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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 84/1995
T.A. No.

199

DATE OF DECISION 26.9.95

Roshan Lal Vyas Petitioner

Mr. Vijay Mehta, Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent

Mr. Sunil Joshi, Brief

holder for Mr. J.P. Joshi, Advocate for the Respondent (s)
Counsel for the respondents

CORAM :

The Hon'ble Mr. N.K. Verma, Administrative Member.

The Hon'ble Mr. -

1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
- ✓ 4. Whether it needs to be circulated to other Benches of the Tribunal ? *Yes*

N. K. Verma
(N.K. VERMA)
MEMBER (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Date of order ; 26.9.1995

OA NO. 84/1995

Roshan Lal Vyas Applicant.

v e r s u s

Union of India & Ors. Respondents.

Mr. Vijay Mehta, Counsel for the applicant.

Mr. Sunil Joshi, Brief Holder for Mr. J.P. Joshi,
Counsel for the respondents.

CORAM:

Hon'ble Mr. N.K. Verma, Administrative Member.
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BY THE COURT:

In this OA the applicant Roshan Lal Vyas who is a Postal Assistant was working as S.B. Counter Assistant in the Head Post Office, Bhilwara, on which he was taking a special pay of Rs. 60/- per month with effect from 16.1.1994. He was transferred to this Post Office on his own request in January, 1993 foregoing TA & DA etc. and started working as Postal Assistant. He had earlier qualified in the examination for S.B. allowances to Postal Assistant working in the S.B. branch of the Post Office which was communicated to the Post Master, Bhilwara on 10th July, 1992. The applicant was, however, suddenly transferred to Mandalgarh vide impugned order at Annexure A/1 dated 8.12.94 whereby he

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was ordered to be posted as Postal Signaller in the interest of service. The applicant had been working as a Postal Signaller earlier at Hamirgarh when he had made a request on 21.9.91 that due to cramp in his fingers he did not wish to continue as postal Signaller any further and he had requested to the Post Master General, Rajasthan Circle, to withdraw the advance increment of Rs. 60/- sanctioned to him for having passed the test of Postal Signaller and he should be removed from the post of Postal Signaller. He also requested that a medical test may be conducted so that his name could be removed from the list of Postal Signaller. However, inspite of the fact that he had made his request in 1991 and had subsequently passed the S.B. allowances examination, he was again transferred to Mandalgarh in the interest of service to work as Postal Signaller. He made two representations against this order placed at Annexure A/7 dated 21.9.91 and Annexure A/8 dated 9.1.95 which did not succeed and the last representation to the Director Postal Services, Ajmer, was rejected by Annexure A/9 dated 7.2.1995.

2. The respondents in their reply to the OA had stated that the applicant was a Postal Assistant and his services are liable to be transferred even as a Postal Signaller. The applicant was imparted telegraph training in English for which he was given an advance increment ^{which} merged in his basic pay. Since ^{still} he was getting that benefit, he was liable to be posted as Postal Signaller at any time in the interest

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of service. The transfer was made in the interest of service as the post of Postal Signaller at Mandalgarh was lying vacant and he had not submitted any medical certificate to prove that he was not capable of doing the work of a Postal Signaller. The ground taken for exemption of transfer on account of the applicant being an office bearer of a recognised Union was not tenable as that exemption ~~was applicable~~ to an office bearer for first year. The provisions of Rule 37(A) of the P&T Manual Volume IV according to which transfers have to be made as far as possible during the beginning of academic session are also directory and not mandatory. The applicant's transfer was made in the interest of service and, therefore, the matter does not warrant judicial review or interference.

