

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
ERNAKULAM

Date of Decision: 20.10.89

PRESENT:

Hon'ble Shri N.V. Krishnan - Admve. Member
&
Hon'ble Shri A.V. Haridasan - Judicial Member

ORIGINAL APPLICATION NO.7/89

Beena Mary .. Applicant

Vs.

1. The Senior Superintendent of Post Offices, Calicut Division Calicut-2.
2. Shri Gopalan, Sub Postmaster, Sultan Battery Post Office, Sultan Battery, Wynadu Dist.
3. M.K. Ammini, E.D.Agent, Beenadi Post Office, Beenadi, Wynadu District. .. Respondents.

Counsel for the applicant .. M/s K.M. Joseph & B.V. Deepak.

Counsel for the respondents .. Mr. P.V. Madhavan Nambiar SCGSC (For R.1&2)

Mr. MR Rajendran Nair (For R.3)

O R D E R
(Shri N.V. Krishnan, Admve. Member)

The applicant is aggrieved by the fact that she has been relieved from the post of Extra Departmental Stamp Vendor at Sultan Battery Post Office illegally by appointing to that post the respondent No.3.

2. The brief facts of the case are as follows.

2.1. The applicant was initially appointed as a substitute by the then incumbent, Shri K.P. Sukumaran, with effect from 17.7.1987. The applicant thus began on purely provisional basis and the appointment was recognised

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by the Department by Annexure-I which relates to the transfer of charge from K.P.Sukumaran to the applicant. She was later continued by the Deptt. itself on provisional basis, when KP Sukumaran was relieved on his promotion.

2.2. The applicant contends that as she has been doing her work in a satisfactory manner, she had a right to continue on that post. However, by the order dated 13.12.88 of the respondent No.1, the respondent No.3 has now been posted in her place, thus involving the termination of her service.

2.3. It is contended that the respondent No.3's appointment is illegal and malafide.

3. The respondents 1 and 2 have filed a reply in which it is stated that the respondent No.3 has been appointed in the place of the applicant on compassionate grounds. Respondent No.3 was initially appointed on compassionate grounds under the orders of the Post Master General, Trivandrum as an Extra Departmental Delivery Agent consequent upon the death of her husband on 5.11.84, while serving as E.D. Messenger at that time. Though the job of a Delivery Agent is more arduous, respondent No.3 had to be appointed to that post, as no other post was vacant at that time. She made a representation for transfer to the post of E.D. Stamp Vendor in Sultan Battery when that post fell vacant. The representation was considered by the Post Master General, who it is stated, allowed it and directed the first respondent to grant

the transfer in accordance with the instructions contained in the DG's letter No. ST/1/28/R1g IV dated 20.9.88 (ie, the Posts and Telegraphs). It is in pursuance of those instructions (Exbt.R.1) that the impugned order at Annexure A.2 was issued.

4. The Third respondent has already joined that post on 4.1.1989, and relieved the applicant.

5. We have heard the counsel and perused the records. The counsel for the applicant contended that in the circumstances of this case, the only instruction of the Director General at Exbt.R.1 which may apply to this case is the following:

"When an ED post falls vacant in the same office or in any office in the same place and if one of the existing EDAs prefers to work against that post, he may be allowed to be appointed against that vacant post without coming through the Employment Exchange provided/he/she is suitable for the other post and fulfils all the required conditions."

He argued that the vacancy of Extra Departmental Stamp Vendor is neither in the same office nor in the same place as Beenachi, where the respondent No.3 worked earlier, and Sultan Battery are two different places. This is also not a case where a selection for regular appointment is made and the person so selected is appointed in place of the applicant, admittedly a provisional appointee.

6. The counsel for respondent No.1 and 2 contend

that the reference to 'same place' in the aforesaid instructions should be construed to mean the same Sub-Division.

