

Central Administrative Tribunal
Ernakulam Bench

O.A No.180/00261/2021

Monday, this the 20th day of September, 2021

CORAM:

Hon'ble Mr. P.Madhavan, Judicial Member
Hon'ble Mr.K.V.Eapen, Administrative Member

Manikuttan.S, aged 51 years,
S/o. Stephenson, Multi Tasking Staff (MTS),
Trivandrum South Postal Division,
Poojappura H.P.O., Thiruvananthapuram,
Residing at Medayil, T.C. 11/243, Pananvila,
Nalanchira P.O., Thiruvananthapuram – 695015 - Applicant

(By Advocate: Mr.Ayyappan Sankar)

Versus

1. The Chief Post Master General,
Kerala Circle, Office of the Chief Post Master General,
Vikas Bhavan. P.O.,
Thiruvananthapuram – 695033.
2. The Director of Postal Services (HQ),
Office of the Chief Post Master General,
Kerala Circle, Vikas Bhavan P.O.,
Thiruvananthapuram – 695033.
3. Assistant Director (W&S),
Office of the Chief Post Master General,
Kerala Circle, Vikas Bhavan P.O.,
Thiruvananthapuram – 695033.
4. The Superintendent of Post Offices,
Department of Posts, Thiruvananthapuram South Division,
Office of the Superintendent of Post Offices,
Thiruvananthapuram (South) Division, Fort P.O.
Thiruvananthapuram – 695023.
5. Post Master,
Poojappura Head Post Office,
Poojappura P.O., Thiruvananthapuram – 695012.

Respondents

(By Advocate: Mr.N.Anilkumar,SCGSC)

The O.A having been heard on 16th September, 2021 through video conferencing, this Tribunal delivered the following order on 20.09.2021:

ORDER

P.Madhavan, Judicial Member

This Original Application has been filed by the applicant seeking the following reliefs:

“(i) Call for an examine the records of proceedings of the 2nd respondent culminating in Annexure-A9 Order confirming Annexure-A6 punitive transfer order and set aside Annexure-A9 and A6, to the extent it operates as against the Applicant;

(ii) Issue appropriate orders commanding Respondents 2,4 and 5 to refrain from enforcing Annexure-A9 and A6 transfer orders as against the Applicant pending approval by the 1st respondent as per the specific stipulations in Annexure-A10 and A11 interdicting transfers of all kinds during the Covid-19 pandemic situation;

(iii) Issue such other directions or orders as this Hon'ble Tribunal deems fit and proper to be granted in the interests of justice and the circumstances of the case..”

2. The applicant's case in brief is that the applicant has been transferred to a nearby Post Office at Manacua Sub Post Office in Trivandrum District from Poojappura Head Post Office, as per order dated 5.4.2021 (Annexure A-6) and according to the applicant, the said transfer is made as a punishment and it is highly illegal and arbitrary.

3. The applicant joined the Postal service as an Extra Departmental Staff, in Sports Quota, in the year 1989. He was promoted to the post of Multi Tasking Staff (M.T.S) with effect from 1.1.1991. The applicant is presently working at Poojappura Head Post Office in Trivandrum District. As per the impugned order at Annexure A-6, he was transferred to Manacua P.O. According to the applicant, the above transfer order is a punishment since

the respondents had alleged insubordination and other charges. The applicant is a sports man having participated in various competitions and had won medals in the 'All India Postal Cycling Meets' during the years 1989 to 2019. He was a winner of 'Best Cyclist' award and 'All Indian Champion' Award to his credit. The respondents had also granted permission for two hours cycling practice every day. The said order was passed in the year 1992 (Annexure A-1) and it was being extended till date. Since he wants to have hectic practice for the coming annual sports for the year 2021 scheduled to be conducted in the month of November 2021 in Uttar Pradesh, he wants to have daily practice.

4. The applicant is accordingly attending duty after 11 a.m everyday, after completing cycling practice. Now the applicant is constrained to attend duty without wearing uniform due to lack of the facility of dressing room in the office. Even though the respondents are aware of the same, the Postmaster took an adamant view that the applicant should wear uniform even though there is no facility provided for the same. The applicant continued to do duty without any fail even though he could not wear the uniform. The 5th respondent had given a complaint to the 4th respondent and the 4th respondent had asked to explain the circumstances by which he disobeyed the orders of the Postmaster. The show-cause notice is produced as Annexure A-3. The applicant had submitted a detailed explanation pointing out the lack of facility for changing dress during office hours and hence he is unable to change the dress during office hours. There are lot of female staff present in the office and it will not be proper to change the dress in office. Eventhough he has given an explanation to 4th respondent, the Superintendent of Post Offices had issued a direction to him that he should obey the directions of the 5th respondent. (According to the 5th respondent, a room is arranged behind the annex building for changing dress. Owing to the non-obedience of the orders of the Postmaster, respondent no.4 had issued an order to transfer the applicant to Manacwad Sub P.O as a punishment. The transfer order is produced as Annexure A-6.)

