

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No.529/2006

Friday, this the 25th day of April, 2008.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE MRS O.P.SOSAMMA, ADMINISTRATIVE MEMBER

Viny.V.Kallayil,
Gramin Dak Sevak Branch Postmaster,
Vattekkad BO, Orumanayoor S.O.
Thrissur Postal Division,
Thrissur.Applicant

(By Advocate Mr OV Radhakrishnan, Senior along with Mr Antony Mukkath)

v.

1. Union of India represented by its
Secretary,
Department of Posts,
Ministry of Communications,
New Delhi.
2. Director General of Posts,
Department of Posts,
Dak Bhavan, Sansad Marg,
New Delhi-110 001.
3. Assistant Director General (GDS),
Dak Bhavan, Sansad Marg,
New Delhi-110 001.
4. Chief Post Master General,
Kerala Circle,
Thiruvananthapuram.
5. Senior Superintendent of Post Offices,
Thrissur Division, Thrissur-680 001.Respondents

(By Advocate Mr. TPM Ibrahimkhan, SCGSC)



ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The scope and interpretation of Note II(iv) under Rule 3 of the Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules, 2001 (2001 Rules for short) as amended by the Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules, 2004 (2004 Rules for short) are disputed in this O.A. The provision contained in the 2001 Rules was under:

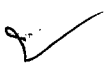
"A Sevak shall not have any transfer liability".

In the 2004 Rules, aforesaid provision was amended as under:


"A Sevak shall not be eligible for transfer in any case from one post/unit to another post/unit except in public interest."

In the light of the above amended Note, what is to be decided in this O.A is whether a Gramin Dak Sevak has any right to seek a transfer from one post to another post of the same category but situated in a different office in the same unit, notwithstanding the earlier orders of this Tribunal/judgments on this issue. The applicant's contention is that the prohibition of transfer of a GDS applies only with regard to the power of the Department to transfer a Sevak from one post/unit to another post/unit except in public interest but no such prohibition applies to Sevak from seeking transfer to the same post within the same unit. Contrary is the stand of the respondents. According to them, the amended rules do not permit a GDS to seek transfer at all from a particular post to which he was been appointed to another post except in public interest.

2. At this juncture, it is necessary to have the brief factual matrix of this case before us. Applicant was appointed as GDSBPM, Vattekad on regular basis with effect from 1.9.2005. A regular vacancy of GDSBPM, Chemmanthatta had arisen with effect from 29.7.2004 and the respondents were making efforts to fill



up that post through open competition. The applicant made the Annexure A-2 representation dated 20.5.2006 for a transfer to that post in her own interest, vide Annexure A-3 letter dated 25.5.2006. The respondents rejected her request stating that "as per the rules, GDSs are not eligible for transfer from the specific post for which they are appointed". The applicant challenged the said rejection in this O.A on the ground that it is ex-facie illegal, arbitrary, discriminatory and violative Articles 14 and 16 of the Constitution of India. According to Senior Counsel Shri O.V.Radhakrishnan, such a rejection was "on a misreading" of the provisions contained in the aforesaid Note II(iv) under Rule 3 of GDS (Conduct and Employment) Rules, 2001 as amended by the Amendment Rules, 2004. He further contended that under the aforesaid amended rule, a GDSBPM is eligible and entitled to seek for transfer to the same post of GDSBPM at a different station in the same unit and the restriction imposed on the GDS is only against seeking transfer from one post to another post or from one unit to another unit. His other contention was that the amendment of the Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules, 2004 was to bring the rule in conformity with the law declared by the Hon'ble High Court of Kerala in the case of **Senior Superintendent of Post Offices v. Reji Mol** [2004(1) KLT 183]. The further argument of the applicant's counsel was that the GDSs are holders of civil post and therefore, they cannot be discriminated in the matter of transfer on request, which is generally allowed to all other civil servants of the Department of Posts. Moreover, transfer of GDS to same post in another station within the unit cannot by any logic or imagination be said to be injurious to public interest, but on the other hand, the transfers of GDS to their home station would only advance the public interest as the employee can procure more business with their contacts and influence in the area.