7. On behalf of the third respondent a written reply has not been filed as it was contended by her counsel that there was no need to file any such reply. The learned counsel pointed out that the entire ~~case~~ of the applicant ~~is on the footing that the respondent No.3 was transferred from Beennachito Sultan Battery.~~ He pointed out that a perusal of the Annexure-2 order dated 15.12.88 will make it clear that the appointment of respondent No.3 is not by way of transfer. It is a direction from the respondent No.1 (Senior Superintendent of Post Offices, Calicut to respondent No.2 (Sub Post Master, Sultan Battery) ~~concerning~~ ~~that respondent No.3~~ ~~may be appointed against the existing~~ ~~vacancy on her resigning the EDDA Post and compliance~~ ~~are reported. Fresh security may be obtained.~~ Therefore, no transfer is involved. She was asked to resign the earlier post held by her and join the new post. Therefore, the entire basis ~~on which~~ ~~this application~~ ~~has no~~ ~~foundation. That apart, the Annexure-2 order is only in~~ ~~compliance of a direction stated to have been given by the~~ ~~Post Master General,~~ ~~made clear in the Counter Affidavit~~ ~~as~~ ~~by respondents 1 and 2.~~

8. The counsel for Respondent-3 points that that even after the receipt of the Counter Affidavit of respondents 1 and 2, the applicant has neither chosen to implead the Post Master General, who, in the circumstances, is a necessary party nor to impugn the directions given by him to respondent No.1 in this regard.

9. We are of the view that the impugned Annexure-2 order cannot, per se, be considered to be an order of transfer. Respondent No.3 has been directed to first resign her appointment as Extra Departmental Delivery Agent, Beenachi before / appointed as Extra Departmental Stamp Vendor, Sultan Battery. It is ~~conceded~~ ^{she was} Upheld that the respondent No.3 complied with this direction. In the circumstances, we are of the view that the Annexure-2 order is really an order of a fresh appointment given to respondent No.3 to take up the post of Extra Departmental Stamp Vendor at Sultan Battery.

10. The respondent No.1 and 2 / tried to sustain the Annexure -2 order on the basis of the direction given by the Post Master General in pursuance of the standing instructions of the Director General at Exbt.R.1 relating to transfer of E.D. Agents from one post to another. We that the notice / Annexure-2 order is not in strict compliance of such

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directions, in as much as it does state in plain terms that the Respondent 3 is transferred from the post of EDDA, Beenachi and posted as EDSV at Sultan Battery. We are also of the view that the Annexure 2 order is not an order of transfer which is permissible under the Ex.R-1 instructions in some cases.

11. Therefore, it has to be held that it has been passed suo motu by Respondent-1 himself. It does not need much argument to conclude that making a fresh regular appointment in the manner it has been done in Annexure-2 is beyond the authority of Respondent-1. Therefore, Annexure-2 is liable to be quashed.

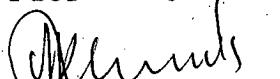
12. In the circumstances - ie, as Annexure-2 order is not a transfer order - we are not called upon to decide in the whether, on the facts and circumstances of this case, a transfer, if made from one ED office in Beenachi to another ED office in Sultan Battery, is permitted ^{possible} on the basis of the instruction extracted at para 5 supra.

13. As regards the arguments of the learned counsel for the respondent No.3 that the applicant has neither impleaded the PMG nor impugned the direction given by him to respondent No.1, we are of the view that this would have been necessary if Annexure-2 order of respondent No.1 had been strictly in terms of the directions given by the Post Master General. That not being the case, the application does not suffer from such defects.

14 In the result, we find that the Annexure-2 order has been passed by Respondent-1 without any authority. Accordingly, it is quashed. Respondent No. 2 is directed to reappoint the applicant as EDSV on a purely provisional basis. If it is possible to implement this order without reverting Respondent-3, it is certainly ~~b~~ be welcomed; but if it is inevitable to relieve Respondent-3, she shall be relieved.

15 We are conscious of the fact that in case Respondent-3 is relieved, it would be for no fault of her own and her being thrown out of employment after having secured compassionate appointment will be a matter of regret. We are, therefore, of the view that in the peculiar circumstances of the case in which this result might ensue - unless it is avoided by reinstating the applicant without reverting Respondent-3 as mentioned in the previous para - Respondent should take steps to see that she is provided ^a suitable job elsewhere. If, for this purpose, any special sanction is required, the matter may be taken up ^{by him} with the Postmaster General, who, we hope, will deal this matter sympathetically.

