

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

03.03.2014

OA No.496/2013

Mr. C.B. Sharma, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents.

Heard the learned counsel for the parties.

ORDER RESERVED.

M. Nagarajan
(M. Nagarajan))
Member (J)

Anil Kumar
(Anil Kumar)
Member (A)

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6-3-2014

Order is pronounced in
the open Court today.

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6.3.14

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Draft / pre-delivery common order in OA No. 285/2013 &
OA No. 496/2013 is respectfully submitted for approval.

M. Nagarajan
(M. Nagarajan)
Judicial Member

Hon'ble Shri Anil Kumar,
Administrative Member

I agree.
Anil Kumar

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 285/2013
&
ORIGINAL APPLICATION NO. 496/2013

Order reserved on: 03.03.2014

Order pronounced on: 06.03.2014

CORAM

**HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MR. M. NAGARAJAN, JUDICIAL MEMBER**

(1) ORIGINAL APPLICATION NO. 285/2013

Kailash Chand Sharma S/o Shri Prabhu Lal Sharma, aged about 52 years, R/o Village and Post Gurukul via Bakani, District Jhalawar and presently holding the post of Gramin Dak Sevak, Mail Carrier, Gurukul Branch Post Office (Bakani), District Jhalawar.

...Applicant
Mr. C.B. Sharma, counsel for applicant.

VERSUS

1. Union of India through its Secretary to the Government of India, Department of Posts, Ministry of Communication and Information Technology, Dak Bhawan, New Delhi - 110001.
2. Chief Post Master General, Rajasthan Circle, Jaipur - 302007.
3. Senior Superintendent of Post Offices, Kota Postal Division, Kota - 3324001.
4. Assistant Superintendent of Post Offices, Jhalawar Sub Division, Jhalawar - 326001.

...Respondents
Mr. Mukesh Agarwal, counsel for respondents.

(2) ORIGINAL APPLICATION NO. 496/2013

Kailash Chand Sharma S/o Shri Prabhu Lal Sharma, aged about 52 years, R/o Village and Post Gurukul via Bakani, District Jhalawar and presently holding the post of Gramin Dak Sevak, Mail Carrier, Gurukul Branch Post Office (Bakani), District Jhalawar.

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Mr. C.B. Sharma, counsel for applicant.

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VERSUS

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4. Assistant Superintendent of Post Offices, Jhalawar Sub Division, Jhalawar – 326001.

...Respondents

Mr. Mukesh Agarwal, counsel for respondents.

ORDER (Per Mr. M. Nagarajan, Judicial Member)

1. OA No. 285/2013 and OA No. 496/2013 have been filed by the applicant Shri Kailash Chand Sharma.
2. In OA No. 285/2013, the applicant has challenged the order dated 16.03.2013 (Annexure A/1) under which he was directed to look after the work of Branch Post Master at Dungargaon Branch Post Office till further orders w.e.f. 09.04.2013 in place of one Shri Kanhaiya Lal Meena, who retired on 09.04.2013, while the applicant was working as Gramin Dak Sevak, Mail Carrier at Gurukul Branch Post Office.
3. In OA No. 496/2013, the applicant has challenged the order dated 25.06.2013 (Annexure A/1) under which the applicant has been posted as GDS MD Bakani on temporary basis w.e.f. 01.07.2013 in place of one Shri Abdul Rahim GDS MD Bakani, who retired on 30.06.2013.

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4. The Tribunal by the order dated 04.04.2013 in OA No. 285/2013, stayed the operation of the order dated 16.03.2013 which is impugned in OA No. 285/2013. That in the meanwhile by the order dated 25.06.2013, the applicant has been posted as GDS, MD, Bakani on temporary basis w.e.f. 01.07.2013 which is impugned in OA No. 496/2013.

Since both the OAs are filed by the applicant challenging his postings on identical grounds, with the consent of the learned counsels for both the parties, both the OAs were taken up for hearing together and hence this common order.

5. The brief facts of the case, as stated by the applicant, are that he was initially appointed as Gramin Dak Sevak, Mail Carrier on 02.11.1978 at Gurukul Branch Post Office and, subsequently, on the fact that he was entitled for promotion to the post of Postman based on his seniority, he was selected to the post with a further direction to undertake ten days practical training by memorandum dated 23.09.2010. In pursuance of the said memorandum dated 23.09.2010, he had undergone training for ten days. Thereafter, the respondents have allotted him to the unit of Assistant Superintendent of Post Offices, Jhalawar Sub Division, Jhalawar. In pursuance of the same, the Assistant Superintendent of Post Offices, Jhalawar Sub Division, Jhalawar vide his memorandum dated 20.12.2010 given a further posting to the applicant at Khanpur Post Office. On receipt of the said memorandum dated 20.12.2010 under which he was posted to

