

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Jaipur, 31st day of August, 2005

ORIGINAL APPLICATION NO. 217/2005
with
MISC. APPLICATION NO. 191/2005

CORAM:

HON'BLE MR. M.L. CHAUHAN, MEMBER (JUDICIAL)

Pratibha Hada wife of Shri Laxman Singh Hada, aged about 48 years, resident of 151. Ballabh Badi, Kota. Presently holding the post of Postal Assistant, Saving Bank Control Organisation, Head Post Office, Kota (Rajasthan) under transfer to Dungarpur Head Post Office.

.....Applicant

By Advocate : Mr. C.B. Sharma.

Versus

- 1 Union of India through its Secretary to the government of India, Department of Posts, Ministry of Communication and Information Technology, 20 Ashoka Road, Dak Bhawan, New Delhi.
- 2 Principal Chief Post Master General, Rajasthan Circle, Jaipur.
- 3 Post Master General, Rajasthan Southern Region, Ajmer.
- 4 Sr. Superintendent of Post Offices, Kota Postal Division, Kota.

.....Respondents

By Advocate : Mr. N.C. Goyal.

ORDER (ORAL)

The applicants have filed this OA thereby praying for

the following reliefs:-

- (i) That entire record relating to the case may kindly be called for from the respondents and after perusing the same transfer order of the applicant from Kota to Dungarpur vide Memo dated 14.3.2005 (Annexure A/1) with memos dated 16.3.2005 and -- 3.2005 (Annexure A/2 and Annexure A/3 to the extent of transfer be quashed and set aside with all consequential benefits.
- (ii) That the respondents may be further directed to allow the applicant to work at Kota Head Post Office or New Grain Mandi Head Post Office where the post of the applicant is in existence.
- (iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iv) That the cost of this application may be awarded.

2 Briefly stated, the facts of the case are that the applicant while working on the post of Postal Assistant (SBCO). Kota Head Office was transferred in the same capacity to Dungarpur Head Office vide impugned order dated 14.3.2005 (Annexure A/1). According to the applicant, the transfer order has been passed at the instance of Respondent No. 4 as he has filed a complaint against him regarding his habit of smoking to the higher authorities vide letter dated 24.06.2003 (Annexure A/4) followed by another complaint dated 27.09.2004. Pursuant to such complaint, respondent No. 4 made a complaint against the applicant for so-called mis-behaviour vide letter dated 25.09.2004. It is further stated that the applicant was placed under suspension vide letter dated 29.09.2004 (Annexure A/8). Thereafter, a charge-sheet for major penalty was issued to the applicant on 06.12.2004. It is further stated that the suspension order of the applicant was reviewed by the Review Committee in its meeting held on

10.1.2005 and vide impugned order dated 14.3.2005, the respondent No. 3 ordered the transfer of the applicant from Kota Head Post Office to Dungarpur Head Post Office on revocation of the suspension order. However, the order of suspension was revoked with immediate effect vide order dated 16.3.2005. It is on these facts that the applicant has filed this OA thereby praying for the aforesaid reliefs. When the matter was listed for admission on 06.5.2005. while issuing notices to the respondents this Tribunal granted the stay and passed the following order:-

"Heard the learned counsel for the applicant.

Issue notices to the respondents returnable within two weeks. The service of notices on the respondents will be served by the applicant by Hum Dust/Speed Post within three days. The respondents are directed to file reply to the interim prayer of the applicant within ten days.

Let the matter be listed for consideration of the interim prayer of the applicant on 20.5.2005.

The learned counsel for the applicant argued that vide order dated 29.9.2003, the applicant was placed under suspension and his Headquarter was fixed at Kota. Thereafter he was served with major charge sheet dated 6.12.2004 (Annexure A/11) and inquiry is still going on. The grievance of the applicant is that his suspension was revoked on 16.3.2005 whereas order of transferring him Kota to Doongarpur has been passed before revocation of the suspensin order dated 14.3.2005. Thus according to the applicant, this shows non application of mind and further that such order should not have been passed when the inquiry against the applicant is going on at Kota. Under these circumstances, the applicant should not have been transferred to Dungarpur.

In view of what has been stated that we are of the view that the applicant has made out a prima facie case for grant of interim relief. Accordingly, the operation of the impugned order dated 14.3.2005 is stayed so far as it relates to transfer of the applicant to Dungarpur is concerned till the next date."

The aforesaid stay order was extended from time to time.

2 The respondents have filed reply. In the reply, it has been stated that the applicant is working at Kota station

since the date of her appointment i.e. from 18.10.1978 to 17.3.2005 in different capacity in different Post Offices. It is further stated that the applicant had worked at Kota Station during the entire service of 26½ years except the period of 50 days w.e.f. 25.12.1997 to 13.02.1998. The applicant was only transferred to Bhilwara Head Post Office in the year 1995 but she remained on leave after relinquishing of charge at Kota from 02.08.1995 to 24.12.1997. It is further stated that while working as Postal Assistant (SBCO) Kota Head Post Office, there were substantial complaints against the applicant regarding failing to maintain the office decorum, frequent use of unparliamentary language during working hours, defiance of orders of supervisors and quarreling with supervisors and other colleagues. It is further stated that aggrieved with the behaviour of the applicant, staff of Kota Head Post Office, where the applicant was working, has given a Memorandum dated 27.09.2004, in which it was requested to transfer the applicant from Kota Head Post Office so that the staff of the Kota Head Post Office may get relief from her rude and undisciplined behaviour and working environment of Kota Head Post Office could improve. Copy of the Memorandum dated 27.09.2005 is placed on record as Annexure R/1. From perusal of the Memorandum, it appears that staff of Kota Head Post Office has threatened to proceed on token strike on 29.09.2004. if the applicant is not shifted immediately. According to the respondents, the Memorandum received from the staff was got inquired into