3. Before we proceed further, it is necessary to briefly go into the history of the relevant rules relating to Extra Departmental Agents (EDAs for short) which has since been redesignated as Gramin Dak Sevaks (GDS for short). The EDAs were earlier governed by Posts and Telegraph ED Agents Conduct & Service Rules, 1964 (1964 Rules for short). According to Rule 2(b), there were 13 categories of EDAs as follows:

"(b) "Extra Departmental Agent" means -

- (i) an Extra Departmental Sub Postmaster;
- (ii) an Extra Departmental Branch Postmaster;
- (iii) an Extra Departmental Delivery Agent;
- (iv) an Extra Departmental Mail Peon; (redesignated as ED Mail Carrier)
- (v) an Extra Departmental Letter Box Peon;
- (vi) an Extra Departmental Mail Carrier or Runner;
- (vii) an Extra Departmental Packer;
- (viii) an Extra Departmental Messenger;
- (ix) an Extra Departmental Chowkidar
- (x) an Extra Departmental Stamp Vendor;
- (xi) an Extra Departmental Sorter in the Railway Mail Service;
- (xii) an Extra Departmental Sub Record Clerk in the Railway Mail Service.
- (xiii) an Extra Departmental Porter."

4. There were no provisions for transfer of EDAs in those Rules. Therefore, the then existing position was that the EDAs were not eligible for or entitled to transfer. However, as an exception to the aforesaid position, the respondents themselves have identified certain circumstances under which the EDAs may be appointed against vacant post in the same office or any office in the same place, as contained in DG. Posts, letter No.43-27/85-Pen. (EDC & Trg.) dated 12th September, 1988 which is extracted below:

"Normally, EDAs are to be recruited from local area and they are not eligible for transfer from one post to another; but in cases where a post has been abolished, EDAs are to be offered alternative appointment within the sub division in the next available vacancy in accordance with Order No.43-24/64-Pen. dated 12.4.1964 and further clarified in Order No.43-4/77-Pen., dated 23.2.1979 (SI.No.29). As per orders, those of EDAs who are held as surplus consequent to the abolition of ED posts are to be adjusted against the posts that may occur subsequently in the same office or in the neighbouring offices. In view of this, it will not be correct to allow transfer of EDAs freely from one post to other. However, it has now been decided that exception may be made in the following cases:

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- (i) When an ED post falls vacant in the same office or in any office in the same place and if one of the existing EDAs prefers to work against that post, he may be allowed to be appointed against that vacant post without coming through the Employment Exchange, provided he is suitable for the other post and fulfils all the required conditions.
- (ii) In cases where EDAs become surplus due to abolition of posts and they are offered alternative appointments in a place other than the place where they were originally holding the post, to mitigate hardship, they may be allowed to be appointed in a post that may subsequently occur in the place where they were originally working without coming through Employment Exchange."

5. Thereafter, a number of EDAs filed Original Applications before this Tribunal seeking transfer from one post of EDA to another post of EDA in the same office. In all those cases, this Tribunal held that the applicants therein were entitled to be considered for transfer and appointment to different categories of EDAs in the same office. The Hon'ble High Court of Kerala in the case of **Sub Division Inspector of Post Offices v. CAT [2000(3) KLT 541]** upheld the above declaration of this Tribunal and stated as under:

"7. If the right given for claiming transfer and appointment in arising vacancies is limited to a claim for being considered along with Employment Exchange nominees there was no necessity to provide for the order of preference on the basis of seniority etc. in such detail in Annexure A-4. There is no indication at all in Annexure-A4 that the EDAs have to compete with fresh candidates from Employment Exchange.