3. I have heard both parties at length.

4. Shri Vijay Mehta, learned counsel for the applicant brought to my notice that there is no compulsory liability of any Postal Assistant to work as Postal Signaller once he had indicated his difficulties in working in that post due to medical reasons. No special tenure has been prescribed for a Postal Signaller and the applicant had already ~~completed~~ one tenure at Hamirgarh from where he was transferred on his mutual adjustment with another official. Once that tenure was over at Hamirgarh, the applicant commenced a new tenure at Bhilwara as Postal Assistant

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where he has completed nearly a tenure of nine months. Since he was in receipt of a special allowance of Rs. 60/- per month, his tenure could not be interfered with just after nine months of the posting in the S.B. branch. He also brought to my notice that a volunteer was available as per the representation of the applicant to the Post Master General sent on 7.2.95 (Annex. A/10). It was stated therein that one Narendra Kumar Pareek, Signaller at Jahazpur, who had completed six years of his posting as Postal Signaller in that Station has made a request for transfer to Mandalgarh and another official S.C. Mehta available requested at Gulabpura as a surplus to be posted at Jahazpur. If the requests made by S/Shri Narendra Kumar Pareek and S.C. Mehta had been considered by the respondents, the vacancy at Mandalgarh could have been filled up and the contention that a post of Postal Signaller was lying vacant at Mandalgarh would have been taken care of.

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5. Shri Vijay Mehta further argued on the point about 'public interest'. Mr. Mehta cited a judgement of the Hon'ble Supreme Court reported at JT 1994 (5) S.C. 459 S. Ramachandra Raju V. State of Orissa wherein it was held that it is incumbent upon the respondents to disclose the reasons of which the authorities come to the conclusion that a public interest is served by transferring an official. He further fortified his submission by

citing another judgement ~~at~~ at 1994 (27) ATC 650 K. Ramachandran vs. Director General, All India Radio, New Delhi & Ors. wherein the urgency of situation which demands immediate transfer in the exigencies of service has to be brought out by the authority saying such transfer order is in public interest. There was no such indications in the two replies filed by the respondents in the instant case and yet they have ordered a mid-term transfer of the applicant in violation of 37(A) of the P&T Manual Volume IV. The respondents did not even think it proper to have a medical examination conducted on the applicant so as to satisfy themselves that he is fit for the post of Postal Signaller and, therefore, the order should not have been passed in the matter.

6. Shri Sunil Joshi appearing on behalf of the Standing Counsel Shri J.P. Joshi rebutted the arguments of Shri Mehta by saying that ~~the~~ representation made by the applicant only indicates his unwillingness to work as Postal Signaller. If he was really medically unfit to perform the functions of a Postal Signaller he should have filed medical certificates in support thereof. Since he had not so far submitted any medical certificate it was considered that he was fit to continue as Postal Signaller and in view of the reply already filed by the respondents it was in the public interest that the applicant was transferred to Mandalgarh. While on the point of 'public interest' he was not able to ~~dilate~~ dilate what that public interest was and in what way was the applicant's transfer necessitated in the exigencies

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of service in view of the decision and arguments submitted by the learned Counsel for the applicant.

7. I have given careful considerations to the arguments of both the parties.

8. What emerged during these arguments is the question about the liabilities of the postal Assistant to discharge the function of the postal Signaller any time during his service career with or without his consent. It is well known fact that the postal Signaller's job is a technical job for which volunteers are solicited from time to time and they are given the incentive of an advance increment for passing such examination and taking the telegraph training test. Therefore, they are bound to work as Postal Signaller apart from their actual duties wherever found necessary. The list of such volunteers kept on panel is updated from time to time and once an official who has completed his tenure and who wants to go out from this kind of technical work there is no compulsion or there is any rule regulating his liabilities to continue as postal Signaller.

Learned Counsel for the respondents was not able to show any departmental instructions or statutory rules that the postal Assistant once having worked as postal Signaller must continue to work as such as per the requirement or exigencies of service or once the advance increment is given after having passed the examination and imparted the telegraph training, the applicant is bound to work as postal Signaller during his career as

