

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

PATNA BENCH : PATNA

Date of Order:- 4.11.97

Registration No. OA-552 of 1996

Shri Vishwa Nath Sah, Son of Late Gauri Shanker Sah,
Accounts Supervisor, Office of the Head Record
Officer, Head Record Office, RMS 'U' Dn.,
Muzaffarpur-842001, resident of South Indra
Nagar Bigrahpur, Patna-800001

.... Applicant

Versus

1. The Union of India through the Secretary,
Government of India, Ministry of Communication,
Department of Posts, New Delhi-Cum-Director
General, Department of Posts, India Dak Bhawan,
New Delhi-110001.
2. The Chief Postmaster General, Bihar Circle,
Patna-800001.
3. The Postmaster General, North Bihar Region,
Muzaffarpur-842 002.
4. The Superintendent RMS 'U' Dn.,
Muzaffarpur-842 001.
5. The Superintendent RMS ,
'P' Division, Patna-800 004

... Respondents

Learned counsel for the applicant .. Mr. S.N.Tiwary

Learned counsel for the respondents ..Mr. J.N.Pandey,
Senior Standing
Counsel

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Coram:- Hon'ble Mr. Justice V.N.Mehrotra, Vice-Chairman

O R D E R

Hon'ble Mr. Justice V.N.Mehrotra, Vice-Chairman:-

1. This OA has been filed under section 19 of the Administrative Tribunals Act, 1985 praying that the Memo. dated 24.4.96 (Annexure-A/8) issued by the Respondent No.2 staying the transfer of the applicant from RMS U Division, Muzaffarpur to RMS P Division, Patna, be quashed and set aside and the Respondents be directed to allow the applicant to join as Accounts Supervisor HRO, RMS 'P' Division, Patna.
2. The brief facts of the case, as alleged by the applicant, are that he was initially appointed as Sorter in RMS 'P' Division, Patna, on 16.7.1963. He later on passed the P.O. and RMS Accountants Examination, 1976. He opted out of the Cadre of Accountants. He was later promoted in Lower Selection Grade under one Time bound Scale with effect from 30.11.1983. By order dated 7.12.88 he was posted as Accounts Supervisor RMS, 'U' Division, Muzaffarpur. The applicant has also made certain assertions regarding the fixation of his seniority vis-a-vis Pradip Singh. However, that fact is not

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very relevant to the present case.

3. The applicant has further asserted that the Lower Selection Grade cadre was a Circle cadre, but with effect from 8.6.94 it was declared as Divisional cadre. The applicant had been transferred out of his parent unit vide Memo. dated 27.12.88 and as Shri Pradip Singh was made senior to him he was posted in HRO RMS 'PT' Division, Patna, where he continued as Accounts Supervisor. The Director General, Department of Posts, New Delhi, has issued clarification vide letter dated 13.2.95, in which it was clarified that the LSG PO and RMS Accountants who were posted prior to issue of the order of Divisionalisation and posted outside their parent division can be transferred back to their parent Division on their request and their request may be considered whenever a vacancy occurs. In the light of the clarification the applicant filed a representation praying for transfer from RMS 'U' Division, Muzaffarpur, to RMS PT Division, Patna ^{✓ P. D. Patna}. The Respondent No.2 considered the case of the applicant and transferred and posted him as Accounts Supervisor, RMS 'P' Division, Patna, vide Office Memo. dated 4.4.96. Pay advance and TA advance was also sanctioned to the applicant. However, in order to please the Union representatives, the Respondent No.2 stayed the order of

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transfer by Memo. dated 24.4.96. The applicant represented against the order of stay, but no reply in respect of the same was received and so the present O.A. has been filed.

4. The applicant has asserted that the post of Accounts Supervisor, HRO RMS, 'P' Division, Patna, is vacant and the work is being managed locally by ad-hoc arrangement, but as the Union representatives are against the applicant, the Respondent No.2 has stayed his transfer ignoring the circumstances of the applicant under the clarifications issued by the Director General referred to above. The applicant has also asserted that he was entitled to the transfer to the 'P' Division, Patna and the order of stay issued by the Respondent No.2 should be quashed.

