

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Common Order in O.A.No.1098/01 and O.A.53/02.

Tuesday this the 12th day of March 2002:

CORAM:

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

O.A.1098/2001.

Pious Augustine,
Murikkumthottathil,
Nellikutty P.O., Chemberi,
GDSMD (Gramina Dak Sevak-Mail Deliverer)
EDDA II, Nellikutty,
Chemberi (Via).

Applicant

(By Advocate Shri M.Sasindran & Prajith M.B.)

Vs.

1. Post Master General,
(Northern Region),
Calicut-11.
2. Superintendent of Post Office,
Kannur Division, Kannur,
3. Union of India, represented by
Secretary to Government,
Department of Posts, New Delhi.
4. Biju Zacharia,
GDS MD,
Karuvanchal P.O.,
Kannur District.

Respondents

(By Advocate Shri TC Krishna, ACGSC (R.1-3)
(By Advocate Shri Grashious Kuriakose (R.4)

O.A.53/2002.

P.J.George
BPM Pulikurumba,
Thenamkandam House,
Karuvanchal.

Applicant

(By Advocate Ms.Hema Ananthakrishnan)

Vs.

1. Union of India, represented by the
Director General, Department of Posts,
Dak Bhavan, New Delhi.
2. Post Master General, Northern Region,
Calicut.

3. Superintendent of Post Office,
Kannur Division, Kannur.

4. Biju Zacharia, GDS MD,
Karuvanchal, Pin-670 571.

Respondents

(By Advocate Mrs. P.Vani, ACGSC (R.1-3))
(By Advocate Mr. Grashious Kuriakose (R.4))

The application having been heard on 12th March 2002
the Tribunal on the same day delivered the following:

O R D E R

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

The facts of these cases are closely inter-connected and therefore, these two cases are considered and disposed of by this common order.

2. The applicant Shri Pious Augustine in O.A.1098/01 working as Gramina Dak Sevak-Mail Deliverer (GDSMD for short), Nellikkutty P.O. as also Shri PJ George, the applicant in O.A.53/02 working as Branch Post Master (BPM for short), Pulikurumba applied for appointment by transfer as Gramina Dak Sevak-Branch Post Master (GDSBPM for short) Vayattuparamba. The 4th respondent in both these cases Shri Biju Zacharia, (a member of the Kerala Postal Circle Volley Ball Team), GDSMD, Karuvanchal P.O. who was appointed on that post in sports quota also applied for transfer. Although Shri Pious Augustine had secured the highest marks among those who applied for transfer, by the impugned order A-IV dated 30.10.2001 in O.A. 1098/01 which is the same as A-4 in O.A.53/02, Shri Biju Zacharia, the 4th respondent was provisionally selected for appointment to the post. The applicants therefore, have filed this application challenging the order A-IV provisionally selecting the 4th respondent on the ground that the selection ignoring the superior merit of the applicants is arbitrary and irrational. They pray

for a direction to the 2nd respondent to forbear from posting the 4th respondent as GDSBPM Vayattuparamba and to issue the order of transfer and appointment to the applicant.

3. In O.A.1098/01, on behalf of the respondents 1 to 3, a statement of the counsel has been filed seeking to support the impugned selection of the 4th respondent on the ground that it was made to facilitate the practice of the 4th respondent as also to make him available for call to attend the Volley Ball Tournaments although it has been stated that there is nothing in the guidelines which provides for preference to sportsman in the matter of transfer to any ED posts.

4. In the reply statement filed on behalf of respondents 1 to 3 in O.A.53/02, though it is not disputed that there is no provision in transfer guidelines which provides any preference to outstanding sportsman, the selection of the 4th respondent is sought to be justified stating that he being an outstanding Volley Ball Player, the posting would enable him to practice Volley Ball and participate in tournaments more effectively. It has further been contended that Shri PJ George, the applicant in O.A.53/02 had been given a transfer in the year 1999, he is not entitled to seek another transfer after such a brief interval because, as per the instructions an ED Agent can be given only two transfers during the whole career. It has also come out from the pleadings that the applicant Shri Pius Augustine in O.A.1098/01 has secured highest marks in the SSLC examination among all the candidates. The 4th respondent seeks to justify his appointment for the reason that as an outstanding Sportsman a posting as GDSBPM or BPM would enable him to devote more time to practice and as GDS Mail Deliverer he would not get sufficient time.

5. On a consideration of the contentions of the parties in the light of the facts and circumstances, we find that the selection of the 4th respondent ignoring the superior merit of the applicant in O.A. 1098/01 is unsustainable because as per instructions on the subject of transfer undisputedly a candidate with higher marks in the SSLC examination has got to be preferred for appointment as EDBPM and EDSPM. If without any selection the 4th respondent was given a transfer in public interest, the applicants might not have had a case to challenge it, because, transfer cannot be claimed as of right. Once the transfer is made by selection calling all those who have applied, then the selection has to be made on the basis of the norms contained in the instructions and guidelines. The applicant in O.A. 1098/01 who among the candidates has obtained the highest marks in the SSLC examination should have been selected and transferred.

6. In the light of what is stated above, we allow the O.A. 1098/01 and direct the respondents to transfer the applicant to the post of GDSBPM, Vayattuparamba and to issue necessary orders in that regard within a period of one month, as he is, going by the guidelines, most meritorious as undisputedly he has obtained the highest marks in the S.S.L.C. examination amongst the candidates and as no pre-appointment formality is required because he is a serving ED Agent.

7. O.A. 53/02 is dismissed.

8. We make it clear that these orders would not preclude the department in transferring the 4th respondent to any other post of EDBPM or EDSPM in public interest without calling for option from other working ED Agents and without making any selection. No costs.

Dated the 12th March 2002.

Sd/-
(T.N.T. NAYAR)
ADMINISTRATIVE MEMBER

Sd/-
(A.V. HARIDASAN)
VICE CHAIRMAN

rv
O.A.1098/2001 A P P E N D I X
Applicant's Annexures:

1. A-I : A true copy of the Memo No.DA II-80-66/97-98 dt.30.3.98.
2. A-II : A true copy of the Memo No.83/322 dt.7.9.2001.
3. A-III : A true copy of the order dt.16.10.2001 No.83/322.
4. A-IV : A true copy of the order No.83/322 dt.30.10.2001.

Respondents' Annexures:

1. R-4(I): True copy of the mark list of the 4th respondent.
2. R-4(II): True copy of the proceedings dt.12.7.99 of the Chief Postmaster General, Kerala Circle.
3. R-4(III): True copy of the proceedings dt.13.2.2002 of the Chief Postmaster General, Kerala Circle.

O.A 53/2002

Applicant's Annexures:

1. A-1 : True copy of the notification Memo No.83/322 dt.7.9.2001.
2. A-2 : True copy of application dt.22.9.2001 alongwith English translation.
3. A-3 : True copy of the Order of Central Administrative Tribunal in OA 721/99.
4. A-4 : True copy of the appointment order of 3rd respondent, Order No.83/322 dt.30.10.2001.

Respondents' Annexures:

1. R-1 : True copy of letter No.KPSB 16/20/98 dt.13.8.99 by the CPMG, Kerala.
2. R-2 : True copy of instructions by DG Posts in letter No.8-4/98-WL & Sports dt.4.5.98.
3. R-3 : True copy of DG Posts Order 17-60/95 ED Trg. dt.28.8.96.
4. R-4(I): True copy of the marklist of the 4th respondent.
5. R-4(II): True copy of the proceedings dt.12.7.99 of the Chief Postmaster General, Kerala Circle.
6. R-4(III): True copy of the Chief Postmaster General, Kerala Circle.