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Khanpur Post Office, the applicant instead of reporting at Khanpur Post Office, made a request on 23.12.2010 stating therein that he is not willing to work as Postman and he may be allowed to continue on the post of GDS, MC, Gurukul Branch Post Office, but the request of the applicant came to be turned down by the Senior Superintendent of Post Offices, Kota Postal Division, Kota by a letter dated 03.01.2011 before he could join the post of Postman. Since his request to continue on the post of GDS, MC, Gurukul Branch Post Office, could not be accepted, the applicant reported for duty as Postman on 06.01.2011 at Khanpur and after joining on the post of Postman, he made several requests informing the respondents that he is unable to perform the duties of Postman and requested to permit him to continue on the post of GDS, MC, Gurukul Branch Post Office.

6. That in view of the fact that his several representations seeking continuation at Gurukul Branch Post Office as GDS MC was not considered, he approached this Bench of the Tribunal by filing OA No. 432/2011 and this Tribunal vide order dated 09.02.2012 directed the respondents to consider his case for reversion from the post of Postman and allow him to work on his original post i.e. on the post of GDS MC, Gurukul Branch Post Office. In obedience of the same, the Senior Superintendent of Post Offices, Kota Division, Kota, by his order dated 25.07.2012 (Annexure A/4 of OA No. 285/2013) accepted the request of the applicant for he being continued as GDS, MC, Gurukul Branch Post Office, and allowed him to work on his original post i.e. in

the post of GDS, MC, Gurukul Branch Post Office (Bakani) and in pursuance of the same, the Assistant Superintendent of Post Offices, Jhalawar Sub Division, Jhalawar posted him back as GDS, MC, Gurukul Branch Post Office vide memorandum dated 22.08.2012 (Annexure A/6 of OA No. 285/2013) and accordingly, he reported for duty as GDS, MC, Gurukul Branch Post Office and while working as GDS, MC, Gurukul Branch Post Office under impugned order dated 16.03.2013 (Annexure A/1) he was directed to look after the work of Branch Post Master at Dungargaon Branch Post Office on temporary basis.

7. Being aggrieved by the said order dated 16.03.2013 (Annexure A/1), he presented O.A. No. 285/2013 with prayer to quash the same.

8. This Bench of the Tribunal vide interim order dated 04.04.2013 in the said OA No. 285/2013 stayed the impugned order dated 16.03.2013 and in view of the order dated 04.04.2013 he was working as GDS MC Gurukul Branch Post and while working as GDS MC Gurukul Branch Post, the Assistant Superintendent of Post Offices, Jhalawar Sub Division, Jhalawar by his order dated 25.06.2013 (Annexure A/1 of OA No. 496/2013) posted the applicant as GDS MD Bakani on temporary basis in place of one Shri Abdul Rahim, GDS MD Bakani, who retired on 30.06.2013, which is impugned order in OA No. 496/2013.

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9. The main grounds urged by the applicant in support of his prayer for quashing the impugned orders in both the OAs, are as under: -

(i) As per policy of the Postal Department, a Gramin Dak Sevak is not liable for transfer.

(ii) The respondent nos. 3 & 4 do not have the competency to pass the impugned transfer orders.

(iii) The qualification possessed by the applicant is 08th standard, whereas the qualification prescribed for the post of Branch Post Master is 10th standard and as such he cannot be posted as Branch Post Master without having the prescribed qualification for the same.

(iv). The impugned orders are not passed in public interest.

10. The respondents have filed their detailed reply and contended that the aforesaid grounds are not at all tenable.

11. Heard Shri C.B. Sharma, learned counsel for the applicant and Shri Mukesh Agarwal, learned counsel for the respondents and perused the pleadings and the documents annexed to the pleadings.

12. Shri C.B. Sharma, learned counsel for the applicant inviting our attention to the Government of India, Department of

Posts, letter No. 19-10/2004-GDS, dated 17.07.2006 (Annexure A/8 of OA No. 285/2013) argued that the term "Public Interest" is prescribed by the Government of India in para 2 of the said letter dated 17.07.2006 and none of the circumstances mentioned at para 2 of the said letter dated 17.07.2006 has been mentioned in the impugned orders and hence, the impugned orders are liable to be quashed for want of public interest. Further inviting attention paragraph 4 of the very same letter dated 17.07.2006, Shri C.B. Sharma, learned counsel for the applicant contended that the power to transfer in public interest is vested with the Heads of Circles but in the cases on hands, the impugned orders are not passed by the Heads of Circles and, hence, the impugned orders are liable to be interfered with for want of competency.

