

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.505/93

Friday, this the 4th day of February, 1994.

SHRI N DHARMADAN, MEMBER(J)
SHRI S KASIPANDIAN, MEMBER(A)

S Bhaskaran,
EDMC, Thadikkadu.P.O.
(via) Anchal.

- Applicant

By Advocate Mr G Sasidharan Chempazhanthiyil

Vs.

1. Sub Divisional Inspector,
Punalur.
2. The Superintendent of Post Offices,
Pathanamthitta.
3. Chief Postmaster General,
Kerala Circle,
Thiruvananthapuram.
4. Union of India represented by
its Secretary,
Ministry of Communications,
New Delhi.
5. S Ayyakutty Pillai,
EDOA, Kettukkai.
6. VP Ahmed Ashraf,
SDI, Punalur. - Respondents

By Advocate Mr K Karthikeya Panicker, ACGSC

O_R_D_E_R

N DHARMADAN, MEMBER(J)

Applicant, who is at present working as Extra Departmental Mail Carrier, Thadikkadu Post Office is aggrieved by Annexure-V order passed by the Sub Divisional Inspector, first respondent, rejecting the request of the applicant for a transfer to Kettukkal Post Office in a vacancy of Extra Departmental Delivery Agent.

2. According to the applicant, he has been regularly appointed as per Annexure-I order as EOMC, Thadikkadu Post Office. While working in that Post Office a vacancy of EDDA arose in the Kettukkal Post Office which is within $\frac{1}{2}$ KM from his residence. Applicant applied for a transfer in terms of the instructions dealing with the transfer of ED Agents. That request was rejected as per Annexure-R2(a) dated 29.1.1992.

The order reads as follows:

"Your request for transfer to the post of EDDA, Kettukkal has been considered at this end. But it has been decided to reject your request taking into consideration the technical and administrative aspects relating to the case. So your request is hereby rejected."

3. Since the request was not properly considered and disposed of in accordance with relevant rules governing the issue, applicant submitted further representation on 18.3.1992, 1.4.1992, 23.7.1992 and 3.8.1992 for getting the same benefit of transfer. They were not considered. Hence he filed earlier OA-1568/92 which was heard and disposed of as per Annexure-III dated 11.11.1992 directing the first respondent to consider the request of the applicant for a transfer to Kettukkal Post Office. Pursuant to the direction, when an order was passed by the first respondent, the applicant is aggrieved by the same. He is challenging that order on the ground that there is no proper application of mind or consideration of the claim of the applicant for a transfer. He submitted that the appointment of the 5th respondent as EDA, Kettukkal Post Office is illegal since he is not duly qualified for the post.

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4. During the pendency of this case a vacancy of EO post arose in Karavaloor Post Office because of the appointment of the 5th respondent as EDDA, Kettukkal Post Office. When the first respondent initiated steps for filling up the vacancy at Karavaloor, applicant moved M.P-897/93. This Tribunal disposed of that M.P. on 8.6.1993 making it clear that the appointment to the EO post, Karavaloor Post Office would be subject to the final outcome of this OA.

5. The 5th respondent has been regularly selected and appointed as EDDA in the Kettukkal Post Office with effect from 17.10.1992.

6. The 5th respondent is now involved in a case and disciplinary proceedings are pending against him. The applicant moved M.P-1521/93 alleging that the 5th respondent has been placed under 'put off' duty with effect from 16.7.1993 and that the applicant can be appointed in the vacancy of EDDA at Kettukkal Post Office. This Tribunal disposed of that M.P. directing the first respondent to consider the request of the applicant for a posting on a provisional basis in that vacancy as per order dated 13.10.1993.

7. We have to examine the legality of the impugned order under the above facts and circumstances. All the reasons stated in Annexure-V impugned orders, for rejecting the request for transfer are unsustained. This Tribunal has considered the

scope and ambit of the circular issued by the department providing for transfer of ED Agents, from one ED Post to another, either in the same Post Office or in the neighbouring Post Office in the same place and held that a transfer is permissible in appropriate cases when the conditions prescribed therein are satisfied. In the instant case, the first respondent considered the issue presumably with a closed mind as indicated in the impugned order. He takes the view that:

"ED Agent is not a transferable one"

We are not able to subscribe to this view. If one examines the grievance of the applicant with this erroneous view, he would definitely go wrong. The further reasoning in the order are also not supportable. He further stated that since the applicant is not a Matriculate, he does not fulfil the required condition. This reason is also not sustainable. Another reason given by him for rejecting the request of the applicant for transfer is that the vacancy in Kottukkal Post Office cannot be treated as a vacancy in the same Post Office or any Post Office in the same place. This is directly contrary to the interpretation given by this Tribunal in number of judgements considering the scope and ambit of the circular dealing with the transfers of ED Agents. Hence after a careful consideration of the impugned order, we are satisfied that none of the reasons mentioned in the impugned order for rejecting the request of transfer of the applicant is sustainable.

8. Having considered the matter in detail, we are of the view that the impugned order is unsustainable and it is liable to be quashed. Accordingly we quash the order and declare that the applicant is fully eligible to be considered for appointment in the Kottukkal Post Office as EDA considering the request for transfer.

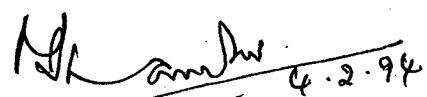
9. Now that the 5th respondent has been placed under 'put off duty,' the applicant's request for posting in the place of the 5th respondent can be considered in the light of the order already passed by this Tribunal on 13.10.1993 on M.P-1521/93.

10. In case the 5th respondent returns after the disciplinary enquiry, he can be considered for appointment in the Karavaloor Post Office, if he is otherwise suitable for a posting in that Post Office in the light of the order already passed by this Tribunal on M.P-897/93 dated 8.6.1993. It goes without saying that the respondents can fill up the ED Post at Karavaloor in terms of the order dated 8.6.1993 either on a provisional basis till the filling up of that post in a regular manner, or through direct selection or by appointing the 5th respondent in his return, if he establishes his innocence and is exonerated from the guilt making him eligible for reinstatement.

11. The application is allowed with the above observations/ directions. No order as to costs.


S. Kasi Pandian

(S KASIPANDIAN)
MEMBER(A)


N. Dharmadan
4.2.94

(N DHARMADAN)
MEMBER(J)