

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 896 of 2003

Jabalpur, this the 11<sup>th</sup> day of May, 2004

Hon'ble Shri Madan Mohan, Judicial Member

1. Abdul Rajjak Khan, S/o. Shri Abdul Rasheed Khan, Date of birth - 7.12.1978, R/o. House No. 10, Gandhi Street, Badwali Masjid Road, Jahangirabad, Bhopal.
2. Kashiram Gangwal, S/o. Shri Ratiram Gangwal, aged about 43 years, R/o. H. No. 5442, Krishna Nagar Colony, Karod, Bairasia Road, Bhopal. ... Applicants

(By Advocate - Shri V. Tripathi)

V e r s u s

1. Union of India, through its Secretary, Ministry of Communication, Deptt. of Post, New Delhi.
2. The Director General, Department of Post, Dak Bhawan, Sansad Marg, New Delhi.
3. The Chief Post Master General, MP Circle, Hoshangabad Road, Bhopal.
4. The Chief Post Master General, Chhattisgarh Circle, Raipur. ... Respondents

(By Advocate - Shri K.N. Pethia)

O R D E R

By filing this Original Application the applicants have sought the following main reliefs :

"(ii) set aside the orders dated 22.8.2003, Annexure A-1, dated 25.9.2003 Annexure A-2 and dated 16.12.2003 Annexure A-3,

(iii) consequently command the respondents to continue the applicants at Bhopal, as if the impugned orders dated 22.8.2003 Annexure A-1 dated 25.9.2003 Annexure A-2 and dated 16.12.2003 Annexure A-3."

2. The brief facts of the case are that the applicant No. 1 and applicant No. 2 are presently working as Peon under the direct control and supervision of respondent No. 3.

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The Group-D post to which the applicants belongs to a District/Division cadre post. The Group-D employees are not subjected to transfer outside the division normally. However, earlier in appointment orders of even Group-D and C employees it was mentioned that it has an All India Service/transfer liability. However subsequently by order dated 17.9.1990, the respondents decided to delete the said clause whereby the employees were subjected to a condition of All India Transfer Liability. Thus, for all partial purposes the applicants and Group-C and D employees can be subjected to transfer within their own seniority and not beyond it. The impugned order dated 22.8.2003 Annexure A-1 came as a bolt from blue to the applicants, whereby the applicants are transferred from one circle i.e. CPMG Bhopal to another circle i.e. respondent No. 4 CPMG, Chhattisgarh Circle, Raipur. This order appears to have been issued on the strength of some order of respondent No. 2 as mentioned in the impugned order dated 22.8.2003. However the orders mentioned in the said order dated 22.8.2003 have not been supplied to the applicants. As per the legal provisions, the applicants are not subjected to transfer outside their seniority unit. The following provisions are given in Annexure A-5 :

"1. The following options were given :

- (i) the post of AD/(PLI) in the parent circles should be transferred to the new circles.
- (ii) the proportionate posts of PAs should be transferred on the basis of total PLI policies held by the newly created circles.
- (iii) the posts of DOs (PLI) be transferred on the basis of Postal Divisions transferred to the newly created circles.
- (iv) the vacant post shall be preferred for transfer.

2. The procedures adopted for transfer of staff/post :

- (i) willingness shall also be called for transfer of officials to the newly created circles.
- (ii) the officials may be transferred on deputation

(iii) as far as possible Junior most officials be transferred to these circles.

3. The parent circles shall possible help for imparting training to the staff of the newly created circles. The detailed training will be provided by the trainer at the HQ of the newly created circles.

4. The above scheme will be implemented w.e.f. 18.8.2003. The heads of the newly created circles will take immediate action for procurement of the required hardware/soft ware to start the scheme in time."

The applicant No. 1 is a low paid Group-D employee. His ailing father Shri Abdul Rasheed Khan and his unemployed brother is dependent upon him. Both the applicants were effected by Bhopal Gas Tragedy and is still under ailment/problems arising out of the said Gas tragedy persists for which the applicants required special treatment which is available at Bhopal only. The applicants preferred representation dated 23.8.2003 by speed post. However no heed was paid by the respondents. The applicants have filed OA No. 574/2003, wherein the Tribunal vide order dated 27th August, 2003 has stayed the impugned order dated 22.8.2003, till the decision of the respondents on the representation of the applicants. The applicants were also given liberty to file fresh representation within a period of one week, and the respondents shall decide the same as per rules. After decision of the Tribunal the applicants preferred a fresh representation to the Director General, Department of Posts on 3.9.2003 through proper channel. However, the representation of the applicants have not been decided by the Director General so far. The respondent No. 3 has issued an order dated 25.9.2003, whereby the representation of the applicants has been rejected though the respondent No. 3 has no authority and jurisdiction to reject the representation of the applicants because after the order of the Tribunal the applicants had preferred representations to the Director General of Deptt. of Posts. The respondent No. 3 has not assigned

