

## CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHO.A.NO.: 25 OF 2006[Patna, this Monday, the 13<sup>th</sup> Day of March, 2006].C O R A M

HON'BLE SHRI JUSTICE P.K.SINHA, VICE-CHAIRMAN.

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Manoj Kumar, son of Shri Rajniti Singh, resident of Adarsh Colony, Kidwaipuri, P.O.: Patna GPO, Distt.: Patna, posted as Accountant, Patna GPO, Patna. ....APPLICANT.

By Advocate :- Shri M.P.Dixit.

Shri S.K.Dixit.

Vs.

1. The Union of India through the Chief Post Master General, Bihar Circle, Patna.
2. The Director of Postal Services [H.Q.], Office of the Chief P.M.G. Bihar Circle, Patna.
3. The Chief Post Master, Patna G.P.O.
4. Dy. Chief Post Master [Admn.], Patna G.P.O., Patna.
5. Sr. Supdt. of R.M.S., P.T., Division, Patna. ....RESPONDENTS.

By Advocate :- Shri M. K. Mishra, SSC.

O R D E R

Justice P. K. Sinha, V.C.:- Admitted position is that the applicant was appointed initially as Sorting Assistant on 29.09.1997 and was working as such at RMS, Patna Division at Patna. Subsequently he was deployed at Patna GPO vide order under letter dated 07.08.2001 to work in SPCC, which has been clarified to be a posting on deputation in the written statement. While posted at the GPO, Patna the applicant appeared and passed the qualifying examination of Accountancy, having been declared successful on 17.08.2001



vide Annexure-A/1. As per the applicant, since the post of the Accountant was lying vacant in the Patna GPO he submitted option for his posting/appointment as an Accountant which was allowed vide Annexure-A/3 and he started working as such at Patna GPO w.e.f. 23.09.2002. His salary, etc. were paid by Patna GPO. Ultimately, vide Annexure-7, along with others, the applicant also was transferred to work as Sorting Assistant at the RMS Patna Division, Patna. Vide Annexure-A/8, dated 04.01.2006 he was ordered to be relieved from Patna GPO and was directed to report to parent Division/Unit for further duty, with immediate effect. It is against this order that the applicant has come up before this Tribunal on following grounds, as per arguments advance by the learned counsel for the applicant :-

[i] Once the applicant was posted to the post of Accountant at Patna GPO, he no longer remained on deputation but posting

has to be treated to be on the post of Accountant on regular basis, hence he could not have been sent back to the parent department in the post of Sorting Assistant.

[ii] Under Rule 276 of the Post & Telegraph Manual [Vol.

IV], the applicant, who was a qualified Accountant, had to be continued on the post of Accountant, also claiming that there were four posts of Accountant at the Patna GPO, the other posts being manned by such Assistants who were not qualified as an Accountant.

[iii] Even if it was held that the applicant was on deputation, he could not have been removed from that post and sent to the



parent department with a view to fill up the post by another deputationist for which, during the pendency of this application, efforts have been made by the respondents.

2. Before proceeding further it is mentioned that it is admitted position that a Sorting Assistant and an Accountant are in the same rank and pay scale, but on being appointed as an Accountant, one gets some amount as special pay.

3. Shri M.K.Mishra, the learned Sr. Standing Counsel for the respondents argued that the applicant was working on a deputation post and all that has been done was to sent him back to his parent department as there could not be any lien held by him to the post of Accountant. He held lien on his post in the parent department, his not having been absorbed in the establishment of GPO Patna. The learned counsel in that regard also relied upon two decisions of the Apex Court, namely, in the case of **Rati Lal B.Soni Vs. State of Gujarat; AIR 1990 SC 1132** and in the case of **State of Madhya Pradesh Vs. Ashok Deshmukh; 1998 SCC [L&S] 809**.

