

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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NEW BOMBAY BENCH

O.A. No. 208/89

198

~~ExAxxNo.~~

DATE OF DECISION 28.7.1989

Shri C.D.Sonar

Petitioner

Shri G.K.Masand

Advocate for the Petitioner(s)

Versus

Supdt.of Post Offices, Shreerampur Respondents
and others.

Shri P.M.Pradhan

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.Y.Priolkar, Member (A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

OA.NO. 208/89

Shri C.D.Sonar,
R/o. Gopinath Nagar,
Near Sanjay Nagar, Ward No.2,
Shreerampur - 413 709.

... Applicant

Vs.

1. Superintendent of Post Office,
Shreerampur Division, Shreerampur.
2. Director of Postal Services,
Aurangabad Division, Aurangabad.
3. Post Master General (Staff
Grievance Cell), Maharashtra
Circle, Bombay.
4. Shri B.S.Shinde
Accountant in
Shreerampur Head Post Office,
Shreerampur.

... Respondents

CORAM: Hon'ble Member (A) Shri M.Y.Priolkar

Appearances:

Mr.G.K.Masand
Advocate
for the Applicant

Mr.P.M.Pradhan,
Advocate
for the Respondents

ORAL JUDGMENT

Dated: 28.7.1989

(PER: M.Y.Priolkar, Member (A))

The grievance of the applicant in this case is that by order dated 17.6.1988 he has been transferred from the post of Accountant (carrying a special pay of Rs.90/-) from Shreerampur Head Office to Rahuri as Postal Assistant (which post does not carry any special pay). According to the applicant, this is in violation of Rules 274 and 276 of Posts & Telegraphs Manual, governing appointments to and transfers from the posts of Accountants. The applicant also alleges that the transfer order is mala fide and has been issued merely to accommodate another employee who had applied for transfer to Shreerampur at own cost.

2. In their written reply, the respondents state that the applicant was appointed to officiate as Accountant purely on temporary and ad hoc basis and that there is no reversion involved in this transfer, as the post of Accountant is not a promotional post but a post for which additional pay of Rs. 90/- p.m. is allowed only to officials who are entrusted with the duties of that post. According to the respondents, the transfer order was in compliance with the directives received from Director (Vigilance) as also Director of Postal Services, Aurangabad Region for transferring the applicant away from Shreerampur in order to avoid tampering of evidence and documents, since disciplinary proceedings had been initiated against the applicant for an irregular appointment of an under aged candidate.

3. I have heard today Mr.G.K.Masand, learned advocate for the applicant and Mr.P.M.Pradhan, Counsel for the respondents.

4. Rule 276 which governs appointments to the post of Accountant carrying a special pay is reproduced below :-

"276. Appointments to the posts of Accountants or Assistant 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 PQ/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 assistants 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."

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There is also another rule, namely, Rule 274 which lays down the circumstances in which an official already employed as Accountant may be debarred from further employment. This rule reads as follows:-

"274. The Head of a Circle may debar an official who has passed the Accountants' examination, from further employment, as Accountant or Assistant Accountant in the following circumstances :-

- (a) If, on examination by an Inspecting Accounts Officer, it is found that the passed official is incompetent;
- (b) if the Director of Postal Accounts, reports to the Head of the Circle an excessive number of objections in a month against the Accounts branch of a head office, and if the Head of the Circle, on investigation, is satisfied that passed accountant concerned is incompetent;
- (c) if a Superintendent or a First Class Head Postmaster recommends, after investigation, that the work of an accountant is unsatisfactory and if the Head of the Circle accepts that recommendation."

5. It is clear that the post of Accountant is not a promotion post for postal assistants as mere addition of special pay does not make it a higher post. There is also no separate cadre of such Accountant's posts. At the same time, the fact that separate rules have been framed stipulating clearly the conditions under which officials can be posted, ⁴ as Accountant, ⁴ and also debarred from further employment in this post, does show that such postings and transfers can be ordered only in accordance with these rules. The wording of these rules is such that no discretion has been vested in the authorities to make any deviation from these two rules in the matter of initial appointments as well as from further debarment of employees posted as Accountants. These rules also appear to be applicable in all cases of such appointments, whether on ad hoc, temporary or regular basis.

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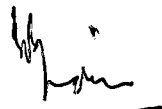
6. In this view of the matter, while no doubt on the ground of administrative exigencies the applicant could be transferred out of Shreerampur as directed by Director (Vigilance) and Director of Postal Services, the applicant should have been transferred only to a place where an Accountant's post was available. It was submitted on behalf of the respondents that there are only two posts of Accountant in this circle and both of them being only at Shreerampur, the applicant could not have been transferred out of Shreerampur in an identical post, and the only alternative was to post him as a postal assistant. The respondents also contend that as in any case, the post of Accountant is not a promotional post, the applicant has no vested right to be continued in that post.

7. As stated earlier, however, since specific rules exist for the purpose of making appointments to the post of Accountant on the basis of passing a qualifying examination and also seniority, and also for discontinuing them from further employment as Accountants only under specified circumstances, the transfer of the applicant from the post of Accountant to the post of Postal Assistant (which post did not carry any special pay) should be held to be in violation of Rule 274 of Posts & Telegraphs Manual. This Rule provides for such transfer under specified circumstances, but initiation of disciplinary proceedings is not one of them. It was contended on behalf of the respondents that since there was no other sanctioned post of Accountant in that Circle outside Shreerampur, and his presence in any office in the same city was not considered desirable in the interest of smooth conduct of disciplinary proceedings, the only option in this case would be to suspend the applicant. While I do not wish to go into the question of what should be the best course of action to

be in this case, which would be permissible under the rules, to be taken by the respondents, I shall only hold that the transfer order dated 17.6.1988 which resulted in depriving the applicant of the special pay in the post of Accountant, is clearly in violation of Rules 274 and 276 of Posts and Telegraphs Manual.

8. I do not, however, find any substance in the other contention of the applicant that the transfer was purely to accommodate another employee, in the context of specific directives received in this regard from the Director (Vigilance) and Director of Postal Services. The Accountant's post is admittedly a transferable post and the applicant should have had no grievance about his transfer if this had been done in accordance with the relevant rules.

9. On the basis of the foregoing discussion, the impugned transfer order dated 17.6.1988 issued by the Assistant Superintendent of Post Offices, Shreerampur is set aside. The Respondents are directed to transfer the applicant back to his original post of Accountant or to another Accountant's post, within a month from the date of receipt of a copy of this order. The applicant shall also be paid Special pay of Rs.90/- per month from 18-th June 1988 till the date of his joining the post of Accountant to which he will now be transferred. It will, however, be open to the Competent Authority to adopt ^{if thereafter} any other measures, including suspension, in accordance with the law, if they consider it essential that he has to be removed from the post of Accountant earlier held by him to facilitate the disciplinary proceedings. The parties will bear their respective costs.


(M.Y. PRIOLKAR)
MEMBER (A)