5. The applicant again submitted a detailed representation to respondent no.2 seeking

urgent interference and remedial action. The said representation was considered by the 2nd respondent upon the orders of the Hon'ble High Court in WP(C) No.10526/2021. The direction of the Hon'ble High Court is produced as Annexure A-8. Respondent no.2 had rejected the representation as untenable as per Annexure A-9 communication. Now the respondents are hastily taking steps to relieve him from the present office at Poojappura Head Post Office for joining at Manacudad P.O. The Government of India had issued orders interdicting transfers of all kinds in the light of the surge in Covid 19 pandemic situation. Copy of the same is produced as Annexure A-11 by the applicant. According to the applicant, the transfer order is arbitrary and it is a punishment imposed upon him illegally and the applicant was not heard before the transfer order is issued. It was issued to him due to extraneous reasons and it is cryptic and untenable and the applicant is being harassed by the respondents by issuing show-cause notice on flimsy allegations. There is no bonafide reason in the transfer order passed and there is no public interest involved in it. So the applicant seeks to set aside the order of transfer.

6. The respondents entered appearance and they have filed a detailed reply statement stating that the applicant was working as M.T.S in the Poojappura Head Post Office and in fact there had occurred incidents of non-wearing of uniform by applicant and the Postmaster had reported the same to respondent no.4 on 22.2.2021. There has also taken place another incident of insubordination since the applicant did not trace out the files and vouchers as directed by the superior and later the officer himself had to trace out the file. According to the respondents, the 4th respondent had issued a direction to the applicant that wearing of uniform is compulsory and if any dis-obedience takes place, necessary action will be taken. Even after issuing the direction, the applicant continued the same practice stating that there is no changing room in the Poojappura Head Post Office and he will not be able to wear the uniform. A report was called for from the Postmaster regarding the facility for changing room for the staff. It was reported that there exists a facility for changing dress behind the annex building and all officers are using the same

for changing their uniform. The applicant has availed the dress allowance of Rs.5000/- and he did not care to wear the uniform as expected. The applicant is supposed to wear his uniform as he is a uniformed staff. He is also expected to obey the directions of his Head of Office. Since the 5th respondent has reported that the applicant is continuing non-wearing of uniform in the office, it is a clear insubordination. The applicant being a sports man can continue his cycling practice in Manacaud P.O also which is only 4.4. kms away from the office where he is presently working. According to the applicant, a Transfer and Placement Committee was constituted by the CPMG vide letter dated 13.4.2015 consisting of SSPOs, Trivandrum North Division as Chairman, SPOs, Trivandrum South Division and ASP(HQ), Thiruvananthapuram South Division etc as members in it. On 23.3.2021, a meeting was convened for considering the transfer of officials in the cadre of M.T.S. The Committee considered the case of the applicant also and decided to transfer the applicant to Manacaud S.O in the interest of service. The Manacaud Sub Post Office is having the facility for changing uniform and he can very well use his uniform if he works there. He can also continue his cycling practice. It was also submitted that the 4th respondent has not taken any action to cancel the medical leave as alleged. The applicant has not submitted any documentary evidence to show that he is suffering from any disease and he is continuing on medical leave without medical certificate till 14.8.2021. He is taking the leave in order to avoid the transfer order issued by the 4th respondent. According to the respondents there is no merit in the contentions raised and the transfer order in this case is not as a punishment.

7. We have heard the counsel appearing for the applicant and the counsel appearing on behalf of the respondents and perused the records.

8. The short question to be considered in this case is that whether the transfer order from Poojappura Head Post Office to Manacaud Sub Post Office (4.4.kms away) is a punishment transfer or not.

9. It is true that there exists an issue regarding non-wearing of uniform by the applicant and the Postmaster reported the same to respondent no.4. Respondent no.4 in turn had directed the applicant to wear the uniform again. But the applicant continued his practice of non-wearing of uniform stating that there is no facility available in the Poojappura Head Post Office for changing dress.