8. We are not impressed by the contention that even if a claim is made by an EDA for transfer and appointment it is within the discretion of the department to allow it or not. According to us, the word 'may' used in Cl.(i) does not import a discretion. The provision is made for the benefit of EDAs. If that be so, if the EDA satisfies all the conditions required in Cl.(i) his claim cannot be denied.

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10. Public interest is in no way adversely affected by granting the claim of the EDAs. They had already undergone a selection process through the Employment Exchange. They had acquired experience by working in one category or others as EDA. They must be found suitable for the new post and should fulfil all the required conditions. If that be so, there is no question of the standard of efficiency being diluted by granting their claim. We find no merit in the averment that if the EDAs are entertained in

arising vacancies the large multitude of jobless young people standing outside would be denied an opportunity. When the EDA is granted transfer and appointment to an arising vacancy the post held by him will become vacant and it will be available for those who are nominated by the Employment Exchange. The analogy sought to be drawn from the appointments made for 180 days under R.9(a)(i) of K.S. & S.S.R is totally out of place.

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12. In all the above cases, Tribunal granted a declaration that the applicants are entitled to be considered for transfer and appointment to different categories coming under ED Agent, in the light of Annexures A3 and A4 as marked in O.A.306/2000 from which arises O.P.19237/2000. Tribunal further directed the respondents to consider the claim of the applicants along with other applicants from among EDAs in accordances with Annexures A3 and A4. We have already come to the conclusion that the respondents are bound by the provisions contained under Annexures A3 and A4. Therefore, the Tribunal was fully justified in directing the respondents to consider the request made by the applicants on merits."

6. The 1964 Rules have undergone amendments vide the "Department of Posts Gramin Dak Sevaks (Conduct & Employment) Rules 2001(2001 Rules for short). While circulating the aforesaid 2001 Rules, the Department of Post vide letter No.22-1/2000-ED & TRG dated 24.4.2001 made it is clear that the change in nomenclature for EDAs to GDS will not in any manner alter the existing terms and conditions of employment of ED Agents in terms of the non-statutory P&T ED Agents (Conduct & Service) rules, 1964 and that legal status of such agents will be suitably reflected in the relevant rules to make it amply clear that they would continue to be outside the Civil Service of the Union and shall not be treated on par with the regular Government employees. In the 2001 Rules, the categories of GDS were reduced to 8 from the earlier 13 categories as under:

- (i) A Gramin Dak Sevak Sub Postmaster;
- (ii) A Gramin Dak Sevak Branch Postmaster;
- (iii) A Gramin Dak Sevak Mail Deliverer;
- (iv) A Gramin Dak Sevak Mail Carrier;
- (v) A Gramin Dak Sevak Mail Packer;
- (vi) A Gramin Dak Sevak Mail Messenger;
- (vii) A Gramin Dak Sevak Mailman;
- (viii) A Gramin Dak Sevak Stamp Vendor."

7. In Note II(iv) below Rule 3, it was incorporated that "a Sevak shall not have any transfer liability." This provision of the Rule was under consideration in the case of **Senior Superintendent of Post Offices v. Reji Mol** (supra). It was a Writ Petition arising out of the order of this Tribunal wherein the applicant had approached this Tribunal with the prayer that the Department be directed to consider her claim for appointment by transfer to the available posts. The two questions considered by the Hon'ble High Court of Kerala in that case were the following:

"(1) Does a Rule, which says that "Sevak shall not have any transfer liability", debar the employee from claiming appointment by transfer?

(2) Does an employee have a right to claim appointment by transfer to a post in a higher scale of pay than the one in which he is working?"

