

O.A. No. 262 of 2006.

Order dated: 13.02.2007

In short the case is that the Applicant (Prafulla Kumar Pati) was appointed as GDS MC Panchamahala BO in account with Ullunda SO by the Respondent No.6 vide order dated 24.03.2001. At the time of his appointment, Panchamahala BO in account with Ullunda SO was under the administrative control of Respondent No.4. On bifurcation, Ullunda SO was transferred to the administrative control of Respondent No.5 with effect from 01.04.2001 as a result the applicant came under the control of the Respondent No.5 with effect from 01.04.2001.. The applicant submitted a representation to the Respondent No.3 through Respondent No.5 requesting to take back him to his initial recruiting division i.e. Sambalpur Division. The said representation of the applicant was considered and rejected by the Respondent under Annexure-R/7 dated 17.03.2005 on the ground that "A GDS shall not be eligible for any transfer in any from one post/unit to another post/unit except in public interest". Being aggrieved by such order of rejection, the Applicant files this Original Application under section 19 of the Administrative Tribunals Act, 1985 with the following prayers: *p*

- “(i) To consider the case of applicant and post him in any suitable GDS post in his parent Division/Sambalpur Division;
- “(ii) To allow the applicant to sit in the examination for postman/mail guard etc.”

2. Factual aspects of the mater are not in dispute. However, in the counter it has been averred by the Respondents that no such representation under Annexure-A/3 and A/4 has been received by them. They have averred that there is no provision in the GDS (Conduct and Employment) Rules, 2001 to take back a GDS employee whose services have been placed to other division on bifurcation. There is also no provision in the Rules to call option from GDS in the event of change of administration jurisdiction. They have therefore opposed the prayers of the Applicant.

3. Learned Counsel for the Applicant has argued that it is completely myth to say that there is no provision for transferring a GDS employee from one place to another. Power is available with the authorities to transfer one GDS employee from one place to another in public interest. It is argued that since the services of the applicant have been shifted from one division to another due to unforeseen situation which is unconnected with the official conduct of the applicant, there was no reason not to invoke

the powers available with the authorities to transfer the applicant back. It is submitted that by virtue of such transfer of territorial jurisdiction, the chances of promotion/appointment to Postman/Mail guard of the applicant have been dwindle there being no sufficient vacancies available in the new division. In this connection he has also relied on the instructions of the Government of India Department of Posts issued on 17.7.2006. On the other hand, Learned Senior Standing Counsel for the Respondents argued that in the Rules there is no provision for such transfer but in view of the subsequent instructions request of transfer can be considered by the authorities provided there exists public interest and what are the public interest has also been defined. It has been argued that since the present case does not come within the parameter of the public interest defined in the said circular, as such, the applicant has no right to claim for such transfer. He has also argued that though power is available for considering transfer, no power has been vested for transfer of GDS employee from one division to other. He has accordingly, opposed the prayer of the Applicant.

4. On perusal of the records I find that there is no provision for transfer of GDS employees from one place to another. However, in subsequent instructions dated 17.7.2006 power was vested with the authorities to accept such request provided the same comes under the

purview of the ingredients mentioned therein. The instructions provide as under:

“2. In terms of amendment to Rule 3 of GDS (Conduct and Employment) Rules, 2001 “a GDS is not eligible for transfer in any case from one post/unit to another post/unit except in public interest”. What constitute a “Public Interest” has been interpreted differently by different Circles. In order to have a uniform criteria, it has been decided to allow limited transfer facility to GDS from a post /unit to another under the existing provision of amended Rule 3 of GDS (Conduct and Employment)Rules, 2001 on the following grounds:-

- I. A GDS who is posted at a distant place on redeployment in the event of abolition of the post.
- II. GDS appointed on compassionate grounds and posted at distant place.
- III. Woman GDS on her marriage/remarriage
- IV. Where the GDS himself/herself suffers from extreme hardship due to a disease and for medical attention/treatment, such transfer may be allowed on production of a valid medical certificate from the medical officer of a Government hospital.
- V. Where the GDS is looking after the welfare of a physically handicapped/mentally handicapped person/dependant and he/she requires to move to different places to give support to such physically mentally challenged person/dependant.

3. The limited transfer facility to GDS from post/unit to another will be subject to fulfillment of the following conditions. The conditions mentioned below are only illustrate:

- (i) A GDS will normally be eligible for only one transfer during the entire career;]
- (ii) Request for such transfer will be considered against the future vacancies of GDS and that too after examining the possibility of recombination of duties of GDS;
- (iii) TRCA of the new post shall be fixed after assessment of the actual workload of the post measured with respect to cycle beat in respect of GDS MD/MC/Packer/Mail Messenger in terms of Directorate Letter No. 14-11/97-PAP, dated 1-10-1987;
- (iv) Past Service of the GDS will be counted for assessing the eligibility for appearing in departmental examination. **GDS will not have any claim to go back to the previous recruitment unit/Division.** When a GDS is transferred at his own request and the transfer is approved by the competent authority irrespective of the length of service, he/she will rank junior in the seniority list of the new unit to all the GDS of that unit who exist in the seniority list on the date on which the transfer is ordered. A declaration to the effect that he/she accepts the seniority on transfer in accordance with this should be obtained before a GDS is transferred.
- (v) Transfer will be at the cost and expenditure of GDS . No expenditure whatsoever on this

account will be borne by the Department under any circumstances.

(vi) Request for transfer of the GDS will be confined to transfer with the same circle.

(vii) No transfer request will be entertained within three years of initial recruitment.

4. Power in this regard will vest with the Heads of Circles who will decide each and every individual case on merit keeping in view aforementioned criteria and standard of "public interest".

5. Applicant has neither been sent far away of his original place of posting nor has he faced any loss of pay. On the bifurcation of the territorial jurisdiction the post office in which he was working has been changed from Sambalpur to Bolangir Division. The Circular at para 2(I) provides that a GDS who is posted at a distant place on redeployment in the event of abolition of the post can seek for transfer which is not the case of the applicant in this OA. Nowhere in the rules or the instructions it has been provided that in such circumstances as in the present case, the request for change of division can be acceded to by the Authorities. Rather in paragraph 3(iv) it has clearly been provided that GDS will not have any claim to go back to the previous recruitment Unit/Division. Besides, the applicant does not fulfill the circumstances under which the power of the authority can be utilized in the 'Public interest'. That apart it is a settled

position of law that who should be transferred where and at what point of time is clearly within the discretion of the authorities. Merely because there is no adequate opportunity of promotional avenues at present at present place of posting/division cannot be a ground to approach the authorities to transfer the applicant to his previous unit in public interest. In view of the above I find no illegality or irregularity in the order of rejection of the prayer of the applicant.

6. Besides, I find that this Original Application is not maintainable as per Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987 which provides as under:

“10. Plural remedies-An application shall be based upon a single cause of action and may seek one or more reliefs, provided that they are consequential to one another”

But from the relief sought for by the applicant I do not find that both are consequential to one another.

7. In this view of the matter, I find no merit in his OA which stands dismissed. No costs.

B.B.MISHRA  
MEMBER (A)