

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.62/2003.

Friday, this the 26th day of September, 2003.

C O R A M

HON'BLE MR.T.N.T. NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

Vrinda. S.,
Gramin Dak Sevak Mail Deliverer,
Desom P.O.,
Residing at Radhamandiram,
Desom P.O., Aluva : 683 103.

..Applicant

[By Advocate Mr. P.C. Sebastian]

Versus

1. Senior Superintendent of Post Offices,
Aluva Division, Aluva : 683 101.
2. The Chief Postmaster General,
Kerla Circle, Thiruvananthapuram : 695 303.
3. Union of India represented by its
Secretary, Ministry of Communications,
Department of Posts, New Delhi.

..Respondents

[By Advocate Mrs. S. Chitra, ACGSC for R-1 to R-3 and
Mr. TCG Swamy for R-4]

O R D E R

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant, who is presently working as Gramin Dak Sevak Mail Deliverer (GDSMD) at Desom P.O. in Aluva Postal Division on permanent basis with effect from 22.5.2001, applied for a transfer in response to Annexure A2 notification dated 2.12.2002 issued by the first respondent. The applicant secured 523 marks out of 600 in the SSLC examination and she claimed that she has got independent income from landed property. The application submitted by the applicant is Annexure A/3. It is stated by the applicant that there were only three candidates for the post of GDSSPM, Varapetty, and among them, the applicant as the highest mark holder, got a chance to be selected for the post of GDSSPM, Varapetty. The 4th respondent, K.R. Anitha, who was


also a candidate applied for the said post, was not eligible since she had obtained less marks than the applicant. On enquiry, the applicant was orally informed that her application could not be considered for the post of GDSSPM, Varapetty, in view of clarification issued by the Chief Post Master General, Kerala, Thiruvananthapuram, that Gramin Dak Sevak appointed after coming into force of the new Gramin Dak Sevak (Conduct and Employment) Rules, 2001, will not be considered for transfer from one post to another. As per letter dated 9.10.2002 (Annexure A4) issued by the second respondent to all divisional heads in Kerala Circle, the new Gramin Dak Sevak (Conduct and Employment) Rules, 2001, will be applicable only for GDS appointed on or after the issue of the new Rules, 2001, and they will not be given transfer since in Note II(4) under Rule 3 of the New Rules, GDS have no transfer liability. The applicant submitted that this position has been settled by the decision of this Tribunal in O.A.No. 45/1998, which was upheld by the Hon'ble High Court of Kerala reported in 2000 (3) KLT 541. The decision of the Chief Post Master General contained in Annexure A/4 is illegal and ultra vires. Aggrieved by the said order, the applicant has filed this O.A. seeking following reliefs:

- "(i) To call for the records leading to the issue of Annexure A/4 and to set aside the same;
- (ii) To declare that the applicant is entitled to be considered for selection to the post of GDS SPM, Varapetty, pursuant to Annexure A/2 and to direct the first respondent to consider her candidature to the said post and finalise the selection on merit.
- (iii) To grant such other reliefs which may be prayed for and which this Hon'ble Tribunal may deem fit and proper to grant in the facts and circumstances of the case.
- (iv) To award costs in favour of the applicant."

2. The official respondents 1 to 3 and the party respondent No.4 have filed separate reply statements contending that as per DG's letter No.22-1/2000-ED&Trg. dated 24.4.2001, the

