

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application Nos.443/2013 & 624/2013

Wednesday, this the ^{17th} day of *September*, 2014

CORAM:

Hon'ble Mr. U.Sarathchandran, Judicial Member
Hon'ble Mr.Rudhra Gangadharan, Administrative Member

O.A No.443/2013

Mr.K.V.Devan
 S/o.Late Velayudhan, Mail Overseer,
 Palakkad North Sub Division, Palakkad,
 (under Orders of Transfer), residing at
 "Mridula", Chorakkappallam
 Vengodi, Elapulli P.O
 Palakkad 678 622 Applicant

(By Advocate – Mr.Shafik M.Abdulkhadir)

V e r s u s

1. Union of India
 Represented by Chief Postmaster General
 Kerala Circle, Trivandrum 695 033
2. The Superintendent of Post Offices
 Palakkad Division
 Palakkad 678 001 Respondents

(By Advocate – Mr.Sunil Jacob Jose, SCGSC)

O.A No.624/2013

Mr.P.P.Madhusoodanan
 S/o.Late M.E.K.Nambiar, Mail Overseer,
 Kannur Sub Division, Kannur-670 001,
 residing at "Manikyam", Kannapuram,
 Mottammel P.O, Kannur – 670 331 Applicant

(By Advocate – Mr.O.V.Radhakrishnan, Sr.
 Mrs.R Radhamani Amma & Mr.Antony Mukkath)

Versus

1. The Superintendent of Post Offices
Kannur Division
Kannur - 670 001
2. Postmaster General
Northern Region
Kozhikode - 673 011
3. Chief Postmaster General
Thiruvananthapuram - 695 001
4. Union of India
represented by its Secretary
Ministry of Communications
New Delhi - 110 001

..... Respondents

(By Advocate – Mr.S.Jamal, ACGSC)

These Original Applications having been heard on 08.08.2014, the Tribunal on 17-09-14 day delivered the following:

ORDER**BY HON'BLE MR.U.SARATHCHANDRAN, JUDICIAL MEMBER**

The common issue in both these matters relate to transfer of applicants working as Mail Overseer and posting them as Postman.

2. The grievance of applicants in both these cases is that the act of the respondents in the guise of transfer from the place where they were working as Mail Overseer and posting them as Postmen amounts to reduction in rank, attracting Clause (2) of Article 311 of the Constitution of India.



3. The applicants state that while they were working as Postmen they were promoted to the post of Mail Overseer as per the provisions of Rule 281 of Postal Manual Volume IV, which reads as follows:

“281. Appointment to the post of branch postmasters, overseers, overseer postman, sorting or reader postman and head postmen should be made by promotion of postmen and village postmen. Such appointments will normally be made in order of seniority but the appointing authority may, in his discretion pass over any senior official whom, he does not consider fit for such appointment. A single gradation list should be maintained for the holders of all these posts which should be made interchangeable.”

(emphasis supplied)

4. Respondents contend that in the wake of the new developments in the field of service law like introduction of ACP & MACP and in the light of GDS (Conduct and Engagement) Rules, the aforequoted Rule 281 has become redundant. According to the respondents the Mail Overseer is a posting given to senior Postman for supervising the work of Postmen and the character of the cadre of Postman is not lost when a Postman is posted as Mail Overseer. It is further contended by the respondents that the post of Mail Overseer under Rule 238 was framed when mail was carried by “runners” or “Anchalottakaran” who carried mail bag on their shoulders with a spear and travelled long distance by walking at a time when transport system was primitive. Now with the development of transport and communication technologies, supervision of such “runners” has lost relevance and therefore the said provision has become archaic.

5. Shorn of all details, it appears to us that the core issue involved in these two Original Applications is the issue whether the impugned orders in

these two cases amount to reduction in rank of the applicants. As agreed by the counsel appearing on both sides in these Original Applications, we proceed to adjudicate these Original Applications focussing on the aforesaid issue.

