

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/00984/2019

HYDERABAD, this the 26th day of March, 2021

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member



K. Kotamma W/o P. Suresh,
Age : 28 years, GDSMC / MD,
Buradagalikotha Palem B.O.,
a/w Mallam SO

...Applicant

(By Advocate : Mr. M. Venkanna)

Vs.

1. Union of India, represented by its
Secretary to the Govt. of India,
Ministry of Communications & IT,
Department of Posts – India, Dak Bhavan,
Sansad Marg, New Delhi – 110001.

2. The Chief Postmaster General,
Andhra Pradesh Circle,
VIJAYAWADA 520013.

3. The Postmaster General,
Vijayawada Region,
Vijayawada 520003.

4. The Superintendent of Posts Offices,
Gudur Dn., (NL), GUDUR 524101.

....Respondents

(By Advocate : Mrs. K. Rajitha, Sr. CGSC)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:



2. The OA is filed for not granting transfer of the applicant from the post of GDS MC/MD, Buradagalikotha Palem BO to GDS BPM of Buradagalikotha Palem BO.

3. Brief facts of the case are that the applicant joined the Buradagalikotha Palem Branch Office (BO) as Grameen Dak Sewak (GDS) Mail Carrier (MC)/ Mail Deliverer (MD) in 2010. Job involves riding a bicycle to carry and deliver mail. Therefore, applicant represented on 27.06.2018 for transfer from the post of GDS MC/MD to the post of GDS Branch Post Master (BPM) in the same Buradagalikotha Palem Branch Office on medical grounds. Without considering her request, respondents issued notification No.RE/APCO/3-11/2019 to fill up the post at Sl. No.1095 of the notification, to which she seeks transfer, from open market. Aggrieved, the OA is filed.

On 08.11.2019, as an interim measure, this Tribunal directed the respondents not to fill up the said post for a period of two weeks and the said order has been extended subsequently.

4. The contentions of the applicant are that she has severe gynecological problem and hence, cannot ride a bicycle. She is eligible for the transfer under Rule 3 of GDS (C&E) Rules, 2011. Her representation was not replied. Aged parents & mother-in-law are to be taken care of.

Applicant passed SSC and has computer knowledge. Transfer guidelines have been changed on 04.01.2019 and even before that date, the applicant had preferred the transfer and hence, old rules apply to her case.



5. Respondents filed vacate stay petition against interim order of this Tribunal dt. 08.11.2019 vide MA No. 22/2021. In the MA, respondents state that for the vacancy of BPM, Buradagalikotha Palem, applicant applied for transfer on 27.03.2018/6.8.2018 without enclosing relevant documents and on reminding her, they were received on 15.02.2019. The post of GDS MC/ MD was re-designated as ABPM (Assistant Branch Post Master) and transfer from ABPM to BPM is not permitted under new transfer guidelines issued on 4.1.2019. Therefore, notification for filling up Buradagalikotha Palem BO was issued on 13.10.2019. However, as per interim order of the Tribunal, the post was not filled up. In the meanwhile, transfer guidelines were again revised on 22.01.2020 permitting transfer between ABPM and BPM, provided Time Related Continuity Allowance (TRCA) slab is the same for both the posts. In the instant case, for the applicant who is working as ABPM, TRCA is Rs.10,000-24,470/- whereas for BPM it is Rs.12,000-29,380/- and therefore, the transfer sought cannot be agreed to. The respondents organization has networked the post offices and is offering IT solutions at the Branch Office level where public money in large scale is dealt with. Therefore, manning the post temporarily with outsiders is fraught with risk. Hence, prayed for vacation of interim order.

6. Heard both the counsel and perused the pleadings on record.

7 (I) The dispute is in regard to transfer of the applicant from GDS MC/MD, re-designated as ABPM to BPM of Buradagalikotha Palem BO. Transfer of GDS is permitted as per Rule 3 of GDS (Conduct and Engagement) Rules, 2011. Applicant applied for transfer on 27.03.2018 & 06.08.2018 respectively, as admitted by the respondents. However, the respondents claim that the applicant submitted relevant documents only on 15.02.2019, by which date, the transfer guidelines were changed and hence, request for transfer was not conceded to.



(II) We are surprised that the respondents could not obtain relevant papers from an ABPM for 10 months. The GDS (Grameen Dak Sewak) are from the lowest rung of the Respondents Organization who are not well informed and not conversant with the rules. The Inspector of Sub-Division generally guides them in doing their work as well as attends to their service aspects like leave, substitute arrangement, etc. The Divisional Superintendent deals with the processing of appointment of GDS and their transfer. Therefore, it was all the more necessary to walk that extra mile to ensure that a legally eligible benefit is not denied for some supervisory inadequacy at different levels.