and the allegations levelled against the applicant by the staff of Kota Head Post Office were found genuine and accordingly in order to ensure smooth functioning of Kota Head Post office, the applicant was immediately deputed from Kota Head Post Office to N.G. Mandi head Post Office. The fact that the applicant was placed under suspension and a charge sheet was also issued have also been admitted. The fact that the suspension order of the applicant was revoked on 16.3.2005 on the recommendation of the committee which met on 10.01.2005 has also been admitted. The reason given by the Review committee to revoke the suspension was that there is no justification for her prolonged suspension and also recommended to post her in another office of the station. Copy of the minutes of the Review committee dated 10.1.2005 has been placed on record as Annexure R/3. It was pursuant to the recommendations made by the Review Committee that Respondent No. 4 revoked the suspension of the applicant vide order dated 16.3.2005 (Annexure A/2). The respondents have stated that the applicant has completed her post tenure at Kota and the Suspension Review Committee has also recommended to post her in another office in station, as such, impugned order was passed. It is further stated that one post of Postal Assistant (SBCO), Kota has been abolished on 17.03.2005 on the recommendations of the Screening Committee in connection with direct recruitment plan for the year 2002 vide Circle Office Jaipur letter dated 28.07.2004 and the applicant has since been relieved and struck off from the strength of

Kota Head Post office vide order dated 22.03.2005 (Annexure A/3) and the same was given to the applicant on 23.3.2005. Thus according to the respondents, the applicant is no more on the strength of the Head Office Kota and there is no post where the applicant could be accommodated.

4 The applicant has filed rejoinder thereby reiterating the stand taken by him in the OA. It is further stated that Respondent No. 4 managed complaint from the staff when she approached the higher authorities in connection with the mis-behaviour of Respondent No. 4. It is further stated that once the higher authorities have recommended to post her at Kota itself, it was not permissible for the respondents to transfer the applicant to Dungarpur, which is 400 Kms away from the present posting. The applicant has also denied that there is no post at Kota where the applicant could be posted.

5 The respondents have filed sub-rejoinder. In the sub-rejoinder, it has been stated that vacancy has become available at Kota Head Post Office subsequently on account of relieving of one Shri Gamma Ram Choudhary and now the applicant has been allowed to join at Kota Head Post Office in compliance of the orders of the Hon'ble Tribunal dated 06.05.2005.

6 I have heard the learned counsel for the parties and have gone through the material placed on record. I am of

the view that this OA can be disposed of in view of subsequent development as the post of Postal Assistant has become available at Kota after Shri Gamma Ram Choudhary has been relieved and the applicant has been allowed to join at Kota Head Post Office pursuant to the order passed by the Tribunal vide order dated 06.5.2005. At this stage, it may be relevant to mention here that while revoking the suspension order of the applicant, the Review Committee had observed as follows:-

".....Since the departmental investigation has been completed and as such in our view there is no justification of prolonged suspension. Now the pending aspect of the case is finalization of disciplinary action. Hence we recommend to revoke the suspension of the official with immediate effect and official may be posted in an other office of the station."

Pursuant to the aforesaid observations made by the Review Committee, the matter was referred to the Chairman of the Committee for his kind consideration. The recommendation of the Review Committee was accepted and suspension order of the applicant was revoked. However, instead of posting the applicant in an other office of the station at Kota, the applicant was transferred to Dungarpur vide impugned order dated 14.3.2005 (Annexure A/1). Reasons given by the respondents to transfer the applicant at far off place is that there was no post of Postal Assistant available at Kota as one post of Postal Assistant (SBCO), Kota was abolished on 17.3.2005 and the name of the applicant was struck from the strength of Kota Head Post office on 23.3.2005. It has come on record that the Post of the Postal Assistant (SBCO) has become available now on account of relieving of Shri Gamma Ram Choudhary and the

applicant has also been allowed to join against this post pursuant to the stay order passed by the Tribunal which continued from time to time. In view of this development, the ground taken by the respondents for transferring the applicant to Dungarpur does not survive now. Further I am of the view that it was not proper for the respondents to transfer the applicant to Dungarpur in view of the fact that the Disciplinary inquiry against the applicant was going on at Kota and Rule 66 of the Postal Manual Volume III stipulates that where disciplinary proceedings against the person are contemplated, he should not be transferred out of the jurisdiction of the Disciplinary Authority who has to conduct the departmental inquiry even though it may some times b e found desirable to transfer the official outstation within the jurisdiction of the same disciplinary authority. The learned counsel for the applicant argued that in almost in similar circumstances, CAT, Principal Bench has quashed the transfer order where disciplinary proceedings were pending. For that purpose, the learned counsel for the applicant has placed reliance on the judgement of the CAT, Principal Bench rendered in the case of Shri Jasbir Singh vs. Union of India & Others , 2003(1) ATJ 267 and decision in the case of A.K. Gandhi vs. Union of India & Others 2004(1) ATJ 134.

7 In view of what has been stated above, I am of the view that the applicant has made out a case for grant of the relief. Accordingly, the impugned order dated 14.3.2005

(Annexure A/1) shall not be given effect to and applicant be allowed to work against the post of Postal Assistant at Kota during the pendency of Disciplinary Proceedings. However, the respondents shall be at liberty to transfer the applicant after conclusion of the departmental inquiry if administrative exigency so requires by passing fresh order. The OA is allowed in the above term. No costs.

8 In view of the order passed in the OA, no order is required to pass in MA No. 191/2005 for vacation of stay order dated 06.05.2005 and the same is also disposed of.


(M.L. CRAHAN)
MEMBER (J)

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