

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO. 660 OF 2003
ALLAHABAD THIS THE 15th DAY OF September, 2003

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A
HON'BLE MR. A. K. BHATNAGAR, MEMBER-J

Sunil Kumar Singh,
S/o Late Shri Shiv Karan Singh,
R/o 268 Navsheel Dham, Bithur,
District-Kanpur.

.....Applicant

(By Advocate Shri R. Trivedi)

Versus

1. Union of India,
through Secretary,
Ministry of Communication,
Department of Posts,
New Delhi.
2. Post Master General,
Kanpur Region,
Kanpur.
3. Chief Post Master, Kanpur.
4. Assistant Director,
Post Master General,
Kanpur.

.....Respondents

(By Advocate Shri S.C.Mishra)
Shri S. Chaturvedi

O R D E R

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A

In this O.A. filed under section 19 of Administrative
Tribunals Act 1985, the applicant has prayed for quashing
the impugned transfer orders dated 10.02.2003, 09.04.2003

and 09.05.2003 (Annexure A-2,3 & 4) respectively.

2. The facts, in short, are that the applicant was appointed as Postal Assistant on 27.12.1991 in the establishment of respondent no.3 i.e., Head Post Office, Kanpur. The applicant by impugned order dated 10.02.2003 was transferred to Kaimganj Fatehgarh Division. The applicant met the authorities concerned and requested for cancellation of the same. On 09.04.2003 the order dated 10.02.2003 was modified by respondent no.2 by which the applicant was transferred from Kanpur Head Post Office to Kanpur City Division. The order of 09.04.2003 was again modified by order dated 09.05.2003 and the applicant was transferred from Kanpur Head Post Office to Kanpur Cantt Head Post Office. The applicant ^{has} is on medical leave since February 2003 and when on becoming fit he reported for duty, he was not allowed to join. As per applicant he has not been relieved till date. Aggrieved by the action of the respondents the applicant has filed this O.A. which has been contested by the respondents by filing CA.

3. Shri R. Trivedi, learned counsel for the applicant submitted that Group 'C' and Group 'D' employees cannot be transferred from one unit to another except on their request. Vide office memorandum dated 23.08.1990 (Annexure A-5) issued by D.G. Posts addressed to all P.M.G's etc, the transfer liability clause has been deleted from the appointment offer in respect of Group 'C' and Group 'D' staff.

4. The learned counsel for the applicant further submitted that as held by Ahmedabad Bench of this Tribunal in its judgment dated 21.12.1995 in the case of B.N. Parmar Vs. U.O.I. and Ors. passed in O.A. No.250/94 and connected




0. As (Annexure A-6) the applicant ~~could~~ not be transferred to another division as the seniority and promotion prospects are adversely affected. ~~Besides~~ he has been transferred merely ~~on administrative grounds, / The impugned orders of the respondents are bad in law and are liable to be quashed.~~ ^{no reasons have been given.}

5. The learned counsel for the applicant also submitted that para 8 of the instructions relating to recruitment of Time Scale Clerks ~~lays~~ ^{lays} down that once appointed in a unit the person will not be eligible for transfer to any other unit. He may be transferred only when his turn for promotion on circle basis comes. The learned counsel argued that in view of the extant rule position the impugned transfer orders are liable to be quashed.

6. Opposing the claim of the applicant the learned counsel for the respondents submitted that the applicant has not challenged the order dated 05.02.2003 issued by respondent no.2 in pursuance of which the impugned order dated 10.02.03 has been passed by respondent no.3.

7. The learned counsel for the respondents further submitted that the seniority of the applicant is not going to be affected as his promotion under TBOP/BCR will not be affected because for promotion under TBOP/BCR the initial date of appointment is taken into account.

8. The learned counsel for the respondents argued that the department has powers to transfer its employees and transfer is an incidence of service. There is no violation of statutory rules and the applicant inspite of exhausting




the departmental remedies available to him, has approached this Tribunal, therefore, this O.A. is not maintainable under section 19(4) of Administrative Tribunals Act 1985.

9. The learned counsel for the respondents also submitted that the transfer of the applicant does not involve any change of station and ^{the transfer is} to a place which is just about 5Kms from the present duty place, therefore, the grievance of the applicant is not sustainable.

