

**Central Administrative Tribunal
Ernakulam Bench**

O.A No.180/00302/2019

Friday, this the 17th day of September, 2021

CORAM:

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

Sunitha Kumari K.S.,
W/o B. Hari Kumar, aged 40 years,
Postal Assistant, Kanhangad
(On temporary transfer to Pathanamthitta)
Having permanent residence at Thiruvathira,
Ullannur P.O., Kulanada - 689503

- Applicant

(By Advocate: Mr. V. Sajith Kumar)

Versus

1. Union of India, represented by the
Secretary to the Government of India,
Department of Post, Government of India,
New Delhi - 110001
2. The Chief Postmaster General,
Kerala Circle, Trivandrum - 695033
3. The Post Master General, Northern Region,
Calicut – 673011
4. The Superintendent of Post Offices,
Kasaragod Postal Division, Kasaragod – 67111
5. The Superintendent of Post Offices,
Pathanamthitta Postal Division,
Pathanamthitta – 689645.

- Respondents

(By Advocate: Mr. Rajagopal L. K., ACGSC)

The O.A having been heard on 14th September, 2021 through video conferencing, this Tribunal delivered the following order on 17.9.2021:

ORDER**P.Madhavan, Judicial Member**

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

“(i) To quash Annexure A5.

(ii) To direct the Respondents to implement Annexures A2 to Annexure A4 by permitting the Applicant to join at Pathanamthitta Postal Division.

(iii) Grant such other reliefs as may be prayed for and as the Court may deem fit to grant, and

(iv) Grant the cost of this Original Application.”

2. The applicant in this case had entered into the service as a GDS. Thereafter, she was regularly appointed into the cadre of a Postman with effect from 7.12.2010 after passing a Departmental Competitive Examination. She had availed the benefit of notional service in the cadre of Postman for applying to the post of Postal Assistant and she took part in a Competitive LGO Examination for the post of Postal Assistant against the vacancies of the year 2013. She got successful and she was appointed to the post of Postal Assistant. Since there was no vacancy in Pathanamthitta Postal Division, she was appointed to the Kasaragod Postal Division. She had served more than three years at Kasaragod and she had applied for Rule 38 transfer to Pathanamthitta Postal Division by giving an undertaking to forgo all claims for confirmation in the old unit. In consideration of the application submitted by the applicant, the second respondent approved the request for transfer and ordered for accommodating her against a vacancy at Pathanamthitta Postal Division. Thereafter, 5th respondent in this case had issued an appointment order to the applicant posting her at Pathanamthitta Division. However, the transfer order was kept in abeyance for reasons not known to the applicant. According to her, she received a communication from the second respondent informing that Rule 38 transfer granted to her will be kept in abeyance. There is no justification for the issuance of Annexure A-5 order

by the second respondent. Hence, according to the applicant, the order directing to keep in abeyance the transfer of applicant is a highly illegal order. On enquiry, she understood that her posting at Pathanamthitta was kept in abeyance only because of the dispute regarding notional service claimed by the applicant for her appointment as Postal Assistant. She was appointed to the cadre of Postal Assistant and she was regularised in the said cadre. There is no legal justification in denying the transfer on the basis of a dispute pending regarding notional service. Hence the applicant has approached this Tribunal praying for the aforementioned reliefs.

3. The official respondents entered appearance through Adv.Mr.Rajagopal L.K and filed a detailed statement stating the following grounds:-

Respondents submits that the applicant entered service as GDS in Mavelikkara Division. The applicant was a candidate of the Postman Examination held on 20.12.2009 for the vacancies of the year 2009 under UR category and was not selected as she ranked lower to other candidates. Reservation was allowed to OBC in GDS category for filling up of Postman vacancy by Limited Departmental Competitive Examination (LDCE). 4 OBC candidates who were having marks less than that of applicant were appointed as Postman and joined the department on 27.2.2010 in Mavelikkara Division. Aggrieved by the above order issued by the respondents, the applicant had filed O.A 436/2010 before this Tribunal challenging the appointment of OBC candidates. According to her, reservation is not permissible for promotion. When the above O.A was pending, a notification calling for filling up of vacancies of Postman of the year 2010 was issued. The applicant had appeared in the said LDCE to the post of Postman and she came out successful and she was appointed as Postman in Mavelikkara Division on 4.12.2010. In the meanwhile, the Original Application No.436/2010 filed by the applicant was allowed and the Department had filed an appeal against the said order as O.P (CAT) 1638/2011 before the Hon'ble High Court of Kerala. The Hon'ble High Court has upheld the above

