

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.477 OF 2000
ALLAHABAD THIS THE 10th DAY OF MARCH, 2004

HON'BLE MRS MEERA CHHIBBER, MEMBER-J

Jai Narayan Upadhyay,
son of Sri Uma Shankar Upadhyay,
resident of Mohalla Upadhiyana,
Samthar, District-Jhansi.Applicant

(By Advocate Shri V.C. Dixit)

Versus

1. Union of India,
through Secretary,
Ministry of Communication,
Department of Posts,
New Delhi.
2. Post Master General,
Agra Region, Agra.
3. Senior Superintendent of Post Jhansi.
4. Sub Divisional Inspector of Post Conch,
District-Jalaun.
5. Wakib Khan, E.D. Packer,
Samthar Post Office,
District-Jhansi.Respondents

(By Advocate Shri R.C. Joshi)

ORDER

By this O.A. applicant has sought quashing of the
order dated 05.04.2000 whereby his representation was rejected.
He has further sought a direction to the respondents to



transfer the applicant from Conch to Samthar Post Office and treat him in service from 23.06.1989 by giving him all seniority and benefits etc.

2. It is submitted by the applicant that he was initially appointed as E.D. Packer on 23.06.1989 and the same was subsequently cancelled on 05.06.1990 as his father was also appointed in the same post office. Being aggrieved he filed D.A. No.317/1992/with a direction to respondents to consider him for fresh appointment. Pursuant to the directions given by this Tribunal applicant was given fresh appointment as E.D. Packer at Gorla Gaon on 01.11.1993. He was transferred from Gorla Gaon to Conch by order dated 15.03.95. In the mean time the respondents issued D.Gs letter dated 17.02.1999 whereby the instructions dated 17.10.1966 wherein it was stipulated that the employment of near relatives as E.D. Agents in the same post office should be avoided was withdrawn after the judgment given by the Hon'ble Supreme Court in the case of Baliram Prasad Vs. Union of India and others and therefore, applicant gave a representation requesting the authorities to transfer him back to the same post office at Samthar where his appointment was cancelled and to give him all the benefits including his seniority from 23.06.1989 itself. Since respondents did not pass any orders, he filed second D.A.164/2000 which was decided on 22.02.2000 (Page 49) with a direction to the respondents to decide his representation. It is pursuant to this direction that respondents have passed the impugned order dated 05.04.2000 (Page 16) rejecting applicants claim on the ground that before he gave his application on 01.07.1999 the process had already been started for ^{filling B} fulfilling the post at Samthar Post Office and one Shri Wakib Khan has already been selected and appointed on 18.02.2000, therefore, it is not possible to accept his request to post him back on Conch Post Office.

They have also stated that there is no other extra departmental vacancy available in the Samrath Sub Post Office. As far as the transfer is concerned they have stated that the applicant has not given any such application stating therein the illness of his wife or for some other reason for being posted at Samrath and even otherwise there is no such rule to transfer E.D. Packer from one place to the other in normal course. In any case his request for transfer was also acceded to twice earlier also, therefore his request was rejected. It is this order which has been challenged by the applicant before us.

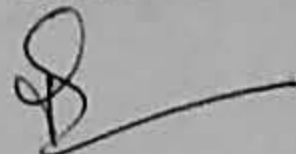
3. I have heard counsel for the parties and perused the pleadings as well.

4. It is seen that when applicant had challenged his cancellation as E.D. Packer in first O.A. No.317/1992 this Tribunal had recorded categorical finding that his appointment was not regular appointment nor can it be said to be a case of transfer but it was a case of fresh appointment, therefore, court had observed that O.A. deserves to be dismissed. However, since applicant had performed his duties satisfactorily for more than one year a direction was given to the respondents to consider him for fresh appointment in some other post office for delivery agent. It is thus, clear that even though applicant had challenged his cancellation order before the Tribunal but his request was not acceded to and direction was given to consider him for fresh appointment only in view of the fact that he had worked satisfactorily for over one year. It is thus, clear that his earlier appointment dated 23.06.1989 cannot be said to be a regular appointment. Even otherwise applicant has not even annexed either the appointment letter dated 23.06.1989 or the fresh appointment letter dated



01.11.1993 from which alone it could be seen in what capacity applicant was given the appointment. Respondents have stated in para 16 that his appointment was only provisional which fact, has not been controverted by the applicant in his RA. In case applicant was given a regular appointment in the year 1989 the first thing he would have done was to place the appointment letter on record but since he has not done so I have no other option but to treat him as provisional appointee on 23.06.1989.

5. As far as his appointment at Gorla Gaon is concerned applicant has himself stated that he was given fresh appointment as per direction given by this Tribunal. From Gorla Gaon he was transferred to Conch at his own request. Applicant has not been able to show us any provision or rule under which E.D. Packer can seek transfer from one place to the other as a matter of right. On the contrary respondents have explained that when applicant gave his application on 01.07.1999 they had already started the process for ^{filling} ~~fulfilling~~ up the post at Samrath by issuing a notification on 20.02.1999 requesting the Employment Exchange Jhansi to send the names of suitable candidates within 30 days. Pursuant to the selection one Shri Wakib Khan was selected and appointed ^{who} ~~to~~ assumed the charge of E.D. Packer Samrath on 18.02.2000, therefore, there is no post available at Samrath at present. It goes without saying that Shri Wakib Khan had acquired a right to hold the post since he was selected pursuant to a process initiated by the respondents and was given appointment letter as E.D. Packer at Samrath. Applicant has not challenged appointment letter of the said Shri Wakib Khan and so long he continues to be appointed at Samrath. Naturally applicant cannot be directed to be posted at Samrath in the absence of any vacancy.



6. Learned counsel for the applicant had submitted that since Shri Wakib Khan was given the appointment only on 18.02.2000 whereas he had given his application on 01.07.1999, the reasoning given by the respondents is not correct. I cannot agree with this submission of the applicant's counsel because once the process was started which ultimately culminated into an appointment of ~~those~~ persons, applicant cannot claim to be transferred at samrath as he had no legal right in these circumstances to be posted back at Samrath alone especially so when this Tribunal had already given direction to the respondents to consider applicant for fresh appointment in some other Post Office.

7. In view of the above discussions the O.A. is found to be devoid of merits, ~~and~~ the same is accordingly dismissed with no order as to costs.



Member-J

/Neelam/