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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR

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Date of Order : 28.05.2003.

O. A. NO. 209/2002

Smt. Sangeeta Prajapat W/o Shri Nand Kishore Resident of 472, Subhash Nagar Pal Road, Jodhpur, working as Extra Departmental Stamp Vendor (EDSV) HPO Shastri Nagar, Jodhpur.

.....Applicant.

versus

1. Union of India through Secretary, Ministry of Communication, Department of Post, Dak Bhawan, Sansad Marg, New Delhi.
2. Senior Superintendent of Post Offices, Jodhpur Division, Jodhpur.
3. Post Master Head Post Office, Shastri Nagar, Jodhpur.
4. Shri Veeru Das S/o Shri Bherudas R/o 28K Behind Umraonkhan Petrol Pump, Chopasani Road, Jodhpur, working as EDMC in HPO Shastri Nagar, Jodhpur.

.....Respondents.

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CORAM :

Hon'ble Mr. Justice G.L. Gupta, Vice Chairman

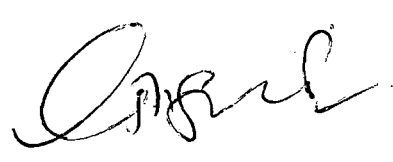
Hon'ble Mr. G.C. Srivastava, Administrative Member

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

Mr. P.R. Patel, counsel for the respondents No. 1 to 3.

Mr. S.K. Malik, counsel for the respondent No. 4.



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ORDER

PER MR. JUSTICE G.L. GUPTA :

The order Annexure A/1 dated 7.8.2002, whereby, the applicant was transferred from Shastri Nagar Post Office to SD 1 (P) South, Jodhpur, is under challenge in this O.A.

2. The facts. The respondent No. 3 had issued an advertisement on 19.7.1994 for the post of Extra Departmental Stamp Vendor (EDSV). The applicant also applied for the post. She was selected and informed vide letter dated 14.9.1998 (Annex.A/4). She was appointed on the post vide order Annex. A/5 dated 15.9.1998. Subsequently, because of a decision of the High Court, Respondent No. 4 was appointed on the post and the applicant was transferred vide order Annexure A/1.

2.1 The say of the applicant is that by transferring her on a lower post her pay has been reduced and status has been down graded. It is averred that the order, pre-judicial to the applicant has been issued without following the principle of natural justice and her status has been down-graded and, therefore, the action of the respondents is illegal.

3. In the reply, the official respondents have come out with the case that Shri Veeru Das, (Respondent No.4), then EDMC, Marudhar Industrial Area Post Office, had to be given appointment as EDSV in compliance of the orders of the High Court passed in the Writ Petition No. 3192 of 1998 decided on 8.3.2002 and as the vacancy of EDMC in Marudhar Industrial Area Post Office was available, the applicant was shifted there in place of Shri Veeru Das. Admitting that the post of EDSV, Shastri Nagar Post Office, carried the monthly allowances of Rs. 420/- plus D.A. as per rules, it is averred that the allowance is variable on pro rata basis according to the work load, nature of duty and working hours. It is the



further case for the respondents that the applicant was offered alternative employment as EDMC as per the departmental Instructions dated 28.8.1996.

4. The private respondent No. 4 in his reply has also resisted the claim of the applicant.

5. We have heard the learned counsel for the parties and perused the documents placed on record.

6. It is appropriate to first state the facts of the case on which there is no dispute between the parties.

6.1 Shri Veeru Das, respondent No. 4, was initially appointed as EDMC, Shastri Nagar w.e.f. 6.2.1984. That post was abolished and hence, he was given alternative appointment on the post of EDMC, Marudhar Industrial Area, Jodhpur, w.e.f. 18.12.1989. The incumbent, who was working as EDSV, Shastri Nagar (Shri Ram Chander), was promoted as Post Man on 15.5.1991 and for the vacant post of EDSV, Shastri Nagar Post Office, recruitment process was initiated and the names were called from the Employment Exchange.

