

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 917/93

Date of Decision 10-12-96

J.G.Phatak

Petitioner

Shri S.P.Kulkarni.

Advocate for the Petitioner.

Versus

Union of India & Ors.

Respondent

Shri S.S.Karkera for R-1 to R-3,

Shri H.Y.Deo for R-4 and Shri S.P.Saxena

for intervenor.

Advocate for the Respondents.


Coram:

The Hon'ble Mr. B.S.Hegde, Member(J),

The Hon'ble Mr. P.P.Srivastava, Member(A).

1. To be referred to the Reporter or not? ☒

2. Whether it needs to be circulated to other Benches of the Tribunal? ☒

  
(B.S.HEGDE)

MEMBER(J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 917 / 1993.

Coram: Hon'ble Shri B.S.Hegde, Member(J),  
Hon'ble Shri P.P.Srivastava, Member(A).

10<sup>th</sup>, this the Friday day of December 1996.

J.G.Phatak,  
C/o.Shri S.P.Kulkarni,  
'Gunjan' Wadavli Section,  
At & PO : Ambernath(E),  
Dist. Thane - 421 501.

... Applicant.

(By Advocate Shri S.P.Kulkarni)

V/s.

1. Union of India through  
Senior Supdt. of Post Offices,  
Pune City West Division,  
Pune - 411 030.
2. Postmaster General,  
Pune Region,  
Near C.T.C. (P&T Admn. Office),  
Pune - 411 001.
3. Member(Posts) Department of Post,  
Ministry of Communication,  
Dak Bhavan (through ADG SPN),  
New Delhi - 110 001.
4. Shri S.M.Deshpande,  
Time Scale Accountant (PO & RMS),  
Accounts Branch,  
Pune City Head Post Office,  
Pune - 411 002.

... Respondents.

5. S.R.Terdalkar,  
Time Scale Accountant (PO & RMS)  
Accounts Branch,  
Pune City H.P.O.  
Poona - 411 002.

... Intervenor.

(By Advocate Shri S.S.Karkera for R-1 to 3,  
Shri H.Y.Deo for R-4 and Shri S.P.Saxena  
for Intervenor.)

O R D E R

¶Per Shri B.S.Hegde, Member(J)¶

In this O.A. the applicant is challenging the

appointment of Respondent No.4 one Shri S.M.Deshpande to the post of Time Scale Accountant (PO & RMS) vide order dt. 1.11.1990 and also the rejection letter issued by the respondents on the basis of the representation made by the applicant vide letter dt. 2.3.1993 respectively on the ground of discrimination under Article 14 of the Constitution and seeks quashing of the said appointment.

2. The applicant was appointed as a Postal Assistant on 7.10.1977 in the grade of Rs.975-1540. Thereafter, he appeared for the examination of Post Office and Railway Mail Service Accountant held in April, 1987 and was declared successful. The post of Accountant is "Allowance Post" and incumbent actually working is entitled for "Special Pay". After passing the exam the applicant sought transfer under Rule 38 of the Postal Manual Vol.IV and his request was considered and approved by the Competent Authority. Consequently, he was relieved on 21.9.1990 and he joined Pune City Post Office, West Division on 24.9.1990. The contention of the learned counsel for the applicant is that Respondent No.4 had been appointed purely on ad hoc and temporary basis w.e.f. 23.07.1990 to the post of Accountant, Pune City cannot claim continuity and does not have any right to claim till 1.11.1990. The applicant having joined the Pune City West Division, he accrued right to claim the said post on 24.9.1990, since the ad hoc posting of R-4 being fortuitous and has no locus standi to claim the said post. Further R-4 had passed the Accountant Exam in the year 1987, whereas, the applicant has passed

the Examination in the year 1986. Therefore, he should be given the post of Accountant in view of D.G.P&T's Circular dt. 12.3.1970 which states that "The appointment to the Allowance Post of Time Scale Accountants/Asstt. Accountants should be made according to the year of passing the Accountant's examination, etc."

