

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.105/2004

Tuesday, this the 12th day of July 2005.

CORAM:

**HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

**M.C.Sekharan
GDS Sub Post Master
Yendar P.O
Chenganassery Division : Applicant**

(By Advocate Ms.K.Indu)

Versus

- 1. Union of India represented by its Secretary
Ministry of Communication,
New Delhi**
- 2. Post Master General
Central Region, Kochi**
- 3. Superintendent of Post Offices
Chenganassery Division
Chenganassery**
- 4. Senior Superintendent of Post Offices
Kottayam**
- 5. Deepakumar R.
GDSSPM
Perumbaikad, Manarcad
Kottayam : Respondents**

**(By Advocate Mr.T.P.M.Ibrahim Khan, SCGSC (R 1-4)
Mr.P.C.Sebastian (R - 5)**

**The application having been heard on 12.07.2005, the Tribunal on
the same day delivered the following:**

ORDER

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

The applicant is presently working as Gramin Dak Sevak Sub Postmaster, at Yendar Post Office in Changanassery Division who claims to be a native of Kottayam. He is seeking transfer to Kottayam Division on the presumption that there is a vacant post at Perumpayikadu in Kottayam Division.



According to the applicant it is vacant and sought for a transfer. The Department did not oblige and therefore he has filed this Original Application seeking the following reliefs:

- i. To direct the respondents to consider the applicant's request for transfer to the post of GDSSPM Perumbaikadu in Kottayam Division, since the post sought by the applicant is an equivalent post;
- ii. To direct the respondents to appoint the applicant as GDSSPM, Perumbaikadu in Kottayam Division on transfer from the present post of GDS, Sub Post Master, Yendar in Chenganassery Division;
- iii. To issue such other reliefs as this Hon'ble Tribunal may deem fit and proper.

2. When the matter came up for hearing, the learned counsel for applicant submitted that he is continuing as EDSPM, Yendar for the last 8 years and he is entitled for transfer to Kottayam District. The official respondents has filed reply statement as well as additional reply statement contending that there was a ban of filling up of the post of Gramin Dak Sevak Sub Postmaster, Perumbaikadu as per orders contained in Postmaster General, Central Region, Kochi letter dated 04.09.2003. They further contended that a retrenched Gramin Dak Sevak is working there on adhoc basis to manage the day-to-day work and the candidature of the retrenched GDS is to be considered first when the ban on filling up of the post is lifted of this Division and therefore there is no claim for the applicant. In the additional reply statement they further contended that :

“ The additional 5th respondent was working as Gramin Dak Sevak, Sub Postmaster (GDSSPM) Malam with effect from 25.10.1999 on provisional basis when the regular incumbent the additional 5th respondent was relieved/thrown out from service on 05.11.2003. As she has worked continuously for more than 4 years, she has to be treated as retrenched and preference to be given to her for appointment as GDSSPM Perumbaikad as she belongs to Kottayam Division. The applicant in the O.A is working in another recruiting unit. The 5th respondent was appointed as GDSSPM Perumbaikad on adhoc basis with effect from 09.01.2004 on priority basis, she being a retrenched GDS ”.

3. Subsequently vide MA 157/04 the incumbent working as GDSSPM, Perumbaikad was impleaded as 5th respondent who has also filed reply statement contending that she is working at Perumbaikad in consideration of the fact that she is a retrenched GDS pending decision of the 4th respondent on the application for alternate appointment. According to her, she was appointed provisionally and subsequently discharged from service due to administrative reasons and at the time of discharge she had put in not less than 3 years continuous approved service, therefore, she should be provided alternative employment. In such cases, their names should be included in the waiting list of ED Agents discharged from service as per D.G.P&T letter dated 23.02.1979 and subsequent clarification from the Director General of Posts dated 28.08.1996 As regards transfer of E.D. Agents from one post to another, retrenched employees are to be given priority.

4. We have heard Ms. K. Indu, learned counsel for the applicant, Mr. T.P.M.Ibrahim Khan, SCGSC for Respondents 1 to 4 and Mr.P.C.Sebastian for R5.

5. The learned counsel for applicant submitted that he has got preferential claim for transfer because as per Court orders he is eligible and entitled for transfer. The learned counsel for respondents on the other hand submitted that since the 5th respondent being a retrenched employee and presently occupying the post to which the applicant is seeking a transfer has got a preferential claim to the said post.

6. We have heard the learned counsel on both sides and given due consideration to the arguments advanced by them. The short question is that the applicant who is seeking an Inter Divisional transfer from Changanassery to Kottayam where the 5th respondent is also working. The counsel for applicant has invited our attention to the decision reported in 2004 1 KLT 183, Sr. Superintendent of Post Office v.. Raji Mol wherein it has been declared by the Hon'ble High Court that the GDS are entitled for transfer. We have no quarrel with respect to the proposition canvassed by the applicant and the dictum laid down by the said decision. But the question mooted has a different footing. It is not the transfer liability but preference in engagement is the point of issue.

7. The learned counsel for respondents on the other hand, brought to our notice the Government of India, Ministry of Communications order dated 28.08.1996 transferring of ED officials from one post to another. The clarification of the said OM is reproduced as under :-

QUERY

Whether preference can be given to the EDAs for transfer against a vacant ED post working in the same office or whether the request of senior EDA should be given preference ?

CLARIFICATION

(i) The transfer request may be considered in the following orders of preference ;
(a) Surplus ED Agents whose names for deployment appear in the waiting list.
(b) If surplus ED Agents are not available, the senior-most ED Agent, working in the same same office and/or the senior most ED Agent in the same recruitment unit may be given preference in that order. The resultant vacancy, if any, can also be offered in the same manner.

8. It is undoubted that the 5th respondent is occupying the said post in question and she being a retrenched employee, we are of the considered view that she has got a preferential claim to continue in the same post than the applicant who is seeking a transfer. In this view of the matter, the Original Application fails and is liable to be dismissed.

9. The Original Application is accordingly dismissed. No order as to costs.

Dated the 12th July, 2005


N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER


K.V.SACHIDANANDAN
JUDICIAL MEMBER

vs