

CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH

OA No. 552 of 2016

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Kailash Chandra Dash, aged about 40 years, S/o Sri Jagabandhu Dash, R/o At/Vill-Nuagaon Ichhapur, PO-Nuagaon Ichhapur, Via-Motto, PS – Bansada, Dist- Bhadrak, Odisha, Pin 0 756132.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary-cum-Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110116.
2. Chief Post Master General, Odisha Circle, At/PO-Bhubaneswar, Dist-Khurda, Odisha-751001.
3. The Postmaster General, Sambalpur Region, Sambalpur-768001.
4. The Supdt. Of Post Offices, Bhadrak Division, Bhadrak-7560100.
5. The Senior Supdt. Of Post Offices, Sundargarh Division, Sundargarh-770001.

.....Respondents.

For the applicant : Mr.C.P.Sahani, counsel

For the respondents: Mr.S.Bhera, counsel

Heard & reserved on : 16.7.2019 Order on : 27.8.2019

ORDER

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- "(i) Admit the Original Application, and
- (ii) After hearing the counsels for the parties be further pleased to quash the impugned orders at Annexure A/16 and Annexure A/19 and direct the Departmental respondent(s) to allow the applicant to join his original cadre of Postman in his parent division i.e. Bhadrak Division.

AND/OR

(iii) Pass any other order(s) as the Hon'ble tribunal deem just and proper in the interest of justice."

2. The facts of the case in brief are that the applicant was appointed as a GDSBPM in Bhadrak Division on 28.4.2000 and he was promoted as a Postman in Bhadrak Division vide order dated 21.5.2010. He was confirmed in the cadre of Postman on 29.8.2013. On 24.6.2015, he was declared as suitable for promotion to the cadre of Postal Assistant (Annexure-A/4) and he was

allotted to Sundargarh Division and was posted as a Postal Assistant, Rourkela on 30.7.2015. He joined at Rourkela on 1.8.2015.

3. Thereafter, on 20.11.2015, the applicant represented the authorities to revert him to the Postman cadre and post him as such to Bhadrak Division (Annexure-A/9). His request was accepted and he was reverted to Postman cadre of Bhadrak Division vide order dated 29.2.2016 (Annexure-A/10). Vide order dated 4.3.2016 (Annexure-A/12), the applicant was posted as Postman under Bhadrak Division. Then vide order dated 25.7.2016 (Annexure-A/16), he was posted to Sundargarh and asked to apply for transfer under the rule 38 of the Postal Manual. He was relieved from Bhadrak Division immediately. He submitted a representation dated 26.7.2016 (Annexure-A/18) which was rejected by the respondents vide order dated 27.7.2016 (Annexure-A/19), which has been challenged in this OA.

4. The respondents have filed the Counter without disputing the facts and stating that the applicant was wrongly posted to Bhadrak Division by the respondent no. 5 without obtaining approval of the Respondent No. 2 who was competent to approve the inter-region transfer. On a review it was instructed by the Respondent No. 2 that an official on reversion from the cadre of Postal Assistant, should have been posted in the same Division i.e. Sundargarh and then he should apply for a transfer to Bhadrak Division under the rule 58 of the Postal Manual. It was also observed by the Respondent No. 2 that the applicant's posting at Bhadrak on reversion in Sundargarh Division was irregular. Regarding the personal difficulties of the applicant, it was stated that he took a conscious decision to work in Sundargarh district on promotion. It was further stated that after death of the applicant's wife, he had re-married to another lady who was there to take care of his children. It is averred that the applicant had concealed this fact from the authorities. It is averred that the applicant was re-posted to Sundargarh as per the instruction of the Respondent (Annexure-R/3).

5. The applicant filed the Rejoinder stating that he had specifically requested to return him to his original post of Postman in Bhadrak Division for personal reasons and the respondents had accepted the said request. Hence, the decision to send the applicant to Sundargarh Division and taking a decision on his representation which was not prayed for by him was bad in law. It was further averred that if the respondents did not take the approval of higher authority, the applicant was no way concerned. It is also stated that as per the letter at Annexure-R/3, the observations of the respondent no. 2 was communicated, but no direction was given. Hence, the order of the respondent no. 4 at Annexure-A/16 to transfer him back to Sundargarh was unlawful. It is

further averred in the Rejoinder that the applicant had joined as Postal Assistant in Sundargarh division on probation and his service was not confirmed in Sundargarh division and hence, he was holding lien in the post of Postman in Bhadrak Division in terms of the circular dated 17.8.2016 (Annexure-A/20).

6. Heard learned counsel for both the parties, who reiterated the stand taken in their respective pleadings. The issue to be decided in this case is **whether the order dated 25.7.2016 (Annexure-A/16), passed by the respondent No. 4, posting the applicant back to Sundargarh Division as Postman is legally valid and sustainable**. It is noted that by virtue of the order dated 23.8.2016 passed by this Tribunal, the applicant is continuing in Bhadrak Division.