6. Applicants placed heavy reliance on Rule 281 of the Postal Manual Volume IV. According to them, the applicants were promoted to the post of Mail Overseer. Documents produced by the applicants in both cases indicate that their posting as Mail Overseer was done after calling for their willingness to be posted as Mail Overseer. On going through the provision in rule 281 of the Postal Manual Volume IV, we are of the view that the specific words used in Rule 281 i.e; "appointment" and "promotion" strongly suggest that the post of Mail Overseer is a promotion post of Postman and Village Postman . Once the willingness of the applicants were called for and after considering such willingness by the appointing authority, they are granted the appointment to the post of Mail Overseers. We are of the view that this process amounts to granting of promotion. From this perspective, if such a promoted employee is posted subsequently as Postman, it would amount to reduction in rank.


7. Mail Overseer is obviously a supervisory post. According to respondents there is no difference in pay from pay drawn by Postmen even when the applicants were functioning as Mail Overseers. In the case of the applicant in Original Application No.443/13, the respondents contend that he had received financial upgradation and yet continued to get the pay of



Postman. A similar argument was taken by the respondents in O.A 623/13 also contending that while holding the post of Mail Overseer there is no upgradation in the pay structure which normally happens in the case of promotion to a higher post. Therefore, the official respondents contend that what has been granted to the applicants is not a promotion from the post of Postman, but only a posting as Mail Supervisor. Respondents contend that if Mail Overseer is a promotional post, there ought to have been a special recruitment rule for Mail Overseers whereas there is no recruitment rule for such post in the department. In short, the attempt of the respondents was to establish that the post of Mail Overseer was only a posting of senior Postmen, not amounting to promotion which carries higher pay, grade and status.

8. Of course, promotion carries a higher status, not only amongst the co-employees but also it places the promoted incumbent on a higher pedestal in the eyes of junior employees as well as in the eye of general public. Normally, the promotion post carries higher pay than the post from which the official is promoted. Nevertheless, on account of the increments earned and financial upgradations like bi-annual cadre review, stagnation increments, ACP and-of late-the MACP, by the time an employee gets promotion, there may not be any substantial increase in his emoluments from the emoluments of the lower post. Nevertheless, promotion confers an importance to the promoted individual.

9. In the instant case, the post of Mail Overseer conferred on a Postman



and that too having been appointed from amongst senior Postman tantamounts to promotion. *A fortiori*, when postings were given to the applicants as Mail Overseers, the rule governing such posting was Rule 281 of Postal Manual volume IV. As pointed out earlier, the provisions of rule 281 strongly suggest that such postings are promotions. Applicants in Original Application No.443/13 relied on a decision of this bench of the Tribunal in Original Application No.542/14. A similar issue was dealt with by this Tribunal in that case and it was held that the postings given under rule 281 are promotions.

10. In the circumstance, we hold that before the impugned orders of transfer have been issued the posts of Mail Overseers held by the applicants were promotional posts from the posts of Postman and the act of the respondents while transferring them as per the impugned transfer orders and posting them as Postmen amounts to reduction in rank.

11. Article 311 of the Constitution of India deals with dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.

“(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in



respect of those charges.

[Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply.

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final. "

12. There is no plea by the respondents that the applicants have been so reduced on their rank on the ground of ^{5 a conduct 2} which led to the conviction of the applicant on a criminal charge. No other circumstance has been indicated by the respondents as provided in the second proviso to Clause (2) of Article 311 when they decided to transfer applicants and post as Postman which is a rank lower than Mail Overseer, the post held by applicants immediately prior to the impugned orders.

S/

13. In the circumstance, we are inclined to quash and set aside the impugned orders i.e, Annexure A-1 in O.A 443/13 and Annexure A-9 in O.A 624/13. Ordered accordingly. It goes without saying that necessarily their transfer orders also stand quashed. We make it clear that this order will not affect the departmental proceedings, if any, lawfully initiated against applicants.

14. The Original Applications are disposed of accordingly. The parties shall suffer their own costs.



(RUDHRA GANGADHARAN)
ADMINISTRATIVE MEMBER



(U.SARATHCHANDRAN)
JUDICIAL MEMBER