8. After examining the above question in detail, the Hon'ble Court answered them as under:

Question No.1

"11. Admittedly there are no statutory rules governing the appointment etc. of the Sevaks in the Department of Posts. However, instructions have been periodically issued. Initially the Department had issued instructions by which "Posts and Telegraph Extra Departmental Agents (Conduct and Service) Rules, 1964, were circulated. These so called Rules were superseded by the "Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules, 2001". R.3 Note II(iv) provides that "Sevak shall not have any transfer liability". The clear intention of the authority appears to be that since the Sevaks are low paid employees and do not hold whole time jobs, they would be entitled to continue to work at the place of their posting. They will not have to face periodic transfers from one place to another, which may dislocate their family life. Normally, transfer is an incidence of service. However, in case of persons working on the posts of Sevaks the competent authority has decided to make an exception.

12. On behalf of the petitioners it has been contended that the provision carries with it a corresponding bar on the employees to seek transfer. We are unable to accept this contention. The plain language of the provision militates against the submission. The provision embodies the protection to the employee. It does not place



a restriction on his right to claim transfer to another post. If the authority has wanted to place such a restriction it should have specifically provided that the employee in a particular circle or place shall not be entitled to claim appointment by transfer to another post in any equivalent scale or a higher post. Then it would have been possible for the Department to contend that the employee cannot claim appointment by transfer. However, in the absence of such a provision, the contention as raised now cannot be accepted. Thus, we find that the view taken by the Tribunal that the provision does not place a bar on the employee to seek transfer does not suffer from any infirmity. It was a possible view. It is reasonable. It is not shown to be contrary to any express provision of any law. Thus it calls for no interference. Accordingly, the first question is answered against the petitioners."

Question No.2:

"13. On behalf of the petitioners, it is contended that Gramin Dak Sevak Mail Carrier, Packer or Messenger working in the pay scale of Rs.1220-20-1600 cannot claim appointment by transfer to the post of Branch Postmaster or any other post in a higher scale of pay. On the other hand, Mr Radhakrishnan, learned counsel for the respondents, has contended that appointment by transfer is permissible. This can even embody an element of promotion.

14. Admittedly, the Constitution guarantees equality of opportunity to eligible persons in the matter of appointment to civil posts. Thus, whenever a post becomes available, every eligible person has a right to compete. The competent authority has to fill up the post in accordance with the prescribed criteria. The normal method followed by the authorities in different departments is direct recruitment, promotion or by transfer. Whatever be the method, the persons who are eligible for the post are entitled to equality of opportunity in accordance with the prescribed criteria.

15. In the case of direct recruitment the posts have to be advertised. All eligible persons have a right to compete. Similarly, in case of promotion, the claim of all the eligible persons have to be considered on the basis of the provision in the Rules. Normally a senior person is considered before any one junior to him can be promoted.

16. So far as the appointment by transfer is concerned, the normal rule is that a person working on one post can be transferred to another, provided, the post is in a same rank and scale of pay. In certain services even appointment by transfer to a higher post is permissible. This depends upon the provision in the rules. However, in a case where a person working on a lower post is appointed by transfer to a higher post, every eligible person has a right to be considered.

17. In the present context, it may be mentioned that if the post of a Branch Postmaster in the scale of Rs.1280-35-1980 or Rs.1600-40-2400 has to be filled up by transfer, every eligible persons who may be in the feeder category shall have a right to be considered.

But in the event of there being no provision for transfer, the appointing authority is entitled to fill up the post by inviting applications from one market and considering the applications of all eligible persons. Subject to a specific provision to the contrary, every eligible person working in the department shall be eligible to apply and compete.


18. Mr Radhakrishnan contends that the respondents have a right to be considered for appointment by transfer to the exclusion of all other persons.

19. Learned counsel has not been able to refer to any rule providing that appointment to the post of Branch Postmaster or any other equivalent post shall be made only by transfer. In the absence of such a rule, the existing employees working in comparatively lower scales of pay cannot claim that they have a right to be appointed by transfer. Equally, they cannot also say that the department cannot consider the claims of such persons, who fulfill the prescribed qualifications and may be willing to compete for the post. Since every person has the right to equality of opportunity and there is no rule specifically providing that the post shall be filled up exclusively by transfer of the existing employees, the contention as raised on behalf of the respondents cannot be accepted.