13. Per contra, Shri Mukesh Agarwal, learned counsel for the respondents, submitted that the applicant cannot place any reliance upon the said letter dated 17.07.2006. By inviting our attention to the Rules called Department of Posts, Gramin Dak Sevaks (Conduct and Engagement) Rules, 2011 (Annexure R/2), Shri Mukesh Agarwal, learned counsel for the respondents, submitted that the said Rules of 2011 came to be issued in supersession of the earlier Rules of 2001 and the same shall applicable to Gramin Dak Sevaks of Department of Posts, Ministry of Communications & IT, Government of India. As per Rule 3-A(iv) of the said Rules of 2011, a Sevak can be transferred from one post / unit to another post/unit in public

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interest and, thus, the impugned orders in both the OAs do not in contravene of any of the provisions contained in Rules of 2011 (Annexure R/2).

14. We have carefully perused the said Rules of 2011 at Annexure R/2. Rule 2 provides for application of the said Rules, 2011, which reads as follows: -

"2. Application

These rules shall apply to Gramin Dak Sevaks of Department of Posts, Ministry of Communications & IT, Government of India."

Admittedly, the applicant is a Gramin Dak Sevak. In view of this position and in view of the fact that the said Rules of 2011 came to be issued in supersession of all the existing rules, the applicant cannot place any reliance upon the said Government of India, Department of Posts, letter No. 19-10/2004-GDS, dated 17.07.2006 (Annexure A/8 of OA No. 285/2013). Therefore, we are not inclined to accept the arguments of Shri C.B. Sharma, learned counsel for the applicant, that the Gramin Dak Sevak is not liable to be transferred.

15. While considering the contention of the learned counsel for the applicant that the authorities who have passed the impugned orders in both the OAs, have no competency to issue the impugned orders, it is necessary for us to refer to Definitions of term "Recruiting Authority". Rule 3 (a) of the said Rules of 2011 reads as follows: -

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"3(a) "Recruiting Authority" means an authority empowered to engage GDS on the basis of GDS (Conduct and Engagement) Rules, 2011."

The schedule to the Rule 4 of the said Rules, 2011 prescribes the 'Recruiting Authority' in respect of each category of Sevak, the same reads as:

"Schedule of Recruiting Authorities
(See Rule 4)
Post Offices

Sl. No. (1)	Name of the Post (2)	Recruiting Authority (3)
1
2.	Gramin Dak Sevak Mail Deliverer	Deputy Presidency
3.	Gramin Dak Sevak Mail Carrier	Postmaster; Gazetted
4.	Gramin Dak Sevak Mail Packer	Postmaster including
5.	Gramin Dak Sevak Stamp Vendor	Gazetted Sub Postmaster in charge of Town Post Office, Postmaster in Higher or Lower Selection Grade (in own office) except a Postmaster in charge of a Town Sub-Office, Inspector of Post Offices / Assistant Superintendent of Post Offices (in all other office)

A reading of the aforesaid schedule makes it crystal clear that the 'Recruiting Authority' for the post of Gramin Dak Sevak, Mail Carrier is the Assistant Superintendent of Post Offices. It needless to say power to appoint incurs power to transfer and power to punish, unless a contrary provision is made in a particular Rule. No contrary provision is found in the Rules of 2011. Thus, in view of the fact that schedule to Rule 4 of the said Rules prescribes Assistant Superintendent of Post Offices as Recruiting Authority, the contention of the applicant that the

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authorities, who have issued the impugned transfer orders, have no competency, cannot be accepted.

16. With regard to the other ground urges by the learned counsel for the applicant that a lower qualified person shall not be permitted to look after the post for which the higher qualification is prescribed, we may observe that as per Rule 3 (d) -

"3(d). "Gramin Dak Sevak" means -

- (i) a Gramin Dak Sevak Branch Postmaster;
- (ii) a Gramin Dak Sevak Mail Deliverer;
- (iii) a Gramin Dak Sevak Mail Carrier;
- (iv) a Gramin Dak Sevak Mail Packer;
- (v) a Gramin Dak Sevak Stamp Vendor."

