

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.538/03

Tuesday this the 12th day of August 2003

C O R A M :

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

Binumone P. Nair
S/o. Sri.Padmanabhan Nair
Gramin Dak Sevak Packer/Mail Carrier,
Kunnakkal.

Applicant6

(By advocate Mr.O.V.Radhakrishnan)

Versus

1. Assistant Superintendent of Post Offices
Aluva Sub Division, Aluva.
2. Senior Superintendent of Post Offices,
Aluva Division, Aluva.
3. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
4. Union of India, represented
by its Secretary,
Ministry of Communications,
New Delhi.

Respondents

(By advocate Mr.M.Rajendrakumar,ACGSC)

The application having been heard on 12th August 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 sole question to be considered here in this OA is whether the refusal of the respondents to consider the applicant's case for appointment by transfer to the post of GDS BPM, Kadamattam from the post of GDS MP/MC at Kunnakkal is justified in the light of the DG(Posts) letter dated 12.9.88 and the subsequent clarification (dated 12.9.88 and) 28.8.96 (A6 & A7). According to the applicant his claim has been rejected on the ground that as per the new GDS(Conduct and Employment) Rules, 2001, "a sevak shall not have any transfer liability". The applicant's case is that while under the rules the applicant is

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not affected by any transfer liability, his eligibility to be considered for appointment by transfer cannot be negatived by invoking the provision of the new Rules of 2001. Accordingly, the applicant seeks the following reliefs :

- i. to call for the records relating to Annexure A-3 notification dated 9.6.2003 and to set aside the same;
- ii. to declare that the action of the 1st respondent in rejecting and returning Annexure A-4 representation dated 16.6.2003 of the applicant with the endorsement that as per GDS (Conduct and Employment) Rules, 2001 "a sevak shall not have any transfer liability" is illegal, arbitrary, ultra-vires, unconstitutional and that the applicant is eligible and entitled to be considered for transfer and appointment to the post of GDS BPM, Kadamattom with regard to the endorsement made by the 1st respondent in Annexure A-4;
- iii. to issue appropriate direction or order directing the 2nd respondent to consider the applicant for transfer and appointment to the post of Gramin Dak Sevak Branch Post Master, Kadamattom which arose in the same Sub Division and to appoint him to the post before taking any steps pursuant to Annexure A-3 Notification for selection from open market candidates;
- iv. to issue appropriate direction or order directing the 2nd respondent not to take any steps for selection for appointment to the post of GDS BPM, Kadamattom from among open market candidates pursuant to Annexure A-3 Notification before the case of the applicant for transfer to the above post is considered and a decision is taken;
- v. to grant such other reliefs which this Hon'ble Tribunal may deem fit, just and proper in the circumstances oof the case such other;

2. In the reply statement the respondents have opposed the applicant's claim by stating that GDS do not have transfer liability as per the GDS (Conduct and Employment) Rules, 2001 and that, as such, the applicant could not claim consideration for transfer as GDS BPM, Kadamattam. The respondents rely on R1 letter dated 27.6.03 which, infact, reitrates the rule contained in GDS (Conduct and Employment) Rule, 2001 to the effect that sevak shall not have any transfer liability. The GDS (Conduct

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and Employment) Rules, 2001 was issued in supersession of the P & T ED Agents (Conduct & Service) Rules, 1964, according to the respondents.

3. We have heard Shri.O.V.Radhakrishnan, learned counsel for the applicant and Shri.M.Rajendrakumar, learned ACGSC. According to Shri.O.V.Radhakrishnan, the 2001 Rules do not contain anything that takes away the GDS' eligibility to be considered for appointment by transfer. It is submitted by him that the 1964 Rules also did not contain anything regarding the eligibility of the EDAs for consideration for appointment by transfer. These matters are dealt with in the instructions contained in the D.G.Post's letter dated 12.9.88 (A6) and in A7 clarification dated 28.8.96, according to the learned counsel for the applicant. It is also pointed out by counsel for the applicant that the issue is covered by several orders of this Tribunal which include those in OA 45/98, 858/02 and in the more recent orders in O.A.39/03 and 562/03. Shri.M.Rajendrakumar, learned counsel for the respondents would rely on the pleadings in the reply statement and would contend that since there is a specific rule that Sevaks shall not have any transfer liability and since the matter is clarified in R1 the applicant's case could not be considered and the impugned notification could not be assailed.

4. We have considered the facts and contentions arising in the OA. We find that the issue is wholly covered by the recent order of this Tribunal in O.A.39/03 dated 1.8.03. The relevant findings of this Tribunal in para 6 of the order are quoted hereunder :

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" 6. Now the question of liability and eligibility of EDA(GDS) to transfer requires to be examined: Note II clause (iv) below Rule 3 of the 2001 Rules states : "Sevak shall not have any transfer liability". The above clause does not mean that the Sevaks have no right to seek appointment by transfer as provided under the existing instructions. While transfer liability is expressly prohibited as a necessary incident of service, as per the GDS Rules, transfer involved in appointment by transfer of a GDS from one post to another is not prohibited. In fact, it is a right subject to fulfilment of the conditions prescribed in the instructions contained in by the D.G. as per A-7 and as clarified in A-7(a). That being the position, we hold that the applicant is eligible to be considered for appointment by transfer to the post of GDSBPM, Kallanode falling within the same Division. While holding that the conditions stipulated in the GDS (Conduct and Employment) Rules, 2001 to the effect that GDS shall not have any transfer liability does not mean that the GDS cannot exercise their right to be considered for appointment by transfer in accordance with the extant instructions and orders, the impugned A-3 notification in so far as it states that GDS who are appointed on or after the issue of the new GDS (Conduct and Employment) Rules, 2001 are not eligible for transfer is unsustainable and hence deserves to be struck down. We hold that the expressions 'not liable' and 'not eligible' connote two different meanings. The expression 'not liable' protect the interest of the employee while the expression 'not eligible' means the employee cannot ask for a transfer. Since the rule only says there is no transfer liability, there is no justification for interpreting it as meaning there is no transfer eligibility. The impugned A-6 is a letter written by the additional 5th respondent to the Chief PMG, Bihar Circle. The observation in the said letter to the effect that there is no provision in the rules for the transfer of GDS and they are selected and engaged for specific part time jobs at specific places and are expected to have alternative employment/source of income at the same place does not, in our opinion, call for any interference. We do not know under what circumstance such a communication was sent. In so far as there is no order taking away the right of the GDS employees to seek appointment to another vacant post, there is no scope for interference. In our opinion, for the purpose of this O.A. our above findings would suffice.

5. The facts and circumstances and the provisions of the rule being identical, we follow the same findings in this case and hold that the applicant's claim merits consideration. Accordingly, we direct the respondents to consider the applicant's candidature for transfer and appointment to the post of GDS BPM, Kadammattam, subject to his fulfilling the other criteria in accordance with the extant rules and instructions

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particularly A6 and A7. The respondents are further directed to issue appropriate orders, if they find the applicant to be otherwise eligible, by granting him appointment as GDS BPM, Kadamattam without regard to R1. The above exercise shall be completed within six weeks from the date of receipt of a copy of this order. No order as to costs.

(Dated 12th day of August 2003)




T.N.T. NAYAR
ADMINISTRATIVE MEMBER

A.V. HARIDASAN
VICE CHAIRMAN

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