

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NOs. 770/05, 93/06 & 144/08

this the *5th* day of February, 2008

C O R A M

**HON'BLE MR. GEORGE PARACKAN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

O.A. 770/2005

V.Sukumaran Nair S/o Shri Velayudhan Pillai
Gramin Dak Sevak Mail Packer
Parasuvaikal Sub Post Office
Neyyattinkara, Trivandrum District
residing at Latha Mandiram, Mekkolla
Dhanuvachapuram Post
Trivandrum-695 503 ..Applicant

By Advocate M/s T.C. Govindaswamy, D. Heera, P.N. Pankajakshan Pillai
& Sumy P. Baby

Vs.

- 1 Union of India represented by
the Secretary to Government of India
Ministry of Communications
Department of Posts,
New Delhi.
- 2 The Chief Postmaster General,
Kerala Postal Circle,
Trivandrum
- 3 The Superintendent of Post Offices
Trivandrum South Postal Division
Trivandrum-14 ..Respondents

By Advocate Mr. P. Parameswaran Nair, ACGSC.

O.A. 93/2006

A. Kannappadas S/o K. Aru
Sepoy (Group-D) No. 507 Postal Unit
Army Postal Service, Himamk C/o 56 APO
Permanent Address: Vembara
Nanniode, Vandithavalam (Via)
Palghat District. ..Applicant

By Advocate M/s T.C. Govindaswamy, D. Heera, P.N. Pankajakshan Pillai & Sumy P. Baby

Vs.

- 1 Union of India represented by
the Secretary to Government of India
Ministry of Communications
Department of Posts,
New Delhi.
- 2 The Chief Postmaster General,
Kerala Postal Circle,
Trivandrum
- 3 The Postmaster General,
Northern Region, Calicut-673 005
- 4 The Superintendent of Post Offices
Palghat Postal Division
Palghat.
- 5 V. Shyamaladas, GDS/Branch Postmaster
Anthikode PO
Palghat.
- 6 C. Velumani, GDS Mail Deliverer/Mail Carrier
Thannisseri PO
Palghat District.
- 7 M. Sasi,
GDS Mail Deliverer
Vattekad PO
Palghat District.
- 8 A. Kaveri, GDS Branch Postmaster
Nenmeni PO
Palghat district. Respondents

By Advocate Mr. P. Parameswaran Nair, ACGSC for R 1-4.
Advocate Mr. O.V. Radhakrishnan, Sr. Advocate for R 5-8

O.A. No. 144/2008

D. Sivankutty Nair S/o Damodaran Pillai
Gramin Dak Sevak Mail Deliverer, Valiyamala
residing at Kailasam
Kochuvenkadu, Panangadu PO
Peringamala, Trivandrum

..Applicant

By Advocate Mr. R. Sreeraj

Vs.

- 1 Union of India represented by
the Secretary to Government of India
Ministry of Communications
Department of Posts,
New Delhi.
- 2 The Chief Postmaster General,
Kerala Postal Circle,
Trivandrum
- 3 The Superintendent of Post Offices
Trivandrum South Postal Division
Trivandrum-14

..Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

As common question of law is involved in these three OAs they were heard together and are being disposed of by this common order.

- 2 The applicants in all the three cases challenge refusal on the part of the respondents to post them as Group-D employees on their repatriation/deputation from the Army Postal Service.
- 3 The facts in brief in each OAs are as given below:

O.A. 770/2005

- 4 The applicant was initially appointed as ED Mail Carrier on 10.3.1983 at Kanjivilakam Branch Post Office. While working so, when volunteers were called for from EDAs for deputation to the Army Postal Service, he applied, on selection he was granted proforma promotion as Group-D employee and thereafter was sent on deputation to the Army Postal Service by Annexure A-1 order dated 19.3.1991. A certificate was also given to the effect that he will not be reverted to the lower cadre of

EDA during his deputation to APS. He was enrolled in the APS as a Sepoy on 27.3.1991 and discharged on 24th January, 2003. However, on repatriation he was posted only as Gramin Dak Sevak Mail Packer at Perinkadavila Sub Post Office. On abolition of that post he was posted as Gramin Dak Sevak Mail Packer at Parasuvaikal Sub Post Office of Trivandrum South Postal Division under the 3rd respondent.

