

1.

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A. No.469/2005

Date of order : 30th Sept., 2005

C O R A M

Hon'ble Mr. Justice P.K.Sinha, Vice-Chairman

Prayag Prasad, son of late Gopi Prasad Yadav, resident of Village/Post – Rajauli, District – Nawada, Posted as Postman, Rajauli S.O., District – Nawada [Bihar].

..... Applicant.

Vrs.

1. Union of India through Chief Postmaster General, Bihar Circle, Patna.

2. Director Postal Services, o/o C.P.M.G., Bihar Circle, Patna.

3. Superintendent of Post Offices, Nawadah Division, Nawadah.

4. Sub-Divisional Inspector [Postal] South Sub – Division, Nawadah.

5. Sub Postmaster, Rajauli, District – Nawadah.

6. Sri Bal Mukund Narayan, Postman, Rajauli, District – Nawadah.

..... Respondents.

Counsel for the applicant : Shri M.P.Dixit

Counsel for the respondents : Shri B.K.Prasad, A. S.C.

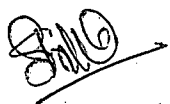
Shri S.N.Tiwari, Id. counsel for the pvt. Respondent.



ORDER (ORAL)

By Justice P.K.Sinha, VC :-

The applicant was employed as Postman at Rajauli Sub Office and so was Respondent No.6, Bal Mukund Narayan. The applicant, admittedly, was senior to Respondent No.6. One post of Postman at the Rajauli S.O. was abolished, hence authorities issued Annexure-A/1 transferring the applicant on the same post to Govindpur S.O., retaining Respondent No.6. The applicant filed a representation against his transfer, vice Annexure-A/3 dated 31.5.2005 mainly claiming that since he was senior to Respondent No.6, under Rules, Respondent No.6 should have been transferred in case of abolition of a post. The Superintendent of Post Offices, Nawadah Division considered the same and reversed the order at Annexure-A/1, transferring the junior Postman, Respondent No.6 to Govindpur S.O. instead of the applicant. Admittedly, Respondent No.6 also made representation which, as submitted, was on the ground of his retirement within two years [w.e.f. 31.1.2007], but that was rejected by the Superintendent of Post Offices, vice order dated 23.6.2005 at Annexure-A/5.



2. By a subsequent order communicated by Sub-Divisional Inspector of Post Offices, South Sub-Division to the S.P.M., Rajauli S.O., in view of a letter issued by the Superintendent of Post Offices, Nawadah dated 12/20.7.2005, ¹The S.P.M. was directed to relieve the applicant for joining at Govindpur and to allow the Respondent No.6 to continue at Rajauli. The applicant, thereafter moved this Tribunal for quashing of Annexure-A/6.

3. Shri M.P.Dixit, learned counsel for the applicant has raised several points to augment the case of the applicant which are as follows :-

Firstly, that para 4.4[a] of the revised scheme [G.I., Dept. of Per. & Trg. O.M. No.1/18/88-CS III, dated 1.4.1989] for the Disposal of Personnel rendered surplus due to reduction of establishment in Central Government Department/Offices [referred to as Revised Scheme ⁱⁿhereafter] did not allow transfer of a senior officer in such a case. Para 4.4[a] of the scheme provides as follows : -

"Immediately after the surplus posts requiring abolition are determined, action shall be taken in hand to determine whether there is any surplus staff and, if so, to identify them. Ordinarily, the juniormost temporary persons should be surrendered against the reduced cadre strength, followed, if necessary, by the junior most quasi - permanent and then permanent staff. The rule of 'juniormost' should be insisted upon and the Central Cells in the Department of



Personnel and Training and the Directorate General of Employment and Training would have authority to see to the strict and prompt observance of this rule.”

4. Shri M.P.Dixit, learned counsel for the applicant has submitted that under this provision, which requires strict compliance, it was Respondent No.6 who should have been relocated to Govindpur S.O., not the applicant. In that regard, Shri Dixit has relied upon ^a decision of the Principal Bench of the Central Administrative Tribunal, in the case of Shri Sant Ram Singh vs. Union of India & Ors.; 1999[2] ATJ 684 and another decision of Jodhpur Bench of the Tribunal in the case of Balwinder Singh vs. Union of India and Another, 2005 [1] ATJ 278. The learned counsel submits that as per the written statement of the official respondents, the order of transfer of Respondent No.6 was reversed under the direction of the Chief Postmaster General, Bihar Circle, Patna which is at Annexure-R/4 to the supplementary written statement of the official respondents and is dated 18.8.2005. This order issued on behalf of the Chief Postmaster General, Bihar Circle, Patna intimates the Superintendent of Post Offices, Nawadah Circle that in the light of direction issued earlier by the Chief Postmaster General, the matter was again reviewed and it was found that the Superintendent of Post Offices should have issued transfer order, according to rules, whereas after inquiry



5.