10. When this matter was pending, the Department Transfer and Placement Committee met for considering the transfer of M.T.S staff on 23.2.2021 and after a detailed discussion, they found that the continued practice of non-wearing of uniform by the applicant may affect the discipline of the office and if he is transferred to Manacud S.O, which is a very near place.

11. After considering all aspects, the Transfer and Placement Committee had ordered to transfer the applicant to a near by Post Office i.e, Manacud S.O. It is also submitted that the Manacud Sub Post Office is having the facility for changing dress and the applicant can very well change uniform if he is working in the said P.O. Since the Manacud P.O is very near, we cannot say that the transfer of the applicant from Poojappura Head Post Office to Manacud P.O is a punishment transfer as the transferred place is only 4.4. kms away from the present place of posting. The main grievance raised by the applicant is that he could not wear the uniform as there was no dress changing room attached to Poojappura Head Post Office . So his grievance also can be redressed. On going through the pleadings and documents, we find that there is absolutely no discrepancy or enmity shown by the respondents against the applicant. The transfer order was issued while the transfer of M.T.S staff was considered on 23.3.2021 by the Transfer and Placement Committee and the Committee has decided to transfer the applicant to Manacud S.O. The respondents had not initiated any disciplinary proceedings against the applicant and no penalty was imposed on the applicant in this case. The applicant was directed to wear the

uniform by respondent no.4. But he desisted from doing so. Since the applicant continued same practice, the Department found that it will affect the discipline of office. So the respondents decided to transfer the applicant to the nearest Post Office within 4.4. kms where there is a dress changing facility is available. So we find that there is no merit in the contention put forward by the applicant that this is a transfer order issued as a punishment. The applicant was given a very convenient posting within 4.4. kms and he can very well practice his cycling there also.

12. Even though the applicant has claimed that he is permitted to practice cycling practice for two hours, only one order in the year 1992 was produced as Annexure A-1. The said order was applicable only for the year 1992-1993. He has not produced any further extension of the said provision for him. The respondent has denied any existence of such order in favour of the applicant. So there is absolutely no merit in the contention of the applicant that he could not practice cycling for 2 hours as claimed by him. It is not proper to permit an employee to keep away from duty for two hours without having a proper order.

13. In the result, **we find that there is no merit in the O.A and the O.A is liable to be dismissed. Ordered accordingly.** No costs.

(K.V.Eapen)
Administrative Member

(P.Madhavan)
Judicial Member

List of Annexures

Annexure A1 - True photocopy of Order dated 21.11.1992, issued from the office of the 3rd respondent.

Annexure A2- True photocopy of Finalized Annual Sports calender 2021-2022 issued by the Director (W&S), Department of Posts, Ministry of Communications, Government of India, circulated vide communication no: 6-01/2021-WL & Sports.

Annexure A3- A true photocopy of Show Cause Notice dated 22.12.2020 issued by the 4th respondent.

Annexure A4- A true photocopy of Order dated 05.02.2021 issued by the 4th respondent.

Annexure A5- A true photocopy of Show Cause Notice dated 03.03.2021 issued by the 4th Respondent.

Annexure A6- True photocopy of Memo No: BIE/Tfr/Postman dated 05.04.2021 issued by the 4th respondent.

Annexure A7- A true copy of representation/Appeal Petition dated 20.04.2021 submitted before the 2nd Respondent.

Annexure A8- A true copy of the Judgment dated 11.05.2021 of the Hon'ble High Court off Kerala in W.P. (C) no: 10526/2021.

Annexure A9- A true copy of order no: ST/36/Appeal-MTS/2021 dated 25.05.2021 issued by the 2nd Respondent dismissing Annexure-A7 Appeal Petition and confirming Annexure A6 transfer Order.

Annexure R1- True copy of the letter of Postmaster, Poojapura HC.

Annexure R2- True copy of the explanation of the applicant dated 31.12.2020.

Annexure R3- True copy of the letter no. BIE/MISC/TV(S) dated 18.01.2021.

Annexure R4- True copy of the letter no. PM/PF/PJP/20-21 dated 28.01.2021.

Annexure R5- True copy of the letter no. PM/PF/PJP/20-21 dated 22.02.2021.

Annexure R6- True copy of representation of the applicant dated 13.03.2021.

Annexure R7- True copy of the letter no. PM/PF/PJP/20-21 dated 24.02.2021.

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