O.A. 93/2006

5 The applicant is presently working on deputation as a Group-D Sepoy in the Army Postal Unit. He was initially appointed as EDA, Kuttipallam BPO Palghat district on 20.12.1995 and later transferred as EDBPM, Panangattiri Palghat w.e.f 1.5.1997. While working so, he was promoted as Group-D at Palghat Head Office w.e.f. 16.8.2000 and deputed to Army Postal Service vide Annexure A-1 order dated 14.8.2001. By Annexure A-2 notification dated 22.2.2005 applications were invited from eligible employees for promotion to the cadre of Postman. According to him though he qualified in parts A,B & C of the examinations, his name was not included in the select list. The grievance of the applicant is that he is entitled to be considered for promotion against the 50% quota meant for Group-D.

O.A.144/08

6 The applicant commenced service as EDA Mail Carrier at Kochulvila Post Office on 12.12.1979. While continuing so, in 1991 he was deputed to the Army Postal Service after giving technical promotion as Group-D. He was discharged from the Army Postal Service on 30.6.2007 on medical grounds. On repatriation he was asked to join duty as GDSMD, Valiamala. According to him, he ought to have been accommodated against a regular Group-D post. He states that before proceeding on deputation he was appointed as Group-D and that the

Government had taken a policy decision to regularise the services of the GDSs working in the Army Postal Service vide letter dated 15.6.2007 (A-3).

7 The main ground raised by the applicants is that before being deputed to the Army Postal Service, they were appointed as Group-D employees in the Postal Department in public interest. Therefore, on repatriation they are entitled to join back the Group-D post left by them with all attendant benefits including promotion/ACP etc.

8 The respondents contested the OAs by filing reply statement in each OAs. They have admitted that before relieving the applicants they were technically appointed as Group-D for a day in an available vacancy for the express purpose of sending the selected GDS to Army's branch recruiting office for conducting the physical fitness, medical tests etc. before finally deputing them to APS. This procedure was adopted in accordance with the instructions for deputation of volunteers for the posts of Group-D in APS in view of non-availability of sufficient number of volunteers from among Group-D officials in the civil and availability of large number of volunteers among Extra Departmental Agents in the postal side in the erstwhile combined P & T department vide DGP&T's letter No. 37/9/78-SPB-II dated 23.8.79 annexed as R-3 in O.A. 770/2005. Annexure R-3 pointed out the provision in Appendix 12 of P & T Manual Vol.IV which allowed ED agents to officiate as Group-D and postman in shorter vacancies provided they are able to provide substitution in their ED posts, at their own risk. This clearly shows that when their officiating arrangement is over they will revert back to this ED posts as per the criteria laid down in Appendix 12 of P & T Manual Vol. I which denotes that GDS can officiate in those Group-D/Postman posts in short term vacancies.

9 When the Group-D position was improved in Army Postal Service, the order of th DG Posts dated 28.5.1997 was reviewed and withdrawn and it was further ordered vide letter dated 23.7.03 that the GDS on deputation to Army Postal Service shall be considered for appointment against GroupD posts in civil side according to their turn and eligibility for such appointment in the light of the provision of the Recruitment Rules and their technical appointment as Group-D in civil for one day does not confer on them any special right for claiming benefit as Group-D on their repatriation. DG Posts letter dated 15.5.2000 also clarified that the applicant's deputation to APS as Group-D will have no significance so far as their eligibility for departmental examination/promotion etc. are concerned. They have contended that the applicants have given an undertaking on the above lines. Therefore the applicants are not entitled to the reliefs sought for in the OAs and the OAs are liable to be dismissed.

10 We have heard the learned counsel Shri TC Govindaswamy the counsel for the applicants in OA 770/95 and O.A. 93/2006 and Shri R. Sreeraj, the learned counsel for the applilcant in O.A. 144/08 and the learned counsel appearing for the respondents.

11 The learned counsel for the applicants strenuously argued that the applicants are entitled to benefits of promotion to Group-D, Postman etc, as has been granted to similarly situated persons. The counsel argued that the applicants were forced to sign the "declarations' which have been obtained well after they joined Army Postal Service. The counsel submitted that applicants' promotion to the Group-D post was on a regular basis and their deputation to APS were in public interest and therefore, they are entitled to the reliefs sought for.

12 The counsel appearing for the respondents on the other hand submitted that the applicants had never been appointed to function as a regular Group-D in the Civil Postal Service. Their promotion to the cadre of Group-D for one day in the civil post was a technical formality and a pre-condition for being deputed to the APS. This promotion is on the clear understanding that they will hold lien only in the post of EDAs unless departmental examinations are passed. The applicants had clearly understood this position and submitted a signed declaration in token of having accepted the conditions of the deputation. On premature reversion they will have no claim for posting as Group-D and the respondents are not bound to treat them as Group-D. Therefore there is nothing illegal in the action of the respondents. Many of the seniors to them are still working as GDS in the respective divisions. In this view of the matter they sought for dismissal of the OAs. They have also relied on the judgment of this Tribunal in OA. 132/2007 in which identical question of law was considered by a Single Member Bench of this Tribunal in detail and the O.A. was dismissed.