4. On the other hand the learned counsel for the respondents has relied upon a decision of the Chandigarh Bench of CAT in the case of **D.C.Chauhan Vs. Union of India & Ors. in OA 398 [HP] of 2005**, disposed of on 06.09.2005.

5. Before proceeding to examine the rival claims, first a look on these decisions. In the case of Ashok Deshmukh [supra] the respondent was sent on deputation to officiate on a post in another department and was ordered to be repatriated to substantive post in the parent department. The



allegation of bias and malafide against the authority responsible for such repatriation was not substantiated and it was found that the order attached no stigma to the respondent merely on the ground of transfer being the outcome of displeasure of superiors incurred by reason of a complaint made against him by a M.L.A which, too, was found to be wrong. The order of repatriation was held to be legal and proper. Their Lordships also had considered another decision of the Apex Court in the case of P.H.Phadnis Vs. State of Maharashtra; [1971] 1 SCC 790 which was also a case of repatriation to the parent department. Their Lordships in that case had held that the order of reversion simplicitor would not amount to a reduction in rank or a punishment. A Government servant having lien to his substantive post might be sent back to the substantive post under ordinary routine administrative action or in a case of exigency of service. A person holding a temporary post might draw a salary higher than that of his substantive post and when he is reverted to his parent department the loss of salary could not be said to have any penal consequence. Their Lordships observed that what had to be ascertained was as to whether such an order was a genuine one, of "accident of service" in which a person sent from the substantive post to a temporary post had to go back to the parent post without any aspersion against his character or integrity, or whether the order amounts to a reduction in rank by way of punishment. It was also observed that reversion by itself will not be a stigma but if there was evidence that the order of reversion was not "a pure accident of service" but an order in the nature of punishment, Article 311 of the Constitution would be attracted.



6. In the case of Rati Lal B.Soni [supra], the applicant was repatriated to his substantive post. In the circumstances of the case their Lordships have held that the appellants being on deputation could be reverted back to their parent cadre at any time and they did not get any right to be absorbed on the deputation post.

7. In that view of the matter the crux would be to find out as to whether or not as an Accountant in the GPO, Patna the applicant had continued on deputation or was absorbed in the establishment of the GPO, Patna permanently, hence could not be repatriated as Sorting Assistant. The related question would be as to whether this repatriation order, if he was on deputation, was by way of punishment. This question would arise as in the written statement in para 4.9 following averment finds place :-

"Because of the said deputation there is no question of any definite right accruing to the applicant for continuing at GPO, Patna. Moreover, the inquiry report with regard to the work of applicant [on deputation] is quite unsatisfactory [if required, it would be produced before the Hon'ble Tribunal at the time of hearing]."

In view of this averment, the respondents were directed to file the inquiry report since they had mentioned that in the order which was complied through the additional written statement filed by them which is at Annexure-R/1. To this written statement a rejoinder was also filed by the applicant.

8. Now coming to the first question, provisions under Rule 276 of



the P&T Manual may also be seen which runs as follows :-

“Appointments to the posts of Accountants or Asst. Accountants in the ordinary time scale of pay carrying a special pay will be made from qualified officials who have passed the Accountant's examination according to their seniority in the clerical cadre. An unqualified official, i.e. who has not passed the examination has no claim to hold any such post in preference to a qualified candidate. Appointment to the posts of PO/RMS Accountant, Asstt. Accountant in the cities of Calcutta, Bombay, Madras and Delhi [including New Delhi] will be made from amongst the eligible officials on the basis of the city as a whole. The position of the time scale clerks in the gradation list maintained for promotion to LSG in the city units will also determine the order of their promotion to the posts of Accountants and Asstt. Accountants in those units.”