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Postal Assistant. This cannot be a true import of the ruling on the subject. More so, in view of the fact that the respondents themselves had allowed the applicant to appear at the examination for Savings Bank Assistants wherein a monthly allowance of Rs.60/- is permissible. That permission was given with the implicit liberty that once the applicant passed the said examination, he will be available to be utilised as an S.B. Assistant. However, this again is ~~the~~ a voluntary exercise and there is no compulsion that official having passed the examination must be forced to work as S.B. Assistant on payment of special allowance. Both the work as Postal Signaller and S.B. Asstt. with S.B. allowance are consensual postings in which the Postal Assistant himself must agree to perform the special task assigned to him. Having allowed the applicant to work as S.B. Assistant with a special allowance of Rs.60/- per month, the respondents could not have taken recourse of transferring the applicant from that post without any show cause notice or without completing 4-6 years of working as S.B. Assistant. The order transferring him, therefore, fails on the basic principle that any order which alters the conditions of service to the disadvantages of the Government servant has to be preceded by a show cause notice. Since no show cause notice was served upon the applicant that he was likely to be transferred, thereby causing a financial loss of Rs.60/- per month to the applicant, this impugned order deserves to be quashed.

9. From another angle, I find this order is very much untenable. The only extra advantage that a Postal Signaller gets is an advance increment to his pay which got merged in his basic pay. The applicant had passed the examination for Telegraph training in 1987 and, thereafter, the increment became a part of his pay for all times to come. This is not subject to reduction after the Signaller ceases to be a Signaller and reverted to be a Postal Assistant. Thus, the claim of the respondents that by giving advance increment, the services of the Postal Signallers are available to the Department during his entire career as Postal Assistant has no support. An advance increment is only an incentive to the postal Assistant to take Telegraph Training examination and serve as Postal Signaller. However, in absence of any clear instructions about the prescribed compulsory tenure for such Signallers who are imparted training[&] irrevocable liability to serve as postal Signallers, the respondents are precluded from removing the applicant as S.B. Assistant and transferring him as Postal Signaller to Mandalgarh.

10. There was nothing serious or genuine about transferring the applicant to Mandalgarh in spite of the clear position that he was working in an allowed post for a tenure which could have been for 4/6 years. I, therefore, hold that the impugned orders should be quashed.

11. Before parting with this case, I would like to comment upon the confusion created in this OA, by filing a reply on behalf of the respondents by a party

who had not been impleaded and for which a very detailed order was passed on 22.8.95. In spite of the clear instructions given, the respondents had filed another reply reiterating the point that the Sr. Superintendent of Post Offices, Jodhpur Division was duly authorised by the Chief Post Master General, Rajasthan Circle, Jaipur, to represent this case and file a reply on behalf of the respondents. In the rejoinder to the reply, learned Counsel for the applicant brought to my notice that the respondents have not referred to GSR 511 issued on 30.7.90. As per this notification of the Government, officers of equivalent or above rank of Under Secretary to the Government of India in subordinate officers/ Circle offices under the department of Posts are required to file a reply. It has not been averred by the respondents that the Officer Incharge in this case is an officer of equivalent or above rank of an Under Secretary. The respondents have filed Annexure R/2 dated 2.3.95 alongwith a reply. Annexure R/2 is an order passed by the Post Master General, Rajasthan Eastern Region, Ajmer, authorising the Senior Superintendent of Post Offices, Jodhpur, as Officer Incharge of the case according to which he has been authorised to sign and verify the pleadings and to act on behalf of the Union of India and others in this particular case. Learned Counsel for the respondents has referred to G.S.R. 133 dated March 10, 1990 which was modified under GSR 511 issued on 30.7.1990 which is now the statutory provision of the Government in this regard read in connection with the CPC Order XXVII Rules 1 & 2 . A statutory provision of the Government cannot be diluted or modified by an

