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/ IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
JODHPUR.

Date of decision: 03.5.2002

OA 16/2002

Mangi Lal Sharma, EDSPM at Sobhasar Post Office,
District Churu (Rajasthan).

... Applicant

Versus

1. Union of India through Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. Post Master General, Rajasthan Western Region, Jodhpur.
3. Supdt. of Post Offices, Churu Division, Churu.
4. Shri Riddhikaran Sharma s/o Shri Hari Prasad Sharma r/o Village & Post Sobhasar, District Churu.

... Respondents

CORAM:

HON'BLE MR.GOPAL SINGH, ADM.MEMBER

HON'BLE MR.J.K.KAUSHIK, JUDL.MEMBER

Mr.S.K.Malik, counsel for Applicant

Mr.Vinit Mathur, counsel for Respondents No.1 to 3

Mr.H.K.Purohit, counsel for Respondent No.4

O R D E R

PER HON'BLE MR.J.K.KAUSHIK, JUDL.MEMBER

Applicant, Mangi Lal Sharma, has filed this application u/s 19 of the Administrative Tribunals Act, 1985 and has prayed for the following reliefs :

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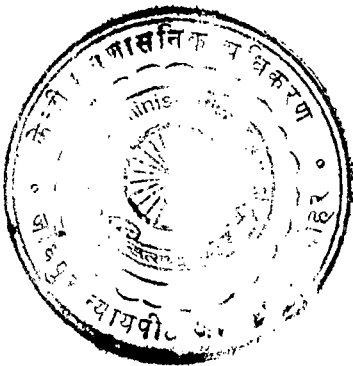


"i) That by an appropriate writ, order or directions impugned Memo No.A-21 dated 21.1.2002 (Ann.A/1) be declared illegal and be quashed and set aside as if it was never passed against his applicant.

ii) That by an appropriate writ, order or directions respondent may be directed to continue the applicant on the post of EDSPM, Sobhasar with all consequential benefits.

iii) Any other relief which is found just and proper in the facts and circumstances of the case be passed in favour of the applicant by the Hon'ble Tribunal.

iv) Exemplary cost may be awarded against respondents for causing undue harassment to the applicant."



2. The brief facts of the case are that the applicant was given charge of the post of EDSPM Sobhasar (Ratangarh) from Shri. Mangat Mal Daroga on 12.6.97 vide charge report dated 6.6.97. Thereafter, an advertisement was issued for calling the applications for filling up the said post of EDSPM, on 4.11.97. The applicant fulfilled all eligibility conditions and applied for the same. He was duly selected and was issued appointment letter dated 8/17.7.98 effective from 20.10.98, vide Ann.A/4.

3. Further, it has been averred by the applicant that one Shri Ridhkaran Sharma, respondent No.4, was

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removed from service in June, 1997 on the charge of embezzlement of Government money after holding due inquiry from the department. Respondent No.3, without any show-cause notice, ordered the applicant to join on the post of EDMC Bhimsar vide impugned order dated 21.1.2002. The post of EDMC Bhimsar is a lower post requiring lower qualification and carrying lower scale of pay. Further, it has been mentioned ^{that} the applicant is a heart patient and he has also undergone bypass surgery at Escort Heart Institute, New Delhi, and the applicant cannot discharge the duty of EDMC as he was never appointed as such.



4. This OA has been preferred on the ground that the applicant was appointed to the post of EDSPM after due selection and his service conditions cannot be changed without show-cause notice and the impugned order entails evil and civil consequences. There has been violation of the principles of natural justice. Secondly, as per the provisions of law for E.D. employees, one cannot be transferred from one post to another or cannot be shifted from one place to another. Thirdly, the transfer of applicant from Sobhasar to Bhimsar on a lower post will affect his pay[&] allowances and consequently he would be reverted to a lower post to which he was never appointed. Fourthly, the applicant is the holder of a civil post and he cannot be reduced in rank without complying with the provisions of Article 311 of the Constitution of India and, lastly, the action of the

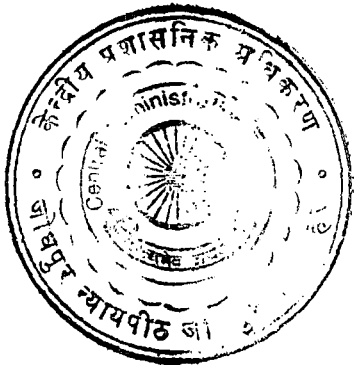
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respondents is said to be clearly outcome of colourable exercise of power in the eye of law and in view of this the impugned order is not sustainable in law and the OA deserves to be allowed.