6.2 Before the appointment could be made on the basis of the said selection process, Shri Veeru Das, respondent No. 4, who was EDMC, Marudhar Industrial Area, made a request for his re-employment in the Head Post Office and he was posted as EDSV, Shastri Nagar on 27.10.1994. His appointment as EDSV, Shastri Nagar, by way of transfer, came to be challenged by one Shri Hamid Hussain, by filing O.A. No. 429 of 1995. The said O.A. was allowed by this Tribunal and the official respondents were directed to re-transfer Shri Veeru Das to Industrial Area Post Office where, he was working earlier and to fill up the vacant post of EDSV from amongst the candidates, empanelled by the department for filling the post

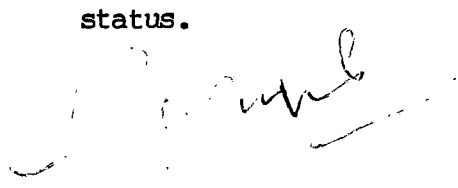


of EDSV, at Shastri Nagar Head Post Office.

6.3. Pursuant to the directions of the Tribunal, the official respondents gave appointment to the applicant vide order Annex. A/5 dated 15.9.1998 as her name found place at Sl. No. 1 of the merit list. However, to the ill luck of the applicant, Shri Veeru Das, Respondent No. 4, challenged the order of this Court dated 7.8.1998 before the Hon'ble High Court by filing Writ Petition No. 3192/1998. The said Writ Petition was allowed and the Tribunal's order was set aside. The resultant effect was that the appointment given to Shri Veeru Das on the post of EDSV, Head Post Office Shastri Nagar, by way of transfer, was held a valid order and he got of right of reinstatement on that post.

6.4 Though, the applicant was not a party in O.A. No. 429/95, nor, she was the party before the Hon'ble High Court yet as a consequence of the implementation of the order of the High Court, Shri Veeru Das was brought back as EDSV, Shastri Nagar Head Post Office vide order Annexure A/1 dated 7.8.2002. As a consequence, the applicant, was shifted from the post of EDSV, Shastri Nagar and was allotted the SD 1(P), South, Jodhpur Unit which post Shri Veeru Das was holding.

7. The serious contention on learned counsel for the applicant was that the scale of allowance of the applicant could not be reduced even if she was transferred from Shastri Nagar Head Post Office. He pointed out that before reducing the allowance of the applicant, no show cause notice was issued to her. For this contention he cited the case of Kashi Ram versus Union of India (O.A. No. 169/96 decided on 7.9.1999). He also pointed out that before issuing the order Annexure A/1, the services of the applicant as EDSV had not been terminated and the applicant had not given her consent to reduce her pay and post her on the post of lower status.

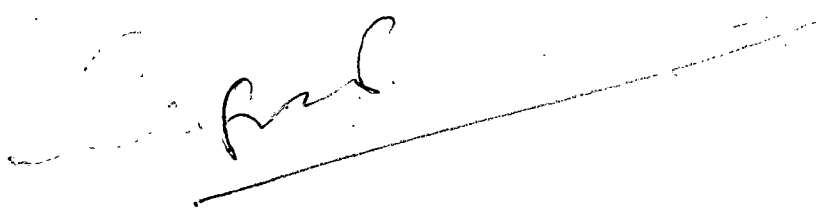


8. On the other hand, the learned counsel for the official respondents contended that there was no post of EDSV available at Shastri Nagar after Shri Veeru Das was given appointment on the basis of the High Court judgement and, therefore, the applicant was offered alternative appointment. According to him, the applicant could be removed from service as there was no post of EDSV available for her but she was extended special favour by giving her appointment on the alternative post.