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nomenclature of ED Agent was changed into Gramin Dak Sevaks (GDS, for short) and framed a new service and conduct rules. According to this new Rule, the GDSs have no transfer liability. Therefore, Smt. S.Vrinda, GDS MD, Desom, appointed on 22.05.2001 is not eligible for appointment as GDS SPM, Varapetty, by transfer even though she satisfies all other conditions. The criteria for selection of GDS BPM/ SPM is based on the marks obtained in SSLC examination if all other conditions are satisfied. Out of seven candidates, five did not fulfil the independent income condition. Remaining two candidates are Smt. S. Vrinda, GDS MD, Desom and Smt. K.R. Anita, GDS BPM, Plamudy. Smt. S. Vrinda is not eligible for transfer as per DG's letter dated 24.4.2001 even though she secured 523/600 marks in SSLC Examination. Smt. K.R. Anitha, GDS BPM, Plamudy, who scored 519/600 marks in SSLC Examination and having fulfilled other required conditions, was found suitable for the post of GDS SPM, Varapetty. The applicant was appointed as GDS MD, Desom, on 22.5.2001 after the issued of new Rules with effect from 24.4.2001. They have also contended that the applicant was not eligible for consideration as per letter No. ST/120/Kollam dated 09.12.2002 issued by the second respondent to all Divisional Heads in Kerala Circle. That circular has now been withdrawn in view of DG Posts letter No. 17/103/2002-GDS dated 26.12.2002. Therefore, now the power for consideration of request transfer of GDS from one post to another is vested with the Chief Postmaster General (Head of the Circle) only. As per the latest orders of the Director General, Department of Posts, New Delhi, letter No. 17-103/2002-GDS dated 26.12.2002, the applicant may not be eligible for consideration. In view of the above, all the applications for the post of GDS SPM, Varapetty, including the application with all documents of the applicant were forwarded to the Chief Postmaster General, Kerala Circle, for consideration. The party respondent No.4 vehemently contended that in Annexure



R4(a), the query No.5 and the clarification against the same is very much relevant so as to consider the eligibility of the original applicant. The provision against item No.3 as mentioned in the clarification runs as under:-

"Under the normal circumstances, ED Agents do not carry any transfer liability and are not liable to be transferred from one post to another or from one place to another. However, in rarest cases where ED Agents are posted far away from their original post offices of posting on being rendered surplus, they may be allowed one or two transfers in their entire service in order to enable them to be posted back to their parent Post Offices or any nearby Post Offices."

The respondent No.4, therefore, contended that in terms of Annexure R4(a), an ED Agent other than EDBPM/SPM can apply for the post of EDBPM/SPM, falling vacant outside his recruiting unit (Sub Division), but that would be subject to the condition stipulated in the proviso above. The learned counsel for the respondent No.4 further contended that she had secured 519 marks out of 600 in SSLC Examination and also obtained B.A. degree in literature. She also qualified in Computer Data Entry Operation. She is a native of Varapetti situated at a distance of 25 kilometres from Plamudi and she could visit her home only during the week end. It is further stated that the decision of Hon'ble High Court of Kerala reported in 2000 (3) KLT 541 (supra) has no application to the particular facts and circumstances of this case and prayed that the O.A. is liable to be dismissed.


3. The applicant has filed a rejoinder with the contention that it is clear from the reply statement filed by the first respondent that her claim for transfer was initially rejected stating that the applicant having been appointed to the post of GDS MD after coming into force the new GDS Service Rules with effect from 24.04.2001, she cannot claim transfer since there was no provision in the aforesaid new Rules for transfer of GDS. Subsequently, the said order was withdrawn and as per the new instructions, the transfer claims of GDS officials are to be

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decided by the Head of the Circle. The said order has already been declared as non-operative in one of the similar O.As No. 40/2003. The applicant is seeking appointment by transfer within the same recruitment unit, i.e. Aluva Division, and the third respondent is competent to decide the matter as per the extant rules as stand settled by the Tribunal in O.A. No. 45/98, Rajendran Pillai R vs. Union of India and Others, decided on 25.2.1999.

4. We have heard Shri P.C. Sebastian, learned counsel for the applicant, Mrs. Chitra, ACGSC, for official respondents No. 1 to 3 and Mr. T.C.Govindaswamy, learned counsel, appeared on behalf of the respondent No.4.