, it was decided that Respondent No.6 who was to retire after one year and four months should be allowed to continue at Rajauli and the applicant who was to retire in the year 2011, should be transferred to Govindpur S.O. which was in conformity with the tenure transfer rule. It was argued by Shri Dixit that whereas this letter is dated 18.8.2005, how the letter at Annexure-A/6 was issued on 22.7.2005, which could not have been done if based upon the direction of the Chief Postmaster General.

5. Shri Dixit further argued that Annexure-R/3 to the supplementary written statement was a circular letter dated 7.12.1998 issued through the Assistant Director General relating to ^{the} rotational transfer policy. It was provided therein that any staff who had two years or less to go on 30th September each year before superannuation would be exempted from rotational transfer as far as possible. Argument was that this was not a case of rotational transfer in which the aforesaid principle could have been applied, but it was a case of redeployment of a surplus staff, which should have been done in accordance with rule 4.4[a] of the revised scheme.

6. The point relating to date of the order issued from the office of Chief Postmaster General and the one at Annexure-A/6 had also intrigued this Tribunal in course of hearing and the entire record relating to ^{the} transfer order was called which has been submitted by the learned ASC, Shri B.K.Prasad.



7. From perusal of this record, it appears that on receipt of representation of Respondent No.6, the file had moved in the office of the Chief Postmaster General. In a noting dated 12.8.2005, it was mentioned that as per direction of the Chief Postmaster General, a direction had already issued to the S.P.O., Nawadah [relating to transfer of the applicant and retaining of Respondent No.6]. It was pointed out that the Chief Postmaster General had earlier issued direction to the S.P.O., Nawadah keeping in view the lesser period of service of Respondent No.6. Concluding the note, the official sought permission to convey the aforesaid direction of the Chief Postmaster General in writing also, to the S.P.O., Nawadah. On this, it was ordered that cancellation of transfer of Respondent No.6 would be in accordance with the tenure rules, which should not have been changed by the S.P.O., Nawadah and it was also directed to issue a direction in ^{that} regard to all. This order is dated 18.8.2005 and the draft letter was approved on the same day. It, therefore, appears that on earlier direction of the Chief Postmaster General, Annexure-A/6 was issued and the letter at Annexure-R/2 was issued in the written confirmation of the previous order.

8. Para 4.4[a] has not made it mandatory that under any circumstance,

only the juniormost should be redeployed rather the expression used is "ordinarily." Strict compliance of this direction has been made advisable but this leaves scope for deviation in exceptional cases.

9. Under the revised scheme, agency for redeployment has been identified, i.e., the Central [Surplus] Cell in the Department of Personnel and Training. The reading of the revised scheme would show that this provides for the redeployment of a staff declared surplus, instead of retrenching him or keeping him without work, to an available vacancy which might be in other cadres or in other offices under the Ministry/Department [see also para 5.3 of the Revised Scheme]. It does not say that this could be done immediately after a staff is declared surplus.

10. However, this does not strictly appear to be the case here. Here at Rajauli S.O. , one post of Postman for administrative reasons was abolished and a simple order of transfer of one staff to another station on the same post was ordered. It was pointed out by the learned counsel for the Respondent No.6, Shri S.N.Tiwari, that since it was a case of transfer of a surplus staff, the applicant was transferred, initially and lastly, to a S.O. under the same sub division of the same circle. If it was a case of transfer of a surplus staff, then rules of rotational transfer would also apply.

11. In so far as the case of Shri Sant Ram [supra] is concerned, in that

case the post of the applicant was declared surplus and his services were dispensed with. He had taken the ground that while his services were dispensed with, juniors to him had remained in the service. However, that is not the case here.

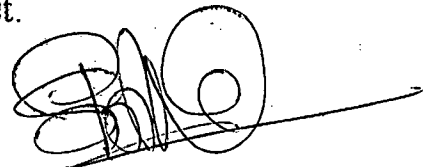
12. In the case of Balwender Singh [supra], certain surplus Khalasies were redeployed as Gangman whereas certain juniors were retained in the cadre of khalasy. But in the instant case no change in the cadre has been made rather the applicant has been transferred on the same post within the same ^{sub-}division, hence no prejudice to him can be said to have been caused. It has been pointed out in the supplementary written statement of the private respondent that the applicant had been working in that office since 1.7.1993 whereas the Respondent No.6 was there since 1998.

13. In the aforesaid circumstances, I do not find that the transfer was ordered in violation of any extant rule, the transfer rather having been made for administrative reasons after one post was declared surplus, on the same post and in the same postal sub division. That being so, if the applicant who was working at Rajauli S.O. Since much longer than the Respondent No.6 and had much longer service – span, whereas the Respondent No.6 was due to retire in January, 2007, the transfer of the applicant, while allowing the respondent No.6 to stay in his post, can be



held to be based on sound administrative reasons. Such transfer of the applicant was considered upto the level of Chief Postmaster General Bihar Circle, Patna.

14. For aforesaid reasons, I see no reason to interfere with that order. The application is, therefore, dismissed. No cost.



[P.K. Sinha]
Vice-Chairman

mps.