13 The short issue that comes up for consideration in these OAs is whether the EDAs who were promoted to the post of Group-D for one day and sent on deputation to the Army Postal Cadre as Group-D, on repatriation is entitled to rejoin the post of Group-D. It is an admitted fact that there was acute shortage of Group-D and Group-C posts in the Army Postal Cadre and that they were not getting sufficient number of volunteers on deputation. It is also admitted that EDAs are not eligible to go on deputation to the Army Postal Cadre. However, with a view to attract volunteers from rural areas volunteers from EDAs were called for after taking recourse to the provisions of recruitment of EDAs as Group-D

as per the criteria laid down in Appendix 12 of the P&T Manual Vol. IV to enable the Department to fill up the posts of Group-D in the Army Postal Service on deputation with ED Agents who were otherwise ineligible for deputation, Department found a way to make them eligible by promoting them to Group-D for one day. These are evident from the letters of PMG Trivandrum No. STA/301/Rgs/II dated 13.9.1979 to all SSPs/SPs in Kerala Circle and circular of DGP&T dated 23.8.79 which are extracted below:

Extract from letter of PMG, Trivandrum No. STA/301/Rgs/II dated 13.9.1979 to all SSPs/SPs in Kerala Circle.

Sub: Army Postal Service-Deputation of required number of volunteers to APS.

Kindly refer to this office letter of even No. Dated 21.10.78 and 14.3.79 on the above subject. The DG, P&T New Delhi in his letter No. 37/9/78-SPB II dated 23.8.79 (copy enclosed) has stated that cases are still brought to his notice where volunteers for field service are not forth coming to the extent of requirement with the result that there is a considerable short fall in recruitment to Army Postal Service.

It is therefore requested that all our efforts should be made to meet the demands from the Army Postal Service in full.

Sd/- P. Parameswaran Nair
Asst. Director (Staff)

Extracts of letter No. 87/9/78-SPB.II dated 23.8.79 from the Director General, Posts and Telegraphs, New Delhi addressed to all Heads of Postal Circles etc.

Sub:- Army Postal Service- Deputation of required number of volunteers to:

I am directed to invite a reference to the instructions issued from time to time and the latest having been issued vide this office letter of even number dated 22nd February, 1979, on the above subject and to state that the Army Postal Service have again brought to the notice of this office that they have not been getting required number of group-D and -C officials on deputation in spite of best efforts. They have suggested that the officials belonging to urban areas may not be very much interested to join the services, but if the officials belong to rural areas are made fully aware of the benefits/incentive being allowed to the deputationists, they are

likely to volunteer in a large number and short fall being experienced by that organisation is likely to be recouped to some extent. They have also suggested that on postal side the EDAs should specifically be deputed by relaxing the condition of recruitment rules. Although the recruitment rules cannot be relaxed only because of shortfall in the Army Postal Services, yet we can take action to attract a large number of EDAs after taking recourse to the provisions of recruitment of EDAs as Group-D according to criteria laid down in Appendix 12 of P & T Manual Vol. IV inter alia laying down that if the EDAs have been selected as Group-D officials, they can officiate in these posts in short term vacancies if they are able to provide a substitute on their own risk. You may therefore draw a select list of the EDAs after they have qualified in the prescribed test according to the provisions of rule and depute them to APS straightaway to be absorbed in the existing vacancies if they are able to provide substitute in their place and if they are inclined to agree to join the Army Postal Services. They will be shown as officiating against the existing civil vacancies till they are absorbed in their civil posts on regular basis such vacancies occur in the division.

2 You are therefore, requested to make special efforts to get a large number of volunteers enrolled in Group-C and D so that they may be deputed to Army Postal Service on demand and this can be achieved only if the Divisional number of volunteers for deputation to that organisation which is to be manned by the P & T Employees only. The division heads may please be directed to ensure that the facilities and incentive allowed to P & T officials on deputation to APS are brought to the notice of all concerned immediately and a large number officials fulfilling all the conditions are enrolled as quickly as possible.