5. We have given due consideration to the pleadings, material and evidence placed on record and also the arguments advanced by the learned counsel for the parties. The learned counsel for the applicant reiterated his arguments and submitted that the 4th respondent has no better claim than the applicant as the criteria as declared by this Tribunal for selection to the post of GDS SPM, where there are more than one applicant, is based on the marks obtained in the SSLC Examination. The applicant as well as the 4th respondent are eligible to seek transfer on the post in question and the selection has to be made only on the basis of the aforesaid criteria. The learned counsel for the official respondents submitted that this is a case which has to be considered by the Head or Circle only as per the extant instructions. The learned counsel for the 4th respondent on the other hand, submitted that the applicant will not come within the purview of consideration for transfer because she belongs to a different unit and the 4th respondent is only eligible to be considered for the said post although she had secured lesser



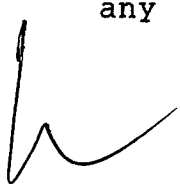
marks in the SSLC Examination. She has higher qualification (a degree in BA) and also having knowledge of computer operation at the time of considering the applications.

6. The Extra Departmental Agent is not a casual worker but he holds a post under the administrative control of the State. In the case of the Superintendent of Post Offices etc. etc. vs. P.K. Rajamma etc. etc., reported in AIR 1977 SC 1677, the Hon'ble Supreme Court declared that though the post of ED Agents are outside the regular civil services, it is a post under the State. The instrumentality of the civil post will be attached to the said post and the tests of a civil post laid down in the said decision are clearly satisfied in the case of Extra Departmental Agents. The decision reported in 2000 (3) KLT 541, Sub Divisional Inspector of Post Offices vs. C.A.T., the Hon'ble High Court has upheld the decision of this Tribunal and declared that the EDAs are entitled to transfer and appointment in other categories. It was further observed in that O.A. that in O.A. No.45/98 there was a challenge against two letters 14.2.1997 and 16.10.1997 issued by Member (Personnel) and Senior Superintendent of Post Offices, Aluva Division attempting to clarify that the communication dated 12.2.1988 intended only to mean that the EDAs in service need not go through a selection process through Employment Exchange and that they do not have any right or claim for transfer and appointment in other vacancies. The said letters were set aside by this Tribunal, which was ultimately upheld by the Hon'ble High Court of Kerala in the decision cited supra.

7. One of the impugned letters, which was set aside by the Tribunal in the above O.A., giving an interpretation of transfer liability, has now incorporated under item No.3 in Rule 3 of the new GDS Rules which is being pressed into service now for the



purpose of denying the benefit to the applicant. The word "transfer liability" contained in the new Rule, cannot be understood to mean that GDSs are not to be considered for transfer from one post to another. As per DG's letter No. 22-1/2000-ED & Trg. dated 24.4.2001, the nomenclature of the ED Agent was changed into Gramin Dak Sevaks and framed a new series and conduct Rules. As per the respondents, the GDSs have no transfer liability in terms of this Rule and as per this Rule, the applicant being appointed on 22.5.2001, is not eligible for appointment as GDS SPM, Varapetty, by transfer even though she satisfies all other conditions. We are unable to accept this contention of the respondents on the ground that whatever be the nomenclature that has been put to/changed to in respect of the ED Agents service, their service conditions as declared by Hon'ble Supreme Court in Rajamma's case (supra) cannot be taken away from the GDS Service under Article 311. On going through the service conditions, nature of job and other aspects, we find that ED Agents and GDSs are the workers coming within the shelter of one umbrella and the conduct Rules. The fact that the new Rules framed by the respondents for GDSs in order to deny such a valuable right to those employees, cannot be accepted by any legal ratio. It is also to be understood that such employees have acquired the said right by fighting their grievance over years and finally, the Hon'ble Apex Court has granted such benefits by declaration of a law. On the pretext of mere changing the name of EDAs into GDSs, such benefits that the ED Agents have already acquired/enjoyed cannot be denied. Therefore, the contention of the respondents that the applicant is not entitled for transfer will not stand to any reason. Apart from that, this Court time and again declared that the criteria to be adopted for selection to the post in question was on the basis of the marks obtained in the SSLC Examination. Possessing any higher qualification by a candidate does not mean that



