

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.590/05

Friday this the 5th day of August, 2005.

CORAM:

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

C. Gopalakrishna Pillai,
Postal Assistant/CO(BCR),
Office of the Postmaster General,
Central Region, Kochi, residing permanently at
Sreekanakam, Karoor, Ambiapuzha P.O.,
Alappuzha District. Applicant

(By Advocate Shri M.R. Hariraj)

Vs.

1. Union of India represented by
the Secretary, Ministry of
Communications, Department of Posts,
New Delhi.
2. Chief Postmaster General, Kerala Circle,
Thiruvananthapuram.
3. Post Master General, Central Region, Kochi.
4. Assistant Director (Staff),
O/o the Post Master General,
Central Region, Kochi. Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC(rep)

The Petition having been heard on 5.8.2005, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN.

The applicant Shri C. Gopalakrishna Pillai, while working as Postal Assistant (CO)(BCR), in the Office of the Postmaster General, Central Region, Kochi, was compulsorily retired from service from 12.11.2003 and in pursuance of the order of the CPMG dated 20.7.2005 he was reinstated with immediate effect and an order has been served on him along with the order A-1 posting him to join as PA(CO)(BCR), Mail Motor Service, Ernakulam against the existing vacancy. It is submitted that, Mail Motor Service is consisting of only operational posts and there is no

administrative post in that office. In support thereof, the counsel produced the extract of Rule (Annexure A-4), regarding Appointments and Promotions-General Rules (Rule 32), in which the Mail Motor Service is shown to be consisting of only Junior Accounts Officer, Head Clerks, Office Assistants and Inspector, Mail Motor Service. There is no post of PA(CO(BCR)). It is also seen that such posts exist in the Circle Offices and Regional Offices only.

2. Counsel for applicant submitted that the applicant is willing to join in any place where there is an administrative office and since the applicant had been compulsorily retired by earlier order which has been modified and ^{has} not has been reinstated, if there is any further delay in joining the post, it will result in non-payment of salary for that period.

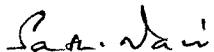
3. In the light of the above submissions made by the applicant's counsel, we are of the view that the O.A. can be disposed of with a direction to the respondents to reinstate the applicant forthwith in any administrative office as he belongs to the administrative cadre. We do so accordingly.

4. O.A. is disposed of at the admission stage itself. In the circumstance no order as to costs.

Dated the 5th August, 2005.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.590/2005

..... THURSDAY..... THIS THE 1st DAY OF DECEMBER, 2005

CORAM

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

C.Gopalakrishna Pillai,
Postal Assistant CO(BCR)
Office of the Postmaster General,
Central Region, Kochi, residing
permanently at Sreekanakam, Karoor,Ambalapuzha PO
Alappuzha District.Applicant

(By Advocate Mr. M.R.Hariraj)

V.

- 1 Union of India, represented by the
Secretary, Ministry of Communications,
Department of Posts,
New Delhi.
- 2 Chief Postmaster General,
Kerala Circle,Thiruvananthapuram.
- 3 Post Master General,
Central Region, Kochi.
- 4 Assistant Director (Staff)
O/o the Post Master General,
Central Region, Kochi.Respondents

(By Advocate Mr.TPM Ibrahim Khan)

The application having been heard on 24/4/2005, the Tribunal on 01.
12.2005 delivered the following:



ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant has filed the present Original Application aggrieved by the order directing him to join as Postal Assistant (CO) (BCR), Mail Motor Service on his reinstatement in service.

2. While working as a Postal Assistant (CO)(BCR) in the office of the Post Master General, Central Region, Kochi, the applicant was compulsorily retired from service with effect from 12.11.2003 but he was later on reinstated under the orders of the Chief Post Master General dated 20.7.04. On his reinstatement, the impugned Annexure A1 order was served on him posting him as PA(CO)(BCR), Mail Motor Service, Ernakulam against an existing vacancy. The contention of the applicant was that Mail Motor Service is consisting of only operational posts and there is no administrative post in that office. Rule 32 of the P&T Manual Vo.IV gives the list of ministerial, non-ministerial and Group D services in Indian Posts and Telegraphs department. The ministerial employees are only UDCs and LDCs in the circle and administrative office. Mail Motor Service do not have any such post. The applicant was originally appointed as an LDC and he was later on promoted as UDC. Based on the restructuring of UDCs and LDCs of the administrative/circle office, these posts were re-designated as Postal Assistant (CO). The Mail Motor Service have the posts of only JAO/Head Clerks/Office Assistants and Inspector

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(Mail Motor Service). It does not have any administrative post held by the Applicant.

3. The applicant has sought a direction from this Tribunal to quash and set aside the Annexure.A1 order dated 2.8.05 to the extend it directs him to join the Mail Motor Service. He has also sought a direction to the respondents to permit him to join as Postal Assistant (CO)(BCR) at the office of the Respondent No.3, namely, the Post Master General, Central Region, Kochi.

4. This OA was earlier disposed of at the initial stage with a direction to the respondents to reinstate the applicant forthwith in any administrative office as he belongs to administrative cadre.