(III) Largely, the GDS are amenable and obedient and they work for more hours than the wages paid because of the nature of the work they do. For example, the applicant is a Mail Carrier, who has to take the mail bag to the bus stand and hand it over to bus conductor for transporting it to its destination. She has to carry the bags to the other village BOs as well. If the bus comes late or other village BO staff attend to her work late, she is

not compensated for the additional hours of work. This is a common occurrence in the respondents organization. Therefore, the GDS are termed as the voiceless individuals in the respondents organization though they contribute more to the revenue of the Department than the regular Departmental employees and yet, their issues are not given the needed attention as is seen in the instant case. True to speak, their pay is low and the nature of work is arduous as they have to trek through the forests, climb the mountains, cross the rivers, to carry/ deliver mails with attendant risks, which are sometimes fatal.



IV. Nevertheless, keeping the factors stated in view, the management of the respondents organization has started ushering in benefits on par with the regular departmental staff in a staggered manner. In the process, we can observe that the transfer policy is being liberalized, as is seen from the fact that the transfer from ABPM to BPM and vice-versa was disallowed as per transfer guidelines of 04.01.2019 and was later allowed on 22.01.2020, with a rider that it should be in the same slab. The important aspect to note is that inter-transfers between the two cadres is allowed in either direction, which would mean that ABPM can work as BPM and vice versa. Therefore, the applicant who passed SSC and computer qualified is eligible to work as BPM. Generally, it is difficult to get computer qualified employees at the level of BPM/ABPM. Posting the applicant as BPM is therefore, beneficial to the respondents organization.

V. Moreover, the application was preferred by the applicant on 27.03.2018 and if the respondents were efficient enough, her transfer could

have been decided as per old transfer guidelines, wherein the restrictions laid on 04.01.2019/22.01.2020 were not there. We are rather surprised that the respondents are unhesitant to admit that it took 10 months to collect the relevant papers from the applicant. Respondents need to note that it is their responsibility to take care of the welfare of its staff. We find in the instant case that because of the mistake of the respondents, the applicant is suffering. As observed by the Hon'ble Apex Court, mistake of the respondents should not recoil on to the applicant as under:



The Apex Court in case decided on 14.12.2007 (*Union of India vs. Sadhana Khanna*, C.A. No. 8208/01) held that the mistake of the department cannot recoil on employees. In yet another case of *M.V. Thimmaiah vs. UPSC*, C.A. No. 5883-5991 of 2007 decided on 13.12.2007, it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer. (iii) It has been held in the case of *Nirmal Chandra Bhattacharjee v. Union of India, 1991 Supp (2) SCC 363* wherein the Apex Court has held "The mistake or delay on the part of the department should not be permitted to recoil on the appellants."

Had the respondents acted in time, the applicant would have got the transfer sought. Therefore, as per the above legal principle, the applicant should not suffer by not granting the transfer.

For every activity to be performed by ABPM/BPM, respondents prescribe a time line. The same principle applies to the respondents, they too have to do their work in a given time line. Law looks at both unequivocally. It was the responsibility of the respondents to decide the transfer in a given time line. The representations submitted were not even replied, which gives an inkling about their responsiveness to the transfer request. The respondents failing to discharge their part of the responsibility in a reasonable time interval cannot be glossed over while adjudicating the dispute. It is not explained as to what prevented the respondents in rejecting

her representations submitted on grounds that enclosures required were not submitted. If done at least the applicant had scope to correct her request before the transfer policy changed. Hence, there is more than what meets the eye in regard to the dispute in question.



VI. To grant the transfer between ABPM and BPM, the only hitch that would come in the way is that the applicant is working in a TRCA slab which is different from that of a BPM. If she is willing to accept the lower TRCA slab, which she is presently drawing, there should not be any issue, particularly in the context of the respondents failure to act promptly. Further, the transfer request is based on gynecological problem, which is a genuine difficulty disabling the applicant to ride a bicycle. Some empathy has to be shown to the cases of the nature in question. Rules are meant to be interpreted positively. There is no rule cited by the respondents to prohibit the applicant to be posted as BPM in the same TRCA slab which she is drawing as ABPM, provided she is willing. Realistically speaking, there would be no violation of any rule too since the rules allow the ABPM to work as BPM. To top it, the inefficiency of the respondents in not processing the request of the applicant for transfer when old rules were prevalent should not make her suffer life long as observed by the Hon'ble Supreme Court in the judgments cited. The female employees are only allowed 2 transfers in their entire career. This aspect should not be lost sight of.

VII. Lastly, we do not understand as to why respondents are engaging outsiders as BPM when the applicant as a regular employee working as ABPM could be given the opportunity to work in the post on officiating

basis, which is permitted under the rules. Indeed, they permitted her to do so initially as we understand from the contents of the OA. Respondents, when they know that it is fraught with risk to have outsiders to man BPM post, their decision not to post the applicant as BPM at least on officiating basis would obviously indicate a malafide intention. Therefore, it is all the more necessary for the Tribunal to intervene when transfer sought is denied on grounds of a malafide decision.



VIII. Thus, based on rules and law expounded above, applicant is eligible for being considered for the transfer from ABPM to BPM. Consequently, respondents are directed to consider the transfer of the applicant from ABPM to BPM, Buradagalikotha Palem BO. Time calendared to implement the judgment is 3 months from the date of receipt of this order.

IX. With the above direction, the OA is allowed and the MA is dismissed. Till a decision is taken as directed, the interim order passed on 08.11.2019 will hold good. No order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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