The above definition makes it clear that a Gramin Dak Sevak Mail Carrier and Gramin Dak Sevak Branch Postmaster are equivalent posts, which means that a Gramin Dak Sevak Branch Postmaster can be posted as a Gramin Dak Sevak Mail Carrier or a Gramin Dak Sevak Mail Carrier can be posted as Gramin Dak Sevak Branch Postmaster since from the date of the commencement of the said Rules 2011. In other words, after the commencement of the Rules of 2011, a Gramin Dak Sevak Branch Postmaster and a Gramin Dak Sevak Mail Carrier are interchangeable. In view of this position, we are unable to accept the contention of the learned counsel for the applicant that a person having lower qualification shall not be directed to look after the work of a post on temporary basis for which higher qualification is prescribed. *UAP*

17. Coming to the next point urged by the learned counsel for the applicant that the impugned transfer orders suffers for want of public interest, at the very outset, we may observe that the applicant is not entitled to place reliance upon the said letter dated 17.07.2006 (Annex. A/8) since the Rules of 2011 supersedes the earlier Rules. The said Rules of 2011 (Annexure R/2) do not prescribe the circumstances which can be termed as public interest. In view of the fact that term "public interest" is not dealt with under the Rules of 2011, whether a particular order of posting / transfer involves public interest or not is required to be determined with reference to the facts and circumstances of each case. In the process, we cannot lose sight of the fact pleaded by the respondents in their written reply at paragraph 2 of OA No. 285/2013, which reads as under: -

"2. That in the meanwhile the post of GDSBPM Dungar Gaon (Asnawar) fallen vacant due to superannuation of Shri Kanhaiya Lal Meena on 09.04.2013 afternoon (Annexure R/1), therefore to maintain the uninterrupted postal facilities, an urgent temporary arrangement was made by Asstt. Supdt. of Post Offices, Jhalawar and the services of Kailash Chand GDSMC Gurukul Branch Post Office were ordered to be spared and utilized as GDSBPM, Dungargaon in the public interest, on temporary basis till regular selection on the post of GDSBPM, Dungargaon (Asnawar)."

The fact that one Shri Kanhaiya Lal Meena attained superannuation on 09.04.2013 is not disputed by the applicant. It is also not the case of the applicant that the respondents have made certain alternative arrangement to look after the work of GDS BPM at Dungargaon. Vide impugned order dated

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16.03.2013 (Annexure A/1 of OA No. 285/2013), the applicant has been directed to take over the additional charge of the post of Branch Post Master, Dungargaon in addition to his original work of GDSMC, Gurukul Branch Post Office, on temporary basis. In view of the fact that the post of Branch Post Master at Dungargaon became vacant on account of retirement of one Shri Kanhaiya Lal Meena on 09.04.2013, it is necessary for the respondents to make some alternative arrangement to cater to the needs of the rural population and, hence, the posting of the applicant is required to be held that the same is in public interest and, hence, the contention of the applicant in this regard is liable to be rejected.

18. Besides, Rule 3-A(ix) of the said Rules of 2011 provides that the 'Combination of duties of a Sevak shall be permissible'. As such the action of the respondents by issuing the impugned order dated 16.03.2013 (Annexure A/1 of OA No. 285/2013)) to look after the duties of Branch Post Master at Dungargaon by the applicant, cannot be held that the same is not in public interest.

19. Similarly, the respondents have issued impugned order dated 25.06.2013 (Annexure A/1 of OA No. 496/2013), which cannot also be held that the same has not been issued in public interest as the applicant has been posted as GDS MD Bakani w.e.f. 01.07.2013 on temporary basis in place of one Shri Abdul Rahim GDS, MD Bankani, who retired on 30.06.2013.

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20. The Hon'ble Supreme Court has time and again held that on what circumstances the Courts / Tribunals can interfere with an order of transfer. The Hon'ble Supreme Court in the case of **State of U.P. and Others vs. Gobardhan Lal**, reported in 2005 SCC (L&S) 55, in para 7 and 8 has held as under: -

"7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in the transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

"8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons,

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no interference could ordinarily be made with an order of transfer."

If the above principles laid down by the Hon'ble Supreme Court were to be applied to the facts and circumstances of the case in hand, we cannot have any hesitation to hold that the impugned orders in both the OAs do not suffer from any legal infirmity, for the reason that the case of the applicant does not fall within any of the ingredients which warrants an interference in the impugned orders as set out by the Hon'ble Supreme Court in said case.

21. The reliefs sought by the applicant in OA No. 496/2013 do not survive for consideration in view of the fact that under the Memo dated at Jhalawar the 11 July, 2013 (Annexure R/2 of OA No. 496/2013) one Shri Shyam Kumar Sharma, GDS DA Nanor BO has been directed to work as GDS MD Bakani to which work was entrusted to the applicant under impugned order dated 25.06.2013 (Annexure A/1 of OA No. 296/2013).

22. For the foregoing reasons, we do not find any reason to interfere with the impugned orders in both the OAs and, consequently, we dismiss both the OAs i.e. OA No. 285/2013 and OA No. 496/2013. There shall be no order as to costs.

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(M. NAGARAJAN)
JUDICIAL MEMBER


(ANIL KUMAR)
ADMINISTRATIVE MEMBER