate Km. S. Srivastava,

Original Application No.589 of 1995

O.P. Narang, A/a 51 years, S/o Late Shri R.D. Narang,
Posted as Assistant Superintendent, Post Offices,
Headquarter, Shahjahanpur.

APPLICANT.

BY Advocate Shri Anupam Shukla,

Versus

1. Union of India through its Secretary, Ministry of Communication, Department of Posts, Daak Bhawan, New Delhi.
2. Post Master General, Bareilly Region, Bareilly.
3. Assistant Post Master General, Bareilly Region. Bareilly.
4. ~~Director~~ Postal Services, Bareilly Region, Bareilly.
5. S.P. Srivastava, Assistant Spdt., Post Offices, Headquarter, Nainital.

RESPONDENTS.

By Advocate Km. S. Srivastava.

O R D E R

By Hon'ble Dr. R.K. Saxena, Member (J)

These two applications which have been filed by Shri R.K. Dubey and Shri O.P. Narang challenging the orders of transfer passed by Post Master General, Bareilly Region, Bareilly, are taken up together for disposal because in both of them² the question of competency of Post Master General Bareilly for passing the said order is challenged. Both the cases are being disposed of on merits at the stage of admission itself on the concurrence of counsel for the parties.

2. The case of Shri R.K. Dubey is that the controlling authority of the applicant who is working as Sub-Divisional-Inspector is the ~~Director~~ Postal Services and the said Director had transferred the applicant vide order 11.5.1994 from Amroha, Distt. Moradabad to Bareilly where he joined on 06.7.1994.

The contention of the applicant is that the Post Master General is only an approving authority of transfers but, could not pass the orders of transfer itself. It is averred that the delegation of powers can be made from superior authority to inferior but, in no case the powers of inferior authority can be delegated to the superior authority. The grievance of the applicant is that the Post-Master-General vide order dated 23.6.1995 (Annexure A-5) had transferred him from the post of Sub-Divisional-Inspector (West) Bareilly, to ^{the post of} Office Superintendent/S.S.P.O.S, Bareilly exercising the powers which were not vested in him. The relief claimed, therefore, is that the transfer order dated 23.6.1995 passed by the Post Master General, Bareilly be quashed and the applicant be allowed to work as Sub-Divisional-Inspector, (West) Bareilly.

3. The case of Shri O.P. Narang is that he was posted as Assistant-Superintendent, Post Office Shahjahanpur and he had requested the Director Postal Services to accommodate him at any place either at Shandila, Pilibhit or Rampur. He was, however, accommodated at Shandila by the Director Postal Services, vide order/ ^{dated 20.4.95} (Annexure A-1). The Post-Master-General, Bareilly, however, kept the said order dated 20.4.95 in abeyance without any cause. When the applicant approached the Post-Master-General, he assured him about the same place of posting but

subsequently, by impugned order dated 23.6.1995, the Post-Master-General directed that the applicant O.P. Narang be retained as ASPO, Head Quarter, Shahjahanpur. The contention of Shri O.P. Narang is also to the effect that the Post-Master-General of Bareilly region has no authority to transfer the Sub-Divisional-Inspector because this power is vested in Director of Postal-Services. He, therefore, sought relief of quashment of the transfer order.

4. The notices were issued to the respondents to file reply before the admission of the case. Consequently, the respondents filed counter-reply through Shri M.B. Tewari, Assistant Post Master General, Bareilly. It has been averred in the reply that Shri R.K. Dubey was brought to Head Quarter in place of Shri K.S. Mehra because Shri Dubey was an efficient officer and could control the office. It is also contended that the Post-Master-General has got the power of transfer/posting of the Sub-Divisional-Inspector and in exercise of the said power, the transfers of two applicants were made. It is also pleaded that Post-Master-General and Director-Postal-Services both are appointing and punishing authority of the cadre of the Inspector, Post Offices. The validity of the transfer orders has been maintained^a and the applications are said to be liable to be dismissed.

5. In both the cases, the applicants have

filed rejoinder, reiterating the facts which were mentioned in the O.A. Besides, it is re ^{reinforced} enforced that the Director Postal Services is the controlling authority of the Inspectors and that authority could not be exercised by any other authority including Post-Master-General. The circular dated 04.10.1990 dealing with the powers and functions of Chief Post-Master-General and Post-Master-General (Region) has also been brought on record.

6. I have heard the learned counsel for the parties and records have also been perused.

7. The crux of the matter in these two cases is whether or not the Post-Master-General is the controlling authority of the Inspector-Post-Offices. In this connection, the ^{attention} ~~addition~~ has been drawn towards the circular dated 05.12.89 which dealt with the powers and functions of the Chief-Post Master-General/Post Master General (Region). In this circular para 3 says that all financial and administrative powers of the Head of Department as spelt out in the delegation of the financial power/rule, general financial rules, F.R. and S.R.s and delegation issued by the Board from time to time, were delegated to each Regional Post-Master-General including Chief-Post Master General. The contention of the learned counsel for the applicant is that this circular was further revised vide circular dated 04.10.1990 (Annexure R.A-3) ^{located & or Regional} whereby the director concerned ^{at} the Circle Headpg.6/-

