

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 124/2005

.....MONDAY...this the 12th day of June, 2006

CORAM

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

K. Gee Varghese,
Gramin Dak Sevak Branch Post Master,
Vellimoni West Branch Post Office,
Kollam Postal Division,
Kollam.....Applicant

(By Advocate Mr. Thomas Mathew)

V.

- 1 Senior Superintendent of Post Offices,
Kollam Postal Division,
Kollam.
- 2 Chief Postmaster General,
Kerala Circle, Trivandrum.
- 3 Assistant Director General (GDS)
Office of Director General
Department of Posts,
New Delhi.
- 4 Director General,
Department of Posts,
New Delhi.
- 5 Union of India, represented by its
Secretary, Department of Posts,
New Delhi.....Respondents

(By Advocate Mrs. K. Girija, ACGSC)

The application having been finally heard on 30.5.2006, the Tribunal on 12.6.2006 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant has filed this Original Application aggrieved by the rejection of his representation for transfer from the post of Gramin Dak Sevak Branch Post Master (GDSBPM for short), Vellimon West Post office under Kollam Postal Division to the post of GDS BPM, Velichikala PO within the same postal division. The post of GDSBPM became vacant due to the promotion of the permanent incumbent to the cadre of Postman in July, 2004. When the vacancy of GDS BPM has arisen at Velichikala the applicant made Annexure.A3 representation dated 7.7.2004 stating that he is a 51 years old person and there is no scope for his passing any test to get any promotion. He is residing with his 84 year old mother who is sick and bed ridden. He has to travel 18 Kms to reach the Vellimon West Post Office everyday from his place of residence at Adichanellor in Kollam District and to spent good amount of money on account of travel itself. He has also submitted that he is a diabetic patient. The respondents rejected his request by Annexure.A5 letter dated Nil.10.2004 stating that his request for transfer is not covered under rules consequent upon the amendment to Note II (iv) below Rule 3 of GDS (Conduct and Employment) Rules, 2001 carried out and circulated by the Department of Posts vide letter No.19-10/2004-GDS dated 1.9.04 (Annexure.A6) according to which "A Sevak shall not be eligible for transfer in any case from one post/unit to another post/unit except in public interest". The applicant challenged the aforesaid action of the respondents rejecting his request for transfer on the ground that the amendment carried out to the Department of Posts, GDS (Conduct and Employment) Rules, 2001 by the amendment Rule of 2004 (A6) is

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arbitrary and illegal and the same is liable to be quashed. He has also submitted that the Rule 3 Note II (iv) of the Department of Posts, GDS (Conduct and Employment) Rules, 2001 originally provided that the "Sevaks shall not have any transfer liability" and the aforesaid amendment has been carried out to override the dictum laid down by the Hon'ble High Court of Kerala in WP(C) No.32571/03(S).

2 The respondents in their reply have submitted that the GDS (Conduct and Employment) Amendment Rules, 2004 are not arbitrary or illegal as alleged by the applicant. The GDSs cannot be treated on par with regular government employees. The GDSs in the Department of Posts are a class apart and are governed by a separate set of non-statutory rules called Gramin Dak Sevaks (Conduct & Employment) Rules, 2001. The terms and conditions of employment of Gramin Dak Sevaks stipulate that they should be local inhabitants, they are required to have additional source of income and are also required to take up residence in the village or at the most in the delivery jurisdiction of the Post Office where they are employed. Further, the Gramin Dak Sevaks are working for 2 to 5 hours only and the allowances paid to them are just to supplement their main source of income, which is a pre-condition for appointment as Gramin Dak Sevaks. There is no supervision by the departmental officials on the working of the Gramin Dak Sevaks on a day to day basis and to that extent they are expected to function independently. The GDS are the rural postal workers, who have limited terms of engagement of service i.e 2 to 5 hours of work only on a daily basis. Such a system of part time rural postal workers or GDS has been envisaged as a policy consistent with the organizational structure and requirements. The GDS are essentially to

work in the Branch Post offices or Village Post Offices and at the grass root level of the village and as such, only local persons with local habitation, local knowledge ~~and~~ locus standi can be engaged. Transfer as a general policy of local resource persons will make the organization of services at the grass root level unsustainable. Transfer of GDS is antithetical to the very mandate and interest of the organization and is inconsistent with the structure of the organization, save in exceptional cases of administrative interests which is the executive prerogative. A person getting appointed as GDS is basically governed by the rules applicable to this category of employees and GDS (Conduct and Employment) Amendment Rules, 2004 circulated on 1.9.2004 does not infringe on any inherent right of Gramin Dak Sevaks, as alleged.