7. The applicant's contention is that he was posted as Postal Assistant in Sundargarh Division on probation and he was holding lien in his permanent post in Postman cadre of Bhadrak Division and hence, the order of the respondent no. 5 to accept his representation to refuse the promotion and post him back at Bhadrak, vide order dated 29.2.2016 (Annexure-A/10) reverting the applicant from the post of Postal Assistant to Postman in Bhadrak cadre was a correct decision. It was further argued by the applicant that the order dated 25.7.2016 (A/16) passed by the respondent no. 4 to revert him back to Sundargarh as Postman was a wrong and illegal decision since there was no direction of the respondents no. 2 to that effect

8. The respondents have contended that the order dated 29.2.2016 (A/10) reverting the applicant from Postal Assistant to the post of Postman in Bhadrak Division was incorrect as he was not authorized to pass that order and only the respondent no. 2 could have passed that order. It was further submitted that as per the consolidated transfer policy and the rule 38 of the Postal Manual, the applicant should have applied for inter-division transfer which should have been approved by the respondent no. 2. On review of the matter, the respondent no. 2 issued a letter at Annexure-R/3 of the Counter, on which the follow up action was taken by the respondent no. 4 to revert the applicant back to Sundargarh Division. It was also argued on behalf of the respondents that since the order of posting him to Bhadrak Division was incorrect as the approval of the competent authority was not obtained, the OA lacked merit.

9. We have considered the matter with reference to the pleadings on record and do not find any justification to accept the contentions of the respondents in the matter. Assuming the contention that the respondent no. 5 was not authorized to issue the order at Annexure-A/10, to be correct, then the competent authority could have cancelled the order at A/10 after following due procedure of law and giving an opportunity of hearing to the applicant as such

cancellation would have adversely affected the applicant's service conditions. No such action was taken by the respondents and there is nothing on record to show that the order at Annexure-A/10 was not in force when the applicant was posted back to Sundargarh Division vide order dated 25.7.2016 (A/16).

10. Regarding the contention in the Counter about the applicability of the guidelines on inter-region transfer and the rule 38 of the Postal Manual, we are of the view that the issue at hand is not the transfer of the applicant, but his refusal of the promotional post during the probation period and if such request is accepted, then he will have to continue in Bhadrak Division as a Postman which is his parent cadre. Since the applicant was not confirmed as Postal Assistant in Sundargarh Division, it was incorrect to treat him to be borne in the cadre of Postman in Sundargarh division. Once the request of the applicant to refuse the promotional post of Postal Assistant in Sundargarh division is accepted by the respondents, then there was no option but to post the applicant in his parent cadre in which he was confirmed i.e. as a Postman in Bhadrak Division, which was done vide the order at Annexure-A/10 of the respondent no. 5.

11. It is also noticed that the applicant, on promotion as Postal Assistant, was provisionally appointed as PA, Rourkela vide order dated 30.7.2015 (Annexure-A/6). There is nothing on record to show that the applicant was confirmed in the post of PA in Sundargarh Division. Hence, as long as he was not confirmed in Sundargarh, he had a lien on the post of Postman in Bhadrak Division. We are unable to accept the arguments of the respondents that request of the applicant at Annexure- A/9 to revert him to the post of Postman in Bhadrak amounted to inter-region transfer, since it was a case of his opting to go back to his parent cadre after refusing the promotional post to which he was provisionally posted and not confirmed. After approval of such request to go back to his parent cadre, he could not have been posted back to Sundargarh Division, where the applicant never worked as a Postman on regular basis.

12. The order dated 27.7.2016 (A/19) was passed by the respondent no. 4 rejecting the representation of the applicant and no reason has been assigned in the said order except that it was based on the Circle Office letter dated 18.7.2016, a copy of which has been enclosed at Annexure-R/3 of the Counter. This letter dated 18.7.2016 stated as under:-

"Sub: Irregular transfer and relief of Shri Kailash Ch. Dash, PA, Rourkela HO as Postman, Bhadrak Division by SSPOs Sundargarh Division.

Ref: RO, Sambalpur letter No.ST/RO/Misc-SND/2016 dated 22.3.2016.

With reference to the above cited letter, I am directed to intimate that the Competent Authority has examined the case of irregular transfer and relief of

Shri Kailash Ch. Dash, PA, Rourkela HO as Postman, Bhadrak Division by SSPOs Sundargarh Division.

The observation recorded by the said authority is as under :

Rule stipulates reversion in the same Division where he was promoted to Postal Assistant. After reversion he has to work in same Division and apply for Rule-38 transfer."

13. It is seen from the letter dated 18.7.2016 that there was no direction to the respondent no. 4 to post the applicant back to Sundargarh Division. It just contained the observation of the competent authority that after reversion he should have worked in the same division and then he should have applied for Rule-38 transfer. As discussed earlier, reversion of the applicant was on his request to go back to his parent cadre and hence, once the reversion is accepted, he could not have been continued as a Postman at Sundargarh Division, which was not his parent cadre. Moreover, there was no direction to the respondent No. 4 to issue the order dated 25.7.2016 posting the applicant back to Sundargarh Division as a Postman and hence, this order was beyond the jurisdiction of the respondent No.4. Further, the applicant cannot be treated as a permanent employee of Sundargarh Division after his reversion. Hence, the answer to the question/issue framed in para 6 is 'No'.

14. In view of the facts and circumstances as discussed above, we allow the OA and quash the order dated 25.7.2016 (Annexure-A/16) and the order dated 27.7.2016 (Annexure-A/19) and direct the respondents to treat the applicant as a Postman of Bhadrak Division who is confirmed as a Postman in the said Division and allow the consequential service benefits as per law. There will be no order as to cost.

(SWARUP KUMAR MISHRA)

MEMBER (J)

(GOKUL CHANDRA PATI)

MEMBER (A)

I.Nath