

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Date of order : 07.08.1998.

ORIGINAL APPLICATION NO. 429/1995

Hamid Hussain S/o Shri Gulam Farid, aged about 23
years, Resident of Bharat Colony, Ship House, Jodhpur.

..... Applicant.

VERSUS

1. Union of India through Secretary to Government of India,
Ministry of Communication (Department of Post), Dak Bhawan,
Sansad Marg, New Delhi-1.
2. The Post Master General, Rajasthan, Jodhpur Western Region,
Jodhpur.
3. The Senior Superintendent of Post Offices, Jodhpur Division,
Jodhpur.
4. The Post Master, Shastri Nagar, Head Post Office, Jodhpur.
5. Shri Veeru Dass, E.D.S.V., Shastri Nagar, Head Post Office,
Jodhpur.

..... Respondents.

Mr. J.K. Misra, counsel for the applicant.
Mr. Vineet Mathur, counsel for the respondents No. 1 to 4.
Mr. S.K. Malik, counsel for the respondent No. 5.

.....

CORAM :

HONOURABLE MR. A.K. MISRA, JUDICIAL MEMBER

HONOURABLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

.....
O R D E R

PER MR. A.K. MISRA, JUDICIAL MEMBER :

The applicant has filed this OA with the prayer that
appointment of Shri Veeru Dass, Respondent No. 5, on the post of
Extra Departmental Stamp Vendor (for short "E.D.S.V.") against the

notified vacancy may be declared illegal and the same may be quashed. The applicant has also prayed that applicant and all other eligible candidates who had applied for the post in response to Notification Annex.A/3 be directed to be considered and selection be directed to be finalised as per the merit position of the candidates.

2. The Notice of the OA was given to the respondents.

Respondents No. 1 to 4 have filed their reply to which no rejoinder was filed. Respondent No. 5 did not file any reply and adopted the reply submitted by the department.

3. We have heard the learned counsel for the parties and gone through the record. We have also gone through the departmental file relating to Notification and subsequent steps taken by the department to fill-in the notified post as mentioned in Annex.A/3.

4. From the facts of the case, it appears that the department issued Notification on 19.7.1994 (Annex.A/3) for filling one post of E.D.S.V. in Shastri Nagar Head Post Office indicating therein the eligibility conditions for a candidate to apply for the post. Names were sponsored by the Employment Exchange and the applicant is one of such candidates. Subsequently the department filled-in the notified post of E.D.S.V. of Shastri Nagar Head Post Office by transferring respondent No. 5 who was working as Extra Departmental Mail Carrier in Marudhar Industrial Area, II Phase, Basni Post Office in accordance with departmental Circular dated 12.9.1988, Annex.R/1.

5. The applicant has challenged the action of the official respondents on the ground that transferring respondent No. 5 from the neighbouring post office to Shastri Nagar Head Post Office, to fill-in the post was not in accordance with the Circular Annex.R/1. Moreover, if the department wanted to fill-in the notified vacancy by transferring the Extra Departmental Agent (for short "E.D.A.") then

21/4

there was no necessity for the department to notify the vacancy and asking the Employment Exchange to sponsor the candidates for consideration. The action of the department is a fraud with the unemployed youth and deserves to be quashed. On the other hand the official respondents have supported the action and have justified the transfer of respondent No. 5 on the notified post according to the departmental instructions. Moreover, it is the contention of the respondents that mere empanellment would not give any right to the applicant for being appointed to the notified post.

6. We have considered the rival contentions and arguments supporting the contentions. No doubt, mere empanellment would not confer on a selected candidate any right to be appointed but in this case we are unable to agree to the departmental action of transferring the respondent No. 5 from the neighbouring post office to Shastri Nagar Head Post Office to fill-in the notified post. The respondent No. 5 was working in Shastri Nagar Head Post Office till 11.12.1989 when the post on which he was working was abolished and respondent No. 5 became surplus. At that time he was adjusted in the nearby post office of industrial area. But the very fact that the respondent 5 was earlier working in the Shastri Nagar Head Post Office was not sufficient to transfer him back to the notified vacancy after a lapse of almost six years when in the intervening period two posts of E.D.As fell vacant as per the application of respondent No. 5 which has been produced by the department as Annexure R/2. In this application respondent No. 5 has specifically mentioned that after he was adjusted in the Industrial Area Post Office one post of E.D.A. fell vacant in the Shastri Nagar Head Post Office after six months but he was not adjusted at that time. Again when another post of E.D.S.V. was created in Shastri Nagar Head Post Office then also he was not transferred on that post and one Shri Om Prakash was adjusted against the new post. Giving these details respondent No. 5 prayed for adjustment in the Shastri Nagar Head Post