20. Mr Radhakrishnan has referred to the decision of a Division Bench in Sub Divisional Inspector of Post Office v. The Central Administrative Tribunal (2000(3) KLT 541). In this case it was held that an Extra Departmental Agent was entitled to be considered for appointment by transfer. However, the issue of appointment to a post in the higher scale than the one in which the agent was working was not considered by their Lordships. It is undoubtedly true that persons working as ED Mail Carriers etc. had also claimed transfer to the post of Agents and that their claim had been upheld. Yet, a perusal of the judgment clearly shows that the issue of one post being higher than the other was never raised or considered. In this situation the decision cannot be read as an authority for the proposition that a person working in the lower post has a right to be appointed to a higher post by transfer and that too, to the exclusion of other eligible persons. Thus, the respondents can derive no advantage from this decision.

21. Faced with the situation, Mr Radhakrishnan has contended that such a contention was not raised by the petitioners before the Tribunal. On the other hand, counsel for the petitioners have pointed out that the Tribunal was considering the claims for appointment of Mail Carriers for the post of Branch Postmaster or the Sub Postmaster etc. The direction by the Tribunal is only for consideration. Since the Tribunal has directed the Department to consider the claims for appointment by transfer to higher posts, the issue has arisen on account of the direction.

22. We have heard the learned counsel for the parties at length. Thus it does not appear to be necessary to remand the matter. In



our view, a person working on a lower post cannot claim that he has an indefeasible right to be appointed by transfer to a higher post to the exclusion of every other eligible candidate. This is all the more so in a case where there is no rule specifically providing for appointment by transfer. In this situation we are of the view that the claims of the respondents have to be considered only along with the other eligible persons who may be sponsored by the Employment Exchange or may otherwise apply for the post. Thus, the second question is answered in favour of the petitioners."

9. Thereafter, the respondents amended the aforesaid provision vide DG Posts, letter No.19-10/2004-GDS dated 1.9.2004 and substituted the following provision in Note II(iv) below Rule 3:

"A Sevak shall not be eligible for transfer in any case from one post/unit to another post/unit except in public interest".

10. Again, the respondents, vide Department of Posts letter No.19-10/2004-GOS dated 17.7.2006, allowed limited transfer facility to GDS on "public interest". The said letter reads as under:

"Subject: Limited Transfer Facility to Gramin Dak Sevaks

As per the order contained in Directorate letter No.43-27/85-Pen(EDC & Trg) dated 12.9.1988, the ED Agents, now called Gramin Dak Sevaks (GDS) were allowed limited transfer facility from one post to another without coming through the agency of employment exchange in exceptional circumstances viz. When an ED post falls vacant in the same office or in any office in the same place or where ED Agent becomes surplus due to abolition of the post and he/she is offered alternate appointment in a place other than the place where he/she was holding the post.

2. In terms of amendment to Rule 3 of GDS (Conduct & Employment) Rules 2001, "a GDS is not eligible for transfer in any case from one post/unit to another post/unit except in public interest". What constitute a "public Interest" has been interpreted differently by different Circles. In order to have a uniform criteria, it has been decided to allow limited transfer facility to GDS from a post/unit to another under the existing provision of amended Rule 3 of GDS (Conduct & Employment) Rules 2001 on the following grounds:

- I. A GDS who is posted at a distant place on redeployment in the event of abolition of the post.
- II. GDS appointed on compassionate grounds and posted at distant place.
- III. Woman GDS on her marriage/remarriage.
- IV. Where the GDS himself/herself suffers from extreme hardship due to a disease and for medical attention/treatment, such transfer may be allowed on production of a valid medical