3 We have heard Advocate Shri Thomas Mathew for the applicant and Advocate Mrs. Girija, ACGSC for the respondents. Prior to the introduction of the Department of Posts, GDS (Conduct and Employment) Rules, 2001 the transfer of the GDSs earlier known as ED Agents from one Post Office to another was governed by the DG, Posts letter No. 43-27/85/Per (EDC&Trg) dated 12.9.1988 wherein it was provided as under:

"When an ED post falls vacant 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 post without coming through the Employment Exchange, provided he is suitable for the other post and fulfils all the required conditions."

Further vide D.G. Posts letter No. 19 ED & Trg dated 11.2.97 it was clarified as under:

"If the placement of an E.D.Agent is for one Post Office to another within the same recruiting unit, the same will be treated as transfer and the ED Agents concerned will not forfeit his past service for any purpose including seniority. However, if the placement is from one Post Office to another outside his own recruiting unit, in such an event, the placement will be

treated as fresh appointment and the ED Agent concerned will forfeit his past service for seniority and will rank juniormost to all the regularly appointed ED Agents of that unit."

Thus the practice prevalent in the department was to allow transfer of GDS employees and the rules applicable to them was the P&T ED Agents (Conduct and Service) Rules, 1964. This rule was superseded by the Department of Posts GDS (Conduct and Employment) Rules, 2001 by making it clear that all executive instructions regarding transfer of GDS issued prior to 24.4.2001 stood superseded and further making an entry under Note II (iv) of Rule 3 that "Sevaks shall not have transfer liability". On the basis of this rule, the department have not been allowing any transfer to the GDS. Such denial of transfer on the request of the applicants was called in question in WP(C) No.32571/03-S - **Senior Supdt. Of Post Offices, and others Vs. Rajimol and others.** The Hon'ble High Court of Kerala vide its judgment dated 21.10.2003 considered the following two issues in the aforesaid case:

- (1) Does a Rule, which says that "Sevak shall not have any transfer liability", debar the employee from claiming appointment by transfer?
- (2) Does an employee have a right to claim appointment by transfer to a post in a higher scale of pay than the one in which he is working?

Since the second issue is not relevant in this case it is not necessary to consider it in this order. As regards the first issue, the Hon'ble High Court has answered the same in the following manner:

"11. Admittedly there are no statutory rules governing the appointment etc. of the Sevaks in the Department of Posts. However, instructions have been periodically issued. Initially the Department had issued instructions by which "Posts and Telegraph Extra Departmental Agents (Conduct and Service) Rules, 1964, were circulated. These so-called Rules were superseded by the "Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules, 2001." Rule 3 Note II(iv)

provides that "Sevak shall not have any transfer liability". The clear intention of the authority appears to be that since the Sevaks are low paid employees and do not hold whole time jobs, they would be entitled to continue to work at the place of their posting. They will not have to face periodic transfers from one place to another, which may dislocate their family life. Normally, transfer is an incidence of service. However, in case of persons working on the posts of Sevaks the competent authority has decided to make an exception.

12 On behalf of the petitioners it has been contended that the provision carries with it a corresponding bar on the employees to seek transfer. We are unable to accept this contention. The plain language of the provision militates against the submission. The provision embodies the protection to the employee. It does not place a restriction on his right to claim transfer to another post. If the authority had wanted to place such a restriction it should have specifically provided that the employee in a particular circle or place shall not be entitled to claim appointment by transfer to any other post in any equivalent scale or a higher post. Then it would have been possible for the Department to contend that the employee cannot claim appointment by transfer. However, in the absence of such a provision, the contention as raised now cannot be accepted. Thus, we find that the view taken by the Tribunal that the provision does not place a bar on the employee to seek transfer does not suffer from any infirmity. It was a possible view. It is reasonable. It is not shown to be contrary to any express provision of any law. Thus it calls for no interference. Accordingly, the first question is answered against the petitioners."

The Hon'ble High Court held in the concluding paragraph of the judgment as under:

"(1) A provision providing that the employee is not liable to be transferred does not debar an employee from seeking transfer.