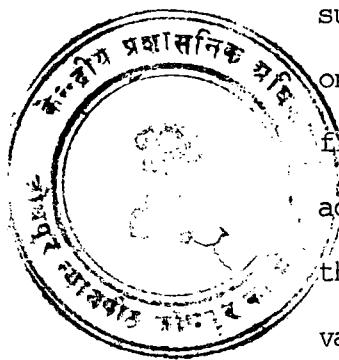
27/IV/

Office against the post of E.D.S.V. which was notified by the department and was subsequently filled-in by respondent No.5.

7. The Circular Annex.R/1 dated 12.9.1988 which relates to transfer of E.D.As from one post to another lays down the procedure and for adjustment of such E.D.As on transfer. In para No. (ii) of the said Circular the following condition has been laid down :-

"In cases where EDAs become surplus due to abolition of posts and they are offered alternate 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 that may subsequently occur in the place where they were originally working without coming through Employment Exchange."

8. On going through the above condition, we feel that the subsequent vacancy occurring in the same post office can be filled-in by the person who was transferred from that post office to another post office due to abolition of post. The word "subsequent" is important. This clearly means that vacancy arising immediately after the adjustment of the surplus E.D.As can only be filled-in by his transfer back to the original post office but this condition does not give the department liberty to fill-in the vacant post by transfer which had arisen some times subsequent to the immediate subsequent vacancy. To further clarify the position, we may say that only the first vacancy arising in the original post office can be filled in by re-transferring the surplus staff who was earlier adjusted to a neighbouring post office due to abolition of post. In this case, we find that in Shastri Nagar Head Post Office two vacancies arose after respondent No. 5 was adjusted in the neighbouring post office. But his case was not considered, the reasons are best known to the department. Therefore, when the third vacancy has occurred in the same post office the department cannot take shelter of adjusting the respondent No. 5 treating that vacancy as a subsequent vacancy as mentioned in Circular Annex.R/1. We may repeat here that if the department had an idea to adjust the



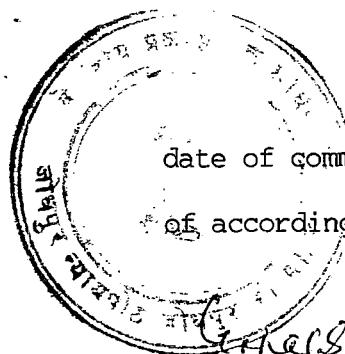
31/IV

respondent No. 5 from the neighbouring post office to Shastri Nagar Head Post Office then there was no necessity for issuing the notification for filling the post of E.D.S.V. and asking the Employment Exchange to sponsor the name of the candidates. This in our opinion is a cruel joke with the un-employed youth. Initially, they are allured with a hope of getting an appointment and then subsequently discouraged by the information that post has been filled-in by transfer. This in our opinion is fraud with the un-employed youth. We are ⁱⁿ agreement with the settled position of law that mere empanellment does not give any right to the successful candidates for being appointed to the post. We are also conscious of this position that it is the prerogative of the Government Department to fill-in the post by giving appointment to an empanelled candidate on the notified post as per merit. But in this case when we have come to the conclusion that the departmental action of notifying the post was only a ^{would be} drama then we/acting unfairly if we do not issue instructions to the department to consider the empanelled candidates for being appointed to the notified post.

9. As we have observed that transfer of respondent No. 5 from neighbouring post office to Shastri Nagar Head Post Office was not in accordance with the conditions laid down in the departmental Circular dated 12.9.1988 (Annex.R/1), therefore, we have no alternative but to quash the transfer order of Shri Veeru Dass, E.D.S.V., respondent No.5. Consequently, the department is directed to re-transfer Shri Veeru Dass to Industrial Area Post Office where he was working earlier and consequently vacated post of E.D.S.V. be filled-in from amongst the candidates as empanelled by the department for fill-in the post E.D.S.V. in the Shastri Nagar Head Post Office by offering appointment strictly in accordance with merit position of the selected candidates as per communication dated 27.8.1994 from the Post Master, Shastri Nagar Head Post Office to Senior Superintendent, Post Offices, Jodhpur, within **three months** from the

3/1

date of communication of this order. The O.A. is, therefore, disposed of accordingly with cost which we quantify at Rs. 250/-.



Gopal Singh
(GOPAL SINGH)
Administrative Member

2
Am
(A.K.MISRA)
Judicial Member

.....
MEHTA