

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00486/2020

Monday, this the 15th day of March 2021

C O R A M :

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

C.Rajalakshmi,
Aged 57,
W/o.S.Mohan,
Vagavurrai Colony,
Talliar Post, Idukki District – 685 614.
Now working as Sub Post Master (SPM),
Surianelle, Idukki – 685 618.

...Applicant

(By Advocate M/s.R.Sreeraj & Mr.K.K.Akhil)

v e r s u s

1. The Chief Post Master,
Kerala Circle, Thiruvananthapuram – 695 001.

2. The Superintendent of Post Offices,
Idukki Division, Thodupuzha – 685 584. **...Respondents**

(By Advocate Mr.C.Rajendran, SCGSC)

This application having been heard on 2nd March 2021, the Tribunal on 15th March 2021 delivered the following :

O R D E R

Per : Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER

The applicant has filed the O.A seeking to set aside Annexure A-7 order issued by the 2nd respondent (Superintendent of Post Offices, Idukki Division) by which she has been relieved from the post of Sub Post Master

(SPM) Surianelle and directed to join as Postal Assistant (PA) Kattappana H.O until further orders. She is also seeking a posting pursuant to Annexure A-1 order at Chithirapuram or Munnar or at Devikulam.

2. The applicant was working as SPM in Surianelle in the Idukki District and vide the Memo issued by the Chief Post Master General (CPMG) (1st respondent), Kerala Circle, Thiruvananthapuram (at Annexure A-1) dated 21.01.2020 she was promoted to the cadre of LSG General Line in the Pay Matrix Level 5 under cadre restructuring and allotted to the Idukki Division. It appears, further, that the 2nd respondent issued a letter (produced at Annexure A-2 and repeated by the respondents in their reply at Annexure R-2) in pursuance to Annexure A-1 memo (also repeated by the respondents in full at Annexure R-1) requesting the officials allotted to the Idukki division to give at least three options for posting, according to their choices, so as to reach him on or before 28.01.2020. It has been recorded in the Annexure A-2/Annexure R-2 letter that posting in respect of the individual offices would be made strictly according to seniority and options exercised by the respective officials and relevant rulings in this regard. It has also been indicated that if no request was received by 28.01.2020 it will be presumed that the officials have no choice to make. The Annexure to the letter shows a list of posts in the district upgraded to LSG. In response to the letter, the applicant gave a request dated 24.01.2020 (produced at Annexure R-3) whereby she

requested transfer as SPM Maraiyur. If this was not possible, her next choice was PA Munnar and, in case, that is not possible, either at Chithirapuram or Devikulam.

3. The respondents in their reply statement have indicated that the applicant was allotted to the LSG post of SPM, Devikulam taking into consideration the three options exercised by her. Accordingly, orders were issued by which the applicant was to be transferred from the post of SPM, Surianelle Sub Office to SPM Devikulam Sub Office vide the memo (produced at Annexure R-4) dated 15.07.2020. This memo has also been produced by the applicant at Annexure A-3. The respondents, however, have drawn specific attention to the fact that it was clearly mentioned in the Annexure R-4 memo that the relieving order would be issued separately in respect of the officials at Sl.Nos.10, 15 and 24 of the memo. The applicant appears at Sl.No.10 of Annexure R-4 memo (Annexure A-3). As there were disciplinary proceedings existing against the applicant, it is submitted by the respondents that a separate relieving order for the applicant was issued on 24.07.2020. This was also done in compliance to the order contained in para 2 of Annexure R-1. A copy of this relieving order has been produced at Annexure R-5 (produced by the applicant as the Annexure A-7, impugned order) by which, the applicant was relieved from the post of SPM, Surianelle Sub Office and directed to join at Kattappana H.O as PA when the incumbent Shri.K.Rajan joins the post of SPM, Surianelle. The

respondents submit that this Annexure R-5 memo was sent as an e-mail on 24.07.2020 ie., on the date of issue itself to the SPM, Surianelle, when the applicant was still incharge at Surianelle Sub Office. The applicant was relieved from the post of SPM, Surianelle Sub Office on the next date on 25.07.2020 afternoon and Shri.K.Rajan assumed the charge as SPM, Surianelle.

