

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 1269/95 199

Date of Decision: 29-8-1996

Chandrakant Dattatraya Sonar

Petitioner/s

Mr. S.P. Kulkarni

Advocate for the
Petitioner/s

V/s.

U.C.I. & Ors.

Respondent/s

Mr. S.S. Markera for Mr. P.M. Pradhan

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri M.R. Kolhatkar, Member(A)

Hon'ble Shri

- (1) To be referred to the Reporter or not? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal? X

M.R. Kolhatkar

(M.R. KOLHATKAR)
M(A)

M

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

O.A. 1269/95

THURSDAY this the 29th day of AUGUST, 1996

CORAM: HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

Chandrakant Dattatraya Sonar,
J-4, Narayan Bapunagar,
Dasak, Nashik Road,
Dist. Nashik - 422 101.

(By Advocate Mr.S.P.Kulkarni)

.. Applicant

-versus-

1. Union of India
through
Senior Supdt. of Post Offices,
Nashik Postal Division,
At. P.O.Nashik,
Dist. Nashik - 422 001.
2. Postmaster General,
Aurangabad Region,
Aurangabad - 431 002.
3. Senior Postmaster,
Nashik Head Post Office,
Nashik - 422 001.

(By Advocate Mr.S.S.Karkera for
Mr.P.M.Pradhan)

.. Respondents

ORDER (ORAL)

(Per M.R.Kolhatkar, Member(A))

The applicant who was working in Shrirampur Postal Division as Postal Assistant and got himself transferred under Rule 38 of Post Office Manual Vol.IV to Nashik Postal Division and at the material time was working as Time Scale-Postmaster, Khedgaon Sub-Post Office in Nashik Postal Division is aggrieved by the order dt. 1-9-95, at page 18, cancelling the order dt. 31-8-1995 deputing him to work as Accountant, Nashik Head Office in the leave vacancy of Shri U.N. Bankar. This order of deputation which is at Annexure-C

page-20 was cancelled by the impugned order. The order purports to cancel the said order on administrative grounds. The contention of the applicant is that he has passed Post Office and Railway Mail Service Accountant/Assistant Accountant examination in February '88 and there are standing instructions that the services of the qualified staff should be utilised in the Accounts branch. It is not disputed that there are orders of DG P&T No.71/17/74-SPB I dt. 20-9-1974 on this point reproduced as below :

"Sub: Posting of PO and RMS Accounts qualified officials in the Accounts branches. ---

A suggestion has been made that PO & RMS qualified accountants who are awaiting their appointments as Time Scale Accountants/ Assistant Accountants should invariably be posted in the Accounts Branches in preference to other unqualified officials. The suggestion has been examined and it has been felt that we need not lay any hard and fast rule that only accounts qualified clerks should be posted in the Accounts Branch if they are available. The matter is left to the discretion of the local authorities. However, the suggestion made should be kept in view as far as administratively."

Counsel for the respondents points out that, that ^{the} circular states that no hard and fast rules can be laid down. The matter is left to the discretion of the local authority but the suggestion is to be kept in view as far as administratively possible.

2. Counsel for the applicant also relies on Bulletin No.3 which reproduces meeting of CPMG with the Circle Secretary and one of the decisions taken was

regarding utilisation of qualified accountants. It was stated that suitable instructions have been issued to Regional PMG's to utilise the services of qualified T/S Accountants in Accounts branches to the extent possible. Counsel for the respondents states that this is merely a minute of the discussion and it had no authority beyond the circular dt. 20-9-74 referred to earlier.

3. The contention of the applicant, however, is that the guidelines are to utilise the services of the qualified T.S.Accountants in Accounts Service and in terms of these guidelines the posting was actually made. Therefore it is not open to the respondents to take the stand that the matter is entirely within the administrative discretion. What is impugned is the cancellation of the order which cancellation according to him was done on extraneous consideration. In this connection he refers to the representation dt. 1-9-95, Ex.'B' in which he has alleged that Sr.P.M., S.R.Shindikar denied to get him joined on 31-8-95 at 17.45 Hrs. being a NFPE Union Member. The allegation therefore is that orders have been cancelled on extraneous grounds viz. union pressure.

4. Counsel for the respondents denies that the cancellation was arbitrary. According to him the cancellation is, in terms, on account of administrative grounds, and the administrative grounds are as below :
the leave vacancy of Shri U.N.Bankar Accountant was only for a duration of 30 days and the applicant had misrepresented that this vacancy is of 38 days and when the real facts came to the notice, the original order which was issued on an understanding that the leave

was for 38 days was required to be cancelled.

5. This contention of the respondents does not appear to be correct. The order dt. 30-8-95 clearly mentions the period of leave as 30 days. It is true that the applicant in his representation has referred to the leave period of Bankar as 38 days but apart from the fact that the applicant ^{is} loosely worded reference to "leave period" is not the same as leave, it is clear on the face of the order dt. 31-8-95 that although the leave sanctioned was for 30 days, the actual absence was for 38 days and therefore the vacancy was for 38 days. There is nothing in the administrative instructions to support ^{the contention} (that for leave arrangements, the leave availed is required to be 30 days. The reference in the administrative instructions as admitted by the respondents themselves is to the effect that officiating arrangements can be made when a vacancy exists for more than 30 days. Thus there is a clear distinction between the leave sanctioned, and the vacancy period in the Rule 50 of the Postal Manual Vol.IV. I am, therefore, not impressed by the submission that the applicant has misrepresented regarding the duration of the vacancy for which the orders were issued on 31-8-95. It is next contended by the respondents that when the applicant was transferred from Shrirampur Division to Nashik Division he had furnished a declaration that he will not claim the post of Accountant, in the new division. Apart from the ^m fact that such a declaration is not supported by

any rules, I also note that in the formal order of transfer of the applicant dt. 4-1-93 which are at Ex. R-II no such condition has been imposed that the applicant will not claim Accountant's post. In any case, if any such condition had been imposed, this Tribunal would be bound to read it down as it is not supported by the rules and have the effect of depriving the applicant of his legitimate expectation of an opportunity, entailing special pay of Rs.90/-

6. It has come out that the applicant has since been transferred from Khedgaon to Nashik Head Office but I am not concerned with any other aspect of this case although the respondents have, in their reply, dealt with this transfer as a request of the applicant. The relief sought by the applicant is in a very narrow compass. The relief claimed by the applicant is to hold and declare that cancellation of posting order of applicant as Accountant Nashik Head Post Office vide letter dt. 1-9-95 was arbitrary and malafide and to direct the respondents to consider representation of the applicant basically relating to utilisation of his qualified status as an Accountant, for being posted in available vacancy as and when it arises subject to administrative instructions.

7. In the facts and circumstances of the case I have no hesitation to declare that the cancellation of the posting order was arbitrary. I am, however, not able to grant any relief in this regard at this stage but the respondents are directed to consider the

representation of the applicant regarding consideration of his name for the posting as Accountant carrying a special pay of Rs.90/- at Nashik/Nashik Road Head Post Office as and when vacancy arises subject to genuine administrative grounds. Respondents are also directed to utilise the service of the applicant as Postal Assistant in a post carrying accounts duty in preference to other unqualified persons in terms of DG P&T Circular dt. 20-9-74. No order as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
Member(A)

M