5. On behalf of the Respondents it has not been denied that the Respondent No.2 had issued an order of transfer, but the same was later stayed. It has, however, been asserted that the post at 'P' Division is not vacant and for this reason the transfer of the applicant has been stayed by the Respondent No.2. It has also been asserted that due to pendency of this O.A. the Respondent No.2 has not passed any order regarding the representation made by the applicant.

6. The applicant has filed rejoinder asserting that the post at 'P' Division, Patna, was in fact vacant

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and in the light of the clarifications issued by the Director General's order for his transfer to the Division was passed. It has also been asserted that the person working at 'P' Division, Patna, as Accounts Supervisor was an unapproved Officer and he was merely officiating on the post on local arrangement.

7. The Respondents were during the course of hearing asked to specify as to whether the post at 'P' Division, Patna, was vacant or it has been filled up. In reply to the query a supplementary Written Statement has been filed, in which it has been asserted that the post was not vacant. It was filled up since 1.3.1996 and Shri Naresh Pandey was working as Accounts Supervisor. It has been asserted that Shri Naresh Pandey is no doubt Junior to the applicant in the Circle, but he was seniormost in 'P' Division, Patna.

8. The applicant has filed rejoinder to the Supplementary Written Statement, in which it has been asserted that Shri Naresh Pandey is never ^{and ✓} approved/appointed as LSG Accounts Officer of RMS 'P' Division, Patna, by the Circle Administration, but he has been merely officiating on the post with effect from 1.3.96.

9. I have heard the learned counsel for the parties and have perused material facts on record. As mentioned earlier there is no dispute that the

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Respondent No.2 had passed an order dated 4.4.96 transferring and posting the applicant to P. Division, Patna. That order was subsequently stayed. On behalf of the applicant it has been asserted that the post at Patna was still vacant and in terms of the clarification issued by the Director General of Posts on 13.2.95 the applicant should be transferred to his parent Division. On behalf of the Respondents it is, however, asserted that the post is not vacant and Shri Naresh Pandey was working in the post since 1.3.96 since after the retirement of ^{the} ~~previous~~ incumbent.

10. It is not disputed that in fact, Shri Naresh Pandey is working as Accounts Supervisor in the RMS P. Division, Patna, though according to the applicant he had not been approved by the Circle Administration and was merely officiating in that post.

11. In the present case Shri Naresh Pandey is not a party and in his absence it will not be just and proper to decide as to whether he was merely officiating in the post as a stop-gap arrangement or he had been appointed to fill up that post. Further, in case an order is passed directing the Respondents to transfer the applicant to 'P' Division as prayed for by him it will obviously affect the posting and

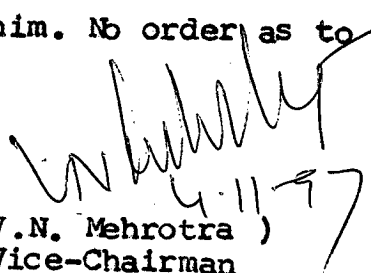
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continuation of Shri Naresh Pandey on that post. In these circumstances, it will not be proper to direct the Respondents to vacate the order staying the transfer of the applicant to 'P' Division or to allow him to join as Accounts Supervisor, HRO RMS, P. Division, Patna. The proper thing to do will be to direct the Respondent No.2 to reconsider the entire matter in the light of the clarification issued by the Director General of 13.2.95 (Annexure-A-4 to the O.A.) and to pass appropriate order.

12. This O.A. is allowed only to the extent that the Respondent No.2, Chief Postmaster General, Bihar Circle, Patna, shall reconsider the entire matter including the representation made by the applicant against the stay of his transfer to 'P' Division, Patna and pass appropriate order within a period of three months from the date on which a certified copy of this order is produced before him. No order as to costs.

SKS


(V.N. Mehrotra)
Vice-Chairman