

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM EBNCH**

O.A. No. 604 OF 2006

Thursday, this the 1st day of November, 2007.

CORAM :

HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER

S.Viswanathan
Senior Manager
Mail Motor Service (Department of Posts)
Ernakulam, Kochi – 16
Residing at : Suhrudam,
VSN Road, Palluruthy
Kochi - 05

: Applicant

(By Advocate Mr. O.V.Radhakrishnan, Senior with
Mr.Antony Mukkath)

Versus

1. Director General Posts,
Dak Bhawan, New Delhi 9 – 110 001
2. Union of India represented by Secretary
Department of Communication and Information Technology
Department of Post, New Delhi
3. S.S.Kushwaha
Manager (JTS), Mail Motor Services
Department of Post, New Delhi : Respondents


(By Advocate Mr. P.J.Philip, ACGSC (R1&2))

The application having been heard on 03.10.2007, the
Tribunal on 01.11.2007 delivered the following

O R D E R


HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant's grievance in this case is against the
Annexure A-6 order dated 04.04.2006 transferring him from Cochin to
Guwahati vice Shri R.K.Tripathi who has been at Delhi in place of one
Shri S.S.Kushwaha who has been transferred from Delhi and posted
at Bhopal. The applicant has also impugned Annexure A-8 order
dated 28.04.2006 issued by the 1st respondent by which, the post of



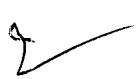
Senior Manager, at Cochin held by the Applicant has been deployed to Guwahati so that the applicant may join his new place of posting and Shri R.K.Tripathi, Manager, Mail Motor Service (MMS for short), Guwahati has been posted as Manager, MMS at Chandigarh, instead of at Delhi. It also says that the transfer order of Shri S.S.Kushwaha from Delhi to Bhopal has been cancelled in the interest of service. When this O.A came up for initial hearing, on a prima facie consideration of the facts as stated by the Applicant, we have directed the respondents to keep the aforesaid Annexure A-6 and A-8 orders in abeyance.

2. The brief facts of the case are that there are only four sanctioned posts of Senior Managers, MMS with the Respondents and they are expected to serve as the Incharges of the four major units at Bombay, Calcutta, Delhi and Madras. The other units at Ahmedabad, Bangalore, Ernakulam, Guwahati, Hyderabad, Kanpur, Nagpur and Patna etc. are manned by officers at the level of Managers. Of the four Senior Managers, the seniormost Senior Manager Shri T.K.Sen has since been promoted as Director, Motor Vehicles, Dak Bhawan, New Delhi and the second senior person Shri S.R.Sangua has retired on 31.12.2002. Thus the applicant is at Sl.No.2 in the seniority list of Senior Managers. The Applicant is presently working as Senior Manager, MMS. He entered service as Manager MMS (Mail Motor Service) in the junior time scale on 22.01.1986 at Hyderabad under the Andhra Circle. He was, thereafter, posted as Manager, MMS to Cochin under Kerala Postal Circle on 31.01.1989 and continued as such till 31.12.1991. On his selection as Senior Manager, Group A (Gazetted), he was promoted and posted as Senior Manager, MMS, Madras with effect from 07.01.1992 and continued there till 15.08.1997. He was then transferred to Calcutta as Senior Manager




on 22.09.1997 and then to Delhi as Deputy Director (Technology), Postal Directorate on deputation basis on 14.07.2003. Thereafter, on his request for a transfer to Cochin on grounds of family problems, the respondents transferred him as Senior Manager, MMS, Cochin, Kerala Circle vide Annexure A-1 order dated 20.01.2004. Now he has been transferred to Guwahati vide the impugned Annexure A-6 order dated 04.04.2006.