16 The application is thus allowed and there will be no order as to costs.



(AV Haridasan)
Judicial Member
20.10.89


20/10/89

(NV Krishnan)
Administrative Member
20.10.89

CENTRAL ADMINISTRATIVE TRIBUNAL: ERNAKULAM BENCH

Date of decision: 6.2.90

Present

Hon'ble Shri NV Krishnan, Administrative Member
and

Hon'ble Shri AV Maridasan, Judicial Member

RA No.5/90 IN OA 7/89

MK Ammini : Applicant

Vs.

1 The Senior Superintendent of
Post Offices, Calicut Division,
Calicut.

2 Shri Gopalan, Sub Postmaster,
Sultan Battery Post Office,
Sultan Battery, Wynadu Dist.

3 Smt Beena Mary, W/o KO Joy,
ED Stamp Vendor (Ex), Sultan
Battery, Wynadu Dist.

Mr MR Rajendran Nair

: Respondents

Mr PVM Nambiar, SCGSC
Mr BV Deepak

: Counsel of Applicant

: Counsel (for R1-2)

: Counsel (for R-3)

ORDER

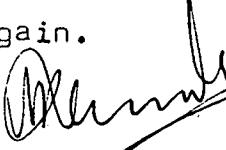
Shri NV Krishnan, Administrative Member.

The applicant, who was the 3rd Respondent in the original case, has applied for a review of the original order dated 20.10.89. The applicant states that, in a sense, the original application was allowed on a ground which was not urged by the applicant in that case.

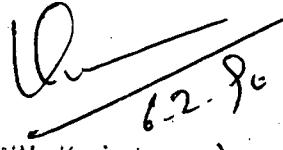
2 We have heard the counsel for the applicant as well as the counsel for the respondents. We are of the view that the point on the basis of which the application was allowed - that, if the Respondent-3 was not appointed by transfer to the Sulthanbatteri Post Office but by a fresh appointment on compassionate ground by Respondent-1 for which she was not competent - ought to have been

argued at the Bar. This conclusion, no doubt, flowed from the arguments advanced by Mr Rajendran Nair, counsel for Respondent-3 in the original case that there was no transfer in this case. However, the further point as to why in that event, the order issued by Respondent-1 should not be held to be invalid on the ground of incompetency was neither put to any counsel nor argued.

3 Accordingly, in the interest of justice, it is necessary to review the order dated 20.10.89 in OA 7/89. That order is, therefore, vacated and OA 7/89 will be heard again.



AV Haridasan
Judicial Member
6.2.90



NV Krishnan
Administrative Member
6.2.90

CENTRAL ADMINISTRATIVE TRIBUNAL: ERNAKULAM BENCH

Date of decision: 29-3-90

Present

Hon'ble Shri NV Krishnan, Administrative Member
and

Hon'ble Shri AV Haridasan, Judicial Member

OA 7/89

Beena Mary

: Applicant

Vs.

1 The Senior Superintendent of Post-
Calicut Division, Offices,
Calicut-2

2 Shri Gopalan, Sub Postmaster
Sultan Battery Post Office,
Sultan Battery, Waynadu District.

3 MK Ammini, E.D. Agent,
Beenadi Post Office, Beenadi,
Waynadu District.

: Respondents

M/s KM Joseph & BV Deepak

: Counsel of Applicants

Mr PV Madhavan Nambiar, SCGSC
Mr MR Rajendran Nair.

: (for R1 & 2)
: (for R-3)

ORDER

Shri NV Krishnan, Administrative Member.

This application was disposed of earlier by our order dated 20th October, 1989. However, the 3rd respondent herein sought a review of the order which was allowed on 6.2.90 and the original order dated 20.10.89 was vacated. The case was, therefore, heard again.

2 The applicant is aggrieved by the fact that she has been relieved from the post of Extra Departmental Stamp Vendor at Sultan Battery Post Office illegally by appointing to that post the Respondent No.3.

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3 The brief facts of the case are as follows.

