

**Central Administrative Tribunal
Ernakulam Bench**

OA 180/00488/2020

Monday, this the 7th day of December, 2020

CORAM

Hon'ble Mr.P.Madhavan, Judicial Member

Hon'ble Mr.K.V.Eapen, Administrative Member

P.K Sadanandan, aged 59 years,

S/o M.P. Narayanan Nambiar,
Lower Selection Grade (LSG),
Postal Assistant, Kannur HPO,
Kannur - 670 001.

Residing at Sruthi Laya, Cheleri P.O.,
Kannur- 670 604.

Mob: 9495907977.

Applicant

(Advocate: Mr. Millu Dandapani)

versus

1. Post Master General,
Northern Region,
Calicut - 673 011.

2. Superintendent of Post Offices,
Kannur Division,
Kannur - 670 001.

Respondents

(Advocate: Mr.Thomas Mathew Nellimoottil, Sr.PCGC)

The OA having been heard on 2nd December, 2020, this Tribunal delivered the following order on 7.12.2020:

ORDER

By P.Madhavan, Judicial Member

This is an OA filed seeking the following reliefs:

(i) *Set aside Annexure A8 and A9 orders dated 8.10.2020 and 12.10.2020 passed by the 1st respondent, posting the applicant at Varam.*

(ii) *Direct the 1st and 2nd respondents to retain the applicant as LSG Postal Assistant at Kannur Postal Division itself dehors Annexure A8 order of transfer and Annexure A9 consequential order.*

2. The applicant is challenging Annexure A8 transfer order and Annexure A9 relieving order issued by the respondents on 8.10.2020 and 12.10.2020 respectively. According to the applicant, he is presently working as Lower Selection Grade (LSG) Postal Assistant in Kannur Postal Division and respondents transferred him as LSG Sub Post Master (SPM) to Varam Post Office and was ordered to be relieved on 12.10.2020 as per Annexure A9. According to the applicant, the above A8 and A9 orders are illegal and violative of the transfer guidelines issued by the Department. The applicant is a handicapped person with 45% disability and he has produced Annexure A1 certificate showing his disability and according to him, he is granted traveling allowance on the basis of the disability. He has also produced a copy of the Office Memorandum dated 3.12.1979 granting conveyance allowance for handicapped persons. The applicant has also produced the latest transfer guidelines issued by the DoPT dated 31.3.2014 wherein it is clearly stated that persons with disability may be exempted from rotational transfer and be allowed to continue in the same job where they would have achieved the desired performance. Further, preference in place of posting at the time of transfer/promotion may be given to the persons with disability subject to the administrative constraints. The applicant mainly relies on the latest guidelines issued by the Ministry of Communications, Department of Posts, dated 17.1.2019 which is produced as Annexure A10. As per Conditions 5 (xi) "*Officials, other than Sub Post Master/Postal Assistants in a single handed or double handed Post Office, who are due for retirement within one year shall not be transferred, unless otherwise specially specified or there are very special reasons to be recorded in writing by the Head of the Circle. Further, official due for retirement within two years shall not be posted as Sub Postmaster/Postal Assistants in a single handed or double handed Post Office*". According to applicant, he has only a few months left

for retirement and it is highly illegal to transfer him to Varam which is a long distance away. The applicant has also sought for an interim relief of staying the transfer order and permitting him to continue as LSG at Kannur during the pendency of the OA.

3. Notices were issued to the respondents and the respondents filed a reply statement. They completely denied the allegations against them and submitted that the transfer was occasioned due to some misconduct committed by the applicant in this case. According to them, the applicant had issued an irregular appointment order and appointed a Sweeper as per Annexure R1 order, instead of going for appointment of a regular Sweeper through due process. He issued an appointment order without following the regular procedure and in contravention of the letter of the Director General of Posts, No.4-4/2009-PCC dated 29.10.2010 prohibiting the engagement of casual labourers. It was also found that the person appointed was a close relative of the applicant, which is clearly a violation of CCS Conduct Rules. When the irregularity came to the notice of the Divisional Head., inquiry was conducted through ASP, Kannur Sub Division. Thereafter, direction was issued to the 2nd respondent to immediately terminate the irregular appointment made by the applicant who was the Post Master of Kannur Head Post Office. The retention of the official in the same post office may result in chances of hampering/manipulation of records connected with the case of appointment of Sweeper at Kannur HO and it was in that administrative exigency that the transfer order was issued. It was also stated that the Varam post office is just 7 km away from the residence of the applicant (Cheleri) and the office where he was working is about 14.5 km away from the residence of the applicant. It is completely wrong to say that the applicant has to travel 40 kms. up and down per day. Immunity from transfer to persons who are going to retire is available only for tenure transfer and

not for transfer on administrative grounds. So the applicant is not entitled to any relief as prayed for. The allegations made against the applicant were placed before the Disciplinary Authority and the said authority had taken a decision to conduct an inquiry under Rule 14 of the CCS (CCA) Rules. They have also produced a sealed cover with details of the correspondence of the Disciplinary Authority. According to them, the applicant has approached the Court with unclean hands and he has suppressed most of the vital facts from the Tribunal. This is a gross misuse of the due process of law.