9. We have given the matter our thoughtful consideration.

10. The applicant had joined as EDSV, Shastri Nagar on 15.9.1998. It is seen that when the post of EDSV was advertised, it carried the monthly allowance of Rs. 420/- per month plus D.A. It appears that by the time the applicant was given appointment, a regular scale of allowance was available and she was getting allowance in the scale of Rs. 1740-30-2640. Vide order Annexure A/2 dated 8.8.2002, the applicant has been appointed as Gram Dak Seva Mail Carrier (GDMC). This post was previously held by Shri Veeru Das. Admittedly, the scale of the post of EDMC is Rs. 1540-25-2020. It is thus manifest that the applicant has been shifted on the post of lower scale of allowance than the post on which she was initially appointed.

11. It is settled legal position that conditions of service of an employee more particularly, the pay, cannot be changed to his/her disadvantage without affording an opportunity by way of notice. The applicant had a right to receive the allowance known as 'Time Rated Continuity Allowance in the scale of Rs. 1740-2640 allowance. In the order Annexure A/2, it is not stated that the applicant's allowance (TRCA) shall stand reduced in the scale of Rs. 1540-25-2020. But, when she has been given appointment on the post of EDMC, which post carries lower scale of Rs. 1545-25-2020, the applicant has reason to believe that



her scale of allowance has been reduced more so when the respondents have not denied the contents of para 6 (a) of the O.A. in clear terms.

12. It is true that the respondents in compliance of the order of the Hon'ble High Court were required to give appointment to Shri Veeru Das at Shastri Nagar Head Office by transfer on the post of E.D.S.V. As there was no post of EDSV available elsewhere at Jodhpur, the applicant had to be shifted on the post of EDMC. However, in the circumstances, the scale of allowance of the applicant could not be altered to her disadvantage.

13. It was contended that by appointment on the post of EDMC, the status of the applicant was lowered down. The contention is not tenable. The service of E.D. Agents is very different than the ordinary Government service. A reading of the Rules of 1964 (Rules of 2001) and the various Instructions issued by the Director General, Posts, indicate that there is not much difference in the status of the various E.D. Agents (Gramin Dak Sevaks). There is no post inferior or superior of the E.D. Agents inspite of the difference in the scales of allowance. The E.D. Agents are required to work for certain hours. As a matter of fact, it is a part time engagement. There is no provision of promotion from one category of E.D. Agents to another category of E.D. Agents. The allowance of the E.D. Agents has been fixed on the basis of the working hours. The lesser the working hours, the lower the scale of allowance and more the working hours, higher the scale of allowance.

13.1. When, there is no provision of promotion, there is no question of status-inferior or superior. It is provided by way of Instructions that where a post of E.D. Agent ceases to exist, an attempt should be made to accommodate the employee on the alternative post. It is in the interest of the employees that a provision has been made for offering alternative employment to them when there is no post available. Some times, posts are abolished. At times, there is departmentalisation of the posts. The department has, therefore, issued Instructions for providing alternative



appointment to such E.D. Agents, who are likely to be out of employment for the administrative reasons. If the employee does not want to accept the alternative appointment, he/she may refuse to accept the same and abandon the employment.

13.2. In the instant case, there was administrative reason that the applicant could not be allowed to continue on the post of EDSV, Shastri Nagar. She was, therefore, offered alternative appointment and was sent as EDMC Marudhar Industrial Area. No fault can be found in the order of transfer of the applicant.

14. As a result of the foregoing discussions, we are of the view that the respondents had not erred when the applicant was transferred (TRCA) and posted as EDMC, SD 1 (P) Jodhpur. However, if the scale of allowance of the applicant is proposed to be reduced or has been reduced, that action is not sustainable. While dismissing the O.A., we direct the respondents not to change the scale of TRC Allowance of the applicant from Rs. 1740-25-2020 to her dis-advantage.

15. No order as to costs.

(G.C. Srivastava)
Administrative Member



(G.L. Gupta)
Vice Chairman

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jrm