5. The show-cause notices for admission were issued on 24.1.2002. The respondents have filed a detailed reply and have controverted the facts and grounds raised in the OA. In reply it has been stated that respondent No.4 was no doubt dismissed from service and his appeal was also rejected, but on a review petition de-novo proceedings were ordered and in review the penalty of dismissal from service has been reduced to withholding of permission for appearing in the Post Masters' examination and from consideration for promotion to the post of Postal Assistant for three years. In this view of the matter, respondent No.4 was reinstated as EDSPM Sobhasar, where he joined on 22.1.2002. Since respondent No.4 was to be reinstated in service on the post held by him before his dismissal, the applicant was asked to join on the alternative post of EDMC, so as to avoid his termination. Thus, the action of the respondents is just and proper. Hence the applicant is not entitled to any relief and the present application deserves to be dismissed.



6. A separate reply has also been filed on behalf of the private respondent, wherein it has been stated that the post against which the applicant was appointed was not a clear vacancy inasmuch as it was as a result of the removal of respondent No.4.

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Respondent No.4 has alternative remedy and in the review the penalty was modified. and he was ordered to ^{be} reinstated. There is no illegality or informity in the ^{impugned} ~~impugned~~ order. The OA, therefore, deserves to be dismissed.

7. We have heard the learned counsel for the parties and have carefully perused the records of the case.

8. The learned counsel for the applicant has heavily stressed on the ground that the service conditions of the applicant have been changed without predecisional hearing and in support of this, the learned counsel has taken support of the judgements of Hon'ble the Supreme Court in H.L.Trehan v. Union of India & Others, (1989) SCC 764, and Bhagwan Shukla v. Union of India & Ors., 1994 (6) SCC 154. In these cases it has been laid down that any order which results in civil consequences to the employee should be passed after giving a predecisional hearing to the employee. On the other hand, the learned counsel for the respondents have argued that there are specific rule to this effect i.e. Rule-6 of the EDAs Conduct & Service Rules, 1964, which governs the matter relating to termination of services of the ED employees. As per Rule-6, one could be terminated from service by the appointing authority if one has not already rendered more than three years continuous service from the date of appointment, by giving one month notice or the service can be also terminated



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forthwith and on such termination the employee shall be entitled to claim a sum equivalent to the amount of basic allowance plus Dearness Allowance for the period of the notice. The extract of Rule-6 of EDAs Conduct & Service Rules, 1964 is reproduced as under :

"6. Termination of Services

(a) The services of an employee who has not already rendered more than three years' continuous service from the date of his appointment shall be liable to termination at any time by a notice in writing given either by the employee to the appointing authority or by the appointing authority to the employee;

(b) the period of such notice shall be one month;

Provided that the service of any such employee may be terminated forthwith and on such termination, the employee shall be entitled to claim a sum equivalent to the amount of 'Basic Allowance' plus Dearness Allowance for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or, as the case may be, for the period by which such notice falls short of one month."

9. As per the version of the learned counsel for the respondents, the applicant was appointed on 15.7.98 and the services on the post of EDSPM came to an end on 21.1.2002 i.e. much before the completion of



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three years. Thus, as per Rule-6 (ibid) at the most the applicant could claim one month's salary if at all the impugned order could be considered to be a termination order and the judgements ~~above~~ referred to ^{above} by the learned counsel for the applicant have no application in the present case inasmuch as the judgements of Hon'ble the Supreme Court cannot be read as a statute. The learned counsel for the respondents has further argued that the department has in fact extended a special favour to the applicant inasmuch as instead of sending him home after termination of his services they have given him employment, may be on the lower post of EDMC, and that leniency should not be considered to be a self inflicted injury to the department. In any case, since the applicant has been given an alternative employment on the post of EDMC and he also did not claim the one month's salary in lieu of the notice, it was not found expedient to make payment of the amount in lieu of the notice. This is in addition to the fact that the impugned order is not an order of termination of the applicant simpliciter. Even the provisions ^{of} Rule-6 do not strictly apply to the present case.

10. On the other hand, the learned counsel for the applicant vehemently opposed the contention of the respondents and it was argued that the said Rule-6 has already been struck down by Andhra Pradesh High Court in K.Lakshma Reddy v. Director of Postal Services, Hyderabad & 2 othes, 1982 (1) SLR 785. We have

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On the other hand, in the present case the infirmity pointed out in that case has already been rectified and the Rule-6 has been amended accordingly. Thus that judgement does not support the contention of the learned counsel for the applicant.




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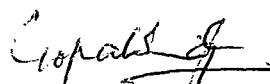


respondents have been very fair and reasonable in giving alternative appointment to the applicant. There is no question of using any colourable exercise of power or of any malafide action on the part of the respondent department. Thus, the impugned order is just, proper and valid. None of the contentions of the applicant are sustainable and the OA is devoid of any merit.

12. In view of the aforesaid discussion, the OA deserves to be dismissed and the same is hereby dismissed. However, there shall be no order as to costs.


(J.K.KAUSHIK)

MEMBER (J)


(GOPAL SINGH)

MEMBE (A)

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Section officer (Record)