4. The applicant has filed a rejoinder and the counsel for the respondents has filed an additional reply statement.

5. On going through the pleadings and various documents produced in this case, it can be seen that the main contention of the applicant herein is that he is a man going to retire by May 2021 and his transfer to Varam Post Office, which is a long distance away from his residence, is highly illegal and is against the provisions of the transfer guidelines issued by the Department. It was also contended that the applicant is a physically handicapped person and he is protected under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD Act for short). According to the applicant, the irregular appointment alleged in this case was immediately terminated and no loss was caused to the government on this account. He has challenged the disciplinary proceedings initiated against him in a separate OA. The counsel for the applicant mainly relies on the decision of the Hon'ble High Court of Kerala in OP (CAT) No.147/2020. It was argued that in view of the special provision regarding the differently abled persons on rotational transfer, they should not be transferred without sufficient reasons or administrative exigency and the respondents are bound to record the specific reasons for transfer. The Hon'ble High Court has

upheld the decision of the CAT quashing the order of transfer in OA No.601/2019.

6. We have heard senior counsel Smt.Sumathi Dandapani for the applicant and the Sr.PCGC appearing for the respondents Sri Thomas Mathew Nellimoottil.,

7. On a perusal of the pleadings in the OA, it appears that the applicant is transferred to Varam post office as per Annexure A8 order and he was also ordered to be relieved as per Annexure A9 order which is dated 12.10.2020. The applicant's contention is that he is a psychically handicapped person having 45% disability and he is drawing permanent conveyance allowance from the Department. He has produced Annexure A1 for showing his disability. The respondents have not seriously challenged the disability certificate produced and they have also not disputed the fact that the applicant is a disabled person. The applicant mainly relies on the guidelines issued by the respondents regarding the transfer of PWD persons. As per Annexure 10 Transfer Guidelines, Sub Clause 5 (xi), "*Officials, other than Sub Post Master/Postal Assistants in a single handed or double handed Post Office, who are due for retirement within one year shall not be transferred, unless otherwise specially specified or there are very special reasons to be recorded in writing by the Head of the Circle. Further, official due for retirement within two years shall not be posted as Sub Postmaster/Postal Assistants in a single handed or double handed Post Office*". Applicant in this case is both handicapped and going to retire from service in May 2021. He also relies upon Annexure A6 Condition (H) regarding transfer and posting of disabled persons, which reads as follows:

“Preference in transfer/posting

As far as possible, the persons with disabilities may be exempted from the rotational transfer policy/transfer and be allowed to continue in the same job, where they would have achieved the desired performance. Further, preference in place of posting at the time of transfer/promotion may be given to the persons with disability subject to the administrative constraints.”

8. So, the counsel for the applicant submitted that the applicant has to be protected from unnecessary transfer as he is on the verge of retirement. There is no specific reason mentioned in the transfer order. According to the applicant, being a handicapped person, he is also protected from transfer without any reason. But the counsel for the respondents contended that there has taken place a misconduct on the part of the applicant and they are proceeding against him by an inquiry under Rule 14 of the CCS (CCA) Rules. According to them, he was transferred to a nearby post office at Varam, protecting the interests of the applicant and also protecting the public interests. It was necessary because there are chances of tampering the records if he is permitted to continue at Kannur post office where he was working, which is more than 14 kms. away from his residence. The Department had carefully considered his disability and posted him to a nearby place i.e., Varam post office which is only 7 kms. away from his residence.

9. On an appreciation of the rival contentions, we find that even though there is a protection given to PWD persons from rotational transfer, it is conditional and such transfers are permissible on the basis of specific reasons to be recorded. As regards transfer on the verge of retirement also, it is not a hard and fast rule and the Department is entitled to transfer a person on the basis of administrative constraints and necessity. The respondents have placed before this Tribunal the specific reasons which prompted the respondents to order the transfer in this case. The applicant had attempted to appoint a very close relative in the post office by adopting an irregular procedure. This was detected by the higher authorities and disciplinary action is being taken against the applicant. The applicant was transferred from Kannur in order to avoid any tampering with records or evidence in the inquiry. We have gone through the various Office Memorandums issued by the Department regarding transfer of persons who are on the verge of retirement and who are physically