3. In reply, the Respondents have submitted that it is true that the R-4 was declared successful in the examination held in April, 1987 for P.O. & R.M.S. Accountant's Examination. The S.S.P., Pune City West Division ordered the R-4 vide order dt. 24.5.1990 to join at Pune City H.O. as Accountant in place of Shri M.R.Kulkarni who was then working as A.P.M. Accountant in Pune City H.O. Respondent No.4 joined Pune City as Accountant from that date onwards. The R-4 is continuously in Pune City West Division without any break, whereas the applicant joined the Pune City West Division on or about 24.9.1990 as Postal Assistant on transfer under Rule 38 of P & T Manual Vol.IV by which time the R-4 was already holding the post of Accountant though under officiating capacity and subsequently he has been regularised in the said post of Accountant w.e.f. 1.11.1990. In this connection the learned counsel for the Respondents draws our attention to Rule 38 of P & T Manual Vol.IV which reads as follows :

"38. Transfer at one's own request.

(1) Transfers of officials when desired for their own convenience should not be discouraged if they can be made without injury to the rights of others.

However, as a general rule, an official should not be transferred from one unit to another, either within the same Circle, or to another Circle unless he is permanent. As it is not possible to accommodate an official borne on one gradation list into another gradation list without injury to the other members in that gradation list such transfers should not ordinarily be allowed except by way of mutual exchange. Transfers by way of mutual exchange, if in themselves inherently unobjectionable, should be allowed, but in order to safeguard the rights of men borne in the gradation lists of both the offices, the official brought in should take the place, in the new gradation list; that would have been assigned to him had he been originally recruited in that unit or the place vacated by the official with whom he exchanges appointment, whichever is the lower.

Note - Transfer of officials, who are not permanent in the grade, may, in deserving cases, be permitted with the personal approval of the Head of Circle/Administrative Office.

(2) When an official is transferred at his own request but without arranging for mutual exchange, he will rank junior in the gradation list of the new unit to all officials of that unit on the date on which the transfer order issued, including also all persons who have been approved for appointment to that grade as on that date."

In the light of the above, it is submitted that such request transfers are to be sanctioned if they are not making any injury to the rights of the others. As the transfer was likely to cause injury to the legal right of R-4, he raised objection to the said transfer vide his letter dt. 16.3.1990 addressed to the P.M.G., Pune/<sup>City, West</sup> Division. In response to the said letter the Respondent Department informed the applicant that on his transfer to Pune City West Division he will rank Junior in the gradation list for all purposes including his posting in the Accountant's cadre. Thereafter, the S.S.P, Pune City West Division, asked the SSP, Pune MFL Division to get the condition noted by the applicant in writing. Therefore, the transfer of the applicant was effected

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under the condition that he will not claim the Accountant's post by injuring the legal rights of the qualified senior Postal Assistants in the Divisional Seniority List. Thereby, he has no legal right to claim the post of Accountant over the heads of others. The admitted facts are that Shri S.M.Deshpande, R-4 is senior to the applicant in Clerical Grade. It is not a promotional post. The Post of Accountant is a separate cadre and is a different cadre. As stated earlier, the main contention of the applicant is that since the applicant passed the examination earlier than the R-4, though he has been transferred subsequent to his passing the examination the Respondents are not justified in taking out his seniority issue in the other division by virtue of reliance to Rule 38 of P & T Manual and he reiterated his contention that appointment to the Allowance Post of Time Scale Accountant's post should be made according to the year of passing the Accountant's Examination in view of Department's Circular dt.12.3.1970. It is an admitted fact that PO & RMS cadre is a Divisional cadre. The applicant has stated that discrimination has been effected by the respondents by giving promotion to one Shri Khedkar. However, on a perusal of the order we notice that the transfer of Shri Khedkar was done on the basis of mutual transfer as Clerk from Pune City East Division to Pune City West Division with one Shri V.N. Dudhedia who was senior to Shri Khedkar and

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there was no loosing of seniority to Shri Khedkar from Pune City West Division. Therefore, the contention of the applicant's counsel is not tenable because insofar as the applicant is concerned he has sought transfer at his own request and not by mutual transfer. Therefore, the comparison of Shri Khedkar is not justified and the same is rejected.