order of the Tribunal. The four candidates appointed under OBC category filed an S.L(P) as S.L.P (CC) 20142/12 before the Hon'ble Supreme Court of India. While the S.L.P was pending, notification for filling up of the Departmental quota of Postal Assistant vacancies of 2013 through LGO exam 2013 was issued on 21.6.2013. The eligibility condition was 3 years of regular service as on 1.1.2013. The applicant applied for LDCE examination for the post of Postal Assistant. Since, three years regular service is necessary as per notification and the applicant did not satisfy the same, she was not recommended for appearing in the said examination. Against this decision, the applicant filed O.A No.706/2013 before this Tribunal. The Original Application No.706/2013 was allowed and the applicant was admitted to the examination provisionally, counting her notional service on the basis of order dated 14.2.2011 in O.A 436/2010 and it was also stated that the outcome will be subject to the S.L.P pending before Hon'ble Supreme Court. While the S.L.P is still pending, the result of LDCE held on 15.9.2013 was announced and the applicant got selected and she was deputed for induction training on provisional basis as per order dated 29.9.2014. The applicant got qualified in the said training and she was allotted to the Kasaragod Division against an unfilled surplus vacancy of Kasaragod Division. The Superintendent of Post Offices, Kasaragod Division had issued appointment order to the applicant on 20.10.2014 stating that her appointment to the post will be subject to the outcome of the SLP(CC) 20142/12 pending before the Hon'ble Supreme Court of India. Subsequently, the Hon'ble Apex Court decided the issue on 12.8.2016 in C.A No.91/2015 in S.L.P 20142/12 and 35223/12 upholding the action of the Department in recruiting OBC candidates in the Postman examination as per the Recruitment Rules, with a decision that the Recruitment and appointment of GDS to the post of Postman/MTS is direct recruitment and not a promotion. According to the Hon'ble Supreme Court, selection to the post of Postman was a direct recruitment and it is not a promotion as contended by the applicant herein.

4. According to the respondents, in view of the above judgment of the Hon'ble

Supreme Court dated 12.8.2016 , appointment of the applicant as Postman for the vacancy year of 2009 had become null and void and subsequent promotion based on the postman eligibility was liable to be terminated as she did not possess the required qualifying service . The Superintendent of Post Offices, Kasaragod division had issued a show-cause notice to the applicant on 12.12.2017 for giving an opportunity to explain why she should not be reverted to the post of Postman. Aggrieved by this notice, the applicant had filed O.A No.1104/2017 before this Tribunal and an interim stay to the said show-cause notice was granted. The O.A No.1104/2017 is still pending before this Tribunal.

5. According to the respondents, it was in the meanwhile, she was granted transfer under Rule 38 to Pathanamthitta Division. On getting the information that the official was not eligible for promotion, the order for transfer was kept in abeyance. So according to the respondents, the applicant is not eligible to continue as Postal Assistant and her continuance in service as Postal Assistant is totally against the decision of the Apex Court in *Y.Najithamol's* case No.35223/2012 (Civil Appeal No.90/2015). So the applicant cannot be granted transfer as prayed for.

6. We have heard both sides and perused the pleadings.

7. The point for consideration here is whether the action of the respondents to keep the transfer order in abeyance is arbitrary and illegal. On a perusal of the pleadings, we find that the applicant is working as a Postal Assistant in Kasaragod Division for the last 3 years and she had applied for Rule 38 transfer to Pathanamthitta Division. The respondents considered her representation and issued a transfer order in favour of the applicant as per Annexure A4 order dated 4.8.2018. Immediately thereafter, respondent no.2 had issued an order at Annexure A-5 dated 29.8.2018 directing the PMG Calicut to keep the transfer of the applicant in abeyance. The reason according to the respondents is that the Hon'ble Supreme Court had set aside the order passed by this Tribunal in O.A

No.436/2010 and that of the Hon'ble High Court on 12.8.2016 and held that reservation in promotion is permissible (vide judgment Annexure R-3 produced by the respondents). So the contention of the applicant that reservation is not possible in the appointment of Postman is not acceptable. So according to the respondents, the appointment of the applicant as Postman is not proper and they had issued a show-cause notice to applicant as to why she shall not be reverted. The applicant thereupon filed O.A 1104/2017 against the notice and the said O.A is pending. It appears from pleadings that the applicant is still working as Postal Assistant and the respondent had issued the transfer order in her favour. The only reason put forward for not effecting transfer is the dispute pending in the Tribunal against reverting her. So the reason for keeping in abeyance the order of transfer has no valid reasons to support. Her posting at Pathanamthitta will not put any difficulty to respondent no.2 to take action against her if it is found necessary. **There is no valid reasons at this stage to deny the benefit of the transfer order passed in favour of the applicant. More than 3 years have passed after the issuance of transfer order Annexure A-4. The action of the respondents is arbitrary and cannot be sustained. Hence the impugned order at Annexure A-5 is set aside. The respondents are directed to permit the applicant to join in any of the vacancy available in the post of Postal Assistant without any delay.**

8. It is also made clear that the respondents can proceed with the reversion of the applicant after the disposal of O.A No.1104/2017 if the decision in that case goes in favour of respondents.

9. **The Original Application is disposed of as above. No costs.**

(K.V.Eapen)
Administrative Member

(P.Madhavan)
Judicial Member

List of Annexures

Annexure A1 - A true copy of the appointment memo No.B1/Rectt/Tfr/14-15 dated 20.10.2014 issued by the 4th respondent.

Annexure A2- A true copy of the application 19.11.2017 submitted by the Applicant before the 2nd Respondent.

Annexure A3- A true copy of the memo No.ST/36/R38/KGD/OW-2-2017 dated 26.07.2018

Annexure A4- A true copy of the memo No.B/39/TFR/V dated 02.08.2018 issued by the 5th respondent.

Annexure A5- A true copy of the letter No.ST/36-R38/KGD/OW-2/2017 dated 29.08.2018 issued by the 2nd Respondent.

Annexure R1- True copy of the PMG, Kerala, Trivandrum letter No.Rectt/10-3/2013/I dated 21.06.2013.

Annexure R2- True copy of the Order in O.A. No.706/2013.

Annexure R3- True copy of the judgment in C.A. No.91/2015 in SLP 20142/12.

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