4. The applicant has a different take on the sequence of events. The applicant claims in her O.A that she was relieved from Surianelle on 25.07.2020 after handing over charge to the incumbent Shri.K.Rajan. But she was not aware at that time about the modification in the order now produced by her at Annexure A-7 and by the respondents at Annexure R-5. She claims that she was under the impression that the order at Annexure A-3 (repeated at Annexure R-4) dated 15.07.2020 by which she was transferred from Surianelle to Devikulam was the operative order in her case. Accordingly, she went to the Devikulam Office on 27.07.2020 morning to take charge there. However, she found that the incumbent therein, Smt.S.Subbulakshmi, was not relieved and thus she could not assume the charge. She submits that, by another order, the said Smt.S.Subbulakshmi had been transferred to Munnar. However, the applicant was not allowed to assume charge. She then submitted a letter to the 1st respondent through SPM, Surianelle on the same date, 27.07.2020 produced at Annexure A-5. Her claim is that she was not aware of the Annexure A-7 (Annexure R-5)

letter issued by the 2nd respondent. Since she was not allowed to join at Devikulam, she then approached this Tribunal by filing O.A.No.358/2020. It was while this O.A was being considered by the Tribunal that she learnt that there was another order issued, transferring her to Kattappana and keeping her transfer to Devikulam in abeyance. The order was produced in that O.A by the learned standing counsel for the respondents in a statement that was filed on behalf of the respondents. Therefore, she prayed for withdrawal of the O.A with permission to file a fresh O.A. This was permitted by the Tribunal vide its order dated 08.09.2020 produced at Annexure A-6. Her submission is that she has never been served with the order transferring her to Kattappana. It was only from the statement filed in the O.A that she came to know about her transfer and posting to Kattappana (Annexure A-7/Annexure R-5). She submits that the post to which she is now transferred (Kattappana) as PA is not a LSG post. In effect, it means that the promotion granted by the 1st respondent vide Annexure A-1 is withheld.

5. The respondents have clarified that even though Smt.S.Subbulakshmi, SPM Devikulam was transferred as PA Munnar vide another order dated 15.07.2020, she was not relieved because the 2nd respondent had issued the Annexure R-5 letter in respect of the applicant. They reiterate that the relieving order was issued on 24.07.2020 vide Annexure R-5 and the same was sent as email to the SPM, Surianelle on the same date. The applicant

was incharge of Surianelle on that date ie. 24.07.2020. Hence, she cannot claim ignorance regarding the Annexure R-5 letter. The applicant should have immediately contacted the office of the 2nd respondent, who is her boss in the Division, in case of any difficulty in her official matters. Instead of that she kept on reiterating that the copy of the order directing her to join the post of PA Kattappana was not received by her. She has forwarded a leave application for the period from 21.08.2020 to 05.09.2020. This was not granted by the 2nd respondent and she was directed to join duty forthwith, through a letter dated 20.08.2020 sent to her under registered letter with acknowledgment due, produced at Annexure R-6. However, this letter was not accepted by her and was returned as unclaimed. It was then sought to serve the said letter to her through Inspector Posts, Munnar Sub Division. But that also was not accepted by her, even though she was available at her residence (as per the report of the Inspector Posts, Munnar at Annexure R-8). Again, another letter was sent to her vide Annexure R-9, which was also returned unclaimed. It is submitted by the respondents that all this amounts to a clear case of evading acceptance of orders of transfer on the part of the applicant and also not obeying the orders of the 2nd respondent.

6. We observe the reasons for this somewhat unusual back and forth between the Superintendent of Post Offices, Idukki Division (2nd respondent) and the applicant are not fully explained by either party.

It appears that the main promotion order to the LSG General Line at Annexure R-1 (also shown partly at Annexure A-1) was kept in abeyance after its issue on 21.01.2020, due to an interim stay in another case before the Tribunal. However, the interim stay of the Tribunal was then vacated and the 1st respondent issued a letter dated 03.07.2020 (produced at Annexure R-11) for implementation of the orders issued on 21.01.2020. It appears from this letter at Annexure R-11 that this Tribunal vide common order dated 30.06.2020 in M.As filed in O.A.Nos.76/2020, 44/2020 and 99/2020 vacated the interim stay. The same letter also directs the heads of the Postal Divisions to accordingly implement the order of promotion to LSG General Line issued vide the memos under reference 1 & 2. It also states that any fixation of seniority of applicants made after filing of these O.As will be subject to their outcome. Thus, it is only after 03.07.2020 (date of Annexure R-11 letter) that the promotion orders issued on 21.01.2020 (Annexure R-1/Annexure A-1) could be taken up for implementation. However, by that time the 2nd respondent had initiated disciplinary action (vide Annexure A-8) memo on 23.06.2020 against the applicant. The respondents draw attention to the fact that the Annexure R-1 memo dated 21.01.2020 at para 2 had the following directions :

"2. If any vigilance/disciplinary case is pending against the above officials, they should not be relieved for posting without obtaining specific orders from this office. If any punishment is current in respect of the above officials, they should not be promoted before the expiry of the currency of punishment."

