

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. No.440/2011

Dated this the 1<sup>st</sup> day of February 2012

C O R A M

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER  
HON'BLE Mrs.K. NOORJEHAN, ADMINISTRATIVE MEMBER

K.Vijaykumar, S/o Late Kunhikrishnn Nair  
Postal Assistant, Thottakar P.O (under orders of Transfer)  
Ottapalam Division, R/o 'Arunodayam'  
Kanniamburam, Ottapalam, Palghat Distt.

Applicant

By Advocate Mr Shafik M.A

Vs

- 1 Union of India, represented by the Chief Postmaster General  
Kerala Circle, Trivandrum-695 033
- 2 The Post Master General, Northern Division  
Calicut -673011.
- 3 The Superintendent of Post Offices  
Ottapalam, Ottapalam - 679101.

Respondents By

Advocate Mr.Sunil Jacob Jose SCGSC.

The Application having been heard on 24.1.2012 the Tribunal delivered the following:

O R D E R

HON'BLE Mrs.K.NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant is aggrieved by the transfer order dated 16.5.2011 (Annx.A1) issued by the 3<sup>rd</sup> respondent transferring him from Thottakara to the post of SPM Agali.

- 2 Brief facts of the case as stated by the applicant are that he

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started his career in the respondent department as Postal Assistant on 14.1.1988 in Ottapalam Division. While he was working as Public Relation Inspector (Postal) (PRI-P for short) at Ottapalam w.e.f 20.8.2006, he was summoned by the Postmaster and Superintendent of Post Offices and directed to clear the old records from the office and nearby offices in Ottapalam by 30.9.2010. Consequently a Contractor was called 28.9.2010 and shown the material kept in the Cycle shed. A part of the items to be cleared were in wet condition therefore the contractor refused to purchase the wet material till it become dry. He therefore sold only the dry material weighing 361 Kg for Rs.3342/- and the wet material was got packed and kept ready to be sold till it became dry. The amount so received was deposited/credited. The rival Union has made a complaint stating that the applicant has sold the entire records showing its weight as 361 Kg and valued as Rs.3342/-. The rival union also called for a 'dharna' and agitation. They also also got a report printed in newspaper. The applicant is the State Organising Secretary of another Union. On completion of his tenure of 4 years he was transferred to Divisional Office as Marketing Executive and relieved on 20.9.2010. The 3<sup>rd</sup> respondent has taken up the matter for investigation and deputed the Asstt. Superintendent of Post Offices to enquire the matter. It is stated by the applicant that the Contractor himself has given statement to the effect that he has taken only 361 Kg and the balance material is yet to be weighed. The 3<sup>rd</sup> respondent by another order dated 10.3.2011 transferred as Postal Assistant Thottkara P.O. The applicant joined as Postal Assistant at Thottakara on 14.3.2011. The officials of FNPO Union again requested the 2<sup>nd</sup> respondent on 13.5.2011 to mete out severe punishment to the applicant. By an order dated 16.5.2011 he was transferred from Thottakara to Agali, a tribal settlement area of Attapady within a span of two months. It is submitted that he was transferred thrice within a period of 6 months. It is further submitted that he being a patient of spondylosis is made to suffer from the high handness of the respondents

and hence submitted his representation dated 18.5.2011 to accommodate him either as PA or equivalent post available in the Division.

3 The respondents contested the OA by filing reply. They have denied the allegation of the applicant that he is being transferred because of the pressure from the rival union. It is submitted by the respondents that the interim order passed by the Tribunal in the OA on 6.6.2011 directing the applicant to be accommodated at Ottapalam Head Post Office was taken up before the Hon'ble High Court of Kerala in OP (CAT) No.1880/11. The Hon'ble High Court vide its judgment dated 25.7.2011 disposed of the same and directed to post the applicant in any Post Office in and around Ottapalam. Pursuant to the judgment he was posted as PA, Shoranur vide order dated 16.8.2011. The pay and allowances due to the applicant for the period from 17.8.11 was paid to him. As regards the period from 17.5.11 to 16.8.11, it is submitted that the applicant has neither reported for duty nor applied for extension of leave. The transfer was effected in the administrative interest.

4 The applicant has filed rejoinder to the reply reiterating the facts stated in the OA and further submitted that the applicant was served with a chargesheet in June 2011 under Rule 16 of the CCS(CCA) Rules relating to irregularities in disposal of old records which culminated in a penalty. Regarding the period 17.5.11 to 16.8.11 it is submitted that though the applicant reported for duty he was not allowed to join duty and he was available to do work.