handicapped and we have found that ordinarily a person is protected from periodical transfer if he is on the verge of retirement. Similarly, if a person is handicapped, he is also protected from periodical transfer on the basis of PWD Act. But that does not mean that he is completely immune from transfer which is necessitated by administrative constraints and necessity. We could not find any malafides or impropriety or inimical action on the part of the respondents in the transfer. The respondents have clearly and satisfactorily explained the circumstances in which the transfer was necessitated. They have also taken care of the difficulties of the applicant and they have given a very nearby posting which is around 6 kms away from the applicant's residence. The counsel for the applicant also did not dispute the fact that the present posting is very near to the house of the applicant. His earlier posting was 12 kms away from his house. So, in that respect they have taken care of the difficulties of the applicant due to his disability and had given a favourable transfer to him. In view of the above circumstances, we find no merit in the contention raised by the applicant in this case. In the decision produced as OP (CAT) 147/2020 Chief Post Master General vs. Rajesh K.R., the Hon'ble High Court has clearly stated that differently able persons are protected from transfer unless it is necessitated by administrative exigency. So, even according to the High Court, differently abled persons can be transferred on grounds of administrative exigency. In the above case, there was no explanation offered by the respondents and the order of transfer was quashed by the High Court. But in this case, the respondents have clearly explained the circumstances in which the transfer had to be effected and specific reasons are stated before the Tribunal in the reply statement. We also see that even though the applicant was aware of all these allegations against him, he did not place them before the Tribunal when he sought a stay of the transfer ordered as A8 and A9. So, we find that the applicant has not

succeeded in showing that A8 and A9 transfer orders are illegal. The OA is devoid of merit and accordingly it is dismissed. No order as to costs,

(K.V.Eapen)
Administrative Member

(P.Madhavan)
Judicial Member

aa.

Annexures filed by the applicant:

Annexure A1: A true copy of the Concession certificate dated 27.09.2007 issued by the Government Doctor.

Annexure A2: A true copy of the O.M No.19029/1/78-BIV(B) dated 31.08.1978 issued by the Ministry of Finance, Department of Expenditure.

Annexure A3: A true copy of the O.M No. 19029/1/78-BIV dated 3.12.1979 issued by Ministry of Finance, Department of Expenditure.

Annexure A4: A true copy of the Memo dated 16.05.1985 issued by Posts, Government of India.

Annexure A5: A true copy of the pay slip for the month of August and September, 2020 issued by the Department of Posts.

Annexure A6: True copy of the O.M.No.36035/3/2013 dated 31.3.2014 issued by Government of India, Dept, of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions.

Annexure A7: True copy of the Annual Performance Assessment Report (APAR) dated 21.7.2020.

Annexure A8: True copy of the 1st order dated 8.10.2020 issued by the 1st respondent.

Annexure A9: True copy of the consequential order dated 12.10.2020 issued by the 2nd respondent.

Annexure A10: True copy of the Circular No . F.No.141-141/2013-SPB-II dated 17.1.2019 issued by the Government of India. Ministry of Communications, Dept. of Posts, Personnel Division.

Annexure A11: True copy of the prescription issued in the year 2016, 17, 18 by Dr. Ramash and his wife Shinu Ramash (Psychiatrist) at Calicut.

Annexure A12: True copy of the prescription dated 27.06.2020 by Dr. Sivaramakrishnan, MD, Consultant Psychiatrist.

Annexure A13: True copy of the OM No.11013/9/2014-Estt.A.III dated 07.10.2020 issued and issued by the Ministry of Personnel, Public Grievance and Pensions (Dept. of Personnel and Training).

Annexure A14: True copy of the statement along with photograph of Rejini K.K. dated 27.12.2018 along with English translation.

Annexure A15: True copy of the Order Book dated 28.12.2018 at Kannur HPO.

Annexure A16: True copy of I.A. 1362/2020 in O.S. 242/2020 on the file of Munsiff Court, Kannur.

Annexure A17: True copy of the Injunction Order in O.S. 242/2020 on the the file of Munsiff Court, Kannur.

Annexure A18: True copy of the letter dated 15.09.2020.

Annexures filed by the respondents:

Annexure R1: True copy of the notification for appointment issued by Postmaster, Kannur HO dt. 10.08.20.

Annexure R2: True copy of the appointment order issued by Postmaster, Kannur HO dt.26.08.20.

Annexure R3: True copy of DG post letter No.4-4/2009-PCC dated 29.10.2010.

Annexure R4: True copy of the termination order issued by Postmaster, Kannur HO dt.09.09.20.

Annexure R5: True copy of email.

Annexure R6: True copy of report dated 7.9.2020.