However, a note is appended below this rule which states that in cases where a qualified Accountant is required in a particular office, and none is available in the Division concerned, the proper course is to offer the post to a qualified official available in any other Division in the Circle. For this purpose selection may be made of the seniormost among qualified accountants who volunteers for such posting. If there are no volunteers available, a qualified official from a nearby Division should be selected subject to the discretion of the Head of the Circle. In case no qualified official is available even in other Divisions, a senior official having the long



experience in the Accounts Branch of Post office or RMS and whom the Head of the unit considers suitable should be appointed to the post. Such an unqualified official should be replaced by another suitable official on completion of four years of continuous service, or earlier if a qualified official becomes available.

9. It was pointed out in this regard that the Patna GPO is in itself a Division. In that case, if no qualified Accountant was available within the GPO, qualified persons from other Divisions or official with longer experience in Accounts branch could be appointed by the Head of the Division.

10. Rule 276 mainly provides that appointment to the post of Accountant or Assistant Accountant should be made from qualified official and an unqualified official may not have a claim to hold such a post in preference to a qualified candidate. Under certain circumstances even unqualified Accountant can be so appointed.

11. Therefore, Rule 276 aforesaid does not lay down any rule that a person, though qualified, appointed to the post of Accountant, if he is on deputation, cannot be repatriated back to his substantive post if the order is not malafide, or by way of punishment involving reduction in rank. Obviously, repatriation to the substantive post cannot be said to be a punishment because there is no reduction in rank or even in scale of pay since the post of Sorting Assistant and of Accountant carries the same pay scale. Loss of some allowances while posted as Accountant cannot be termed as lowering of the pay scale.



12. Now coming to the question as whether the applicant had continued on deputation while posted as Accountant, Annexure-A/3 may be seen. This is a letter of Chief Postmaster, Patna GPO addressed to the Chief Postmaster General, Bihar Circle, Patna, dated 16.05.2002. The subject of the letter is - "Request of Manoj Kumar, S.A., Patna RMS presently on deputation to SPCC Patna GPO." In the body of letter it has been stated that the applicant was on deputation who vide his application had opted and offered to work as an Accountant at the GPO in the vacant post lying in the office. It was mentioned that the post of Accountant was being managed by the unqualified Accountant and that the applicant had qualified in the PO & RMS Accountant examination. A recommendation was made that the official could be accommodated [emphasis added] on the post of Accountant in Patna GPO. This was sent for necessary approval. The reply came from Annexure-4 in which the Chief Postmaster General, Patna GPO was intimated that approval as sought was accorded. Annexure-5 is an office order dated 23.09.2002 signed by the Chief Postmaster, Patna GPO with reference to Annexure-4, ordering that the applicant was posted on the post of Accountant, Patna GPO vide vacant post.

13. Obviously; the applicant had been on deputation at Patna GPO since August, 2001 and ultimately it was in January, 2006 that by order dated 04.01.2006 [Annexure-7] he was sought to be repatriated to his substantive post, i.e., after working for more than four years in both the capacities at Patna, GPO.



14. Annexure-3 makes it clear that the applicant was working on deputation and he himself had prayed to work on the vacant post of Accountant and a recommendation was sent to accommodate him on that post. Obviously, when an employee is on deputation to other office, work of any nature may be taken from him for which he may be qualified. If his nature of work changes during deputation itself, that does not change the nature of his posting in that office unless any order expressly specifies that he has been absorbed in the establishment of that office, ordered by a competent authority. There is nothing in Annexures-3, 4 & 5 to show that by accommodating him to the post of Accountant at Patna GPO he has been expressly absorbed in that establishment creating a new lien. If that was not so done, his lien continued to be with his substantive post of Sorting Assistant at RMS, Patna Division, Patna.

15. It is in this context that the learned counsel for the applicant has drawn my attention to the supplementary application filed by the applicant containing Annexure-9, a letter issued by the Deputy Chief Postmaster [Admn.], Patna, dated 10.12.2004 addressed to the applicant himself. In this letter the applicant was told, in connection with rectification of the unit gradation list of Patna GPO circulated in the year 2004, stating that it was 'reported' that the applicant was accommodated in the establishment of Patna GPO by the order of competent authority, hence his name shown in the present gradation list would be rectified in the next gradation list suitably.

