

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.59/2001

Wednesday this the 18th day of September, 2002.

CORAM

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

Kuttappan V.J.
Extra Departmental Delivery Agent
Pampadumpara
Residing at Vaikunnel House
Pampadumpara, Idukki.

Applicant.

(By advocate Mr.S.Radhakrishnan)

Versus

1. Union of India rep. by the
Secretary, Ministry of Communication
Department of Post, Dak Bhavan
New Delhi.
2. The Director General of Post
Department of Post
New Delhi.
3. The Post Master General
Central Region, Kochi.
4. The Superintendent of Post Offices
Idukki Division
Thodupuzha.
5. Smt.Elsy John
Branch Postmaster
Rajakumari, Idukki.

Respondents.

(By advocate Mr.C.Rajendran, SCGSC for R1-4)
(By Mr.P.C.Sebastian for R5)

The application having been heard on 18th September, 2002,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant aggrieved by A-5 letter dated 8.1.2001 issued by
the 4th respondent appointing the 5th respondent as ED Sub
Postmaster, Pampadumpara filed this Original Application seeking
the following reliefs:

- a) Call for the records connected with the case.
- b) Declare that the seniority should be the criterion in the
case of appointment by transfer of EDDAs.



- c) Set aside A-5 order appointing the 5th respondent as the EDSPM, Pampadumpara in complete negation of the seniority criterion.
- d) Direct the 4th respondent to appoint the applicant, who is having the maximum seniority among all the candidates as the EDSPM, Pampadumpara; and
- e) Direct the respondents to pay the cost of these proceedings.

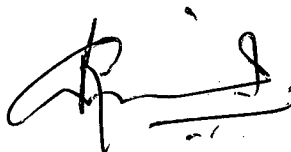
2. Applicant was working as an Extra Departmental Delivery Agent at the Pampadumpara Post Office under the Idukki Division since 29.7.1982. 4th respondent by A-2 order dated 14.11.2000 invited requests for transfer from eligible working ED Agents for four posts including Extra Departmental Sub Postmaster (EDSPM), Pampadumpara. Applicant claimed that the transfer of ED employees from one post to another was governed by A-3 letter dated 28.9.2000. According to the applicant, neither A-2 nor A-3 prescribed that transfer from one ED post to another was by way of selection from eligible candidates. According to the applicant, he satisfied all the eligibility conditions for appointment as EDBPM. By A-4 letter dated 21.12.2000 directed the candidates to attend an interview at the Divisional office, Thodupuzha on 5.1.2001. They were directed to produce certificates in original showing educational qualification, age and certificate from the Tehsildar concerned showing independent income from landed property. 8 persons were enlisted and only 4 persons attended the interview. Claiming that he had more service than others who attended the interview, he submitted that seniority amongst the candidates must be considered as the relevant criteria for transfer. He relied on an order of this Tribunal in OA 45 of 1998 dated 25.2.99. He submitted the respondents failed to consider his seniority over other candidates and issued A-5 letter dated 8.1.2001 appointing the



5th respondent. Alleging A-5 order passed by the 4th respondent was illegal, arbitrary and violative of Article 14 of the Constitution of India and disregarding the orders of this Tribunal in OA 45/98, the applicant filed this OA.

3. Respondents 1-4 filed reply statement resisting the claim of the applicant. According to them, the selection was necessitated since there were requests from several ED Agents of the Division and the selection was made as per rules and instructions on the subject and in compliance of the orders of this Tribunal in several OAs. Length of service was not the criterion for selection by transfer to the post of EDSPM. They relied on R-1 letter issued by the Directorate. According to them, matriculation was the minimum educational qualification for the post of EDSPM/EDBPM. For other posts it was 8th standard. They submitted that if length of service was fixed as the criterion for selection to the post of EDSPM/EDBPM by transfer, those ED Agents with 8th standard or even lesser qualification would have to be selected and in order to avoid this eventuality, the marks obtained in the matriculation or equivalent examination had been fixed as the criterion. Further the post of EDSPM/BPM was having higher responsibility of handling the accounts of the office, supervising the other staff and managing the office. It was submitted that the procedure followed was neither illegal nor violative of Article 14 of the Constitution of India.

4. 5th respondent filed separate reply statement. It was submitted by the applicant's contention that there could not be any selection in the case of appointment by transfer of ED Agents was unsustainable. It was further submitted that transfer of ED

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Agents from one post to another was an exception to the general rule that an ED Agent who was appointed to a particular post was normally neither liable nor entitled to be transferred from one post to another. Even when a transfer was allowed as exception it was an appointment and not a mere transfer. As such there was to be a selection when there were more than one applicants for such transfer. 2nd respondent was the competent authority to decide the method and criterion to be adopted in ED appointments. According to him, his selection was in accordance with the standing instructions and the OA was devoid of merit and the applicant was not entitled to any relief.

