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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

ORIGINAL APPLIATION NO. 178/2006
JODHPUR THIS IS THE 4TH DAY OF APRIL, 2007.

CORAM :

HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN
HON'BLE MR. R.R. BHANDARI, ADMINISTRATIVE MEMBER

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Choru Lal S/o Late Sh. Dhokal Ram aged about 58 years, by caste Verma, resident of Old Post and Telegraph Colony, 'F' Block, Quarter No. F/2, Bikaner, presently working as Group 'D' employee under Head Post Office, Bikaner.

....Applicant.

By Mr. Manoj Bhandari, Advocate, for the applicant.

Versus

1. The Union of India through the Secretary, Ministry of Communication, Government of India, Department of Posts, Dak Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Postal Circle, Jaipur.
3. The Post Master General, Western Zone, Jodhpur.
- The Superintendent, Post Offices, Postal Division, Bikaner.
- The Post Master, Head Office, Bikaner.
6. Shri P.R. Sharma, Superintendent, Postal Division, Post Offices, Bikaner.

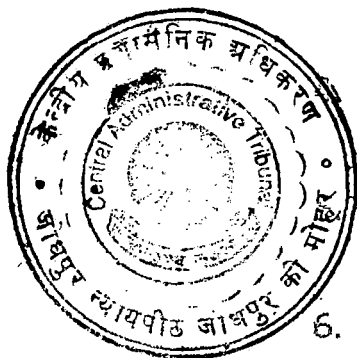
....Respondents

By Mr. M. Godara, Advocate brief holder for Mr. Vineet Mathur, counsel for the respondents.

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O R D E R

[BY KULDIP SINGH, VICE CHAIRMAN]

1. Heard the learned counsel for the parties.
2. The applicant has filed this O.A. against the impugned order at Annex. A/1 dated 22nd August, 2006 by which he has been sent on deputation from Head Post Office Bikaner to Village Kalu, Dakghar in District Bikaner. The



applicant submits that he was initially appointed in the year 1971 as a Group 'D' employee and was posted in the Head Post Office, Bikaner. He was thereafter transferred to the Divisional Post Office in Bikaner under Rule 38 of the Post and Telegraph Manual Vol. IV vide order dated 28.12.1988. From where, he was sent on deputation to the Head Post Office, Bikaner vide order dated 6.10.2005 at Annex. A/3. In compliance of this order, though applicant had joined at Head Post Office, Bikaner but he demanded vide his representation at Annex. A/4, a copy of the order by which he has been posted as such. Subsequent to that, the applicant has been absorbed as a Group 'D' employee in the Head Post Office, Bikaner. The applicant has placed on record a Gradation list (Annex. A/10) which also shows that the applicant is a Group 'D' employee working in Bikaner Head Post Office. The learned counsel for the applicant submits that since the applicant is working under Bikaner Head Post Office, the order Annex. A/1 would not have been issued by the Divisional Office as Divisional Office has no jurisdiction to issue such type of orders.

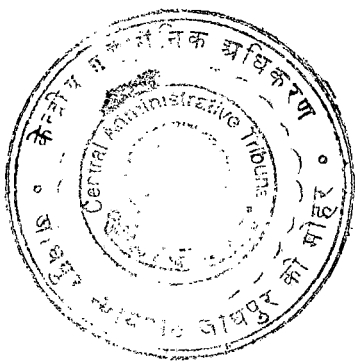


3. In the grounds also the applicant has challenged the same mentioning that he is a regularly absorbed Group 'D' employee but he has been shown working as on deputation in the Head Post Office. Besides this, the applicant has also submitted that the impugned order cannot be sustained in the eye of law because it is de hors the principles of service jurisprudence inasmuch as Group 'D' employees cannot be transferred or deputed at the whims

and caprice of the respondents without deciding the lien of the applicant as to which department and which place the applicant belongs. It is a trite law that an employee can be sent to deputation by triparte agreement, whereby the parent office, the borrowing office and the consent of the employee must be there. In this case, no consent has been taken from the applicant and still the department has sent him on deputation to Village Kalu specially when he has already assailed the validity of his absorption in the Head Post Office, Bikaner. On this score, the impugned order is bad in law and the same is liable to be quashed.



4. The respondents have contested the O.A. taking a plea that it is a case of transfer which is an incident of service and an employee can be transferred from one place to another for better utilisation of services which is well within the domain of the employer, hence, the transfer order is perfectly legal and valid. It is also contended that as per the dictum of Hon'ble Apex Court, the Courts normally should restrain their hands in interfering the transfer matters unless the same is ordered by an authority malafidely having no jurisdiction and in violation of policy on the subject. This O.A. , therefore, deserves to be dismissed.




5. The first question required to be determined is whether the order is placing the applicant on deputation or it is merely a transfer order. The impugned order Annex. A/1 shows that the applicant has been sent on 'Pratiniyukti'. The translation of the same is only 'deputation' and not transfer

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because the English translation of the word 'transfer' is 'Sthanantaran' and not 'Pratiniyukti'. So, this order shows that it is for sending the applicant on deputation basis only to some other Post Office. The next question arises for our determination is, if the applicant is shown on the Gradation list on Bikaner Head Post Office whether, the Dak Pal, Bikaner Division, has jurisdiction to pass an order in question. To that effect also, we find the answer in negative. The impugned order therefore, suffers from this defect also. On the basis of both these points, the Original Application is allowed and the impugned orders at Annex. A/1 dated 22.8.2006 is hereby quashed and the applicant should be allowed to continue to discharge his duties as Group 'D' employee at the Head Post Office Bikaner. The interim order issued by this Tribunal on 28th August, 2006 is made absolute. However, this order will not restrict the power of transfer of employee as per extent rules.

No orders as to cost.


(R.R. Bhandari)
Admv. Member

(Kuldip Singh)
Vice Chairman

jrm

R/c
Pring Chun
10/4/07

For Mr. MANOJ BHANDARI

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Part II and III destroyed
in my presence on 03-6-14
under the supervision of
section officer (I) as per
order dated 26-3-14

Section officer (Record)