

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHO.A No. 572/2007Friday, this the 25th day of April, 2008..

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

V.S.Rajkumar,
Chowkidar,
Group D (Non test category),
GPO, Thiruvananthapuram.Applicant

(By Advocate Mr Vishnu Chempazhanthiyil)

1. The Senior Postmaster,
Thiruvananthapuram GPO,
Thiruvananthapuram-1.
2. The Senior Suerintendent ,of Post Offices,
Thiruvananthapuram North Division,
Thiruvananthapuram-1.
3. Union of India represented by
Chief Post Master General,
Kerala Circle,
ThiruvananthapuramRespondents

(By Advocate Mr.Sunil Jose, ACGSC)

This application having been finally heard on 7.4.2008, the Tribunal on 25.4.2008 delivered the following:

ORDER**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

The applicant's grievance is against the Annexure A-1 memo dated 12.9.2007 by which he was transferred from Thiruvananthapuram GPO to Chirayinkeezhu PO. The said said memo reads as under:

"Department of Posts, India
Office of the Senior Superintendent of Post Offices
Thiruvananthapuram North Division, Thiruvananthapuram-695 001.

Memo

No.BIE/TFR/Group-D dated at Thiruvananthapuram 1 the 12.9.07.

The following transfer and posting is ordered with immediate effect.

Sri Raj Kumar, V.S., Temporary status Group D attached to Thiruvananthapuram GPO is reattached as Temporary status Group D Chiriykeezhu PO in the interest of service with immediate effect."

2. When this matter was initially heard on 17.9.2007, on a *prima facie* consideration of the matter, this Tribunal has ordered the respondents to maintain *status quo*. Accordingly the aforesaid impugned order has not been implemented and the applicant is continuing at Thiruvananthapuram GPO itself as Chowkidar.
3. The brief background of the case is that the applicant had been working under the first respondent since 1984 in various capacities including that of a casual labour. While the applicant was continuing as a casual labourer, a non-test category Group'D' post fell vacant under the first respondent. In the absence of an ED Agent under the first respondent, the applicant was appointed as a regular Group'D' non-test category employee with effect from 31.3.2003 and he has been working as Chowkidar since then (Annexure A-2).
4. The applicant has challenged the transfer mainly on the following four grounds:
 - (i) The appointing authority of the applicant is the first respondent i.e. Senior Post Master, Thiruvananthapuram GPO and not the second respondent i.e. the Senior Superintendent of Post Offices, Thiruvananthapuram North Division. This is because the office of the GPO is a separate recruiting unit for appointment to the post of ED Agents and Group D. The office of GPO maintains a separate seniority list of Group D officials. The second respondent is the Divisional Head of the Thiruvananthapuram North Division. Since in

the instant case, the Group D official is transferred from one unit to another, it is mandatory to obtain permission of third respondent, viz, Chief PMG, Kerala Circle, Thiruvananthapuram to effect such transfers especially since the transfer is of a low grade employee like non-test category Group'D'.

- (ii) There is no post of non test category Group'D' at Chirayinkeezhu PO. There are only 2 posts of Group'D' in Chirayinkeezhu PO. Both are test category posts. Thus, the transfer order is illegal and arbitrary to the extent that the applicant has been transferred to the place where there is no post of non-test category Group'D'.
- (iii) The Annexure A-1 transfer order is punitive in nature. The applicant was issued with Annexure A-3 charge sheet under Rule 16 of the CCS(CCA) Rules, 1965 and in response to the said charge the applicant had submitted a reply and the present transfer order is a direct outcome of the aforesaid Charge sheet.
- (iv) The present transfer entails extreme hardship and liability to the applicant who is working as a non-test category Group'D'.and he has to travel more than 40 Kms. Rule 37 of the P&T Manual, Vol.IV provides that a Postman or Class-IV servants should not be transferred from one district to another except for very special reason. Respondents have violated the aforesaid. Guidelines by transferring the applicant from one recruiting unit to another.