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any reason as to why the instructions dated 17.9.1990 is not applicable in the present case, and while rejecting the representation of the applicants guidelines for bifurcation of circles issued by the Chief General Manager PLI headquarter has been totally ignored. It is learnt that there is a shortage of Group-D employees in the MP circle of Post Offices. Therefore the applicants should not have been transferred to Chhattisgarh as per the policy dated 10.6.2003. The applicants transfer outside the circle and State will uproot their family and will subjected them to run two establishments and will expose them to a situation where no specialize treatment is available. Aggrieved by this the applicants have filed this OA claiming the aforesaid reliefs.

3. Heard the learned counsel for the parties and perused the records carefully.

4. It is argued on behalf of the applicants that the applicants are presently working as Peon on a Group-D post which is a very low paid salary at present and they are the victims of the Bhopal Gas Tragedy and the treatment for this is only available at Bhopal. He further argued that as per the directions of the Tribunal dated 27th August, 2003 the applicants preferred a detailed representation to the Director General, Department of Posts, while the impugned order is passed by the respondent No. 3. Hence he had no authority and jurisdiction to reject the representation of the applicants. He further argued that the respondents have not complied with the directions and guidelines given in Annexure A-5 dated 10.6.2003 and have totally ignored the same. The learned counsel for the applicant has drawn my attention towards



the judgment passed on 28th October, 2003 in OA No. 684/2003 - M.M. Mitra vs. UOI & Ors., wherein the Tribunal has held as under :

8. After hearing the learned counsel for either side, we find that the short question involved in this case is whether the impugned order is sustainable in terms of the instructions issued by the respondent no. 2. According to the reply of the respondents, one post was diverted to the Chhattisgarh Circle. The applicant was not the junior most official. As per Annexure R-2 there were two vacant posts at serial Nos. 17 & 18. Serial no. 18 was vacant, which was to be diverted to the Chhattisgarh Circle. Hence the transfer of the applicant to Chhattisgarh circle is against their own instructions issued by the respondents. Annexures R-3 & R-4 are not applicable in the case of the applicant, he being the Group-C officer. Though the impugned order of transfer is an administrative order and normally the Tribunal does not interfere in such matters, but in the instant case we find that the respondents have violated their own instructions and guidelines issued in the matter and in such a matter the Tribunal can interfere and direct the authorities to pass an appropriate order by following the instructions, guidelines or orders of the higher authorities.

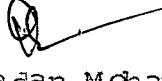
9. In the result, this application is allowed. The impugned orders are not sustainable and the same are quashed. The respondents are, however, at liberty to pass a fresh order by following the instructions or guidelines or orders of the higher authorities considering the observations made in this order. No costs.

5. In reply the learned counsel for the respondents argued that the impugned order is passed by the competent authority having jurisdiction to pass it and in the OA No. 574/2003 and 575/2003 there was no such direction by the Tribunal to prefer representation before the Director General of the Department of Posts, but simply the applicants were directed to make their representation and the name of the authorities were not mentioned in the order. So far as the non-compliance of the said guidelines is concerned the applicants have filed this OA with the request not to accommodate them at Chhattisgarh. It apparently shows their non-willingness to go on transfer. Secondly the applicants are junior most. The learned counsel for the respondents has drawn my attention towards the gradation list of Group-D officials in which the names.

of the applicants are on the bottom i.e. at serial No. 23 and 24. Hence it is apparent from this document that they are junior most employees while in the aforesaid OA No. 684/2003 it is clearly mentioned in para 8 of the judgment that the applicant was not the junior most official. Hence the order passed in the OA No. 684/2003 does not apply in the present case. In this case the applicants are the junior most employees and vide Annexure R-6 dated 25.9.2003 all these facts were considered.

6. I have given careful consideration to the rival contentions made on behalf of the parties and I find that the order dated 28th October, 2003 in OA No. 684/2003 - M.M. Mitra Vs. UOI & Ors. is not applicable in the present case because the applicants are not the junior most. While in the aforesaid OA the applicant was the junior most employee. So far as the willingness of the applicants are concerned, when the applicants have filed this OA, it apparently shows that they/ <sup>are</sup> not willing to go on transfer. Transfer of the Central Government employee through out the country is possible and this fact is very well known to each and every employee when he joins the Central Government service. The applicants have not proved any malafide against any of the officials. Thus the transfer order is issued in accordance with the rules, and I do not find any ground to interfere with the orders passed by the respondents.

7. Hence in my opinion the Original Application deserves to be dismissed as having no merits. Accordingly, the Original Application is dismissed. No costs.

  
(Madan Mohan)  
Judicial Member

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