

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 354 of 2000

Allahabad this the 05th day of August, 2004

Hon'ble Mr. Justice S.R. Singh, V.C.  
Hon'ble Mr. D.R. Tiwari, A.M.

Kaushal Kishore Singh, S/o Shri Kedar Nath Singh, R/o  
Village Akeel, Post Akeel, Distt. Balia.

Applicant

By Advocate Shri Ashish Srivastava

Versus

1. Union of India through Secretary, Ministry of Comm-  
unication, Sanchar Bhawan, New Delhi.
2. Post Master General, Gorakhpur Region, Gorakhpur.
3. Superintendent of Post Offices, Balla Division,  
Balia.
4. Sub Divisional Inspector(P) North Sub-Division,  
Bilthara Road, Balia.
5. Dharam Raj Trivedi, S/o Shri Surya Nath Trivedi,  
R/o Village Akeel, Sikandarpur, Balia.

Respondents

By Advocates Shri A. Sthalekar (official respondents)  
Shri S.C. Mishra (respondent no.4)  
Shri Rakesh Verma (pvt. respondents)

O R D E R ( Oral )

Hon'ble Mr. Justice S.R. Singh, V.C.

Impugned herein is the order dated 23.03.2000  
whereby fifth respondent-Dharam Raj Trivedi an E.D.Runner/  
E.D.M.C. at Branch Post Office Akeel (Nagra) Distt. Balia  
has been transferred to the post <sup>of 2</sup> Extra Departmental Dak  
Vitrak in the same Branch Post Office with immediate

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effect. The impugned transfer order is sought to be quashed inter alia on the ground that process for selection to the post of Dak Vitrak had commenced vide annexure A-1 and the applicant was one amongst the candidates sponsored by the Employment Exchange, but instead of taking the process of appointment to its logical end, Sub Divisional Inspector, Post Offices, Uttari Upmandal, Belthara Road filled the post by transfer of 5th respondent—Shri Dharam Raj Trivedi, which is impermissible under the rules.

2. The O.A. is opposed by the official respondents as well as by the fifth respondent on the ground that transfer from one post to another post of E.D. Agents is permissible under ~~the~~ certain <sup>conditions</sup> circumstances and fifth respondent fulfilled these conditions, therefore, no exception can be taken to the impugned order of transfer. It is also submitted by the learned counsel representing the respondents that even selection does not confer any right to the post much less being a candidate for appointment to the post.

3. We have considered the submissions made across the bar.

4. Instruction no. 22 <sup>of</sup> Section IV 'Method of Recruitment' provides that E.D. Agents are not liable or entitled to be transferred from one post to another. It is further provided therein that if an E.D. Agent is to be shifted from one post to another at his request, he shall be asked to resign his post and fresh appointment order is to be issued against new post in such a case. The formality

of calling application etc. from Employment Exchange is however required to be gone through and the E.D. Agents already in service willing for transfer to another post should apply through Employment Exchange and their applications should be accepted or rejected under the normal rules for E.D. Agents. <sup>These</sup> Clarifications are contained in P.M.G. Madras Letter No. STC/13-413/84 dated 03.01.1985 and D.G., P & T letter no. 43-27/85 <sup>in reply thereto.</sup> Pen dated 06.05.1985, However, by D.G. Posts letter no. 43-27/85-Pen., (EDC & Trg.) dated 12.09.1988 exceptions have been made in the following cases:-

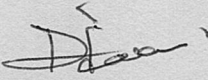
(i) When an ED post falls vacant in the same office or in any office in the same place and if one of the esi existing EDAs prefers to work against that post, he may be allowed to be appointed against that vacant post without coming through the Employment Exchange provided he is suitable for the other post and fulfils all the required conditions.

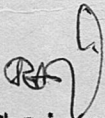
(ii) In cases where EDAs become surplus due to abolition of posts and they are offered alternative appointments in a place other than the place where they were originally holding the post, to mitigate hardship, they may be allowed to be appointed in a post they may subsequently occur in the place where they were originally working without coming through Employment Exchange. "

5. The order impugned herein does not appear to have been passed after proper self direction <sup>to</sup> of the provision aforesaid instead it proceeds on the mere consideration of the Tribunal's order dated 28.01.2000 in O.A.No.1534 of 1999, filed by the fifth respondent. Copy of the order has been annexed as annexure A-8, whereby respondent no.3 therein was directed to dispose of the representation dated 29.06.1999, filed by the fifth respondent on merits by following the procedure within 30 days from the

date of communication of the order. Mere direction to dispose of the representation on merits does not mean that transfer applied for by the applicant therein, must necessarily be allowed. The competent authority ought to have address<sup>ed</sup> itself to the merits of the request made by the fifth respondent and decide<sup>d</sup> it in accordance with law keeping in view the provisions aforesaid. We<sup>are</sup> therefore, of the view that the impugned order dated 23.03.2000 cannot be sustained in the eye of law.

6. Accordingly the O.A. succeeds and is allowed. The impugned order dated 23.03.2000 is quashed. The competent authority is given liberty to proceed in the matter afresh in accordance with law. It is clarified that this order will not prejudice the right of fifth respondent to continue on the post held by him immediately<sup>2</sup> before passing the impugned order dated 23.03.2000<sup>2</sup> till an order is passed by competent authority. There will be no order as to costs.

  
Member (A)

  
Vice Chairman

/M.M./