5. In the reply statement filed by the respondents they have admitted the fact that the applicant was appointed as a Group'D' non-test category and posted as Chowkidar, Thiruvananthapuram BPO with effect from 31.3.2003 and he is not a temporary status Group'D' employee as stated in the Annexure A-1 order. As regards the reasons behind his transfer the respondents have stated that there were two complaints of assault of staff by the applicant. One was from Shri S Sobhanan, Postal Assistant SBCO received on 10.4.2007 alleging that the applicant has assaulted him and a Police case has also been registered at Vanchiyoor Police Station. The second is a complaint from Shri K Sasikumar, Chowkidar of Thiruvananthapuram GPO received on 5/6.9.2007. DPM-II, Trivandrum has also reported that Shri K Sasikumar, the night Chowkidar of the

day was assaulted by the applicant and he was hospitalised as a result of this assault and another police case was registered against him at Vanchiyoor Police Station. Other reason for his transfer was that he had deserted duty on 22.7.2007 while working as a night Chowkidar. Applicant left the office leaving the police constables on duty locked inside without letting them having even dinner. The applicant reported only the next day morning. Respondents have imposed with dies non on the applicant for the day of absence without prejudice to other disciplinary action vide Annexure A-3 memo dated 25.8.2007. The statement of imputation of misconduct or misbehaviour against the applicant was as under:

"It was reported by Night Guard Policemen that Sri V.S.Raj Kumar, Group Trivandrum GPO while working as Night Chowkidar on 22.7.2007 left the office at 9 PM by locking the office from outside keeping Sri C Sunil Kumar inside Business Post Centre. The matter was enquired by PRI(P) and found that Sri V.S.Raj Kumar, Group D left the office at 9 PM without proper permission by violating the rule para 23 below Rule 3C of CCS(Conduct) Rules 1964."

The aforesaid disciplinary proceedings culminated in imposing the punishment of withholding the next increment of the applicant for a period of 3 months without cumulative effect. When the case of assault of the applicant on Shri Sasikumar was reported, the second respondent ordered the enquiry into the case and directed to submit a report immediately. On enquiry it was found that there is prima facie case in the allegation. Considering all those previous incidents, the applicant was transferred to Chirayinkeezhu PO under the Trivandrum North Division in the same District of Trivandrum in the interest of service.

6. According to the respondents, as per Rule 37 of the P&T Manual, Vol.IV Part I, all the officials of the Department are liable to be transferred to any part of India unless it is expressly ordered otherwise for a particular class or classes of official. Ordinarily, Postman, Village Postman and Class IV servants should not be transferred from one District to another except for very special cases.

According to the respondents, in the instant case, there is specific reasons for his transfer as his continuance in Thiruvananthapuram GPO, the most important office of the Headquarters Region, is not desirable for the smooth functioning of this office. He was transferred and re-attached to the Chirayinkil SO is under the same Division and the same revenue District of Thiruvananthapuram, in the public interest and for the smooth functioning of the office. They have therefore, denied the allegation of the applicant that he was transferred in violation of the rules governing transfer of lower grade official. They have also submitted that the 2nd respondent, as Head of the Division is competent to transfer any Group C or D officials working in the Division, within the Division in accordance with the rule in force. They have also submitted that no approval of any higher authority is needed for transferring a Group D official, as the transferring unit and the transferred unit come under the same Division. They have also submitted that the seniority of the applicant will in no way be affected by this transfer as the transfer is within the same Division. They have further submitted that the transfer from non-test category to test category post will no way affect the interest of the applicant.

7. In the rejoinder, the applicant has denied the alleged incident that he had beaten up Shri K Sasikumar. He has also denied the allegation with respect to S Sobhanan and submitted there is no police case against him at Vanchiyoor Police Station as alleged in the reply statement. He has also denied the allegation that the applicant had locked up the police officials and submitted that he was totally unaware of the final order alleged to have been passed pursuant to Rule 16 charge sheet. He has also alleged that the respondents are purposely attempting to portray him as a troublemaker. On the other hand, he submitted that he was on the receiving end being an active member of a minority union affiliated to BMS. He had rather not cooperated with the strike calls or

other activities of the majority NFPTE Union and that was the reason which invited the displeasure of a good number of followers of the above union and the alleged complaints from Shri Sobhanan, Postal Assistant and Shri K Sasikumar, Chowkidar were the result of such rivalry.