3.1 The applicant was initially appointed as a substitute by the then incumbent, KP Sukumaran, with effect from 17.7.1987. The applicant thus began service on purely provisional basis and the appointment was recognised by the Department by Annexure-I which relates to the transfer of charge from KP Sukumaran to the applicant. She was later continued by the Deptt. itself on provisional basis, when KP Sukumaran was relieved on his promotion.

3.2 The applicant contends that as she has been doing her work in a satisfactory manner, she had a right to continue on that post. However, by the order dated 13.12.88 of the respondent No.1, the respondent No.3 has now been posted in her place, thus involving the termination of her service.

3.3 It is contended that the respondent No.3's appointment is illegal and malafide.

4 The respondent 1 and 2 have filed a reply in which it is stated that the respondent No.3 has been appointed in the place of the applicant on compassionate grounds. Respondent No.3 was initially appointed on compassionate grounds under the orders of the Postmaster General, Trivandrum as an Extra Departmental Delivery Agent consequent upon the death of her husband on 5.11.84, while serving as ED Messenger at that time. Though the job of a Delivery Agent is more arduous, respondent No.3 had to be appointed to that post, as no other post was

vacant at that time. She made a representation for transfer to the post of ED Stamp Vendor in Sulthan Battery when that post fell vacant. The representation was considered by the Post Master General, who it is stated, allowed it and directed the first respondent to grant the transfer in accordance with the instructions contained in the DG's letter No. ST/1/28/Vig.IV dated 20.9.88 (i.e. the letter from the Director General of Posts and Telegraphs). It is in pursuance of those instructions (Ext.R1) that the impugned order at Annexure A2 was issued.

5 The third respondent has already joined that post on 4.1.1989 and relieved the applicant.

6 We have perused the record and heard the counsel. It is contended on behalf of the Government (Respondents 1 & 2) that the applicant had no case because the 3rd respondent, who is a regular appointee, having been appointed on compassionate grounds as EDDA-Beenachi has normally been transferred from that place to Sultan Battery as Extra Departmental Stamp Vendor in place of the applicant, who was merely working provisionally, pending selection of a regular appointee. When we heard the case earlier this was contested by the applicant on the ground that this transfer was not permissible in accordance with the instructions issued by the Director General of Posts & Telegraphs. On the contrary, the counsel for the 3rd respondent had then taken the plea that the impugned Annexure-2 letter addressed by the Senior Superintendent of Post Office (1st Respondent) to the Sub-Postmaster,

Sultan Battery (Respondent-2) does not state that this is a transfer. Instead, it states that the 3rd respondent was required to resign the post of EDDA at Beenachi to join the new post of Extra Departmental Stamp Vendor at Sultan's Battery. He contended that, on the face of it, this was not a transfer and hence the objection of the applicant had no force. In respect of this contention neither the counsel for the applicant nor the counsel for Government (Respondents 1 & 2) pointed them out that the Annexure-2 letter directing the 3rd respondent to resign her job at Beenachi to join at Sultan Battery is really in compliance with the standing instructions as to how a transfer is to be carried out. We then of counsel for the third respondent accepted this argument and felt that if the appointment of the 3rd respondent to Sultan Battery is not by way of transfer, it necessarily has to be by way of fresh appointment on compassionate grounds and it was found that the SSPOs did not have such an authority. It is for that reason that in our earlier decision we held that the appointment given to the 3rd respondent by the Annexure-2 letter is void as it was beyond the powers of the first respondent.

7. When the case came up for final hearing after it was re-opened, it was brought to our notice -- and that too by the applicant's counsel -- that the letter at Annexure-2 requiring the 3rd respondent to resign her post at Beenachi and take up the post at Sultan Battery

is really in pursuance of the letter dated 6th May, 1985 of the DGP&T, shown as Instruction No.17 under 'Method of Recruitment' in Swamy's Compilation of Service Rules for ED Staff in Postal Department.

In the normal course i.e., other than in the case of an appointment on compassionate grounds, the ED Agents selected for a new post at another place (i.e. transfer) are directed to resign from their previous posts.

Therefore, it is clear that the Annexure-2 letter is really in pursuance of a direction received from the PMG to grant the transfer of 3rd respondent as prayed for by her, in accordance with the DG's letter dated 20.9.88 (Ext.R1).