7. Thus, in essence, it is submitted by the respondents that by the time Annexure R-11 memo dated 03.07.2020 came out through which orders were issued that the promotions allowed vide Annexure R-1 may be carried out, disciplinary action against the applicant had already been initiated (on 23.06.2020). Thus it was in these circumstances that the Annexure R-4/Annexure A-3 memo was issued, having specific clause that the relieving order with reference to the applicant will be issued separately. Annexure R-5 relieving order was then issued on 24.07.2020. Thus, there was neither inaction or ulterior motive on the part of the respondents as claimed by the applicant. The disciplinary action against her was initiated on clear grounds of lapses on her part. It is submitted that the applicant has approached this Tribunal prematurely, without exhausting official channels to redress her grievances. She has not obeyed the orders of the competent authorities and has approached this Tribunal without complying with orders. Further, it is submitted that the transfer of an official is part of his service and transfers are made according to the administrative exigencies. Transfer orders cannot be termed as malafide. The applicant is not justified in defying the transfer order, levelling allegations against her superiors and also remaining unauthorisedly absent from official duties. The respondents

have, therefore, submitted that in view of the facts and circumstances the contentions of the applicant are baseless. The applicant is not accepting communications sent to her by the department and disobeying the orders of the competent authorities. It is submitted that the Tribunal may be pleased to dismiss the O.A as being devoid of merits.

8. On the other hand and in contradiction, it is submitted by the applicant that she is on leave at present. She was never given the order transferring her to Kattappana. She only came to know about it through the statement of the learned counsel for the respondents in O.A.No.358/2020. Most importantly the post to which she is transferred at Kattappana as Postal Assistant is not an LSG post. As such, it means the promotion granted by the 1st respondent vide Annexure A-1 has been withheld. The instructions in Annexure A-1 about action to be taken in case any vigilance case is pending along with non relief for posting, etc. are applicable to cases which were prevailing on 21.01.2020, the date on which Annexure A-1/Annexure R-1 was issued. It is to be seen that the alleged disciplinary action against the applicant was initiated only on 23.06.2020. Thus, the withholding of her promotion by issuing an order on 24.07.2020 vide the impugned order Annexure A-7/Annexure R-5 is legally unsustainable. This letter has been issued with malafide and ulterior motives only to deny promotion which is unjust, unfair, arbitrary and illegal.

9. Shri.R.Sreeraj, learned counsel appeared for the applicant. The respondents were represented by Shri.C.Rajendran, SCGSC. Learned counsel for the applicant made an additional point during final hearing that it is a settled legal position as per a catena of decisions as well as recognized through instructions issued by the Government that vigilance/disciplinary case can be said to be pending or existing against an official, only when a formal charge sheet has been issued. This position has evolved from the important judgments in various cases. The Government has also passed orders clarifying this position. Counsel's submission is that as on 21.02.2020 ie. the date of issue of the promotion order of the applicant and others in the cadre of PA in Post Offices to the cadre of LSG General Line in Pay Matrix Level 5 and allotting the applicant to Idukki Division, no such vigilance issue/disciplinary case was pending against her. Hence, her posting by Annexure R-5/Annexure A-7 keeping her at the same level as PA at Kattappana is illegal because the disciplinary case was initiated as per Annexure A-8 show cause notice only on 23.06.2020. Even as on that date, Annexure A-8 was only a "show cause notice" to which the applicant has given a reply vide Annexure A-9 dated 08.07.2020. The respondents have not indicated in their reply as to whether and when a charge sheet in this particular case has been issued against the applicant. Thus, the Annexure A-7 order (also produced as Annexure R-5) dated 24.07.2020 interfering with her promotion and posting appears to be not in order taking into account the settled position as per judgments of the Hon'ble Apex Court as

well as Government Instructions. It is submitted that Annexure R-4 memo which was issued 15.07.2020 posting the applicant as SPM, Devikulam was rightly issued. However, indicating that the relieving order would be issued separately in respect of her and also indicating that the official would be relieved to assume charge to the promoted post on or before 31.07.2020 only, if no vigilance or disciplinary cases are pending or contemplated is beyond the scope of the powers of the 2nd respondent, the Superintendent of Post Offices, Idukki Division and is not acceptable in this light.

10. We have given our consideration to all the above aspects. It is not yet clear from documents provided whether a charge sheet in follow up of the show cause notice at Annexure A-8 has since been issued on the applicant and, if so, what was the date of such issue. We also note that while the Superintendent of Post Offices, Idukki Division has apparently the authority to decide where the applicant can be posted within the Division, it is not clear as to whether he is fully authorised to change the posting from an LSG level post of SPM, Devikulam to PA, Kattappana, which apparently is not an LSG level post as submitted by the applicant. It appears on the face of information provided to us that the promotion, which was granted vide Annexure R-1 dated 21.01.2020 to the applicant to the LSG General Line cadre has, therefore, been interfered with by the 2nd respondent. The same order of 21.01.2020 also has the provision that the officials are not to be relieved for posting without obtaining specific orders from the office of the

1st respondent (CPMG, Kerala) in case any vigilance or disciplinary case is pending. The ground taken by the 2nd respondent is that a vigilance/disciplinary case was pending against the applicant necessitating her posting at Kattappana instead of Devikulam though we note that it was started much later. However, no information relating to whether any specific orders were taken in accordance with these instructions from 1st respondent has been provided.