8. Respondents have filed an additional reply statement stating that the applicant has not so far been relieved pursuant to Annexure A-1 order since he has not been attending the office after 5.9.2007. However, in pursuance of the orders contained in memo dated 12.9.2007 of the second respondent, the applicant was reattached to Chirayinkil SO by the first respondent vide memo dated 15.9.2007. But the order could not be delivered to the applicant as he had proceeded on leave on medical ground initially for 15 days from 15.9.2007 onwards. They have reiterated that Shri K Sasikumar was hospitalised as a result of an attack of the applicant and they have produced a copy of the O.P. Ticket (Annexure R-2). They have further submitted that the case was also reported to Vanchiyoor Police Station by Shri K Sasikumar for which acquittance was also given by the Sub Inspector of Police, vide Annexure R-3 receipt dated 19.9.2007. They have also produced Annexure R-4 copy of the complaint dated 10.4.2007 given by Shri S Sobhanan to the Senior Post Master. According to the said letter, Shri Sobhanan has reported the matter to the Vanchiyoor Police Station. They have also produced a copy of Annexure R-5 document submitted by the Police Guard on duty during the night of 21.7.2007. In the said report it was stated that the applicant left the office leaving the police on duty locked inside and the applicant reported the office only next day morning. A copy of the Annexure R-6 memo dated 25.8.2007 issued to the applicant proposing to take action under Rule 16 of the CCS (CCA) Rules, 1965 and the statement of imputation against him was also produced. Annexure R-7 is the order dated 13.9.2007 passed by the Senior Post Master issued to the applicant imposing

the penalty of withholding his next increment for 3 months without cumulative effect.

9. Applicant had filed an additional rejoinder reiterating that the two complaints from Shri Sobhanan and Shri Sasikumar were motivated and they were the result of union rivalry. As regards the third incident during the night of 21.7.2007, the applicant has submitted that he has already been issued with penalty of barring of increment and the period has also treated as dies-non.

10. We have heard Shri Vishnu S Chempazhanthiyil for applicant and Shri Sunil Jose for respondents. According to Rule 37 of the P&T Manual, Vol.IV Part I, all the officials of the Department are liable to be transferred to any part of India unless it is expressly ordered otherwise for a particular class or classes of official. However, Postman and Class IV servants should not, except for very special reason, be transferred from one district to another. All transfers must be subject to the condition laid down in the relevant rules. The factual position is that there have been several complaints against the applicant. Applicant was also punished for his misconduct under Rule 16 of the CCS (CCA) Rules, 1965. It is in this context that the respondents had finally decided to transfer the applicant from the post of Chowkidar Thiruvananthapuram GPO to Group'D' post in Chirayinkeezhu PO. Both the GPO as well as the Chirayinkeezhu PO comes under the same Division to which the second respondent viz, Senior Superintendent of Post Offices, Thiruvananthapuram North Division is the controlling authority. There is no merit in the contention of the applicant that the GPO is a separate recruiting unit for appointment to the post of ED Agents or Group'D' post and therefore no ED Agents or Group'D' from that office cannot be transferred to anywhere else. The seniority of the ED Agents and Group'D' officials are maintained on Divisional basis and as submitted by the respondents,

there is no loss of seniority to the applicant on his transfer from Thiruvananthapuram GPO to Chirayinkeezhu PO. There is also no rule that a non-test category of Group'D' cannot be transferred to a test category Group'D' post. The applicant has not mentioned as to how such transfer from a test category to non-test category would prejudice him. It is also seen that the impugned transfer order is not a direct outcome of the Annexure A-3 charge sheet as alleged by the applicant. Applicant has already been punished for the misconduct alleged against him. Just because there was a charge against him under CCS(CCS) Rules, 1965 which resulted imposing a punishment, there is no rule that the applicant cannot be transferred. I, therefore, do not find that the transfer has been made as a punitive measure, as alleged by the applicant. The maintenance of peace and harmony in the office is the basic responsibility of any administration. In order to maintain such situation, the respondents may have to resort to transfer of an employee from one place to another. There is no arbitrariness or illegality in such matters. I, therefore, dismiss the O.A and vacate the interim order dated 19.8.2007 passed by this Tribunal ordering status quo as on date. There is no order as to costs.

Dated, the 25th April, 2008.


GEORGE PARACKEN
JUDICIAL MEMBER

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