administrative instructions issued by a subordinate office. The Post Master General had appeared in this Tribunal when a proper direction was given in the matter which he had very willingly accepted for compliance. I am rather surprised that a different kind of reply has been now been filed, which are not sustainable. Learned Counsel for the respondents, Mr. J.P. Joshi, however, was not available in the Court. His brief holder Shri Sunil Joshi, who has conducted the case very ably was instructed in the matter further and he was asked to ensure compliance of the CPC provisions and the Government of India instructions on the matter in all Government litigations. The learned Counsel on both sides are officers of the Court assisting the Bench coming to proper conclusions and decisions and passing appropriate orders in the matter. If the case of the Government respondents are weakened due to casual and inadequate attention to the legal provisions, the loss entirely will be of the Government. It is only in this interest that directions were given earlier that the reply must be filed by the proper respondents. Even in this case a number of glaring inconsistencies and incorrect averments were found in the reply. In Para 3, of the reply it was stated that the applicant stands already relieved of his duties at Bhilwara. This was denied in the rejoinder. The averment was thus incorrect and misleading. In Para 4, again the respondents have stated that the applicant had not exhausted all the departmental remedies. This also was denied as the applicant had made two representations and his representation dated 9.1.1995 was rejected by Annexure A/9 dated 7.9.1995.

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12. Submission of these incorrect and misleading replies could have been avoided if the respondents impleaded in the OA themselves replied to the facts brought about in the application with reference to their ^{records} and after proper application of mind. The CAT (Procedure) Rules, 1987, provides in Section 12 (1) that "each respondent intending to contest the application, shall file in triplicate the reply to the application and the documents relied upon in paper-book form with the Registry within one month of the service of notice of the application on him." 12(2) provides "In the reply filed under sub-rule (1), the respondent shall specifically admit, deny or explain the facts stated by the applicants in his application and may also such additional facts as may be found necessary for the just decision of the case. It shall be signed and verified as a written statement by the respondent or any other person duly authorised by him in writing in the same manner as provided for in Order VI, Rule 15 of the Code of Civil Procedure, 1908 (5 of 1908). Order 6 Rule 15 of the C.P.C. states " verification of Pleadings:- (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case." From the reading of these provisions, it is amply clear that the respondents are required to file a reply by the respondents or any other person duly authorised by them can file a written statement on behalf of the

respondents, but the entire exercise is subject to the satisfaction of the Court. Admittedly, the Administrative Tribunals are adjudicating on matters of service in which the respondents are necessarily the Government concerned. The very object of the establishment of the Administrative Tribunals under Article 323-A of the Constitution was because of a large number of cases relating to service matters pending before various Courts. It was expected that the setting up of such Administrative Tribunals to deal exclusively with service matters would go a long way in not only reducing the burden of the various Courts and thereby giving them more time to deal with other cases expeditiously but would also provide to the persons covered by the Administrative Tribunals speedy relief in respect of their grievances." (Vide Lok Sabha Bill No. 21 of 1985.). Now with this objective in mind, it is necessary that the matters which are brought up for adjudication before various Benches of the Tribunals are very seriously conducted by the litigating parties including the respondents. ~~Most of the matters~~ subject to litigation are susceptible to finalisation fairly and satisfactorily in favour of the applicants if the facts ~~of~~ the matter are brought to the notice of the

higher authorities properly and fairly. However, the authorities at the cutting edge level, who have themselves perpetrated those unfair actions, do not allow the facts to be put fairly before the higher authorities who are to sit in judgement as appellate authority. As a result, the employees are driven to the Tribunals for adjudication of their grievances. If the same set of respondents who are basically at the source of litigation are allowed to file replies on behalf of the respondents impleaded at the level of Secretary to the Government of India or Zonal or State Level Officers like the Chief Post Master General without their having applied their minds to the proposed replies to be filed in an OA, the whole exercise get defeated. The attempt of the respondents at that level would again be to cover up their own mischief or misinterpretation of the rules etc. and try to mislead the Tribunal by giving patently wrong and incorrect replies as is evident in the instant case. If the respondents go into the facts and circumstances of the case which would find a proper place in the replies to be filed in the OA, they would perhaps themselves concede the claims of the applicants and thereby saving the time and money by indulging in litigation which are not worthy of the same. However, these objectives of the Parliament and the makers of the Constitution seem to have been lost upon the respondents in the present case and they have passed on the entire responsibility of contesting the matter at the level of an Officer who

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does not belong to the chain of Command of the office of the Regional Post Master General, Ajmer. If we allow such latitude, there would be a serious abuse of judicial process. For e.g. if a matter in which the Divisional Railway Manager, Northern Railway, Jodhpur is concerned, it is not expected that the Railways respondents would delegate the responsibility of contesting the case ^{to an officer} belonging to the unit of Divisional Railway Manager, Jaipur, who is under the Western Railway or vice versa. Such circumstances are not envisaged in the C.P.C. especially when it comes to litigation concerning to the Government.