16. The learned Sr. Standing Counsel submitted that this letter was a communication between one individual official and the applicant which, if



not based upon true facts, could not bind the entire establishment. It was pointed out that even in this letter it has been stated that it was 'reported' that the applicant was accommodated in the establishment of Patna GPO, without making reference to the Annexures 3 to 5 which would have made it clear to the officer that no order was passed for the absorption [as distinguished from accommodation] in the establishment of Patna GPO. It was submitted that such correspondence, obviously not based on facts, cannot change the nature of the job held by the applicant at Patna GPO and cannot bind the entire establishment.

17. It, therefore, is obvious that the applicant had continued on deputation at the Patna GPO. The learned Sr. Standing Counsel also argued that simply permission was sought from the Chief Postmaster General to accommodate him as such which would not change the nature of the posting as the Head of the Office at Patna GPO had sought permission to 'accommodate' the applicant to a vacant post of Accountant which, of course, carried some allowances, when he was sent on deputation for doing work other than that of an Accountant.

18. Now what remains to be seen is whether this order of transfer was malafide or whether it carried any stigma. The learned counsel for the respondents has submitted that though in the original written statement a passing reference was made of a report of the inquiry about the working of the applicant as an Accountant, but the order of repatriation was not exactly based on that, since in the same order a number of other staff were also transferred. This report, which is at Annexure-R/1 to the supplementary written statement

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shows certain lapses, with examples, in the working of the applicant as Accountant. The learned counsel for the applicant submitted that a copy of the report has just been submitted without stating as to who had asked the concerned official to enquire into the matter and also pointed out Annexure-P/1 to the rejoinder to the supplementary written statement to show that in a particular case of TA of an employee, the applicant could not have been held to be at wrong. In reply the learned Sr. Standing Counsel, Shri M.K.Mishra, submitted that on the basis of this inquiry report, the applicant has not been repatriated with any stigma whatsoever, nor such repatriation will be held by the department as any sort of stigma against the applicant. In his parent department also he may be posted by the concerned official to the post of Accountant, if or when vacant. It was also argued that stigma is carried when a transfer is made on some allegations against character or integrity or on account of mis-conduct of the employee concerned, but none of these was present in the instant case. Shri Mishra also argued that it has nowhere been proved that the order of his repatriation was malafide or result of any bias of any superior official, rather it was a routine case of repatriation.

19. Coming to the decision of the Chandigarh Bench of CAT in the case of D.C.Chauhan [supra] it was submitted that the points as placed relating to this case were not considered therein. It was also held in that order that there was no distinction between 'general line' and 'accounts line' though for working in the 'accounts line' a person had to qualify in the concerned examination. As pointed out it was also held that a person who did not pass the examination could not be posted as an Accountant whereas an Accountant



could be posted in the general line. What was taken into consideration in that case was that there were only three Accountants and a number of Postal Assistants hence functional necessity warranted that qualified persons who had so opted, should be utilised on accounts posts. It was also observed therein that if a person who had completed his tenure at one particular station, there was no reason to shift him to the post of a Sub Postmaster as was done in that case.

20. As rightly stated in this case the question is of a deputation posting and repatriation to the substantive post. It is altogether a different thing that since the applicant is a qualified Accountant, even in the department where he holds lien to the substantive post his services ought to be utilised in the post of Accountant, if available.

21. Therefore, I find that the applicant had continued on deputation also while working as Accountant at the GPO, Patna holding lien to the substantive post of Sorting Assistant at RMS, Patna Division, Patna. I also do not find that the repatriation was outcome of any bias or was malafide, or that it carried any stigma or that amounted to any punishment. These being the findings, I find no merit in this case.

22. This application is, therefore, dismissed. No costs.

  
[P. K. Sinha]/VC

skj.