

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH : JAIPUR

Date of Decision : 10.08.2004

Original Application NO.478/2003.

Mangi Lal Sharma S/o Shri Chunni Lal Sharma, aged about 45 years, R/o Village and Post Shobhasar Ratangarh District Churu (presently working as Gramin Dak Sevak Up Dak Pal Boy, Jhunjhunu Division, Jhunjhunu.

... Applicant.

v e r s u s

1. Union of India through Secretary, Ministry of Communication, Department of Post Dak Bhawan, New Delhi.
2. The Post Master General, Western Division, Rajasthan, Jodhpur.
3. The Superintendent of Post Office, Jhunjhunu Division, Jhunjhunu.

... Respondents.

Mr. Amit Nath Mathur counsel for the applicant.  
Mr. N. C. Goyal counsel for the respondents.

CORAM

Hon'ble Mr. M. L. Chauhan, Judicial Member.

: O R D E R (ORAL) :

The applicant was initially given the charge of the post of EDSPM Sobhasar (Ratnagarh) on account of removal of the incumbent Shri Ridhakaran Sharma on account of disciplinary proceedings. Subsequently, steps for filling up this post was taken by issuing an advertisement. The applicant also applied for the post and subsequently he was selected and appointed to the post w.e.f. 20.10.1998. Since the appeal filed by Shri Ridhakaran Sharma against his removal from service was allowed by the Appellate Authority, consequently he was reinstated to his original post of EDSPM Sobhasar vide Memo dated 21.01.2002 and the applicant who was working on the post of EDSPM was provided alternative appointment on the post of EDMC, Bhimsar, which was going to be vacated w.e.f. 24.01.2002 (A/N). The applicant did not obey the



order of his alternative appointment and refused to handover the charge of EDSPM, Sobhasar, to Shri Ridhakaran Sharma. Then a parallel post office was opened at Sobhasar and Shri Ridhakaran joined there. Thereafter the applicant filed an OA before the Jodhpur Bench which was registered as OA NO.16/2002 against the order of the Superintendent of Post Offices, Churu Division, Churu, in which the applicant was asked to join as EDMC Bhimsar. The said OA was dismissed by the Jodhpur Bench of the Tribunal vide its order dated 03.05.2002. Against this order, the applicant filed a DB Civil Writ Petition No.2548/2002 before the Hon'ble High Court of Rajasthan, which was decided on 11.02.2003. The Hon'ble High Court has observed as under :-

"...There was no valid and legitimate ground to deny the petitioner the post of EDSPM against which he was functioning. Just because the fourth respondent was reinstated after the punishment of dismissal from service imposed on him was modified in the year 2002, was no ground to revert the petitioner to the post of EDMC. The fourth respondent could have been accommodated by creating a supernumerary post. But accommodating the fourth respondent by reverting the petitioner cannot be countenanced in law. Therefore, the petitioner could not be dislodged from the post of EDSPM in this manner for no fault of his and without complying with the principles of natural justice.

In the circumstances, the writ petition succeeds and the same is allowed. The order of the Central Administrative Tribunal is set aside. The first respondent is directed to post the petitioner against the post of EDSPM within a period of one month. The petitioner

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shall be entitled to all consequential benefits."

2. Pursuant to the direction issued by the Hon'ble High Court, the petitioner was offered appointment as GDS SPM, Bay, in Jhunjhunu Division vide letter dated 19.05.2003 (Annexure A/4) and he was relieved from the post of GDSMC, Bhimsar on 22.05.2003 (A/N). The applicant submitted representation dated 30.05.2003 to the Director, Rajasthan Postal Services, Western Region, Jodhpur, thereby stating that the applicant may be posted as EDBPM Murdakia EDBO under Ratnagarh H.O. till occurrence of vacancy and till that time he may be allowed to continue on the present post of EDML Bhimsar. The said representation of the applicant was rejected. Hence the applicant has filed this Original Application thereby praying that the directions be issued to the respondents to transfer the applicant from Jhunjhunu to Churu Division where the post is lying vacant and if no post is lying vacant then the respondents be directed to adjust the applicant by creating supernumerary post.