5. The respondents have carried the aforesaid orders of this Tribunal dated 5.8.05 to the Hon'ble High Court of Kerala vide WP© No.24415/05-S on the ground that this Tribunal did not give an opportunity of being heard to the respondents herein and hence the said order was liable to set aside. The Hon'ble High Court agreeing with the ground taken by the respondents herein, set aside the said order dated 5.8.05 with the direction to take up the application de novo after formally issuing of notice to the respondents and to hear the application on merits at an early date.

6. On issuing notice, the respondents have filed a reply statement. They have stated that even though the applicant was working in administrative office he does not belong to the administrative cadre and he was liable to be transferred as condition

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of service to any of the units located in the Headquarters station. While extending the TBOP and the placement under the BCR (Biannual Cadre Review) of Group C staff, they are made liable to be transferred to any unit located at the Headquarters station of the regional office. One of the conditions as contained in para 3.10 of the letter dated 22.7.93 (Annexure R.1) issued by the Ministry of Communications, Department of Posts, Government of India is as under:

"3.10. The Circle Office staff, as on 26.6.93 will retain the existing liability for transfer between the Circle Office and the Regional Offices. In addition, their promotion under this scheme will be conditional, subject to their liability for transfer to any unit located at the Headquarters station of the Regional Office/Circle Office."

7. They have also submitted that the continuance of the applicant in the office of the third respondent was not conducive as he misbehaved with his coworkers and used abusive and filthy language, for which he was punished earlier. They have also stated that the applicant was expected to carry out only the administrative work in the office where he is posted and he is not required to perform any operational work. The nature of work to be attended to by him in the office of the Senior Manager, Mail Motor Service is the same as the one had been doing at regional office prior to his relinquishing charge on punishment.

8. The applicant in his rejoinder has denied the contention of the respondents that he does not belong to the administrative cadre. He

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has submitted that the post of Postal Assistant (CO) is in fact a cadre formed by converting the existing Lower Division Clerks/Upper Division Clerks in circle office. He has also submitted that the reference to "any unit" located in the Headquarters in Para 3.10 of the Annexure.R.1 cannot be understood to mean that a Postal Assistant (CO) can be transferred to a non-administrative office where there exists no such post of Postal Assistant. He has also submitted that is an undisputed fact that no post of Postal Assistant (CO) exists in Mail Motor Service and the applicant figures at Sl.No.48 of the Annexure.A6 gradation list of CO/RO staff as on 1.7.01 and there is no separate gradation list of MMS staff. He has also annexed a copy of the Circle Gradation List of MMS staff as on 1.7.02 which goes to show that there is no post of PA in the MMS. He also pointed out that for more than a decade after starting the MMS Office in Ernakulam, no Postal Assistant (CO) was ever posted in that office and as such no administrative work to be attended to by the Postal Assistants (CO) is available in that office.

9. The respondents have filed an additional statement and the applicant has filed an additional rejoinder thereto. The respondents have stated that there was a vacancy of one Office Assistant in the office of the MMS (BCR) consequent upon the retirement of one Shri K.C.Sivadasan and the applicant was posted to that post which is similar to the post held by him prior to the punishment. The contention of the applicant is that Shri K.C.Sivadasan was holding

the post of Office Assistant and it is different from the post of Postal Assistant (CO) held by him. The seniority units of the Postal Assistant (CO) and Office Assistant are different and rules of Recruitment are also different. There is also no similarity in the nature of work. The Office Assistant of MMS are given separate training to equip with the work they are supposed to perform but no such training is given to the PA(CO). While the appointing authority of the Office Assistant in MSS is the Sr.Manager (MMS), the appointing authority of the Postal Assistant (CO) is the Chief Post Master General. The disciplinary authorities are also different for both the categories.

10. We have heard the counsels for both the parties and also have perused all the records made available by both sides. It is evident from the record that the post of Postal Assistant (CO) and Office Assistant are not identical . They belong to separate seniority units with distinct functions. The respondents have also no precedent of posting any Postal Assistants (CO) in the Office of the MMS. We fully agree with the respondents that his continuation in the earlier office is not conducive to the peaceful administration of the office in view of the incidents which have resulted to his punishment in the departmental proceedings and the subsequent reinstatement in service. Even the applicant's counsel himself has stated during the hearing that the applicant is not interested to continue in the previous office and he also wants to have a transfer outside that office. He is

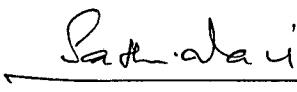
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prepared to work in any administrative office and he had in fact pointed out a vacancy in the office of Supdt. of Post Office, Irinjalakuda. It is of course not in the domain of this Tribunal to decide the office to which a Government Servant is to be posted. However, from the averments of the applicant and respondents, it is quite clear that the applicant is now posted to the Mail Motor Service where there is no post of Postal Assistant (CO). It is also clear that it is not the practice of the respondents to post any Postal Assistant (CO) to the Mail Motor Service even after the introduction of the TBOP/BCR.

11. In the above facts and circumstances of the case, we hold that the impugned order dated 2.8.05 directing the applicant to join as PA (CO) (BCR) in Mail Motor Service, Ernakulam against the existing vacancy is an arbitrary one and accordingly the same is quashed and set aside. The respondents shall post him in any of the administrative offices under them. The intervening period shall be treated as duty for all purposes. This order shall be complied with, immediately on receipt of this order. No order as to costs.

Dated this the 1st day of December, 2005


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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