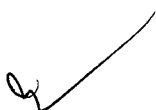
- certificate from the medical officer of a Government hospital.
- V. Where the GDS is looking after the welfare of a physically handicapped/mentally handicapped person/dependent and he/she requires to move to different places to give support to such physically/mentally challenged person/dependent.
3. The limited transfer facility to GDS from post/unit to another will be subject to fulfillment of the following conditions. The conditions mentioned below are only illustrative.
- (i) A GDS will normally be eligible for only one transfer during the entire career.
 - (ii) Request for such transfer will be considered against the future vacancies of GDS and that too after examining the possibility of recombination of duties of GDS.
 - (iii) TRCA of the new post shall be fixed after assessment of the actual workload of the post measured with respect to the cycle beat in respect of GDS MD/MC/Packer/Mail Messenger in terms of Directorate letter No.14-11/97-PAP dated 1.10.1987.
 - (iv) Past service of the GDS will be counted for assessing the eligibility for appearing in departmental examination. GDS will not have any claim to go back to the previous recruitment unit/division. When a GDS is transferred at his own request and the transfer is approved by the competent authority irrespective of the length of service, he/she will rank junior in the seniority list of the new unit to all the GDS of that unit who exist in the seniority list on the date on which the transfer is ordered. A declaration to the effect that he/she accepts the seniority on transfer in accordance with this should be obtained before a GDS is transferred.
 - (v) Transfer will be at the cost and expenditure of GDS. No expenditure whatsoever on this account will be borne by the Department under any circumstances.
 - (vi) Request for transfer of the GDS will be confined to transfer within the same Circle.
 - (vii) No transfer request will be entertained within 3 years of initial recruitment.
4. Power in this regard will vest with the Heads of Circles who will decide each and every individual case on merit keeping in view aforementioned criteria and standard of "public interest".

11. The applicant's counsel has also relied upon the judgment of the Hon'ble High Court of Kerala in O.P.No.17514/2002(S) dated 1.9.2003 arising out of this Tribunal's order in O.A.1057/1999 (Annexure A4). Following the judgment in **Sub Divisional Inspector of Post Offices v. CAT** (supra), the High Court held that "*filling up a vacancy by transfer of an eligible person is not unknown to law.*"

12. Shri TPM Ibrahimkhan, learned SCGSC, the counsel for respondents, on



the other hand, submitted that in view of 2004 amendment to the Department of Posts, Gramin Dak Sevaks (Conduct & Employment) Rules, 2001 (Annexure A6 of the O.A) a Gramin Dak Sevak is not be eligible for transfer in any case from one post/unit except in public interest. He has also submitted that the "Public Interest" for the purpose of transfer is limited only to those cases where a GD Sevak who is appointed to a specific post is rendered surplus due to his/her post being merged or abolished for administrative reasons and is therefore requested to be accommodated elsewhere. Such situations would occur when two posts of GD Sevaks are combined to meet administrative exigencies or for operational economy and consequently one post gets abolished. The transfer request of the applicant did not come under the ambit of the term 'public interest' as defined and as such her request was rejected by the respondents. He has also submitted that the Memo No.19-10/2004-GDS dated 17.7.2006 (Anenxure R-2) referred to earlier was issued to grant only limited transfer facility to GDS from one post/unit to another provided the applicant fulfils the conditions stipulated therein. The applicant's request was examined in terms of the aforesaid Memo dated 17.7.2006 but it was rejected because she did not fulfil the basic condition that the request for transfer will be entertained only after completing 3 years of service as GDS. The applicant was appointed as GDS only on 1.9.2005. He has also relied upon the order of this Tribunal in O.A.413/2005 and 493/2005 dated 23.12.2005 (**A Sathyan v Union of India & others and Anoop v. Assistant Superintendent of Post Offices, Pathanamthitta**). The applicant in the said O.A, Shri A Sathyan was GDSMD Postman. He sought transfer from Rosemala Post Office to Elampal Post Office on the ground that his request was in public interest because the Post Office to which he was sought transfer was near to his residence and the people of that area were known to him. In this regard, he relied upon the judgment of the Apex Court in **Superintendent of Post Offices v P.K.Rajamma** [AIR 1977 SC 1677]. The respondents on the



other hand contended that the GDSs in the Department are a separate class governed by different set of rules and have a social acceptability in the area where they are working and the idea of transferring a GDS will be contrary to the basic features of GDS employment scheme. Therefore, to bring the rule position in tune with the need of the system, the rules were amended as per Annexure R-2 order dated 1.9.2004 which now specifically lays down that the GDS shall not be eligible for transfer except in public interest. This Tribunal held in the common order in the aforesaid O.A.413/2005 and 493/2005 as under:

