

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCNOW BENCH LUCKNOW.

ORIGINAL APPLICATION NO: 240/2006

Lucknow this, the 14th day of July, 2006.

HON'BLE SHRI. P.K CHATTERJI MEMBER(A)

Gopeshwar Misra, aged about 38 years son of Shri Rama Kant Misra, at present working as Sub- Post Master, Avas Vikas Colony, Sitapur.

Applicant.

By Advocate Shri Surendran P.

VERSUS

1. Union of India, through the Secretary, Department of Posts, New Delhi.
2. The Chief Post Master General, U.P. Circle, Lucknow.
3. Superintendent of Post Offices, Sitapur.
4. Smt. Pratima Kashyap. Postal Asst. Sitapur Head Post Office Sitapur.

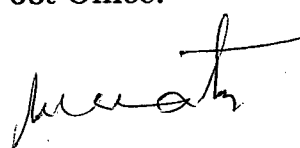
Respondents.

By Advocate Shri S.P. Singh for Shri G. K. Singh.

ORDER

This O.A. 240/2006 has been filed by Shri Gopeshwar Mishra presently working as Sub-Post Master, Avas Vikas Colony, Sitapur. This O.A. has been filed against the order dated 9.5.2006 by opposite No. 3 transferring the applicant before completion of his tenure in Avas Vikas Colony.

2. The facts of the case briefly are as follows. The applicant while working as Postal Assistant at Head Post Office Sitapur, was transferred as Sub-Post Master, Avas Vikas Colony, Sitapur by order dated 6.12.2004. This order of transfer was on request of the applicant and in compliance with this order, the applicant joined at Avas Vikas Colony Post Office.



3. Before the applicant could complete about 1 ½ years at Avas Vikas Colony Post Office, by means of order dated 9.5.2006, he was transferred to Lharpur as Postal Assistant. The tenure of Sub-post Master is about 4 years as per Sub Rule 7 of Rule of 60 of P&T Manual Vol. IV.

4. The contention of the applicant is that much before completion of his tenure as Sub-Post Master Avas Vikas Colony, he has been given transfer order whereas in the normal course his tenure would have been completed on 5.12.2008. The applicant has further contended that the transfer order is also against the provisions of Rule 62 of the P&T Manual which provides that the rotation orders contained in Rules 59 to 61 of the same manual should be followed strictly and any deviation therefrom should not be allowed unless the head of the circle is personally and fully satisfied about the need for such transfer. In the case of the applicant, no orders were obtained from the Head of the circle.

5. The applicant has further pointed out that the wife of the applicant Smt. Chatna Mishra, has been working as an Assistant Teache in Khairabad and as per the policy of the Government, husband and wife should be permitted to be posted in one place so that they can maintain their family smoothly. The applicant has been transferred from Sitapur to Loaharpur which is about 32 K.Ms. away.

6. Aggrieved by the decision of opposite party No. 3, the applicant moved a representation on 11.5.2006 with a request that he may be permitted to continue in his present assignment till completion of his tenure. But no action has so far been taken on the application which is still pending. The relief sought by the applicant is that the Tribunal may quash the order dated 9.5.2005

M. K. Singh

in so far it relates to the applicant and a direction be issued to treat the applicant as Sub-Post Master, Avas Vikas Colony Post Office, Sitapur.

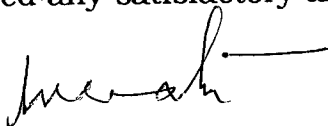
7. The learned counsel for the respondents pleaded that the transfer of the applicant from the post of SPM Avas Vikas Colony Sitapur to PA Laharpur-Sitapur was made in the interest of service and any official can be transferred from one station to another before completion of his tenure. He can be transferred in the interest of service as the power of such transfer is contained in schedule of administrative power under Rule 37 of Post and Telegraphs Manual Vol. IV. It has been pointed by the respondents that while the applicant was working with the SPM Avas Vikas colony, he was found absent from duty and a charge sheet was served to the applicant on 13.5.2006. On a visit of his office, the applicant was found absent from duty on 21.4.2006 at 12 hrs. Explanation for this has was called for. Moreover, the post office Avas Vikas Colony, has been continuously running in loss as per monthly report of the SPM. Considering the loss of the post office SPM, the applicant has been transferred from Avas Vikast Colony Sitapur to P.A. Laharpur for smooth functioning of the post office. The other reasons adduced by the respondents in favour of transfer of the applicant from the post of SPM Avas Vikas Colony are that the applicant, though he has not completed their tenure on Sub Postmaster Avas Vikas, as the official was completed his station tenure at Sitapur which is six years at a Station. As against the claim of the applicant to continue as SPM Avas Vikas Colony Sitapur, the respondents have cited Rule 37 of Post and Telegraph Manual Vol. IV according to which officials of the department are liable to be transferred to any part of India unless it is expressly ordered otherwise for any particular class or classes of officials.

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Regarding, the claim of the applicant for posting at the same station as his wife, the respondents are of the view that this cannot be claimed as a matter of right.

8. As to the statement of the applicant that he had submitted a representation addressed to the Sub Post Master Sitapur which is still pending. Respondent No. 3 i.e. Superintendent of Post Offices has stated that after his decision, the applicant should have submitted his representation before the next higher authority above the Superintendent of Post Offices, Sitapur. The respondent No. 3 has also refuted the claim of the applicant that he is still continuing as Sub Post Master Avas Vikas Colony at Sitapur as stated that at present Smt. Pratima Kashyam is working as Sub Post Master and the applicant is on medical leave.

9. Against the counter affidavit, the applicant furnished a rejoinder affidavit. The applicant has stated that the Station tenure is a criterion for his transfer and many other officials who have been working at the same station more than 10 to 15 years should be transferred out but this has not been done. This order of his transfer is patently discriminating. During the hearing also, this point was stressed by the learned counsel on behalf of the applicant and the learned counsel for the respondents did not give any satisfactory reply. The applicant further stated in his rejoinder affidavit that the transfer order was not in the interest of the department, but it was punitive action under Rule 37 and is not applicable in the case of the applicant. It has been further claimed by the applicant that the competent authority which was supposed to have obtain the approval of the competent authority for transfer under rule 37 has not done so. On this issue also, the respondents have not furnished any satisfactory and clear cut reply.



10. Heard both sides and on the basis of the hearing and also on the basis of the pleadings as recorded in the above paras following orders are passed. The applicant shall submit a representation against the order of his transfer to the next higher authority, i.e. above Superintendent of post Offices, Sitapur, giving justification for cancellation of his transfer order, and the authority before whom his representation is submitted will consider his representation within a period of one month from the date of receipt of such representation and take appropriate decision which will be passed in a reasoned and speaking order. While doing so, he will give due regards to where the Superintendent Post Offices over stepped his limits and disregarded the provisions of P&T Manual and redress the same.

10. With this order, the O.A. is disposed of without any order as to costs.



(P.K. Chatterji)

Member(A)

V.