3. On the receipt of the aforesaid transfer order, the applicant made the Annexure A-7 representation dated 05.03.2006 pointing out that he was holding the post of Senior Manager, MMS Cochin and there was no post of Senior Manager at Guwahati, where he has been posted. He also pointed out that he had completed only two years from 16.02.2004 as Senior Manager, MMS, Cochin and requested to cancel the transfer to Guwahati and to allow him to work at Cochin for another one year due to serious family hardships. On receipt of the aforesaid representation, the respondents issued impugned Annexure A-8 order redeploying of the post of Senior Manager .MMS from Cochin to Guwahati so that the Applicant could join his new place of posting. It has also been conveyed that Shri R.K.Tripathi, Manager, MMS, Guwahati has been posted as Manager, MMS, Chandigarh instead of Delhi. The applicant, thereafter, made another detailed Annexure A-9 representation pointing out that the 3rd respondent who is holding the post of Manager cannot be retained at Delhi which is a major Unit having a fleet strength of above 125 vehicles and the applicant being a regular Senior Manager is entitled to be posted there, if at all his transfer from MMS Cochin Unit is necessitated . Since the post of Senior Manager, Cochin has not been abolished and the post of Senior Manager, Guwahati has not been created and there is no scope of creating such a post there as the fleet strength at



Guwahati is only 15, he has requested to cancel the redeployment of the post of Senior Manager from Cochin to Guwahati.

4. The respondents in their reply has submitted that while the applicant was working as Deputy Director (Technology) on deputation basis in Delhi, in order to accommodate his request for a transfer to Cochin, the aforesaid post was redeployed as that of Senior Manager, MMS, Cochin and he was transferred and posted as Senior Manager, MMS, Cochin. In a similar way, while he was working as Senior Manager, MMS, Cochin, for administrative reasons, he was transferred as Senior Manager, MMS Guwahati by Annexure A-8 order. According to them, the applicant himself has admitted that the status of the post of MMS, Cochin is that of a Manager and it was upgraded to that of Senior Manager by redeployment of a post from Directorate for functional needs. The official being a Senior Manager, got an opportunity to work at Ernakulam only due to the temporary elevation of this post. As the posting was convenient to him, he did not challenge this re-deployment or transfer even though the fleet strength of the Ernakulam unit was less than 15 at that time. It is on the same analogy, the post at Ernakulam is now transferred to Guwahati vide Annexure R-2 order dated 17.08.2006. They have also submitted that the Applicant was transferred /posted in a routine administrative matter and it was for administrative conveniences. As the transfer of the Applicant was to a post carrying same rank and pay, there was no illegality in the order. The applicant's challenge to Annexure A-8 was purely on personal grounds and the same cannot be accepted as valid grounds against the transfer. They have also submitted that Annexure A-6 order was erroneous one, as the post at Cochin and Guwahati were not of the same status. It was for this reason, Annexure A-6 order was kept in abeyance vide Annexure R-3 order dated 10.04.2006 and



Annexure A-8 order was issued only to rectify the above mistake. Now, by the Annexure R-1 order, the post was re-deployed and by Annexure A-8 the official was transferred to the re-deployed post. They have also submitted that Annexure A-8 orders were not implemented immediately as no substitute arrangement was made to relieve the applicant from the post. However, vide Annexure R-5 order dated 05.09.2006 the substitute arrangement has also been made by posting one Shri C.Nagarajan, from Ahmedabad to Kochi and the applicant stood relieved under the local arrangement vide Annexure R-6 memo dated 30.08.2006 by giving the additional charge of Manager, MMS to SSP, Ernakulam without extra remuneration.

5. The applicant had filed rejoinder. He submitted that the respondents have no authority or power either to create or upgrade the post of Manager, MMS at Guwahati as Senior Manager only for effecting a transfer. In this regard he has relied upon the Annexure A-12 Government of India, O.M.No.7(18)-E (Co-ord)/91 dated 16.09.1991. according to which upgradation of a post in effect amounts to creation of higher posts and hence it is necessary that in all such cases of upgradation, the same procedure as is prescribed for creation of posts. He has also relied upon Annexure A-13, Government of India O.M. No.10(4)-E.(Co-ord)/62 dated 01.06.1962 and .No.10(3)-E.(Co-ord)/67 dated 18.10.1968 and submitted that the Work Study Unit should undertake study of the staffing of the establishment for the creation of a new post. The applicant has submitted that to the best of his knowledge, no internal work study has been conducted by the respondents for redeployment of the post of Senior Manager, MMS from Cochin to Guwahati. The applicant has also relied upon Annexure A-14 letter No. 2-3/91-PE-1 dated 03.09.1992 issued by Department of Posts regarding redeployment of posts to meet the



shortage of staff. In the said letter, only such post which become surplus due to reorganisation of existing set up can be redeployed but the respondents has no case that there was reduction in work load at MMS, Cochin or any reorganisation of existing set up at MMS, Cochin warranting redeployment of Senior Manager, MMS Cochin to Guwahati. He has also relied upon Annexure A-15 memo No. 35034/1/97 (Estt-D) dated 09.08.1999 issued by DOPT and refuted the contention of the respondents that the 3rd respondent was given ACP and therefore he has sufficient experience to manage the MMS, Delhi as the said O.M envisages only financial up gradation and which cannot be equated to general promotion.

