

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO.619/07

Friday this the 24th day of October, 2008

C O R A M

**HON'BLE DR K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

P.K. Poulose S/o Kuriakose
Gramin Dak Sevak Mail Deliver
Keerampara Post Office
residing at Parackkal House
Kothamangalam.Applicant

By Advocate Mr. P.C. Sebastian

Vs

- 1 The Chief Postmaster General
Kerala Circle, Thiruvananthapuram-695 033
- 2 The Sub Divisional Inspector of Post Offices
Perumbavoor Sub Division,
Perumbavoor.
- 3 The Union of India represented by
the Secretary to Govt. Of India,
Ministry of Communications
Department of Posts, New Delhi.Respondents

By Advocate Mrs Mini R. Menon, ACGSC

The Application having been heard on 29.9.2008 the Tribunal
delivered the following

O R D E R

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

11
The applicant who is working as GDSMD Keerampara post
office on a permanent basis is aggrieved by the action of the 2nd
respondent in proceeding to fill up the vacancy of GDSMD,

Kothamangalam College post office disregarding his request for transfer to that vacancy pending consideration with the 1st respondent.

2 The applicant is working in the post of GDSMD, Keerampara Post office w.e.f. 24.6.1982. For the treatment of his mother who is a chronic T.B patient and who has become orthopaedically handicapped due to fracture in her leg and for the education of the children, the applicant shifted his residence from Keerampara village to Kothamangalam. A vacancy of GDSMD has come up at Kothamangalam college Post Office on account of creation of a new post by abolishing the existing post of Postman. The second respondent issued Annexure A-1 notification dated 11.4.07 inviting applications from eligible candidates for appointment in that post. On coming to know about the said vacancy applicant submitted a representation on 12.5.07 to the 1st respondent requesting for a transfer to the post of GDSMD, Kothamangalam College Post Office. The applicant submits that GDS are eligible for seeking transfer from one post to another under certain specified circumstances. The applicant has sought for the transfer on the ground of treatment of physically handicapped dependent mother. The applicant submits that the second respondent is taking hasty steps to fill up the vacancy of GDSMD Kothamangalam college Post Office from open market. Hence the applicant, left with no other efficacious remedy to redress his grievances, filed this O.A. Under Section 19 of the Administrative Tribunals Act, 1985.

TM

3 The main ground raised by the applicant is that the action of the 2nd respondent in hastily proceeding with the selection of an outside candidate for filling up the existing vacancy of GDSMD Kothamangalam Post Office disregarding applicant's request for a transfer, is highly unjust, arbitrary and violative of applicant's fundamental rights under Article 14, 16 and 21 of the Constitution. The applicant seeks for a declaration that he is eligible and entitled to get a transfer to the existing vacancy of GDSMD, Kothamangalam College Post Office.

4 The respondents in their reply statement submitted that the applicant is not eligible to be considered for a transfer under the Limited Transfer Facility Norms. They have submitted that the post of GDSMD Kothamangalam college post office is a newly created post consequent on the abolition of the post of Postman. The request for transfer of the applicant does not fulfill the norms mentioned in Annexure A3. Para (v) of Annexure A-3 allows those GDS who are required to shift residence to look after their mentally and physically handicapped dependents to apply for the limited transfer facility. By his own statement the applicant had moved two years back from Keerampara to Kothamangalam. His mother sustained a fall and became physically handicapped due to fracture in her leg a year after he shifted his residence to Kothamangalam. Therefore, as per the respondent, the move to Kothamangalam which was done two years earlier was not intended to lookafter his physically handicapped mother. They further submitted that as per the existing rules the applicant has to submit his request for transfer addressed to the 1st respondent through proper channel. The applicant has submitted the

74

request directly to the first respondent. They have further stated that the 2nd respondent proceeded with the regular selection and the selected candidate has been appointed with specific mention that the appointment will be subject to the outcome of O.A. 296/07 filed by one Sri Baby Mathew and that O.A.296/07 has been disposed of with the direction to the Chief Postmaster General to consider the case of the applicant for transfer from Pooyamkutty.

5 The applicant has filed a rejoinder rebutting the averments in the reply statement and reiterated that the 1st respondent is the competent authority to take a decision on merit for transfer in terms of Annexure A-3 guidelines.

6 We have heard learned counsel Shri P.C. Sebastian for the applicant and Mrs. Mini R. Menon ACGSC appearing for the respondents.

7 The prayer for transfer to the post of GDSMD, Kotamangalam College Post Office has come up before the Tribunal in O.A. 296/07 which has already been disposed of on 8.8.2008. The Tribunal has dealt with elaborately on the legality of the right for transfer and relied on the judgments of the Hon'ble Supreme Court in:-

- (i) Superintendent of Post Offices Vs. P.K. Rajamma (1977)3 SCC 94
- (ii) Senior Superintendent of Post Offices Vs. Raji Mol (2004) (1)KLT 183
- (iii) R.K.Sabharwal Vs. State of Punjab (1995) (2)SCC 745
- (iv) V.Jagannadha Rao s. State of A.P. (2001) 10 SSCC 401
- (v) Union of India Vs. S.L. Abbas (1993)4 SCC 357

(vi) Ganga Sugar Corpor. Ltd. Vs. State of U.P. (1980) 1
SCC 223)

The OA has been disposed of with the direction to the Chief PMG, Kerala Circle, the third respondent in the O.A. to consider the case of the applicant for transfer from Pooyamkutty Branch Post Office to Kothamangalam College Post office.

8 Since this O.A is identical in nature to that of O.A. 296/07, the O.A. is disposed of with the direction to the CPMG, Kerala Circle, the first respondent to consider the case of the applicant for a transfer from Keerampara post office to Kothamangalam college post office under his discretion and power and communicate his decision to the applicant. This shall be done within a period of two months from the date of communication of this order. The O.A. is disposed of as above. There shall be no order as to costs.

Dated 24th October, 2008.


K. NOORJEHAN
ADMINISTRATIVE MEMBER


Dr. K.B.S. RAJAN
JUDICIAL MEMBER

kmn