"11. When the matter came up for hearing the respondents have produced the copy of the order dated 30.11.2005 from the office of the Superintendent of Post Offices, Pathanamthitta Division stating that the Chief Post Master General had reviewed the case and ordered to finalise the selection to the post of GDSMD Elampal on the basis of the cycle test held on 1.6.05 and hence the notice issued in Annexure A-4 orders is to be treated as cancelled. The applicant's side also concurred with the position. In these circumstances, as the prayer of the applicant has already been met, the OA has become infructuous. Hence it is dismissed as infructuous."

The respondents have also relied upon the common order of the Bangalore Bench of this tribunal in O.A Nos.1010/2003 & 1023/2003 dated 8.7.2005 in which it was held that the GD Sevaks and the regular employees of the Government are two distinct, separate and different classes and they are not comparable. The allowances of GDS also dependent on the workload of the particular post and hence recruitment is made to a particular post and not to a particular cadre. Hence no GDSBPM are alike. Hence a person recruited to a particular post is not eligible for transfer to another post except in public interest.

13. We have given our anxious consideration to the submissions of Shri O.V.Radhakrishnan, Senior counsel on behalf of the applicant and Shri TPM Ibrahim Khan, SCGSC for respondents. The Apex Court has held in **Visitor AMU v. K.S.Misra** [(2007) 8 SCC 593] as under:



"... It is well settled principle of interpretation of the statute that it is incumbent upon the court to avoid a construction, if reasonably permissible on the language,, which will render a part of the statute devoid of any meaning or application. The courts always presume that the legislature inserted every part thereof for a purpose and the legislative intent is that every part of the statute should have effect. The legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. It is not a sound principle of construction to brush aside words in a statute as being in apposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. (see Principles of Statutory Interpretation by Justice G.P. Singh, 9th Ed., p. 68)"

In the 1964 Rules, there were no provisions for transfer of an EDA from one post to another under any circumstances. However, by way of administrative instructions issued vide DG, Posts letter No.43-27/85.Pen.(EDC & Trg) dated 12.9.1988, certain exceptions were made and in the following circumstances changes were allowed:

- (i) When an ED post falls vacant in the same office or in any office in the same place and if one of the existing EDAs prefers to work against that post, he may be allowed to be appointed against that vacant post without coming through the Employment Exchange, provided he is suitable for the other post and fulfils all the required conditions.
- (ii) In cases where EDAs become surplus due to abolition of posts and they are offered alternative appointments in a place other than the place where they were originally holding the post, to mitigate hardship, they may be allowed to be appointed in a post that may subsequently occur in the place where they were originally working without coming through Employment Exchange."

In the case of **Sub Divisional Inspector of Post Offices v. CAT** (Supra), the Hon'ble High Court of Kerala considered the aforesaid letter of the Director General of Posts. It was in view of the said letter that this Tribunal as well as the High Court held that the EDAs are entitled to apply for transfer and appointment as and when EDA posts fall vacant in the same office in which they are working or any office in the same place without being sponsored through the Employment Exchange. The contention of the Department before the Tribunal