6. Counsel for applicant has also relied upon the following judgments in State of Kerala v. Balakrishnan [992 1 KLT 420], K.Prasad and Others v. UOI and Others [1988,Suppl.SCC 269] and M.C.Barke & 4 Others v. Employees' State Insurance Corporation & Another [1992 (20) ATC 803] in support of his contentions against the impugned transfer.

7. Heard Mr.O.V.Radhakrishnan, Senior counsel for applicant and Mr.P.J.Philip, counsel for respondents and also perused the relevant transfer/posting file in the grade of Senior Managers/Managers, MMS of the respondent department. The main contention of the applicant is that there are only four posts of Senior Managers located at Delhi, Calcutta, Mumbai and Madras based upon the fleet strength of 125 vehicles and above and Guwahati having a fleet strength of only 15 vehicles is not entitled for the service of a Senior Manager. The Applicant's other contention is that two posts of Senior Managers out of the total four posts are lying vacant and the applicant being the 2nd seniormost Senior Manager, he is to be considered for posting against

9

those two vacant posts. The respondents, on the other hand, have stated that the transfer of the applicant to Guwahati was purely on administrative grounds and it was done after upgrading the post of Manager, MMS there to the level of Senior Managers, MMS and there were no adverse effects on him. They had also submitted that the Office of MMS, Cochin where the Applicant was posted last also did not have the entitlement of the services of a Senior Manager and it was only to accommodate his request for a transfer to Kochi while he was working as Deputy Director (Technology) in Delhi, he was posted there vide Annexure A-1 letter dated 20.01.2004 after the post held by him at that time, namely, the post of Deputy Director (Technology) in the Postal Directorate, New Delhi was redeployed as Senior Manager, MMS, Kochi, Kerala. According to them, after the applicant has enjoyed his posting at Kochi after redeployment of post allegedly against the norms, he cannot now raise the very same ground as a defense for not transferring him from Kochi to Guwahati.

8. I do find a point in the submission of the Respondents. Undisputedly there are only four posts of Senior Managers and 13 posts of Managers in the Mail Motor Service. The distinction between these two sets of posts is basically on the basis of the fleet strength in the respective units. Senior Managers are generally posted in Units where the fleet strength is 125 or more. There are only four such units which are located in Delhi, Bombay, Calcutta and Madras. In normal course, the Senior Managers should have been posted in charge of those Units but for the reasons of administrative exigencies, the respondents cannot always maintain such ideal situation. The Applicant himself had, earlier in 2003, while working as Senior Manager at Calcutta, sought for deputation as Deputy Director (Technology) in Postal Directorate at New Delhi. Since there are only four posts of Senior Managers

: 8 :

available, in order to grant such deputational postings, it would not be possible to post a Senior Manager against the post vacated by the previous incumbent. Again, though there was no post of Senior Manager in the Kochi Unit of the MMS, the Respondents have granted the request of the Applicant for a posting at Kochi as Senior Manager. This was made possible by redeployment of the post of Deputy Director (Technology) as Senior Manager, MMS, Kochi. Moreover, over a period of time, most of the Managers have put in many years of service and became entitled to be promoted as Senior Managers. In these circumstances, I do not find the grievance of the Applicant against his posting and transfer made vide Annexure A-6 and Annexure A-8 orders dated 04.04.2006 and 28.04.2006 respectively is genuine. Moreover, the Respondents have made a chain of postings and transfers to various units and Shri C. Nagarajan, Manager has been transferred from the Ahmedabad Unit and posted in Kochi in place of the Applicant vide Annexure R-5 order dated 05.09.2006. In the above facts and circumstances of the case, this O.A is dismissed. The interim order passed by the Tribunal on 30.08.2006 to keep the Annexure A-6 and A-8 orders in abeyance stands vacated. There shall be no order as to costs.

Dated, the 1st November, 2007.


GEORGE PARACKEN
JUDICIAL MEMBER

vs