

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 619 of 2003

Thursday, this the 25th day of September, 2003

CORAM

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

1. K.T. Anuradha,
W/o Sukumaran,
Gramin Dak Sevak Mail Deliverer,
Kilur Meladi PO, Vadakara Division,
Residing at Vazhavalappil House,
Neduvathur PO, Pin - 673 330Applicant

[By Advocate Mr. P.C. Sebastian]

Versus

1. The Superintendent of Post Offices,
Vadakara Division, Vadakara
Pin - 673 101
2. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
3. The Director General,
Department of Posts,
Dak Bhavan, New Delhi.
4. The Union of India, represented by
Secretary to Govt. of India,
Ministry of Communications,
Department of Posts, New Delhi.Respondents

[By Advocate Mr. C. Rajendran, SCGSC]

The application having been heard on 25-9-2003, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

The applicant, who is working as Gramin Dak Sevak Mail Deliverer (GDSMD for short) at Kilur Post Office in Vadakara South Sub Division, submitted a representation (Annexure A1 and A2) to the 2nd respondent requesting for transfer to the vacant post of Gramin Dak Sevak Sub Postmaster (GDSSPM for short), Neduvathur Post Office. By Annexure A3 letter dated 11-7-2003, the 1st respondent informed the applicant that as per the

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latest orders issued by the D.G.(Posts), the orders empowering the Heads of Circles to issue transfer orders to GDSs have been withdrawn. The applicant's request for transfer was accordingly turned down. Aggrieved by this, the applicant has filed this OA stating that she is entitled to be appointed by transfer as per the D.G.(Posts)'s letter No.43-27/85-Pen.. (EDC & Trg.) dated 12-9-1988 and also in the light of this Tribunal's decision in OA No.45/98.

2. Respondents in their reply statement have resisted the applicant's claim by stating that as per the GDS (Conduct and Employment) Rules, 2001, Sevaks are not liable to be transferred, that the Heads of Circles have no powers as of now to transfer any GDS, since such powers have been withdrawn as per the D.G.(Posts)' letter dated 27-6-2003 (Annexure R1) and that the applicant in any case has filed an application for transfer after the issue of a notification dated 30-5-2002 calling for applications from outside candidates. Accordingly, the applicant has no legitimate cause of action, the respondents would maintain.

3. When the matter came up for consideration, it was agreed by both the counsel that the issue involved in this OA has already been considered and decided by the Tribunal in various earlier orders and that therefore the matter could be decided with the available pleadings. We have accordingly heard Shri P.C.Sebastian, learned counsel for the applicant and Shri C.Rajendran, learned SCGSC.

4. It is pointed out by Shri P.C.Sebastian, learned counsel for the applicant, that what is mentioned in the GDS (Conduct and Employment) Rules, 2001 is that GDSs have no transfer liability, which does not in any way affect their

right to ask for a transfer as permitted under the existing instructions. Learned counsel would point out that D.G.(Posts)' letter dated 12-9-1988 and the subsequent clarification issued thereon would make it abundantly clear that GDSs can ask for one or two transfers subject to their fulfilling other conditions. The applicant, who was working as GDSMD at Kilur Post Office in Vadakara South Sub Division, has asked for a transfer as GDSSPM, Neduvathur falling within the same division and accordingly her case merited consideration in the light of the D.G.(Posts)' letter dated 12-9-1988. Learned counsel would also invite our attention to a large number of orders passed by this Tribunal including OA No.45/98, OA No.39/03 and OA No.635/03. The counsel would, therefore, submit that the applicant was eligible to be appointed by transfer as GDSSPM, Neduvathur subject to her fulfilling other prescribed conditions.

5. Shri C.Rajendran, learned SCGSC, on the other hand, would rely on the reply statement and would contend that the GDS (Conduct and Employment) Rules, 2001 specifically mentions that the Sevaks are not liable to be transferred and that since the powers of transfer on the part of the Heads of Circles have been withdrawn and since the Rules do not permit transfer of GDSs, the applicant has no case for appointment by transfer as GDSSPM, Neduvathur.

6. On a consideration of the relevant facts, we find that the D.G.(Posts)'s letter No.43-27/85-Pen.(EDC & Trg.) dated 12-9-1988 and subsequent clarifications issued thereon make it clear that GDSs have a right to seek appointment by transfer subject to their fulfilling the prescribed conditions regarding educational qualifications, residence, independent source of income, etc. We are not persuaded to accept that the GDS

(Conduct and Employment) Rules, 2001 prohibit such transfer which is visualized under the D.G.(Posts)'s letter referred to above and subsequent clarifications thereon. The applicant in this case has been continuing as a GDSMD since 1998 and it is specifically provided in the 2001 Rules that the terms and conditions of Sevaks who are already in service would be protected. The instruction issued on 12-9-1988 confers on GDS the right to seek an appointment by transfer which, according to us, is well protected under the 2001 Rules also. We notice, in this connection, that on identical facts and circumstances this Tribunal has taken the consistent view that GDSSs are entitled to seek appointment by transfer, which is a privilege and not a liability. While as a liability transfer cannot be imposed on GDSSs, as a privilege it can be conferred on them depending on the exercise of such privilege subject to fulfilment of other prescribed conditions. In this case, that is what the applicant has done. In this regard, we follow the findings in our decisions in OA No.45/98 dated 25-2-1999, OA No.39/03 dated 1-8-2003 and OA No.635/03 dated 27-8-2003, wherein, as mentioned, the same view has been taken.

7. In the light of the factual and legal position discussed above, we hold that the applicant is eligible to be considered for appointment by transfer as GDSSPM, Neduvathur subject to her fulfilling other prescribed conditions. Accordingly, the impugned order Annexure 3 is set aside. The 1st respondent is directed to consider the applicant's request for appointment by transfer along with other similarly situated GDS-candidates, if any, and pass appropriate orders thereon within a period of two months from the date of receipt of a copy of this order. Respondents are further directed not to proceed with the selection/recruitment from open market for the

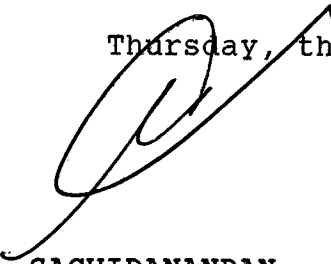
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purpose of filling the vacancy of GDSSPM, Neduvathur until a decision is taken with regard to the applicant's request as directed above.

8. The Original Application is allowed as above. No order as to costs.

Thursday, this the 25th day of September, 2003.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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