irrespective of fulfillment of other norms, he has to be preferred because the notification Annexure A/2 mentions that the minimum educational qualification prescribed for the post is SSLC. Hon'ble Supreme Court in a decision reported in (2002) 4 SCC 16, Bibhudatta Mohanty vs. Union of India and Others, has held that although the guidelines contained in the "Method of recruitment" mention that the minimum educational qualification is VIIIth-passed and preference will be given to SSC-passed, the requisition did not specify that preference would be given to SSC-passed candidates. As the basis of selection was in terms of requisition to the employment exchange, the selection authority committed no illegality in not giving preference to SSC-passed candidates. Their Lordships further held that where any rule or guidelines provides preference in respect of some higher qualification, it only means that all other requirements being equal, a person possessing higher educational qualification will be preferred. It cannot be considered as the sole criterion for preference in selection and appointment. In the instant case, in A/2 notification at item No.2, it has clearly been mentioned that "the minimum educational qualification prescribed for the post is SSLC and selection will be based on the basis of marks obtained in SSLC Examination. Therefore, qualification higher than SSLC is of no relevance.

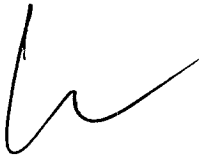
8. We have also perused the latest circular No. 17-103/2002-GDS dated 26.12.2002, in which it has been stated as follows:

"(1)

There is no provision in the rules for the transfer of GDS and they are selected and engaged for specific part-time jobs at specific places and are expected to have alternative/additional employment/source of income at the same place.

(2)

However, in the interest of service any GDS may be redeployed by Heads of Circles if the GDS becomes surplus at any particular place and is willing to work against another vacant




post at another place for which he should be eligible with required qualifications etc. for the said post.

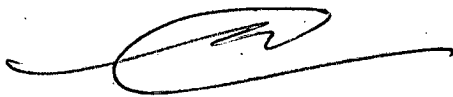
- (3) On the same analogy, a Head of the Circle may also consider the request of GDS to another vacant post available elsewhere only if the applicant is eligible (has the required qualification etc.) for the same and is willing to accept the emoluments of the new post. Higher emoluments in the present post will not be protected in such cases."

9. On close scrutiny of this circular and that of the circulars dated 14.2.1997 and 16.10.1997 (referred to in O.A. 45/98), which were set aside by Hon'ble High Court of Kerala in Sub Divisional Inspector Post Offices vs. C.A.T. (supra), we feel that the applicant has a case for consideration of transfer in view of the observation of Hon'ble High Court. In other words, what we find that in the case of GDS, the respondents are trying to incorporate the same conditions through the new circular, which according to us, is not justified. In fact, they are trying to put the old wine into a new bottle. This is a matter which is being considered by the Chief Postmaster General, Kerala Circle, as per the averments made in para 11 of the reply statement filed by the official respondents.

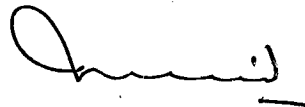
10. Considering the fact that the matter is in the hands of the Chief Postmaster General, Kerala Circle, we consider it appropriate to give a direction to the respondent No.2, the Chief Postmaster General, Kerala Circle, to finalise the selection to the post GDS SPM, Varapetty. Accordingly, we direct the respondent No. 2 to ensure that all the candidates, including the applicant, are considered and the selection to the post of GDS SPM, Varapetty, is finalised keeping in mind the legal position as observed above and cause appropriate orders to be issued within three months from the date of receipt of a copy of this order.



We allow the Original Application as above. In the circumstances, there will be no order as to costs.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

cvr.