11. In short, therefore, Respondents do not appear to have produced sufficient documents fully satisfying us that the transfer made in the case of the applicant has been done as per the proper procedure/rules and as per instructions. We are also not going into whether, for example, promotion issued by a higher authority (the CPMG) can be apparently interfered with by a lower authority such as the Superintendent of Post Offices, Idukki. However, we are also conscious that there have been various higher court judgments cautioning the Tribunals from interfering in areas, such as transfers, which is a condition of service unless a clear malafide or illegality has been established. We are not passing any orders staying Annexure A-7/Annexure R-5. We, feel that ends of justice will be met in the case by directing that the 1st respondent, CPMG, may consider this matter in its entirety in the light of the above details. He will take a final decision relating to promotion/posting of the applicant. We direct that the decision so taken will be in the light of the rules/instructions as are

applicable in such cases. Whether a proper action has been taken in the case by the 2nd respondent, the Superintendent of Post Offices, Idukki Division should be decided by the 1st respondent, CPMG. Further, how the period from the date the applicant has handed over the charge as SPM, Surianelle till the date she joins at whatever new post is finalised is to be treated will need to be decided by the 1st respondent. This exercise shall be completed within a period of two month from the date of issue of this order.

12. With these directions, the O.A is disposed of. There shall be no order as to costs.

(Dated this the 15th day of March 2021)

K.V.EAPEN
ADMINISTRATIVE MEMBER

P.MADHAVAN
JUDICIAL MEMBER

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List of Annexures in O.A.No.180/00486/2020

1. **Annexure A-1** – A copy of the relevant pages of Memo No.ST/5-2/Cadre rest/2019 I dated 21.01.2020 issued by the 1st respondent.
2. **Annexure A-2** – A copy of the Order No.B1/Cadre Restructuring/Dlg dated 23.01.2020 at Thodupuzha issued by the 2nd respondent.
3. **Annexure A-3** – A copy of the Order No.B1/Cadre Restructuring/Dlg dated 15.07.2020 issued by the 2nd respondent.
4. **Annexure A-4** – A copy of the Charge Report.
5. **Annexure A-5** – A copy of the letter dated 27.07.2020 submitted by the applicant to the 2nd respondent.
6. **Annexure A-6** – A copy of the order dated 08.09.2020 in O.A.No.358/2020 of this Hon'ble Tribunal.
7. **Annexure A-7** – A copy of the Office Memo No.B1/Cadre Restructuring/Dlg dated 24.07.2020 issued by the 2nd respondent.
8. **Annexure A-8** – A copy of the show cause notice Memo No.F/VIG/Sqd/Dlg along with statement of imputation dated 23.06.2020 issued by the 2nd respondent.
9. **Annexure A-9** – A copy of the reply submitted to the show cause notice by the applicant on 08.07.2020.
10. **Annexure R-1** – A copy of the CPMG Office Memo No.ST/5-2/Cadre Rest/2019 I dated 21.01.2020.
11. **Annexure R-2** – A copy of the Order bearing No.B!/Cadre Restructuring/Dlg dated 23.01.2020.
12. **Annexure R-3** – A copy of the options given by the applicant vide letter dated 24.01.2020.
13. **Annexure R-4** – A copy of the Memo No.B1/Cadre Restructuring/Dlg(1) dated 15.07.2020.
14. **Annexure R-5** – A copy of the Memo No.B1/Cadre Restructuring/Dlg dated 24.07.2020.

- 15. Annexure R-6** – A copy of the cover sent by Supdt. of Post, Idukki Division addressed to Smt.C.Rajalakshmi under registered letter No.RL 560122773IN dated 20.08.2020 with acknowledgement due.
- 16. Annexure R-7** – A copy of the letter B/552/II dated 20.08.2020 enclosed in Annexure R6 cover.
- 17. Annexure R-8** – A copy of the report of Inspector Posts, Munnar.
- 18. Annexure R-9** – A copy of the cover sent by Supdt. of Post, Idukki Division addressed to Smt.C.Rajalakshmi under registered letter No.RL604570857IN dated 22.09.2020 with acknowledgement due.
- 19. Annexure R-10** – A copy of the Letter No.B/552/II dated 22.09.2020 enclosed in Annexure R-9 cover.
- 20. Annexure R-11** – A copy of the Memo No.ST/5-2/Cadre Rest/2019 dated 03.07.2020.
