

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.554/04

....FRIDAY.....this the 9th day of September, 2005

CORAM

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER**

G.Chandran,
aged 48, S/o Govindan,
GDS BPM, Moonnumukku, Pangode,
residing at Lekshmi Nilayam,
Puliyoor, Nanniyode,
Pacha (PO) Palode.Applicant

(By Advocate Mr. G.Sasidharan Chempazhanthiyil)

V.

Senior Superintendent of Post Offices
Thiruvananthapuram North Division,
Thiruvananthapuram. 1.

Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

Union of India, represented by its
Secretary, Ministry of Communications,
New Delhi.Respondents

(By Advocate Mr.TPM Ibrahim Khan,SCGSC)

The application having been heard on 31.8.2005, the
Tribunal on 9.9.2005 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is working as Gramin Dak Sevak (Branch Postmaster) (GDSBPM for short), Moonnumukku. He applied for transfer to the post of GDSBPM, Mylamoodu which is in the same TRCA. However, the Respondent No.1, namely, the Senior Superintendent of Post Offices, Trivandrum North Division, Kerala vide the impugned letter dated 11.8.04 (A4) rejected the request of the applicant for transfer to the post of GDSBPM, Mylamoodu on the ground that as per the GDS (Conduct and Employment) Rules, 2001, GDS have no transfer liability.

2. The brief facts of the case are that the applicant while working as EDMC, Moonnumukku was appointed as EDBPM vide letter dated 6.7.99 effective from 8.7.99. It has been stated in the said appointment letter that his appointment as EDBPM shall be in the nature of contract liable to be terminated by him or the respondent department by notifying in writing and the said employment was also to be governed by the Posts and Telegraph Extra Departmental Agents (Conduct and Service) Rules, 1964 as amended from time to time. The post of GDS BPM, Mylamoodu under the same Division fell vacant on 6.7.04 consequent upon its incumbent got appointment as Postman. As stated above, in anticipation of the vacancy, the applicant requested the respondents to transfer him to the post of GDS BPM, Mylamoodu vide letter dated 1.7.04, copy of which has been annexed as Annexure A2 of the O.A. The respondents rejected the request of the applicant for the transfer on the ground that there exists no



provision for transfer. On the other hand respondent No.1 has appointed a retired Postman as GDS BPM, Mylamoodu on a provisional basis against the vacancy caused by the promotion of the incumbent as Postman.

3. The applicant has also stated in the O.A that he is a chronic patient of Cervical Spondylitis and is undergoing treatment for the purpose and he is advised not to travel as the same might aggravate the disease. He had also produced a medical certificate to that effect. The transfer to the post of GDS BPM, Mylamoodu would entail less travel. The applicant hence requested for the said transfer.

4. The respondents have submitted that the Gramin Dak Sevaks are governed by the Department of Posts, GDS (Conduct and Employment) Rules, 2001. According to the said rules, there is no provision for appointment to GDS posts by way of transfer. The said rules were amended vide Department of Posts, GDS (Conduct and Employment) Amendment Rules, 2004 which came into existence on 1.9.04. As per the amendment in the Department of Posts (GDS (Conduct and Employment) Rules, 2001 note II(iv) below Rule 3 should be read as under:

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

5. The respondents have also stated in the reply that a retired Postman is now working as GDS BPM, Mylamoodu only as a stop-gap arrangement till a regular incumbent takes charge as GDSBPM. The possibility of combination of Posts, in the light of instructions on the subject is also under examination and a final decision on the request of the applicant for transfer can be arrived at only after examining the scope for combination of duties of GDS posts in the office.



6. The respondents have also filed a reply statement to the amended O.A stating that there is no provision in the GDS (Conduct and Employment) Rules, 2001 which came into effect on 24.4.01 for transfer of GDS to one post to another. It has been contended that the said rules were issued in supersession of earlier rules when P&T ED Agents (Conduct and Service) Rules, 1964 in the GDS (Conduct and Employment) Rules, 2001 under note II(iv) of Rule 3 it has laid down that "Sevaks shall not have any transfer liability". The contention of the respondents is that the applicant was not eligible for transfer to the post of GDS BPM, Mylamoodu even before 1.9.04, the date on which the GDS (Conduct and Employment) Amendment Rules, 2004 came into force.

7. The applicant has relied upon the judgment of the Hon'ble High court of Kerala in **Senior Superintendent of Post Offices Vs. Rajimol**, 2004(1) KLT 183 in which the Department of Posts, GDS (Conduct and Employment) Rules, 2004 note II(iv) below Rule 3 has been considered. The Hon'ble High court has held that the said provision embodies the protection to the employee from transfer and it does not place a restriction on his right to claim transfer to another post. Para 12 of the judgment is relevant and the same is reproduced below:-

"On behalf of the petitioner 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 had 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

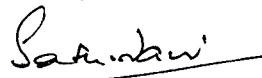


raised now cannot be accepted. Thus, we find that the view taken by the tribunal that the provision does not place a bar on the employee to seek transfer does not suffer from any infirmity. It was a possible view. It is reasonable. It is not shown to be contrary to any express provision of any law. Thus it call for no interference. Accordingly, the first question is answered against the petitioners."

8. We have heard the counsel for both parties. In view of the aforesaid judgment of the Hon'ble High Court of Kerala, we are of the considered view that the request of the applicant cannot be validly rejected by the respondents to transfer him to the post of GDSBPM, Mylamoodu in the vacancy caused due to the promotion of the incumbent with effect from 6.7.04. It is, therefore, directed that the applicant may be transferred to the post of GDSBPM, Mylamoodu. However, if the respondents takes a decision for the combination of this post in accordance with rules, the above direction will not stand in their way. It is expected that the decision in this regard is taken expeditiously. The above direction shall be carried out within a period of two months from the date of receipt of a copy of this order. No costs.

Dated this the 9th day of September, 2005


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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