

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 464 of 2003

Monday, this the 28th day of July, 2003

CORAM

HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

1. P. Jayarajan,
S/o late Pallath Narayana,
working as Gramin Dak Sevak Mail Carrier,
Vadakkumbram BO,
residing at Pallath House,
Vadakkumbram PO, Valancheri-676 552Applicant

[By Advocate Mr. O.V. Radhakrishnan]

Versus

1. Superintendent of Post Offices,
Tirur Division, Tirur - 676 104
2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
3. Union of India, represented by its
Secretary, Ministry of Communications,
New Delhi.Respondents

[By Advocate Mr. C. Rajendran, SCGSC]

The application having been heard on 28-7-2003, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

The applicant, who is working at present as Gramin Dak Sevak Mail Carrier (GDSMC for short), Vadakkumbram BO, Tirur Division since April, 2001, has sought for transfer as Gramin Dak Sevak Branch Postmaster (GDSBPM for short) at Karekkad within Tirur Division itself in response to Annexure A2 notification dated 4-12-2002 calling for applications for

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appointment by transfer from amongst GDSs. The applicant's case was considered and he was provisionally selected, since he had scored the highest marks in the SSLC examination. On the appointed day for production of documents, the applicant produced a copy of the sale deed showing that the applicant owns 44 cents of land jointly with other members of his family to prove his source of income. Though the other formalities were satisfied, since the income certificate was not available as on 7-1-2003, the applicant was given time till 8-1-2003. However, the applicant obtained a certificate dated 8-1-2003 from the Tahsildar concerned showing that he is getting an independent income of Rs.1000/- per month and the same was produced on 9-1-2003. The applicant is aggrieved that the 1st respondent has initiated steps by Annexure A5 notice dated 8-5-2003 to fill the vacancy of GDSBPM, Karekkad from amongst open market candidates ignoring the selection process already finalized as a result of which the applicant had been selected provisionally. The applicant, therefore, seeks the following main reliefs:-

- "i) to call for the records leading to Annexures A-5 Notice dated 08-05-2003 and to set aside the same;
- ii) to declare that the applicant is eligible and entitled to be transferred and appointed as Gramin Dak Sevak Branch Post Master, Karekkad in the light of the Annexure A-7 Order of this Honourable Tribunal which was upheld by the Hon'ble High Court of Kerala in the decision reported in 2000 (3) KLT 541; and
- iii) to issue appropriate direction or order directing the 1st respondent to transfer and appoint the applicant to the post of GDS BPM, Karekkad in accordance with the law declared in Annexure A-7 Order of the Tribunal and the decision reported in 2000 (3) KLT 541, being

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the working Gramin Dak Sevak with the highest marks in Matriculation amongst those GDSS who attended the interview conducted on 07-01-2003."

2. In the reply statement, the respondents have resisted the OA by stating that the applicant produced the income certificate only on 9-1-2003 as against the date given, viz. 7-1-2003. However, it is stated in the reply statement that the applicant was provisionally selected as per orders dated 9-1-2003. According to the respondents, there were complaints from some candidates who appeared in connection with the verification of documents on 7-1-2003 as the alleged ground that the applicant had no independent property and income. Apart from this, the respondents also seem to have been swayed by the provisions of the GDS (Conduct and Employment) Rules, 2001, which stipulate that GDSS have no transfer liability.

3. When the matter came up for disposal, Shri O.V. Radhakrishnan, learned counsel for the applicant submitted that this issue is already covered by several decisions of this Tribunal and that this Tribunal's order in OA No.45/98 dated 25-2-1999, being on the same issue, has been upheld by the Hon'ble High Court of Kerala in Sub Divisional Inspector of Post Offices vs. CAT reported in 2000 (3) KLT 541. He would, therefore, plead that, as a GDS, the applicant was entitled to exercise his right for appointment by transfer, although there was no transfer liability as such attached to the post. With regard to the production of documents concerning independent source of income, learned counsel for the applicant has submitted that the applicant acted diligently and produced a composite sale deed, wherein he is undeniably co-owner of 44

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cents of land in Edayur village together with other family members and that should have been considered as proof of income for the purposes of appointment by transfer of GDS. In any case, the applicant having been provisionally selected as per the respondents' own admission, there was no justification for stating that neither the rules permitted transfer, nor has the applicant fulfilled the necessary criteria for such appointment.

4. Shri C.Rajendran, learned SCGSC would place reliance on the reply statement and stated that GDSs have no transfer liability as per the latest instructions of GDS (Conduct & Employment) Rules, 2001 and as such, the action on the part of the respondents could not be faulted. However, the applicant who had been given an opportunity to submit a certificate proving his source of income on 7-1-2003, chose to submit the same only on 9-1-2003. For these reasons, the applicant could not be given the benefit of an appointment by transfer as GDSBPM, Karekkad, the learned SCGSC would urge.

5. On a consideration of the relevant facts and the legal provisions, we are convinced that the issue is already covered by a number of decisions of this Tribunal, particularly by OA.No.45/98, which has been upheld by the Hon'ble High Court of Kerala vide 2000 (3) KLT 541. It is true that GDSs do not have transfer liability. That does not mean that GDSs cannot exercise their right for seeking appointment by transfer subject to fulfilment of other conditions as per the instructions contained in the Directorate of Posts' letter

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dated 12-9-1988 (Annexure A6) and further clarifications contained in the communication dated 28-8-1996 (Annexure A6[a]). With regard to the production of income certificate, the sale deed showing that the applicant together with other family members owned 44 cents of land was produced by the applicant on 7-1-2003 itself and therefore, we do not consider that the production of the specific income certificate on 9-1-2003 could be rejected on a tenuous technicality, when already the applicant was selected as per the respondents' own admission.

6. In view of the above discussion of facts and law, we hold that the applicant is entitled for appointment by transfer as GDSBPM, Karekkad on the basis of the provisional selection already done by the respondents. Respondents are directed to issue formal orders to the applicant in that regard after necessary verification of other conditions within a period of one month from the date of receipt of a copy of this order.

7. The Original Application is disposed of as above. No order as to costs.

Monday, this the 28th day of July, 2003



K.V. SACHIDANANDAN
JUDICIAL MEMBER



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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