13. Shri Sunil Joshi while arguing on the subject drew my attention to the decision of the Hon'ble Supreme Court reported at AIR 1976 SC 2169 in the case of Virendra Singh Vs. Vimal Kumar in which in Para 7 it was held " a defect which does not affect the merits of the case or the jurisdiction of the Court cannot invalidate the decision." He also quoted another case of Kailash Singh Vs. Hiralal Dey cited at AIR 1994 GAUHATI 12 wherein it has been held that " any error, defect or irregularity in any proceeding in any Suit in S. 99- It includes signing and verification of plaint as laid down in Order 6 Rule 14 & 15 of the CPC." Then he referred to Section 114 of the

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Law of Evidence - Illustration (e), where^{by} he states that there is a general disposition in Courts of justice to uphold official, judicial and other acts rather than to render them inoperative. I am not impressed by these citations as these do not seem to be relevant to the issues involved in this case. The citation of AIR 1976 SC 2169 relates to defects which does not affect the merits of the case. The defects in a plaint are not the same as wrong and misleading statements made in the replies due to non-application of mind or may be due to wilful concealment of the facts. This case (AIR 1976 SC 2169) relates to an election petition which was sought to be dismissed by the respondent on the ground that the verification and the affidavit did not contain sufficient particulars of the corrupt practices attributed to the appellant and did not at all give particulars of printing of the offending leaflet. There were certain other technical grounds also. The case quoted of the Gauhati Bench of the High Court relates to lack of signature and verification on the Plaint. Hon'ble Single Judge of the Gauhati High Court held "In my view we have come to a stage in our jurisprudence where we should not be tied down with procedural technicalities. But we should try to do substantial justice to the parties. In the case in hand it would be unfair and unjust to reject the plaint merely on the ground that the plaint was not properly signed and/or verified as plaintiff himself came to the witness box and made out the case in the plaint."

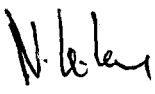
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Thus this matter relates to the omission of the signature on the plaint by the plaintiff himself and not the omission of signature or verification of the respondents. In any case, C.A.Ts. are governed by the C.A.T. (Procedure) Rules, 1987 which are not entirely based on the provisions of CPC. CPC provisions have to be regulated by the procedures specially laid down for administrative justice to be adjudicated between exclusive set of litigants. Under the circumstances, I am constrained to direct that the respondents must comply with the provisions of the C.A.T. (Procedure) Rules, 1987, read with provisions of the C.P.C. on the subject. This may be brought to the personal notice of the respondents in the OA by the Registry. The Registrar of this Bench is also directed to ensure that the pleadings are completed as per the observations contained herein. Any lapse on the part will be seriously noticed as this results in unnecessary delay in adjudicating the matter.

ORDER

14. As discussed earlier, the OA succeeds and I hereby quash the order at Annexure A/1 dated 8.12.1994 with the direction that the applicant shall be allowed to continue as S.B. Assistant at Bhilwara Head Post Office and complete his tenure as per rules. However, the respondents shall be at liberty to remove him from this position in terms of the relevant rules on the subject after giving him a due opportunity by issuing show cause notice, if so advised.

15. There shall be no order as to costs.


(N.K. VERMA)
MEMBER (A)

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12/24/95
ASD. 9-10-B-

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Part II and III destroyed
in my presence on 21/2/01
under the supervision of
section officer (I) as per
order dated 4/9/2000

[Signature]

Section officer (Record)

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Copy of document dt 26.9.95
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to R-3. Vide no 573 to 575

to
R-3. Date 18/X/95

CPD
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