

Reserved
(On 04.04.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 13th day of April 2018

Original Application No 330/00047 of 2013

Hon'ble Dr. Murtaza Ali, Member – A
Hon'ble Mr. Gokul Chandra Pati, Member – A

Deena Nath, S/o Sri Ram Dhani, R/o Village & Post Rajgarh, District Mirzapur.

...Applicant

By Adv: Shri A.K. Srivastava & Shri M.K. Srivastava

V E R S U S

1. Union of India through Chief Post Master General, Uttar Pradesh, Lucknow.
2. Director Postal Services, Allahabad Region, Allahabad.
3. Superintendent of Post Offices, Mirzapur.
4. Sub Divisional Inspector, Post Office Chunar, District Mirzapur. s

... Respondents

By Adv: Shri Ram Pal Singh

O R D E R

By Hon'ble Mr. Gokul Chandra Pati, Member (A)

The applicant preferred the OA u/s 19 of the Administrative Tribunals Act, 1985 with the following reliefs:-

- i. To consider for issue orders or directions, in the nature of Certiorari quashing the impugned order dated 10.07.2012 (Annexure A -1).*
- ii. To consider for issuing orders or directions, in the nature of mandamus commanding the respondents to withdraw the impugned order and allow the applicant on the post of Postman at the place where he was working.*
- iii. To consider for issuing or directions, in the nature of mandamus commanding the respondents to pay leave salary for the month of July and August 2012 and allow to join the post of Postman, Baidad Branch Post Office.*

iv. *To issue any other suitable order in favour of the applicant as deem fit and proper by this Hon'ble Tribunal in the facts and circumstances of the case.*

v. *To award the costs of the application in favour of the applicant."*

2. The brief facts of the case, as stated in the O.A are that the applicant, who was initially appointed as Extra Departmental Mail Carrier (in short GDSMC) at Branch Post Office, Rajgarh, was attached to work as Postman at Branch Post Office, Baidad. Consequent upon the impugned order dated 12.07.2012 (Annexure A-1 to the O.A) by which one Shri Ram Kumar Singh, GDSMC, Baghaura was ordered for put off duty and the applicant was ordered to be relieved from GDSMC, Rajgarh to takeover charge of GDSMC, Baghaura. Aggrieved by the order dated 12.07.2012, the applicant has filed the instant original application on the ground that the transfer of the applicant is in violation of Rule 3 of Department of Posts Gramin Dak Sevak (Conduct and Employment) Rules 2001 (Annexure A-7 to the O.A), which does not permit the transfer of the applicant from one unit/ post to another unit/ post.

3. It is further stated in the OA that the applicant fell ill and he submitted a leave application alongwith medical certificate on 13.07.2012, 19.07.2012, 27.07.2012, 05.08.2012 and 05.09.2012 but no action for grant of leave was taken by the competent authority. The applicant also submitted two applications for joining duty alongwith fitness certificate on 14.09.2012 and 15.09.2012 but it was also not considered by the respondent No. 4. Thereafter, the applicant submitted another application to the respondent No. 3 to join the duty on 06.12.2012.

4. The respondents have filed Short Counter Affidavit as well as Counter Affidavit. It is stated that the applicant who was appointed as

EDMC, Rajgarh was attached to perform the duties of GDS MD, Baidad Branch Post Office vide Memo dated 18.11.2006. The applicant was later on ordered to perform the duties of GDSMC, Baghaura Branch Post Office under a temporary arrangement. It is stated that this arrangement was completely temporary and does not amount to transfer. It is also stated that the competent authority i.e. SDI (P), Chunai is empowered to make temporary arrangement which is in accordance with Rule 3A of the GDS (Conduct and Engagement) Rules, 2011. The respondents have further stated that the employee of GDS Cadre cannot be granted leave on medical ground as there is no provision in GDS Rules. It is also stated that though the applicant had submitted his application with fitness certificate, but he did not join on the post of GDS MC, Baghaura Branch Post Office where he was ordered for posting under temporary arrangement. It is also contended that as per the GDS Rules, only 10 days leave with allowance half yearly is admissible, therefore, leave salary beyond 10 days in a half year cannot be paid to the applicant.

5. The applicant has filed Rejoinder to the Short Counter Affidavit in which he has stated that the action of the respondents is against Section IV of Rule 22 of Service Rules for Postal Extra Departmental (ED) Staff (Annexure RA-2).

6. We have heard Shri A.K. Srivastava, learned counsel for the applicant and Shri Ram Pal Singh, counsel for respondents and perused the pleadings. Learned counsel for the applicant submitted that as per the rules applicable to the GDS, there is no provision for transfer of GDS. The impugned order is a transfer on temporary arrangement, hence, it is not

permissible under the rules. Learned counsel for the respondents rebutted the contention that the impugned order is a transfer and stated that it is a temporary arrangement due to putting off duty of another GDS and the applicant has been informed accordingly.

7. The relevant question to be decided in this case is whether the impugned order dated 12.07.2012 is a transfer order as contended by the applicant and can such transfer be ordered for a temporary period as contended by the respondents. The respondents have stated that as per the rule 3A of the GDS (Conduct and Engagement) Rules, 2011 a GDS can be transferred in public interest. The rule 3A of the said Rules states as under:-

“3-A Terms and Conditions of Engagement

(iv) A sevak can be transferred from one post/unit to another post/unit in public interest;”

From above rules, it is obvious that a GDS can be transferred from one unit to another unit in public interest. In this case, since one GDS was put on off duty, the respondents had deployed/transferred the applicant for a temporary period and they can do it as per the rule 3A of the GDS (Conduct and Engagement) Rules, 2011 as extracted above.

8. The applicant has referred to the rule 3 of the GDS (Conduct and Engagement) Rules, 2001 to argue that a GDS cannot be transferred. But since the GDS (Conduct and Engagement) Rules, 2011 has been issued by replacing the GDS (Conduct and Engagement) Rules, 2001, the provisions of 2001 rules are superseded by the provisions of 2011 rules which provide for such transfer in public interest. The applicant has also referred to the para 22 of Swamy's compilation of service rules for postal

ED Staff at Annexure RA-2 to the Rejoinder. On perusal of the above para, it is seen that the para 22 of the compilation is extracted from the instructions dated 3.01.1985 of the PMG, Madras and dated 6.05.1985 of DG P&T. It is also obvious that the GDS (Conduct and Engagement) Rules, 2011 will have overriding effect on executive instructions of 1985. Hence, these rule and para in Swamy's compilation referred by the applicant in support of his contention that a GDS cannot be transferred, will stand modified as per the provisions in the GDS (Conduct and Engagement) Rules, 2011 which provide for transfer of GDS in public interest.

9. In view of the discussions above, we are not inclined to interfere in the matter. Considering the fact that the impugned transfer dated 12.07.2012 was issued more than five years back, the respondents are directed to review its continuation in public interest now and issue an order to the applicant to join duty by modifying the order dated 12.07.2012 if it is deemed appropriate by the respondents, within one month of receipt of a copy of this order. The interim order in this OA stands vacated. It is also clarified that if the applicant has not complied with the order dated 12.07.2012 because of the dispute and interim order of this Tribunal, it shall not be construed as disobedience of order or a misconduct by the applicant.

10. The OA is disposed of with above directions. No cost.

(**Gokul Chandra Pati**)
Member (A)

/pc/

(**Dr. Murtaza Ali**)
Member (J)