5 Heard the learned counsel for the parties and perused the record.

6 The learned counsel for the applicant argued that the action of the respondents is highly unjust, illegal and arbitrary and hence violative of fundamental right under Articles 14, 16 and 21 of the Constitution of India. He emphasised the fact that the applicant was subjected to three transfer during one year out of which the last two were ordered within a span of two months. When the case came up for consideration of interim relief, initially

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on 25.5.11 the respondents were asked to furnish details of vacancies in and around Ottapalam Head Post Office. The applicant's counsel submitted that there are vacancies at Sreekrishnapuram, Trikateri, Shorannur and Ottapalam Head Post Office and the applicant may be considered for one of these places. The respondents' counsel, on 6.6.2011 submitted on receiving instructions that there are no vacancies in any of the places. Moreover, a charge sheet is being issued to the applicant in connection with certain irregularities in the sale of old records in Ottapalam Head Post Office. Therefore to facilitate speedy conclusion of enquiry, and to avoid his transfer to a remote place like Agali where he will be the head of the office, the applicant was ordered to be retained at Ottapalam Head Post Office, till the disposal of the OA. The respondents took up the matter before the Hon'ble High Court of Kerala and obtained a stay for two months which was vacated on 25.7.11. In addition the applicant was ordered to be transferred to Shorannur Post Office. In the meanwhile, the applicant moved a Contempt Petition wherein he produced Annx.P3 which was information obtained from the respondents under the RTI Act. It shows clearly that there were vacancies at Sreekrishnapuram, Trikateri, Shorannur and Ottapalam Head Post Office in May-June 2011. Had the respondents furnished the correct information the OA could have been closed on 6.6.2011 giving liberty to the respondents to transfer the applicant to one of the three choice stations near Ottapalam. Instead the respondents chose to prolong the case, at the cost of the Department as well as the applicant. The latter alleges willful suppression of information about available vacancies as the reasons for moving the CP(C) against the respondents. However this information comes to us, very late, when the clock cannot be put back and after the contentious issue is settled at the level of the Hon'ble High Court. Being the first time, such allegation, has come to the notice of this Tribunal, in our considered opinion benefit of doubt is to given to the respondents with the hope that there will be no such

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repetition in future which may warrant the presence of third and 2<sup>nd</sup> respondents before this Tribunal. The learned counsel for the respondents submitted that the applicant has no absolute right for a particular place of posting of his choice. However he now stand posted to Shoranur on the basis of the judgment of the Hon'ble High Court of Kerala.

7        However the applicant cannot take shelter, under this fact to stay away from duty once stay was granted by Hon'ble High Court. He had no other option but to report to Agali Post Office where he stood transferred vide Annx.A1, impugned order or apply for leave. The applicant's counsel averred that the respondents have held that he absented from duty for the period from 12.6.11 to 16.8.11 and his whereabouts were not known. This statement of the respondents is patently wrong since Annx.A6 produced by the applicant shows that he attended the enquiry proceedings on 28.6.11 in the office of the 3<sup>rd</sup> respondent. On that date he was present to peruse the documents relating to the charge levelled against him in the chargesheet issued to him. He has requested for extension of 15 days time for submission of his defence statement on 5.7.11. The extension was granted only for 7 days. Finally he was present on 15.7.11 in the 3<sup>rd</sup> respondent office to submit his representation by hand. From the above, it is crystal clear that the applicant was moving in and around in the office of the 3<sup>rd</sup> respondent and he should have been asked to join duty at Agali or apply for leave. In view of the above facts his absence cannot be ~~reasoned~~ as unauthorised and this period, 17.5.11 to 31.7.11, has to be regularised as eligible leave on receipt of his application for the same. The respondents have stated that the application for leave upto 11.6.2011 is on record.

8        After the stay was vacated on 25.7.11, the OA was before this Tribunal on 1<sup>st</sup>, 5<sup>th</sup> and 11<sup>th</sup> of August 2011. This Tribunal repeatedly urged the respondents to issue the transfer order and allow the applicant to join duty at Shorannur Post Office as ordered by the Hon'ble High Court. The applicant too, went to the 3<sup>rd</sup> respondent's office with the same request.

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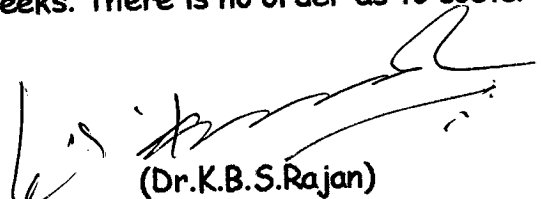
The applicant could report for duty only on 17.8.11, due to delay in issuance of the transfer order by the 3<sup>rd</sup> respondent. In our considered opinion the applicant should not be made to pay for delay willful or otherwise on the part of the respondents. Therefore, he will be entitled to full pay and allowances from 1.8.11 onwards.

9 In view of the foregoing, The OA is disposed of with direction as under:

- i) Since the applicant has joined at Shoranur Head Post Office in accordance with the judgment from the Hon'ble High Court, no further direction from the Tribunal is required.
- ii) The period from 12.6.11 to 31.7.11 will be treated as eligible leave, on receipt of application for leave from the applicant.
- iii) The applicant is entitled to full pay and allowances from 1.8.2011.

The 3<sup>rd</sup> respondent is directed to carry out the direction at (ii) and (iii) above within a time line of four weeks. There is no order as to costs.

  
(K.Noorejehan)  
Administrative Member.

  
(Dr.K.B.S.Rajan)  
Judicial Member

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