3. Notice of this application was given to the respondents. The respondents have filed detailed reply thereby opposing the prayer made by the applicant. I have heard the learned counsels for the parties and gone through the material placed on record. The basis of relief as prayed for by the applicant is that in terms of Hon'ble High Court order dated 11.02.2003 in DBCWP No.2548/2002, the relevant portion of which has been quoted above, it was incumbent upon the respondents to post the applicant as EDSPM, Sobhasar. The stand of the respondents is that in compliance of the Hon'ble High Court order dated 11.02.2003, the applicant was to be given appointment to the post of EDSPM, which order has been complied. The applicant could not have been adjusted at Churu Division on account of reinstatement of earlier holder of the post. Since he became surplus,

he was adjusted as EDSPM, Bay (Jhunjhunu Division), which was the nearest to the applicant's native place. As such, no prejudice has been caused to the applicant.

4. I see considerable force in the submission made by the learned counsel for the respondents. As can be seen from the relevant portion of the judgement rendered by the Hon'ble High Court which has been reproduced in the earlier part of the order, the Hon'ble High Court has held that it was not necessary for the respondents to revert the applicant to the post of EDMC on the ground that the fourth respondent was reinstated after the punishment of dismissal from service imposed on him was modified in the year 2002. The fourth respondent could have been accommodated by creating a supernumerary post. It was under these circumstances that the fourth respondent was directed to post the petitioner against the post of EDSPM within a period of one month. There was no direction given by the Hon'ble High Court that the applicant be adjusted as EDSPM, Sobhasar. The only direction given was that the applicant be adjusted as EDSPM within a period of one month, as such, the applicant has no indefeasible right that he be appointed as EDSPM at Sobhasar and not in any other place where vacancy is available.

5. When the learned counsel for the <sup>applicant</sup> ~~respondent~~ was confronted with the order passed by the Hon'ble High Court, learned counsel for the applicant submitted that the applicant is prepared to work against lower post in case he can be adjusted as GDSPM at Moordakiyan, Ratnagar Division, District Churu, as the post is available. Since there was no such prayer in the OA, the applicant was permitted to amend the OA and make specific pleading in that behalf. Subsequently, the applicant filed amended OA and in the amended OA, the applicant made an alternative prayer to the effect that "or in alternate respondents may be directed to allow the applicant to perform the

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duty as GDSMC at Moor Dakiya, Ratnagarh, District Churu".


6. The respondents have also filed reply to the amended OA. The stand taken by the respondents is that the post of GDSMC in Moor Dakiya under Ratnagarh HO is not vacant. Moreover, the post of GDSMC is lower in rank to the post of applicant i.e. GDSPM. As per direction of Hon'ble High Court in DBCWP No. 2548/2002 filed by the applicant, the petitioner should be given the post of EDSPM. The applicant has again filed an additional affidavit thereby stating that the post of GDSPM is lying vacant at Moor Dakiya in District Churu. By the consent of the parties, this additional affidavit is taken on record. Learned counsel for the applicant submits that he will be satisfied if the applicant is posted as GDSPM at Moor Dakiya, District Churu, which post is lying vacant and this post is also lower in rank to the post of GDSPM which the applicant is presently holding.

7. In view of the submission made by the learned counsel for the applicant and the fact that the applicant himself is seeking reversion/posting to the lower post of GDSBPM at Moor Dakiya in District Churu, the order of Hon'ble High Court dated 11.02.2003 passed in DBCWP No.2548/2002 will not come in the way of the respondents, as the aforesaid order of the Hon'ble High Court stand complied with and pursuant to the order of the Hon'ble High Court the applicant was also offered the post of EDSPM, on which post he is still working. Since the applicant is seeking reversion from the higher post of EDSPM to that of EDSBPM at Moor Dakiya in District Churu, as such, it will be in the interest of justice if the direction is given to the respondents to give appointment to the applicant to the post of GDSPM, Moor Dakiya, in District Churu, in case the said post is lying vacant. Ordered accordingly.

8. With these observations, the present OA is

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disposed of. The respondents will carry out the aforesaid direction within a period of one month from the date of receipt of a copy of this order. The OA shall stand disposed of accordingly with no order as to costs.

  
(M. L. CHAUHAN)

MEMBER (J)