Yours faithfully,

Sd/- J.M. Palwani
Asst. Director General

14 As per Annexure R-4 circular dated 8.5.1997 the EDAs who were to be sent on deputation to APS have to submit a clear declaration before their technical promotion and deputation. The sample declaration reads as follows:

Declaration

- a) I will not seek repatriation to the civil before my appointment to Group-D cadre on my turn
- b) In case of repatriation to civil for any unforeseen reasons before my turn for appointment for Group-D comes I may be ready to be accommodated in any post of EDA, if the present post is not available. If no post of EDA would be available in my recruiting unit I will wait for appointment as such without claiming renumeration till a

vacancy arises.

c) I fully understand that after my promotion to Group-D cadre in the civil, I will be entitled for the service benefits at par with my next junior in the civil.

2. For facilitating long term deputation to APS in Group-D cadre, the following steps may be taken:-

a) EDA's below 30 years of age may be considered for deputation to APS.

b) The ED posts vacated by the EDAs deputed to APS may not be filled up on regular basis so as to facilitate accommodation of EDA's in case of their premature reversion from the APS.

15 The ED Agents thus have to give an undertaking that they will not seek repatriation to Civil before their appointment to Group-D cadre in the Civil is done in their turn and also if they seek repatriation to Civil before their turn comes for appointment as Group-D in their respective Postal Division, they will take their original post of EDA in any Postal Division other than his recruiting unit. The applicants in O.A.770/05 and 48/2002 have sought repatriation from APS before their turn for promotion to Group-D has come in the Civil.

16 Similar issue has come up before this Tribunal in O.A. 132/07. In O.A. 132/07 this Tribunal relying on various judgments of the Hon'ble Supreme Court on "deputation" held as follows:

10 Now, what is the nature of deputation. The Apex Court has in the case of *Umapati Choudhary v. State of Bihar*, (1999) 4 SCC 659, has held as under:-

"8. Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organization (commonly referred to as the parent department or lending authority) to another department or cadre or organization (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the

employee to go on deputation or not....."

11. The above features have been fulfilled by the applicant, his parent department and the borrowing department. The applicant had been earning the increments in the borrowing department. Then he was repatriated. On his repatriation, the aspects that are to be considered are (a) fixation of pay and (b) seniority in the parent department. As regards pay in the parent department on repatriation, the Apex Court has, in *R.L. Gupta v. Union of India, (1988) 2 SCC 250* held as under:-

"9. That rule referred to the right of the government servant who goes on deputation to earn increments in the pay scale applicable to the post on which he held a lien on his return to the parent department from the department to which he had been deputed. One of the questions which arose for consideration in that case also was whether the respondent who had gone on deputation was entitled to claim the promotion which he would have got in his parent department had he not been sent on deputation."

12. The Apex Court has answered to the above question by referring to an earlier decision, as under:-

10. The above decision was followed by this Court in the State of Mysore v. P. V. Nanjundiah. In that case this Court observed thus :

"So long as the service of the employee in the new department is satisfactory and he is obtaining the increments and promotions in that department, it stands to reason that the satisfactory service and the manner of its discharge in the post he actually fills, should be deemed to be rendered in the parent department also so as to entitle him to promotion which are open on seniority-cum-merit basis."

13. As regards seniority, the applicant retains the seniority in the parent department on his repatriation and in fact, if two individuals are posted on deputation, followed by absorption in the borrowed organization, they carry with them the very same seniority, unless otherwise is provided for in the rules, as held by the Apex Court in the case of *Attar Singh Kaushik v. Secy./Commr., Transport Deptt.,(2008) 1 SCC 400*, as under:-

"It is axiomatic that those who were senior in the parent department in the equivalent post should continue to be senior in the deputed post unless there exists a statutory rule to the contrary."

14. The above would go to show that all the benefit that the **applicant could get on his volunteering for deputation is the higher** pay scale and status in the borrowed organization and nothing else. As far as his position in the parent department is considered, he remains junior to his seniors at the time of going on deputation and likewise remains senior to his junior to him as at the time of his going on deputation. Of course, the pay fixation would take into account the years of service rendered in deputation, as held in the case of Nanjundiah referred to in the case of R.L. Gupta (supra). The above decision is also not in any way deviating the spirit behind the provisions of Rule 22(1)(b)(i) of the F.R.

15. In view of the above, the applicant is not entitled to the relief claimed. Hence, the OA is dismissed. No costs.

17 We fully agree with the view taken by the Single Member Bench of this Tribunal in the OA 132/07. The applicants having been given an undertaking as quoted above are bound by it, they cannot now turn around and seek the reliefs as prayed for in the OAs. Accordingly, following the judgment of this Tribunal in O.A. 132/07 we dismiss the O.As. No costs.

Dated 5th February, 2009

K. NOORJEHAN
ADMINISTRATIVE MEMBER

GEORGE PARACKEN
JUDICIAL MEMBER

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