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as well as the High Court was that the aforesaid DG Posts letter dated 12.9.1988 only means that those EDA's can seek consideration for the arising vacancies of EDA along with those candidates advised by the Employment Exchange and the only advantage intended was that they need not come through Employment Exchange but they have no preference over open candidates. However, the High Court did not agree with the aforesaid contention of the Department and held that if the right given for claiming transfer and appointment in arising vacancies is limited to a claim for being considered along with Employment Exchange nominees, there was no necessity to provide for the order of preference on the basis of the seniority etc. to EDAs. It is after the aforesaid orders/judgments of this Tribunal as well as the High Court that the Department had incorporated the following provisions in Note II (iv) below Rule 3 of the 2001 Rules:

"A Sevak shall not have any transfer liability"

In the case of **Senior Superintendent of Post Offices v. Reji Mol** (supra), the Hon'ble High Court of Kerala has considered the question whether the Rule that *"Sevak shall not have any transfer liability"* would debar an employee from claiming appointment by transfer. The High Court affirmed the view of this Tribunal in this regard that the provision does not place a bar on the employee to seek transfer. Therefore, the respondents amended the provision regarding transfer contained in the aforesaid 2001 Rule and substituted it as under in the 2004 Rules:

"A Sevak shall not be eligible for transfer in any case from one post/unit to another post/unit except in public interest".

By a subsequent administrative order No.19-10/2004 GOS dated 17.7.2006, the respondents themselves have permitted limited transfer facility to GDS from a post/unit to another post/unit on certain grounds. In the said letter, the Department has taken into consideration of its earlier letter dated 12.9.1988



referred to above and clarified what "Public Interest" mentioned in the 2004 Rules would constitute. Now, with the amendment carried out in the 2001 Rules and the limited transfer facility to GDS permitted by the letter dated 17.7.2006, the intention of the rule making authority has been made abundantly clear and the position is that the Sevaks are not eligible for transfer from one post/unit to another post/unit except in public interest. We do not find any illegality in the aforesaid amended provision contained in the 2004 Rules regarding the transfer of GDS and instructions issued thereunder. The judgments in *Sub Divisional Inspector of Post Offices v. CAT (supra)* and *Senior Superintendent of Post Offices v. Reji Mol (supra)* cannot be relied upon in this case as they are pre- 2004 Rules. We, therefore, do not find any merit in the contention of Shri O.V.Radhakrishnan, Senior Counsel that the respondents have carried out the 2004 Amendment in the 2001 Rules in order to bring the rule in conformity with the law declared by the High Court in the case of **Reji Mol (supra)**. Rather, in our view, the Department has made the 2004 Rule in order to make their intention that GDS are not eligible or entitled to be transferred except in public interest, clear. Following the judgment of the Apex Court in **Visitor AMU v. K.S.Misra (supra)**, it is to be held that the rule making authorities have substituted the Note II(iv) below Rule 3 in the 2001 Rules by the amendment carried out by the 2004 Rules for the aforesaid specific purpose and the same is clear and unambiguous. Now the position is that the GDS are not eligible to seek transfer from one post/unit to another post/unit except in public interest as detailed in the Departments letter dated 17.7.2006.


14. Considering the case of the applicant in the above matrix, the respondents have rightly rejected the request of the applicant for a transfer from the present post of GDSBPM, Vattekad BO to GDSBVPM, Chamanamthatta vide Annexure A-3 Memorandum dated 25.5.2006 primarily for the reason that



under the GDS Rules, GDS are not eligible for transfer from one specific post for which he is appointed. According to the respondents, they have also examined the request for transfer made by the applicant in terms of the guidelines on allowing limited transfer facility issued vide Memo dated 17.7.2006 during the pendency of this O.A and found that she has not fulfilled the basic condition that the request for transfer shall be entertained only after 3 years of service as GDS and she was appointed only 1.4.2005 and she has not completed 3 years of service.

15. In the above facts and circumstances, we do not find any infirmity in the impugned Annexure A-3 letter of the respondents rejecting the request of the applicant for transfer to the post of GDSBPM, Chemananthatta. O.A is therefore, dismissed. There shall be no order as to costs.

Dated, the 25th April, 2008.


O.P. SOSAMMA
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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