10. The learned counsel for the respondents placing reliance on the judgment of this Tribunal dated 15.11.2002 passed in O.A. No.892/02 submitted that the scope of Tribunal to interfere in the matter of transfer is very limited as Hon'ble Supreme Court has repeatedly held that the Tribunal should not interfere in day today functioning of the Administration. He has also placed reliance on the judgment of Hon'ble Allahabad High Court in the case of Saroj Mahanta ^{& Ors.} Vs. U.O.I. ^{and} 2003 (52) ALR 92 submitted that an employee holding a transfer-able post cannot claim any vested right to work on a particular place. The Government instructions on transfers are mere guidelines without any statutory force. The court cannot interfere in the order of transfer. The learned counsel for the respondents has also cited number of cases in which it has been decided by superior courts that the court should not normally interfere in the matter of transfers even though they might have been passed not in consonance with the guidelines.

11. We have heard counsel for the parties, considered their submissions and perused records.



12. The main ground for challenging the transfer order of the applicant is that he cannot be transferred to other unit as the same is de hors rules. We find substance in this submission of the applicant. Admittedly the applicant was initially appointed as Postal Assistant in Head Post Office Kanpur under respondent no.3 which is an independent unit having its own establishment. Therefore, the applicant could not be transferred to Fatehgarh Division. The respondents have not been able to justify their action of transferring the applicant from Kanpur Post Office to a different division i.e. Fatehgarh Division. A Group 'C' or Group 'D' employee can be transferred from one unit to another unit under rule 38 of Postal Manual VOL IV which deals with the request transfers/mutual transfers. In the instant case, there has been not such request. Therefore, in our opinion, the transfer of the applicant from Kanpur Head Post Office to Fatehgarh Division is not sustainable. The order of transfer of the applicant from Kanpur Head Post Office to Fatehgarh Division has been modified by subsequent orders dated 09.04.03 and 09.05.2003. It has not been denied in the CA by the respondents that the Kanpur Postal City Division under which Kanpur Cantt Head Post Office functions is a separate division. Therefore, certainly the transfer of the applicant from Kanpur Head Post Office to Kanpur City Division is an interdivisional transfer which is not permissible under the rules. In the same postal manual the provision is given for interdivisional transfers under Rule 37. The following has been held by Ahmedabad Bench of this Tribunal in its judgment dated 21.12.1995 in the case of B.M. Parmar and Ors. Vs. U.O.I. and Ors in O.A. No.250/94 and connected OAs.:-

"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 also has not been able to show any follow-up action taken by the Department to amend the Manual subsequent to 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 a power to meet such a contingency in the public interest can be understood. But, at the same time it is also clear in view of the decision referred to by the Department in DG, Posts, Letter No. 20-21/90-SPB-I, dated 23.08.1990, that such a transfer under Rule 37 cannot be resorted to as a long-term measure.

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, though 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 be called for transfer before any formal penal action for any irregularity noticed cannot be in dispute. But, in such cases, the transfer should have been within their own cadre and within the limits such as division prescribed for such a cadre so that the seniority and promotion prospects are not adversely affected merely because of transfer on administrative reasons. The Department has taken a conscious decision in this regard as per the letter of 1990."

13. Though we find substance in the contention of the respondent's counsel that an employee holding a transferable post cannot claim any vested right to work on a particular place, as held by Hon'ble Allahabad High Court in the case of Saroj Mahanta (Supra), yet we would like to observe that the same would not be applicable in this case. Had the orders been for the same unit, the applicant had no case but in the present case, the controversy is regarding interdivisional transfer. The law laid down by the superior courts as cited by the respondents shall not be applicable in the present controversy.



14. In the facts and circumstances and our aforesaid discussions, the impugned transfer orders are bad in law and are not sustainable. The O.A. is allowed. The impugned orders dated 10.02.2003, 09.04.2003 and 09.05.2003 are quashed. We also quash the orders dated 29.01.2003 passed by P.M.G. Kanpur and order dated 05.02.2003 passed by Suptd. Post Office Fatehgarh in modification of which the impugned orders were issued and are being quashed by this order. The respondents are directed to allow the applicant to work in Kanpur Head Post Office which is the parent unit of the applicant as Postal Assistant. This Tribunal by order dated 06.06.2003 stayed the operation of the impugned orders dated 10.02.2003, 09.04.2003 and 09.05.2003. In spite of the fact that the impugned orders were stayed, the respondents did not allow the applicant to join on his post. In the interest of justice we direct the respondents that the applicant shall be deemed to be in service w.e.f. 06.06.2003 and shall be entitled for full salary for the period from 06.06.2003.

15. There shall be no order as to costs.


Member-J


Member-A

/Neelam/