5. Applicant filed rejoinder.

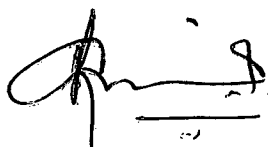
6. Heard the learned counsel for the parties. Learned counsel for the applicant Sri S.Radhakrishnan, after taking us through the factual aspects, referred to A-2 letter dated 14.11.2000 issued by the Superintendent of Post Offices, Idukki Division. He submitted that the 4 posts of EDBPM/SPM stated therein were to be filled up by transfer and requests for transfer from eligible working ED agents were invited. He also referred to A-3 letter dated 28.9.2000 and submitted that the word used in the said letter was transfer and there was no mention of any selection. According to him, the basic issue to be decided in this case is that when a post is filled up on the basis of A-3 letter, whether respondent No.3 is justified in conducting selection and adopting the criterion of marks obtained in SSLC examination for effecting transfer in filling up the post of EDBPM/SPM. Relying on A-3 he submitted that for transfer of ED Agents from one post to another, resorting to the criteria of



marks in the SSLC was not provided for in the Rules. He also referred to clarification No.4 in R-1 letter dated 28.8.96 and submitted that as per the said clarification, an ED Agent having more service was to be given preference in case more than one ED Agent of the same office applied for transfer against the vacant post of ED Agent. Learned counsel for respondents 1 to 4 took us through the reply statement and reiterated the points stated therein. Learned counsel for the 5th respondent reiterated the points made in the reply statement. It was also submitted by him that the respondents have followed the instructions contained in R-1 letter dated 28.8.96. According to clarification No.2 contained in R-1 letter, for filling up the post of EDBPM/SPM, when more than one ED Agent applied, the criteria to be adopted was the marks obtained in the SSLC Examination. It was also submitted by him that clarification No.2 in R-1 is not under challenge in this OA, nor the said letter had been set aside by any court of law or any other authority.

7. We have given careful consideration to the submissions made the learned counsel for the parties and the pleadings of the parties and have also perused the documents brought on record.

8. On careful consideration of the submissions and the pleadings, we find that the main issue which is to be adjudicated in this OA is whether when an ED post is filled up on the basis of appointment by transfer, the respondents are justified in adopting the criteria for selection. The applicant is relying on A-2, A-3 and the order of this Tribunal in OA 45/98 and also R-1

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letter to plead that the respondents cannot adopt the method of selection for filling up the same. According to him, seniority should be the criteria for filling up the post of EDBPM/SPM when an ED Agent applies for transfer to the said post.

9. When the Superintendent of Post Offices, Thodupuzha - the 4th respondent herein - invited requests for transfer from eligible working ED Agents by A-2 letter 14.11.2000, he had clearly stated therein that the requests would be considered as per Chief PMG's instructions in letter No.ST/120/1/Rlg-VI dated 28.9.2000. The said letter dated 28.9.2000 is annexed as A-3 in the OA. The said letter reads as under:

"Department of Posts
Office of the Supdt. of POs, Idukki Division
Thodupuzha - 685 584.

Copy of CPMG, TVM Lr No.ST/120/1/Rlgs-VI dated 28.9.2000
Communicated vide PMG, Kochi No.ST/1-28/95 dated
6.10.2000)

Sub: Transfer of ED employees from one post to another.

Transfer of ED Agents from one post to another is governed by DG Posts letter No.43/27/85/PEN (ED&TRG) dated 12.9.88. this was further modified by DG Post letter No.19-21/94-ED&TRG dated 11.8.94. Various queries raised by subordinate units were clarified by the DG Post vide letter No.17-60/95-ED&TRG dated 28.8.96. Copies of these letter have been circulated to the Region/Divisions vide this office letter No.ST/1/28/Rlgs.IV dated 20.9.88, No.ST/1-28/Rlgs/V dated 5.9.94 and No.ST/120/2/94 dated 12.9.96 respectively.

Based on the clarification issued by Directorate vide letter Ni.19-72/96 ED & TRG dated 14.2.97, the transfer of ED Agents was restricted to only in the case of retrenched EDAs. A copy of this clarification was circulated vide this office letter No.ST/120-2/97 dated 8.4.97 to all units. Directorate's letter dated 14.2.97 has been quashed by the Hon'ble CAT Ernakulam Bench vide order dated 25.2.99 in OA No.45/98 filed by Shri Rajendran Pillai. Hence Directorate instructions in letter No.43-27/85-PE(EDC&TRG) dated 12.9.88 as modified from time to time regarding transfer of EDAs are in force now.



The Chief PMG has ordered that an ED Agent may be given transfer one or two times in his life time provided he is eligible for the post in all respects in accordance with the instructions contained in Dte's letter quoted above. Each transfer case of EDAs may be examined and action taken accordingly.