Quarter, Head Quarter of Chief-Post-Master-General/
Post-Master-General/Regional Post Master General
were treated as Heads of the respective office.
It is also mentioned in this circular that the
Director located at the Head Quarters of the Circle/
Regional Office will be the overall cadre controlling
authority for the non-gazetted Circle/Regional Office/
cadres and the Circle/Regional Office staff. On
the basis of this circular, it is pleaded that the
Post-Master-General has got no authority. The
learned counsel for the applicant also placed
reliance on the case ' Union of India Vs. H.R. Pata-
nkar and Others 1984 (Supp) S.C.C. 359' in which it
was held that the administrative instructions can
be issued in absence of statutory rules or to set
right any lacuna in the existing rules. In the
present case before us, it is, however, clear that
on the creation of the post of Chief-Post-Master-
General at the Head Quarters and the Post Master
General at the region, the powers were again divided
vide circular dated 05.12.1989. It appears that the
powers of the Director Postal Services could not be
specified and, therefore, the circular dated 04.10.90
was issued. It is true that these are administrative
instructions and can be taken help of when statutory
rules are not there. My attention has also been drawn
towards the powers which have been vested in various
authorities of this department under Central Civil
Services (Classification, Control and Appeal), Rules, 1965

vide order dated 27.8.1990. No doubt, these powers have been vested with a view to take disciplinary action against different categories of the employees of the department but, at the same time it would be a pointer to disclose as to which authority has got control over which categories of the employees. At page 26 of this order, it has been mentioned that Inspector of Post Offices who are serving in divisional-office and sub-divisional-office shall be under the appointing authority of the Post Master General/Director of Postal Services. At page 28, the Inspector Post Offices(Group C) have been placed under the appointing authority of Director of Postal Services. It means that the Inspectors have been divided into two classes. One class is of those Inspectors who are working in divisional and sub-divisional-offices and the other class is of those who are working as Group 'C' Inspectors. The harmonious construction of these powers at page 26 and 28 would be that the Inspectors who are working in the divisional and the sub-divisional offices, should be under the appointing authority of P.M.G. whereas the Inspector of Group 'C' should be under the appointing authority of the Director of Postal-Services. If, these² construction is not placed, there would be utter confusion in the matter of control.²

8. Now, the question arises what shall be the²

connotation of 'controlling authority'. It is needed because the circular dated 04.10.1990 speaks about controlling authority. The terms 'controlling authority' has been considered by their Lordships of Supreme Court in the case 'High Court of Punjab and Haryana etc. Vs. The State of Haryana and Others' AIR 1975 S.C.613' and it was observed that control was not merely the power to arrange the day to day working of the Court but, contemplates disciplinary jurisdiction on the presiding judge. It was further observed that the word 'control' includes something in addition to mere superintendence over these courts. The control is over the conduct and discipline of judges. In the same paragraph 28, it was further explained that within the exercise of the control vested in the High Court, it could hold enquiries, impose punishments other than dismissal or removal subject however to the conditions of service, to a right of appeal if granted by the conditions of service and to the giving of an opportunity of showing cause as required by Article 311(2) unless such an opportunity is dispensed with. In the same or case reference was held of the decision in the case 'G.S. Nagmoti V. The State of Mysore (1969) 3 SCC 325' where again the Court observed that the word 'control' in Article 235 includes disciplinary control and jurisdiction over the District Judges. In another case 'Corporation of the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and Others

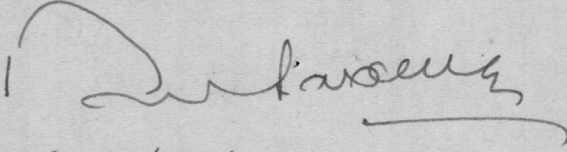
(1981) 2 S.C.C. 714, the interpretation was made in the words:

"The term 'control' is of a very wide connotation and amplitude and includes a large variety of powers which are incidental or consequential to achieve the powers vested in the authority concerned. Suspension from service pending a disciplinary inquiry falls within the ambit of the word 'control'. "

9. Looking to these decisions, it is quite clear that the controlling authority is one which can take disciplinary action, impose penalty and can take action against the employee under it. In this light if, the meaning to circular dated 04.10.1990 is given that only the Director of Postal Services is the controlling authority of both classes of Inspectors Post Offices, the powers which were conferred on the various authorities vide order dated 27.8.1990 under C.C.S.(C.C.A.) Rules, 1965 become ~~ne~~ nugatory. We, therefore, come ~~x~~ to this conclusion that Post-Master-General of a region exercise² the power²s as appointing authority and thereby controlling authority over the Inspectors of Post Offices who have been posted in Divisional office and Sub-Divisional-office. There is no denial that both the applicants were posted in the Divisional or Sub-Divisional-Office. Therefore, the Post-Master-General of the region had got domain over them and could pass the orders of transfer and posting. The result is that the plea of the applicants on this count fail⁶s.

10. The learned counsel for the applicant has also pleaded that the guide lines which were issued about Rotational Transfer Policy for the year 1995-96 have not been followed because according to this policy a person who has not completed one year at one place, should not be disturbed. Deviations is permissible only in urgent public matters. In my opinion even if, guide lines have not been followed in effecting the transfer, it is not violative of any rule and thus, no illegality is committed. 2

11. On the consideration of the facts and circumstances discussed above, I am of the view that there is no merits in the O.A.'s preferred by Shri R.K. Dubey and Shri O.P. Narang and they are, therefore, rejected. No order as to costs.


Member (J)

/M.M./