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CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

O.A. No. 281/05

Lucknow this the 23rd day of Feb., 2007.

Hon. Mr. Justice Khem Karan, Vice Chairman.

Chandra Pratap Singh, aged about 43 years, son of Sri Ram Parsed Singh,
r/o Village Bhikhanpur, Post and Tehsil Patti, Pratapgarh.

Applicant

By Advocate Shri R.K. Upadhyaya.

Vs.

1. Union of India through the Secretary, Ministry of Telecommunication (Postal), Central Secretariat, New Delhi.
2. Chief Post Master General, U.P. Region, Lucknow.
3. Post Master General, U.P. Region, Allahabad.
4. Senior Superintendent of Post Offices, Pratapgarh.
5. Shri Vinay Kumar Saroj, EDBPM Bhikhanpur, Pratapgarh.

Official Respondents

By Advocate Dr. Neelam Shukla.

None for private respondent.

Order (oral)

By Hon. Mr. Justice Khem Karan, Vice Chairman.

1. Applicant has prayed for quashing of order dated 3.6.05 (Annexure 1) by which Senior Superintendent of Post Offices, Pratapgarh (Respondent No. 4) directed him to hand over the charge of Gramin Dak Sewak Post office Bhikhanpur to Shri Vinay Kumar Saroj and to give his option for appointment as such at post office Gobari. He is also praying that the order dated 30.5.05 passed by respondent No.3 be also summoned and quashed with a direction to them to allow him on the post of Branch Post Master Bhikhanpur in District Pratapgarh.
2. There is no dispute on the point that the applicant was given compassionate appointment on the post of Branch Postmaster Bhikhanpur in District Pratapgarh on 14.4.86 and he started working on the said post. It appears that on the complaint of someone he was subjected to formal disciplinary proceedings under EDA (Conduct and Service) Rules, 1964 and as a result of those proceedings, was dismissed from service, vide order dated 30.6.96. He preferred an appeal to the Director, who set

aside the order of punishment vide his order dated 22.12.97 and consequently, he was taken back to duty vide order dated 29.12.97. In exercise of his powers under Rule 16 of the said Rules of 1964, the then P.M.G. who was also holding charge of P.M.G. Allahabad, reviewed the appellate order and dismissed the applicant from service vide his order dated 7.5.99. This compelled the applicant to file O.A. No. 366/99 before this Tribunal challenging the said order of dismissal dated 7.5.99. Vide order dated 13.1.05 this Tribunal allowed the said O.A. But, in the mean time one Shri Vinay Kumar Saroj was appointed provisionally as BPM at Bhikhanpur. It appears that in compliance of the orders dated 13.1.05 of this Tribunal, the applicant was reinstated, on the post of BPM Bhikhanpur on 28.3.05. While he was working as such, he received impugned order dated 3.6.05 (Annexure-1) from Senior Superintendent of Post Offices, Pratapgarh asking him to hand over the charge to Shri Saroj and give his option for being posted as EBPM at Post office Gobari. He challenges this order on the ground that there is no provision under the rules of 1964, whereunder he may be shifted to any other post office or he may be asked to give his option for being posted at any other post office different to one where he was initially appointed as such. He says that all this is being done with a view to harass him and to accommodate the respondent No.5.

3. The official respondents have filed reply saying that after Shri Vinay Kumar Saroj was appointed as GDSBPM at Bhikhanpur in the vacancy caused on account of dismissal of the applicant, administrative exigency requires that the applicant should be accommodated somewhere else and for the same, option was asked for from the applicant, but instead of giving option he has rushed to this Tribunal. The official respondents have also narrated the developments that led to formal disciplinary proceedings and dismissal etc. and to the filing of O.A. No. 366/99. It is



said in para 11 that pursuant to the letter dated 30.5.05 of P.M.G. Shri Vinay Kumar Saroj took over the charge of EDSBPM Bhikhanpur and the applicant was relieved on 4.6.05 so as to be accommodated on Gobari on his option.

4. The respondent No. 5 has also filed his reply saying that he was regularly appointed as EDBPM Bhikhanpur in a clear vacancy ^{and} he has had been working on the said post and so he cannot be dislodged. It is also said in para 6 that the vacancy was declared as ^{and for} a result ~~that~~ a candidate belonging to SC/ST and the applicant had no claim to the said post. He says in para 6 that the applicant had been transferred to Gobari at a distance of about 40 Kms. and there is no difficulty with him in opting for the same.

5. The main contention of Shri R.K. Upadhyaya is that there is no rule/provision in the relevant rules of 1964 for transferring GDSBPM from one post office to another post office and so the applicant cannot be dislodged from Bkhikhanpur or cannot be asked to give his option for being accommodated at some other post office. Shri Upadhyaya says that once the applicant's dismissal was set aside by this Tribunal and once in compliance of the orders of the Tribunal, the applicant was given the charge of BPM Bhikhanpur, it is now not open to the respondents to ask him to hand over the charge to someone else and to give option for the post at some other pot office. The Tribunal put a pointed query to Dr. Neelam Shukla as to whether the rules or the Scheme dealing with appointment, conditions of service etc. of these persons, contemplate shifting of one BPM from one post office to another post office and whether the same envisage asking for option from one BPM to be accommodated ^{at} to another post office, Dr. Sb hukla could not specifically refer to any such rule. Shri Upadhyaya says that a person to be appointed



on the post of BPM has to arrange for a Pucca accommodation for housing the post office and has to live there to perform his duties as such. Shri Upadhyaya says that for this reason ~~that~~⁹ only such persons are appointed who have such accommodation in a village, where such branch post office situates. The Tribunal is of the view that when the Rules of 1964 or the circulars or orders on the subject, do not contemplate or envisage transfer of one BPM from one branch post office to another post office, the authorities are not justified in asking the applicant to hand over the charge of BPM Bhikhanpur to any other person and to give option for being accommodated at Branch post office Gobari or at any other place. There appears sufficient force in the submission of Shri Upadhyaya that the respondents want to dislodge the applicant from the place with a view to accommodate another person. So the O.A. deserves to be allowed.

6. The O.A. is accordingly allowed and the impugned order dated 30.5.05 (Annexure 1 to the short Counter) as well as communication dated 3.6.05 (Annexure-1 to the O.A.) are quashed with the direction to respondents No. 1 to 4 to allow the applicant to continue as BPM Bhikhanpur District Pratapgarh and pay him honorarium as may be admissible under the rules. The respondents may accommodate respondent No. 5 at some other branch post office. No order as to costs.

Le dunnas
23.2.07
Vice Chairman

s.d.