

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 515 of 2003

Tuesday, this the 26th day of August, 2003

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. P.C. Surendrakumar,
S/o Sri YMC Sankara Kurup,
Working as Gramin Dak Sevak Mail Carrier,
Udumbunthala,
residing at Pilakkavil Chirakkara,
Thekkumbad PO, Elambachi, Nileswar.Applicant

[By Advocate Mr. O.V. Radhakrishnan]

Versus

1. Sub Divisional Inspector (Postal),
Nileswar Sub Division, Nileswar.
2. Superintendent of Post Offices,
Kasaragod Division, Kasaragod.
3. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
4. 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 26-8-2003, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant initially appointed as EDMC, Elambachi BO on 24-5-1987 was transferred and appointed as Gramin Dak Sevak Mail Carrier (GDSMC for short), Udumbunthala BO in September, 1997. Finding that a vacancy of Gramin Dak Sevak Mail Deliverer (GDSMD for short) would arise in the very same office, the applicant on 22-5-2003 submitted a representation (Annexure A1) to the 1st respondent. However, a notification (Annexure A2) was issued on 3-6-2003 calling for applications

from open market candidates for recruitment to the post of GDSMD, Udumbunthala BO. The applicant was by Annexure A3 letter of the 1st respondent directed to make his request to the Chief Postmaster General, Kerala Circle, Thiruvananthapuram for transfer. Accordingly, the applicant submitted a representation to the Chief Postmaster General on 17-6-2003. Finding that he did not get any reply and that steps are in progress pursuant to Annexure A2 notification, the applicant has filed this application seeking to quash Annexure A2, for a declaration that he is eligible and entitled to be transferred and appointed as GDSMD, Udumbunthala in the light of Annexure A4 and A5 and the order dated 25-2-1999 of the Tribunal in OA No.45/98 which has been upheld by the Hon'ble High Court of Kerala in the decision reported in 2000 (3) KLT 541 and for appropriate direction to the respondents to consider the applicant for transfer and appointment to the post of GDSMD, Udumbunthala. It is alleged in the application that the applicant satisfies the eligibility criteria for being appointed as GDSMD, that the post of GDSMC, which the applicant is presently holding, is likely to become surplus and that the refusal on the part of the respondents to consider the request of the applicant for transfer is illegal and unjustified. With these allegations the applicant has sought for the aforesaid reliefs.

2. Respondents have filed a reply statement and produced Annexure R1. Since the pleadings are complete, as agreed to by the counsel on either side, the application is being heard for a final disposal.

3. It is not disputed that the applicant was appointed as a GDSMC in September, 1997. There is no contention that the applicant does not satisfy the eligibility criteria for

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appointment to the post of GDSMD. It is also not in dispute that the post of GDSMD has become vacant in the very same office, where the applicant is working as GDSMC. The fact that the post of GDSMC is likely to be abolished is also not disputed. According to the instructions contained in the DG (Posts)'s letter dated 12-9-1988, the request for a transfer of the working ED Agent, if he is eligible and suitable for appointment to another post in the same office, can be considered and in such cases without being routed through the Employment Exchange the ED Agent can be appointed by transfer. This was a concession conferred on the working ED Agents by the DG (Posts) to ameliorate their conditions. The applicant who is working as GDSMC carrying a lower TRCA is now seeking a transfer and appointment to the post of GDSMD which carries a higher TRCA in the same office. In OA No.45/98, this Tribunal has held that the request for transfer of a working ED Agent, if he is eligible and suitable to be appointed on another ED post falling vacant in the same recruitment unit, has to be first considered before taking recourse to the direct recruitment. The request of the applicant for transfer is now being resisted on the ground that as in the GDS (Conduct and Employment) Rules, 2001 there is a condition that "Sevak shall not have any transfer liability", the applicant is not entitled to seek a transfer. Quoting that clause in the said Rules, the Assistant Director General (GDS) had issued a letter dated 27-6-2003 (Annexure R1) to all Heads of Postal Circles stating that GDSs will not be entitled to seek transfer. It is based on this Annexure R1 letter dated 27-6-2003 as also the clause in the GDS (Conduct and Employment) Rules, 2001 that Sevaks shall not have any transfer liability that the respondents contend that the request of the applicant for transfer cannot be entertained.

4. We are of the considered view that the stand taken by the respondents is totally unreasonable and is not covered by any valid rule or instructions. In G.D.S (Conduct and Employment) Rules, 2001 itself it has been stated that the service conditions till then prevailing will be protected. The fact that GDSs shall not have any transfer liability does not mean that they will be deprived of the concession conferred on them by the competent authority by instructions which have not been recalled. A liability cannot be considered to be the same as a privilege. In this case, the applicant is not claiming for a transfer liability, but is claiming the benefit of a concession. We are of the considered view that the contention raised by the respondents that the applicant is not entitled to seek transfer is unreasonable and unsustainable. In OA No.45/98 the Tribunal directed that recruitment from open market should be resorted to only in case the working ED Agents who have requested for transfer are found to be not eligible or suitable. This order has been upheld by the Hon'ble High Court of Kerala. Therefore, in this OA, since there is no contention taken by the respondents that the applicant is neither eligible nor suitable, we are of the considered view that the respondents are bound first to consider the case of the applicant for transfer along with similar requests, if any, of other GDSs and only if the applicant or other GDSs are found ineligible or unsuitable for appointment to the post of GDSMD, appointment from open market should be resorted to.

5. In the result, the Original Application is allowed. Respondents are directed to consider the request of the applicant for transfer to the post of GDSMD, Udumbunthala along with similar requests, if any, received from other GDSs and if the applicant is found meritorious, eligible and suitable, to appoint him on that post. Only if the applicant or any working

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GDS who have applied is found ineligible or unsuitable, recruitment from open market on the basis of the impugned notification shall be taken. A decision on the request for transfer of the applicant shall be taken and communicated to the applicant within a period of six weeks from the date of receipt of a copy of this order. No order as to costs.

Tuesday, this the 26th day of August, 2003



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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