

(12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

O.A. No. 143/1996

Date of Order: 5th March 99

Shri Gheesa Ram Malakar s/o Shri Dana Ram ji, aged about 37 years, Resident of Village & Post Gudha Salt, District Nagaur (Rajasthan). (Presently working as EDMC/EDDA in the Post office at Gudha Salt)

versus

1. Union of India through Secretary,
Department of Post, Dak Bhawan,
Parliament Street, NEW DELHI.
2. The Post Master General,
Rajasthan Western Region,
Jodhpur.
3. The Superintendent of Post Office,
Nagaur Division, Nagaur.
4. Sub Divisional Inspector (Post),
Makarana Sub Division, MAKARANA.

..Respondents.

Mr. S.K. Malik, counsel for the applicant.

Mr. Vinit Mathur, counsel for the respondents.

CORAM :

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

PER HON'BLE MR. GOPAL SINGH :

The applicant, Gheesa Ram Malakar, has filed this application under section 19 of the Administrative Tribunals Act, 1985, praying for setting aside the impugned order, dated 15.4.1996 (Annexure A/1), with all consequential benefits. Applicant's case is that he was given the charge of EDMC/EDDA by

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respondent No. 4 vide their letter dated 13.4.1994 at Annexure A/2 and his offer of appointment was issued vide letter dated 03.2.1995. Since then, the applicant has been working on the said post. The applicant took leave on 15.4.1996 and he handed over the charge of his post to one Shri Ram Pal. The respondents vide their letter 15.4.1996 at Annexure A/1 terminated the services of the applicant. Feeling aggrieved by the action of the respondents, the applicant has approached this Tribunal.

2. Notices were issued to the respondents and they have filed their reply. It has been averred on behalf of the respondents that the charge of the post of EDMC/EDDA was provisionally given to Shri Gheesa Ram Malakar on 13.8.1994 with the condition that the services of the applicant will be terminated any time without giving any notice. The respondents have also contested the contention of the applicant that he took leave on 15.4.1996 and it has been asserted by the respondents that he did not take any leave from the sanctioning authority and he handed over his charge to an unauthorised person namely Shri Ram Pal and remained absent from his duties.

3. We have heard the learned counsel for the parties and perused the record of the case. One Shri Chand Mohd. was transferred and posted as EDDA/EDMC Gudha Salt at his own request in place of the applicant and the provisional appointment of the applicant was terminated vide letter dated 15.4.1996 of the respondents at Annexure A/1. The learned counsel for the applicant has submitted that the action on the part of the respondents to transfer Shri Chand Mohd. from one post to another is against the Rule 20 of Section III of Service Rules For Extra-Departmental Staff in Postal Department. This Rule reads as under :

"Transfer of ED Agents from one post to another:-
ED Agents are not liable or are entitled to transfer from one post to another. However, a few cases have arisen where some ED Agents have been shifted from one post to another at their request. The ED Agents are asked to resign their posts and a fresh appointment order is issued against new posts in such cases.

In this connection, the following issues have arisen and clarified:-

(i). The formality of calling for nomination from Employment Exchange calling for applications etc. should be gone through. The ED Agents already in service should

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apply through Employment Exchange and their applications/appointment should be accepted or rejected under the normal rules for appointment of ED Agents.

(ii) The ED Agents selected for the new posts should resign from their previous post.

(iii) If there is no break in their service, ED Agents selected for the new posts are eligible for the purpose of taking examinations and for sanction of gratuity. Their previous service should be considered in such cases.

(iv) If there is a break of service, this depends on the discretion of the Post Master-General concerned to condone this break in service or reject it keeping in view the circumstances of the case.

(P.M.G., Madras, Letter No. STC/13-413/84, dated the 3rd January, 1985 and D.G., P. & T., Letter No. 43-27/85-Pen., dated the 6th May, 1985, in reply thereto.)

Exceptions: Normally, the Employment Exchange does not register/sponsor the names of persons already in employment except in the cases for appointment to higher posts.

A proposal that EDAs may, therefore, be considered in a limited manner for appointment in other ED posts without coming through the Agency of Employment Exchange in exceptional cases has been under examination.

Normally, EDAs are to be recruited from local area and they are not eligible for transfer from one post to another: but in cases where a post has been abolished, EDAs are to be offered alternative appointment within the sub division in the next available vacancy in accordance with Order No. 43-24/54-Pen, dated 12.4.1964 and further clarified in Order 43-4/77-Pen, dated 23.2.1979. As per orders, EDAs who are held as surplus consequent to the abolition of ED posts are to be adjusted against the post that may occur subsequently in the same office or in the neighbouring offices. In view of this, it will not be correct to allow the transfer of EDAs freely from one post to other. However, it has now been decided that exception may be 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 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 post and fulfills all the required conditions.

(ii) In the cases where EDAs become surplus due to abolition of posts and if 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 that may subsequently occur in the place where they were originally working without coming through Employment Exchange. (D.G. Posts, Letter No. 43-27/85-Pen., (EDC & Trg.), dated the 12th September, 1988)".

It would be seen from the above that under exceptional circumstances such transfers and postings are permissible under the above rule. Thus, this rule does not help the applicant.

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The learned counsel for the applicant has also cited the case of C. Vijayan Vs. Sub Divisional Inspector Post Offices and others - 1990(6) SLR page, 318. We have carefully examined this judgement of the Ernakulam Bench of the Central Administrative Tribunal and we find that the facts of the case in hand are distinguishable from the facts of the case cited by the learned counsel for the applicant and, therefore, we do not consider it necessary to discuss that judgement here. Suffice it to say that this judgement also does not help the applicant. It is also seen from the appointment order of the applicant that he was provisionally appointed subject to certain conditions and one of the conditions was that his appointment would be tenable till regular appointment is made. It was also mentioned in the appointment letter that the respondents reserve the right to terminate the provisional appointment at any time without notice and without any reason. It is also seen from the record that the applicant was not selected as per regular procedure laid down for the purpose. Thus his initial appointment was dehors the rules. In the circumstances, the applicant does not acquire any right to continue on the said post.

6. In the circumstances, we do not find any merit in the application and the same deserves to be dismissed.

The OA is accordingly dismissed with no order as to costs.

(GOPAL SINGH)
(GOPAL SINGH)

MEMBER (A)

3/3/99
(A.K. MISRA)
MEMBER (J)

SM/MEHTA

File No. 979/201

Recd by
H.C.
11/3/99

Part II and III destroyed
in my presence on 28.6.99
under the supervision of
section officer (I) as per
order dated 16/5/99

Section officer (Record)