(2) If an employee seeks transfer to a post equivalent to the one held by him, the rules as at present do not place any bar and his claim has to be considered by the authority. In case an employee seeks appointment by transfer to a higher post than the one on which he is working, the Department can consider his claim subject to his fulfilling the conditions of eligibility along with that of the other eligible persons who may offer their candidature for appointment."

After the pronouncement of the aforesaid judgment, the respondents have issued the 2004 amendment as mentioned above and the provision in the

unamended rules that "Sevaks shall not have any transfer liability" has been substituted as "Sevaks shall not be eligible for transfer in any case from one post/unit to another post/unit except in public interest". Probably, the respondents have used the word "eligible" in the amended provision to prevent the GDS to seek transfer on any ground whatsoever. The Respondents also must have been influenced by the observation of the Hon'ble High Court in the case of Senior Superintendent of Post Offices and others (supra) "that if the authority had wanted to place such a restriction it should have specifically provided that the employee in a particular circle or place shall not be entitled to claim appointment by transfer to another post in any equivalent scale or a higher post". The applicant has now challenged the amended provision as arbitrary and illegal and sought to quash the same. The question whether the aforesaid amended provision is arbitrary and illegal and whether it is to be quashed or not on this ground need not be gone into at this stage as the counsel of the applicant during the course of the argument submitted that the amended provision is not applicable in the present case as his request for transfer relates to a period prior to the amendment and aforesaid judgment of the Hon'ble High Court in Senior Superintendent of Post Offices and others squarely covers the present case. The applicant sought the transfer vide his representation dated 7.7.2004 against the post which became vacant in July, 2004. The Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Amendment Rules, 2004 came into force only after 1.9.2004. Hence the applicant's request has to be considered in the light of the unamended rules. A similar case came up for consideration of this Tribunal in OA 554/04-G.Chandran Vs. Senior

Superintendent of Post Offices, Thiruvananthapuram North Division, Thiruvananthapuram and others in which it has been held as under

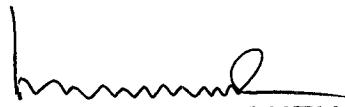
"We have heard the counsel for both the parties. In view of the aforesaid judgment of the Hon'ble High Court of Kerala, we are of the considered view that the request of the applicant cannot be validly rejected by the respondents to transfer him to the post of GDSBPM, Mylamoodu in the vacancy caused due to the promotion of the incumbent with effect from 6.7.04. It is, therefore, directed that the applicant may be transferred to the Post of GDSBPM, Mylamoodu. However, if the respondents takes a decision of the combination of this post in accordance with Rules, the above direction will not stand in their way. It is expected that the decision in this regard is taken expeditiously. The above direction shall be carried out within a period of two months from the date of receipt of a copy of this order. No costs."

4 We, therefore, allow the present OA on the short ground that the Department of Posts, Gramkin Dak Sevaks (Conduct & Employment) Amendment Rules, 2004 have only prospective effect after 1.9.2004 and it cannot be applied in the case of the applicant who sought transfer to the post of GDS BPM, Velichikala on an earlier date on 7.7.2004 against a post which became vacant in July, 2004 when the Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules, 2001 was in operation and the Hon'ble High Court of Kerala in its judgment in Senior Superintendent of Post Offices and others Vs. Rajimol and others (supra) held that the provision contained in Rule 3 Note.II(iv) in the said Rule that "Sevaks shall not have any transfer liability" does not place a restriction on the right of a GDS BPM to claim transfer to another post. Accordingly we quash and set aside Annexure.A5 rejection letter of the respondents denying consideration of transfer of the applicant from the post of GDS BPM, Vellimon West Post Office to the post of GDS Branch Post Master Velichikala Post Office. Consequently we direct the respondents to consider the applicant for transfer to the post of GDS BPM, Velichikala

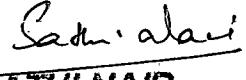
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Post Office independent of the provision contained in the Department of Posts, Gramin Dak Sevaks (Conduct & Employment) Amendment Rules, 2004 (Annexure.A6) that "A Sevak shall not be eligible for transfer in any case from one post/unit to another post/unit except in public interest" and take a decision in the matter within a period of one month from the date of receipt of a copy of this order. There shall be no order as to costs.

Dated this the 12th day of June, 2006


GEORGE PARACKEN
JUDICIAL MEMBER

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SATHI NAIR
VICE CHAIRMAN