4. Shri S.P.Saxena appeared on behalf of the intervenor and he was allowed to file written arguments for our consideration. The learned counsel for the intervenor submitted his written arguments in which he has stated that the applicant had passed the Accountant's Examination in 1986 and the intervenor has passed in 1990. However, the seniority list of each division has been separate, as such the applicant and the intervenor were in two different and distinct seniority list. Promotions for the post of Accountant is on the basis of Division Seniority list subject to those who have passed the exam in the same division would be promoted. Rule 38(2) of P & T Manual provides that if an employee borne on the strength of seniority list of one division, seeks transfer at his own request to another division, then such an employee will loose his seniority and will be listed at the bottom of the seniority list of the other division, where he joins after transfer. It is an admitted fact that the applicant had asked for a transfer from his Moffussil division to the Pune City (West) Division at his own request and that the applicant was specifically informed by the respondents that he would loose seniority on transfer on transfer

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and the applicant accepted this condition which is also reproduced in Rule 38(ii) of the P & T Manual, thereafter he joined at the Pune City (West) Division with full knowledge and consent of losing his seniority. Further it is stated that the intervenor is already working as Officiating Accountant in the Pune City Head Office (West Division) w.e.f. 17.7.1992 and he is the seniormost, awaiting for his regular promotion to Accountant's post for many years. If the applicant is given the benefit of promotion, it will affect all those who are eligible and have passed the exam and placed above Shri Phatak (the applicant). In this connection, the learned counsel for the intervenor Shri S.P.Saxena relies upon the decision of the Supreme Court in Gursharan Singh V/s. Union of India and Ors. [1995 29 ATC 109], wherein the Apex Court has held that on a transfer on compassionate grounds, the transferee would rank juniormost in the transferred unit and this is in accordance with the instructions of the Department dt. 1.7.1973 whereby it stipulates that the transferee employee would not be entitled to carry his seniority from the original unit to the new unit. In other words he would rank juniormost in the transferred unit. Therefore, he submits, keeping in view of the ratio laid down by the Apex Court and in the facts and circumstances, in the present case, would squarely come within the purview of the aforesaid decision and in this case the applicant was transferred to a new division in view of Rule 38 of the P & T Manual on his request, thereby he will not get any seniority




which he gained in earlier unit when he went on transfer to new division.

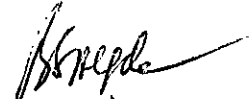
5. Heard the learned counsel for the parties and perused the pleadings. Rule 38 of the P & T Manual is very clear that "when an Official is transferred at his own request but without arranging for mutual exchange, he will rank junior in the gradation list of the new unit to all officials of that unit on the date on which the transfer order issued, including also all persons who have been approved for appointment to that grade as on that date." There is no iota of doubt regarding interpretation of Rule 38. However, if there is any inconsistency between the Circular of the Department and Rule 38, since Rule 38 is a statutory one it should prevail over the administrative instructions of the Department. Since there is no factual disputes that the applicant <sup>has</sup> sought transfer on his own request and after joining the new division he is challenging the appointment of R-4 is not justified in view of Rule 38 of the P & T Rules. In view of that, even if the applicant has passed the Accountant's Examination earlier than R-4, by virtue of his request transfer he loses his seniority in the division to which he has been transferred. As stated earlier, seniority is based on division-wise. Therefore, the contention of the applicant is not based on facts or cannot be sustainable on the point of law.

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6. In the result, we see no merit in the  
O.A. and the same is dismissed with no order as  
to costs.

  
(P.P. SRIVASTAVA)  
Member(A)

  
(B.S. HEGDE)  
Member(J)

B.