8 Therefore, our finding that the 3rd respondent was appointed as a fresh employee by the 1st respondent exceeding his powers, is no more valid. The only question now is whether the transfer of the 3rd respondent is in order.

9 It is necessary to state that the only issue that we have to consider is whether the transfer of the 3rd respondent is in accordance with the provisions of the standing instructions. The learned counsel of the applicant assails the appointment of the 3rd respondent thus -

(i) Though the Annexure-2 letter does not ex-facie state so, it is indeed an order transferring Respondent-3.

(ii) Transfer of ED Agent in an office can be done when an ED post falls vacant in the same office or in any

office in the same place.

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(iii) The transfer can be sustained only if Beenachi i.e., the place where the 3rd respondent was working and the Sultan's Battery i.e. the place to which Respondent-3 has been transferred by the Annexure-2 letter, are in the "same place".

The applicant has contended that this is not the case. Benachi and Sultan Battery are two different places. When the applicant's counsel was asked to clarify whether he would allege that Beenachi and Sultan Battery are, in that cases, two different villages or two different Panchayats, he could do no more than reply that he had no other information in this regard.

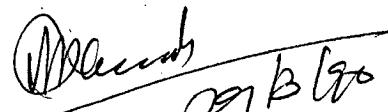
10 The original application itself does not, for obvious reasons, contain anything relating to the transfer of the 3rd respondent, as the applicant did not then know of the circumstances under which the 3rd respondent was being posted to Sultan's Battery by the impugned Annexure-2 order. He knew the facts only after respondent's reply was filed. If the applicant had to take an objection on the ground that the transfer was not between offices located in the same place, he should have amended his application taking this as a specific ground or at any rate, he should have filed a rejoinder containing facts from which one could infer whether Beenachi and Sultan's Battery are in the same place. In the absence of any such argument or pleading in this regard, the respondents cannot be expected to throw any

light on this issue.

11 In the circumstances, we are of the view that the third respondent has been posted to Sultan's Battery as an Extra Departmental Stamp Vendor by way of transfer. The applicant has not been able to establish that such a transfer is ^{not} permissible, for he has not been able to satisfy us that the transfer is not from one office in one place to another office in the same place.

12 We are of the view that the applicant has not made out any case and therefore, her application has to be rejected and is accordingly ordered.

13 There will be no order as to costs.



(AV Haridasan)
Judicial Member

29-3-90



(NV Krishnan)
Administrative Member

CENTRAL ADMINISTRATIVE TRIBUNAL: ERNAKULAM BENCH

Date of decision: 6.2.90

Present

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and

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: Respondents

Mr MR Rajendran Nair : Counsel of Applicant

Mr PVM Nambiar, SCGSC : Counsel (for R1-2)

Mr BV Deepak : Counsel (for R-3)

ORDER

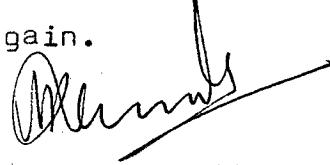
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(AV Haridasan)
Judicial Member
6.2.90


(NV Krishnan)
Administrative Member
6.2.90

30/1/90

SPM & ND

Mr. B. V. Deepak for the applicant.
Mr. C. S. Rama Nathan for SCSC for respondents.

The learned counsel seeks sometime to reply to the CCP. list for further directions on 15.2.90. The respondents are directed to allow the petitioner to take over as E.D. Stamp vendor at Sultans Battery on a provisional basis in compliance of the judgement of this tribunal dated 20.10.89 in O.A. 7189 if there is no order of stay.

Copy of the order may be handed over to the counsels for both the parties by hand.

By S. R.

30/1/90

NVK & ND

Mr. B V Deepak for the applicant.

S. V. S. & the respondent

When the Case came up for hearing 5-day, the Counsel of the applicant in CCP 7190 stated that since the application was filed, there has been a new development namely, the Dennis Application referred to in para-8 of the CCP has already been allowed by the order dt. 6/1/90. He therefore states that there is no grievance in the light of that order. Hence, the application is dismissed.

The M.P. 69/90 also stand dismissed.

By S. R.

Order communicated
on 26.2.90

P.S.D.RK15/2/90