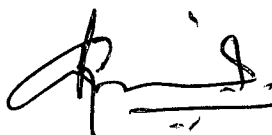
SD/-
N.G.K.Nair
Assistant Director
(Staff)"

10. It is evident from the above letter that DG (Post) instructions dated 12.9.88 as modified by DG (Post) letter dated 11.8.94 and clarified by DG (Post) letter dated 28.8.96 are to govern the appointment by transfer. The import of the letter dated 12.9.88 has been gone into by this Tribunal in OA No.45/98. This Tribunal in its order dated 25.2.99 in OA 45/98 held as follows:

"3. The questions that would arise for consideration are whether the DG (Post) in its letter dated 12.9.88 (A5) had intended that when ED posts fall vacant in an office or in a place, if any working ED Agent applies for that post and he is eligible and qualified to be appointed, is he entitled to be appointed without being subjected to selection along with others sponsored by the Employment Exchange or not. Clause (i) of A5 is reproduced hereunder:

(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."

11. Learned counsel for the applicant referred to para 4 of the above and stressed that this Tribunal had held that Agents when ED Agents apply for transfer there should be no selection. We are unable to agree with this contention of the applicant's counsel. What is stated in para 4 in the order of this Tribunal referred to above is that ED Agents who apply for transfer need



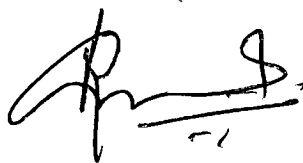
not be subjected to a selection along with outsiders. This Tribunal has held in para 5 that applicant therein was entitled to be considered for appointment by transfer to the post of EDSPM if he was otherwise suitable and eligible for appointment to that post. So, what has been held in OA 45/98 after interpreting DG (Post) letter dated 12.9.88 was that ED Agents are eligible to be considered for appointment by transfer to another post whenever it falls vacant. The Tribunal was interpreting the letter dated 12.9.88 and also stating the respondents' view that ED Agents are not eligible for transfer and hence they have to compete with outsiders whenever a post of ED Agent becomes vacant and an ED Agent applied for transfer. This Tribunal held that a vacant ED post could be filled up on the basis of appointment by transfer.

12. Even before the order in OA 45/98, the DG (Post) had clarified by R-1 letter dated 28.8.96 the various queries raised by different offices as to how ED Agents who apply for transfer pursuant to 12.9.88 letter are to be considered for transfer. While clarification No.1 in R-1 specifically states that first preference would be given to surplus ED Agents whose names for deployment appeared in waiting list, after that the senior most ED Agent who applied for transfer was to be considered for posts other than EDSPM. In clarification No.2, the specific query is whether ED Agents having higher marks can be given preference for filling up the post of EDBPM/SPM. Thus the second clarification is a specific one. General clarification is given under clarification No.1. It is well accepted that when a specific order is given, it applies to specific cases and when a special order is given, special order will be prevailing. When the DG (Post) clarified that the marks obtained in matriculation should

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be the criteria for filling up the post of EDBPM by transfer, the same cannot be faulted. Moreover, this clarification is not under challenge. Not only that, the applicant is relying on A-3 letter which also specifically refers to this clarification as the criteria for filling up the vacant post of BPM/SPM.

13. We also find substance in the respondents' plea that the respondents had to adopt the marks obtained in the matriculation as the criteria for filling up the vacant post of BPM/SPM for the reasons stated therein. It is well accepted that when an administrative decision is taken, unless the said administrative decision is totally perverse or violative of the principles contained in the Constitution, Courts/Tribunals would not interfere in the same. In this particular case, an administrative decision had been taken that the marks obtained in the SSLC examination would be the criteria for filling up the vacant post of BPM/SPM for appointment by transfer and we do not find any infirmity in the decision taken by them. Moreover, the applicant having known the criteria had participated in the selection. Hence, not having been selected, he cannot turn back and assail the same. Further the basic order is not under challenge in this case.

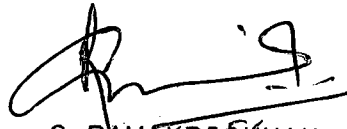
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14. For all the above reasons, we hold that the applicant is not entitled for the reliefs sought for. Accordingly, we dismiss this OA with no order as to costs.

Dated Wednesday 18.9.2002.



K.V.SACHIDANANDAN
JUDICIAL MEMBER



G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

aa.

APPENDIX

Applicant's Annexures:

1. A-1 : A true copy of the appointment order issued to the applicant by the 4th respondent dated 16.8.82.
2. A-2 : True copy of letter No.87/Tfr/Dlg dated 14.11.2000 issued by the 4th respondent.
3. A-3 : A true copy of letter No.ST/120/1/Rlgs-VI dated 28.9.2000 issued by the 4th respondent.
4. A-4 : A true copy of letter No.86/119 dated 21.12.2000 issued by the 4th respondent.
5. A-5 : A true copy of the appointment order No.86/119 dated 8.1.02 issued by the 4th respondent.

Respondents' Annexures:

1. R-1 : True copy of the letter No.17-60/95-ED & TRG dated 28.8.96 issued by U.S.Puria, Assistant Director General (ED & TRG), Ministry of Communications, Department of Posts, Office of the Dak Bhavan, Sansad Marg, New Delhi.

npp
9.10.02