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**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

13.07.2012

OA No. 659/2011 with MA 186/2012

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

Put up on 26.07.2012. In the meantime, the applicant may file rejoinder. It is made clear that both OA & MA for seeking vacation of IR shall be heard finally on the next date.

IR to continue till the next date.

Anil Kumar

(Anil Kumar)
Member (A)

K. S. Rathore
(Justice K.S. Rathore)
Member (J)

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26/07/2012

OA NO. 659/2011 with M.A. No. 186/2012

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

Heard.

O.A. and M.A. are disposed of by a separate order on the separate sheets for the reasons recorded there.

Anil Kumar

[Anil Kumar]
Member (A)

K. S. Rathore

[Justice K.S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 26th day of July, 2012

Original Application No.659/2011

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Prem Raj Sharma
s/o Shri Suraj Mal Sharma,
r/o Village and Post Doongri,
via Malarna, R.S.,
Tehsil Khandar,
Distt. Sawai Madhopur and
Presently working as Gramin Dak Sevak
Mail Carrier/Packer, Gangapur City
Railway Colony Post Office,
District Sawai Madhopur.

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India
through its Secretary to the Govt. of India
Department of Posts,
Ministry of Communication and
Information Technology,
Dak Bahwan, New Delhi.
2. The Chief Post Master General,
Rajasthan Circle,
Jaipur.
3. The Superintendent of Post Offices,
Sawaimadhapur Postal Division,
Sawaimadhapur.

.. Respondents

(By Advocate: Shri Mukesh Agarwal)

ORDER (ORAL)

Brief facts of the case are that the applicant was initially appointed as Gramin Dak Sevak in the year 1989 in Doongri Branch Post Office, where his uncle was holding the post of Gramin Dak Sevak Branch Post Master (GDS BPM). As per the instruction issued in the year 1966 to avoid appointment of near relatives in the same office and to avoid risk of frauds, the respondents not allowed the applicant to continue on the post at Doongri Post Office and his name was kept as surplus candidate for further appointment and ultimately the applicant was allowed appointment vide order dated 12.10.1994. Since then the applicant has been continuously working as GDS MC/Packer at Gangaputy Railway Colony Post Office.

2. It is not disputed by the respective parties that uncle of the applicant Shri Kailash Chand Sharma was due to retire on 26.9.2010. The applicant made request on 5.7.2010 before respondent No. 3 for allowing him to work as Branch Post Master, Doongri, which was going to be vacated by his uncle on the ground that he is eligible and also ready to work on the allowances being paid to his uncle.

3. The controversy arose, when the respondents issued notification dated 5.2.2011 (Ann.A/1) inviting application for the post of GDS BPM, Doongri and the post was reserved for ST category. This notification has been challenged by the applicant



on the ground that instead of considering representation of the applicant for allowing him to work on the vacant post of GDS BPM, Doongri, the respondent No.3 notified the post. It is stated on behalf of the applicant that single post cannot be reserved and reserving the post for ST is against the procedure and the law laid down by the Hon'ble Supreme Court. Therefore, by way of this OA, the applicant has prayed that the respondents be directed to transfer/appoint the applicant against the vacant post of GDS BPM Doongri by quashing notification dated 5.12.2011 with all consequential benefits. Further seeks direction not to fill up and reserve the post for ST category from open market, when surplus candidate working far away from his native village is available and consider him for transfer/appointment as per instructions Ann.A/4 and A/11.

4. The learned counsel appearing for the applicant referred to Rule (23) under the heading 'Method of Recruitment' in the Service Rules for Postal Gramin Dak Sevak which provides limited transfer facility to Gramin Dak Sevaks and more particularly para 2(i) of this Rule according to which there are limited transfer facility to a GDS who is posted at a distant place on redeployment in the event of abolition of the post. Also referred Para 3 (ii) of this Rule which provides that request for such transfer will be considered against the future vacancies of GDS and that too after examining the possibility of recombination of duties of GDS.



5. Also referred to Ann.A/11 and Rule (15) of the said Rules and after referring the aforesaid provisions, the learned counsel appearing for the applicant submits that before filling up the post of GDS BPM, Doongri, request of the applicant should have been considered as per Rule (23) (cited supra).

6. On the contrary, the learned counsel appearing for the respondents has strongly controverted the facts mentioned by the applicant. It is stated that transfer cannot be claimed as a matter of right and it is always the discretion of the CPMG i.e. competent authority, which has to be decided by him looking to the administrative requirement of the department in public interest. Further submits that the vacancy is to be filled up as per the roster maintained for reservation and as there is shortfall in ST category, the post of GDS BPM Doongri has been notified for ST category. The respondents in para 4.6 of the reply stated that representation of the applicant was not decided in his favour.

7. We agree with the submissions made on behalf of the respondents that it is total discretion of the competent authority to transfer an employee or not, but as per the settled principle of law, the applicant has a right of consideration and after going through the reply submitted by the respondents, it is not clear from the reply that the representation has been considered in accordance with the provisions, as has been referred to by the respective parties.



8. Thus, in our considered view, we deem it proper to direct the respondents to first consider representation of the applicant regarding his transfer from Gangapur Railway Colony Post Office to Doongri Post Office and pass a reasoned and speaking order and then only proceed to fill up the vacancy as notified vide notification dated 5.12.2002 (Ann.A/1) and till the decision is taken on the representation filed by the applicant, the respondents are restrained to make appointment pursuant to notification dated 5.12.2001. The respondents are at liberty to proceed further in accordance with provisions of law after the decision is taken on the representation of the applicant.

9. With these observations, the OA stands disposed of and the interim direction granted by this Tribunal on 2.1.2012 stands modified in the aforesaid terms. No costs.

10. In view of the order passed in the OA, no order is required to be passed in MA No.186/2012, which stands disposed of accordingly.



(ANIL KUMAR)
Admv. Member



(JUSTICE K.S.RATHORE)
Judl. Member

R/