

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 27th day of March 1996.

Original Application no. 955 of 1995.

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

Prem Prakash Tiwari, S/o Late Shri J.P. Tiwari, presently posted as A.P.M. in HSG II Cadre (BCR) at Dehradun Head Post Office, Dehradun, R/o 46/5, Ritha Mandi, Dehradun.

... Petitioner.

C/P Shri Rakesh Verma.

Versus

1. Union of India through Secretary, Ministry of Communication, New Delhi.
2. Senior Superintendent of Post Office, Dehradun Division, Dehradun.


... Respondents

C/R Km. Sadhana Srivastava.

ORDER

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

This is an application under section 19 of the Administrative Tribunal's Act, 1985. The applicant seeks following reliefs:-

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- i. Quashing of the transfer order dated 15.09.95 passed by respondent no. 2
 - ii. Direction to the respondent no. 2 not to interfere with the working of the petitioner as A.P.M. in HSG Cadre (BCR) in the pay scale of Rs. 1600-2660/-
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at Dehradun Head Post Office till the date of superannuation i.e. 31.12.1995.

2. The facts of the case as narrated by the applicant in the application that he was working as Assistant Post Master in the pay scale of Rs. 1600-2660/- in the Higher Selection Grade II (BCR) at Dehradun Head Post Office Dehradun w.e.f. May 1992. The petitioner alleges that one Shri Tulsi Das/Chowkidar, in the Head Post Office wanted to close the main door on 14.09.95 on account of Uttara Khand Bandh, but the applicant instructed him not to close the door because of which he made false complaint against the petitioner alleging, manhandling on 14.09.95. The complaint of the chaukidar was persuaded by one Shri R.S. Rawat, Dy. Post master, Dehradun, Head Post Office, belonging to Scheduled Caste Community, ^{who} demanded the statement of the petitioner on the complaint of Shri Tulsi Das. The applicant has stated in the application that Shri Rawat was prejudiced against him because the applicant has made complaint in the capacity of Union Representative. On 15.09.95 the order of transfer was issued by respondent no. 2 transferring the applicant from Dehradun Head Post Office to Cannaught Place, Post Office, Dehradun on administrative grounds in place of Sri Rati Ram, SPM, Cannaught Place, who was ordered to join at Dehradun Head Post Office. It is alleged that the order was by way of punishment although the respondent has said in the order that it was on administrative grounds. It is mentioned that the applicant is due to retire on 31.12.95 and the order of transfer is just three months prior to retirement, is arbitrary. It is mentioned by the applicant that the

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he was transferred to the post of SPM (Time Scale) which carries the pay scale of Rs. 975-1600/- although he belong to HSG Cadre as APM in the pay scale of Rs. 1600-2660/-. The applicant claim that he was on medical leave on 16.09.95 and that the order of transfer was not been served on him. and has claim that the transfer is motivated penal and arbitrary.

3. The respondents in their counter affidavit have claim that the order was legal, just and sustainable in the eye of the law. The respondents have denied that the applicant was posted to the post of SPM (Time Scale) in the grade of Rs. 950-1600/- and have stated that both Shri Rati Ram and the applicant were in the pay scale of Rs. 1400-2300/-. They have annexed a copy of the acquittance roll in which Shri P.P. Tiwari^{is} shown to be getting payment in the pay scale of Rs. 1400-2300/-. It was also mentioned that the applicant was transferred on administrative grounds in the same city. It is stated that the applicant is not holding the post of Assistant Postmaster in the grade of Rs. 1600-2660/- because he was not given promotion to this grade because of his unsatisfactory work. It is admitted by the respondents that Shri Tulsi Das, Chaukidar, was closing the door under general verbal instructions issued to all the staff that whenever there was any attempt on the part of Uttara Khand Andolan Kari to enter the post office compound the doors of the office should be closed forthwith. Therefore, the Chaukidar was closing the door and the applicant mainhanded^{ed} and slapped him without enquiring from the Chaukidar as to why he was closing the door. It is stated that Shri H.S. Rawat was directed to conduct enquiry in-to incident but the applicant

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did not give any statement to him alleging that he was biased because he belonged to S.C. community. It is stated that the order of transfer was passed not as matter of punishment but for administrative reasons. The transfer was to an office which was located at a distance of only 1/2 KM. It is stated that the Govt. orders regarding non-transfer of a Govt. servant at a flag end of his career did not apply to local transfer. It is stated that there is no monetary loss and loss of any status in this transfer. It is stated that the service of the transfer order was evaded by the applicant and he refused to accept the order when he came to produce medical certificate on the forenoon of 16.9.95.

4. The applicant in his R.A. has denied the averments of the respondents.

5. Shri R. Verma, Learned Counsel for the applicant mentioned that applicant was transferred from pay scale of Rs. 1,600 - 2,660 to pay scale of Rs. 950 - 1,600 that the transfer was done by way of punishment and no opportunity for hearing was given and that the applicant was transferred on the eve of his retirement. He has cited the case of Shilpi Bose in his favour.

6. Km. Sadhana Srivastava, Learned Counsel for the respondents mentioned that Annexure A-3 has only an approval of DPC but not a promotion order. Therefore, the applicant was actually working in the pay scale of Rs. 1,400 - 2,300 and that Annexure CA-2 has not been challenged by the applicant. It is also mentioned that preliminary enquiry has been held in this case and detailed enquiry is not necessary because the transfer is not a punishment. In this connection, she has invited attention to Kamlesh Trivedi Vs ICAR 1986-89 and Ors Full Bench Judgements Pg. 80 Para 11-12. The grounds of restraining transfer on the verge

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of retirement is not available to the applicant according to the counsel for the respondents because it has been held in the state of M.P. and Ors Vs Kaurav and Ors 1995 SCC (L & S) 666 in which it has been held that hardship caused to an employee is not a good ground for setting aside the transfer. Learned Counsel for the respondents has also cited U.O.I. & Ors vs Ganesh Das Singh 1995 Vol. 30 ATC 629 in which it has been said that if transfer is made for administrative reasons, it will not be subject to review.

7. I have perused Annexure A-3 filed by the applicant along with his application. The first sentence of the order dated 16.5.94 is quoted below:-

"The Director Postal Services office of the Chief Postmaster General, J.P. Circle Lucknow has ordered the promotion and appointment of officials mentioned in Annexure A in the pay scale of Rs.1600/2660 in HSG II cadre under BCI Scheme with effect from the dates mentioned against each. These officials on promotion to HSG II cadre are allotted to the divisions as mentioned against each. Their promotion in the above scale is subject to satisfactory completion of prescribed period of probation for two years."

8. There is no specific denial of the applicant's claim that he was transferred on account of complaint of Chaukidar against him. On the other hand the fact that the preliminary enquiry has been completed shows that the transfer was made in lieu of punishment. Such transfer coupled with the fact that applicant was due to retire in little over three months time makes it quite clear that

it could not have been ordered in public interest while the ratio of S.S.Kaurav's case (Supra) that hard ship against the employee is not good ground for setting aside an order of transfer is proper in the context of that case, The facts of this case are different. The manner in which the order of transfer was made on the complaint of the Chaukidar indicate that the order of respondent was passed. In haste without affording proper opportunity to the applicant to explain his conduct regarding the complaint. Such transfer on the eve of retirement tends to ~~delay~~^{delay} the payment of terminal benefits and pension of the employee who superannuates from service. It cannot be considered to be a transfer made in public interest.

9. In ^{view of} the foregoing, the order of transfer dated 15.9.1995 is set aside.

10. There shall be no order as to costs.


MEMBER-A

RJ