

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.13/2007

Wednesday this the 11th day of July, 2007

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HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

N.J.Augusty, S/o Joseph,
aged 55 years
Postal Assistant, ICO(SB)
Office of the PMG, Central Region,
residing at 33/2953A,Chilampilkunnel,
St.Mathews Church Road, Vennala PO
Cochin/682028.

..Applicant

(By advocate Mr. M.R.Hariraj)

V.

- 1 The Postmaster General,
Central Regional, Kochi.18
- 2 The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.33
- 3 Union of India, represented by the
Secretary to the Government of India,
Department of Posts, New Delhi.1
....Respondents

(By Advocate Mr.Sunil Jose, ACGSC)

The application having been heard finally on 12.6.2007, the Tribunal on
11.7.2007 delivered the following:

ORDER

Hon'ble Mr. George Paracken, Judicial Member

The applicant is mainly aggrieved by the Annexures A6 and
A10 orders dated 13.11.2006 and 15.12.2006 respectively of the 1st
respondent, namely, the Post Master General, Central Region, Kochi
posting him in Kunnamkulam HO as a Leave Reserve Postal Assistant

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despite the fact that he is one of the senior-most Postal Assistants in the BCR grade.

2 The facts in brief are that the applicant commenced his service as a Leave Reserve LDC in Savings Bank Control Organization (SBCO for short) during 1974 and worked as such till 1980 and during this period he worked all over Kerala against leave vacancies. He was promoted from time to time as UDC, LSG PA (TBOP) and HSG PA (BCR). While working as Postal Assistant BCR in SBCO in HO, Ernakulam, he came to know that there was a vacancy of Postal Assistant in the Office of the Internal Check Organization SB, Central Region and he made the Annexure.A1 request dated 19.4.2006 for posting him there as Postal Assistant. However, the said vacant post was filled up vide the Annexure.A2 order dated 15.6.2006 by posting one Shri Mukund, PA SBCO, Alapuzha Head Office who was rendered surplus. But the applicant was also posted as PA (SBCO) ICO(SB), Regional Office, Kochi against the LR post of Kottayam, HQ after its Headquarters has been changed to ICO (SB) Kochi vide Annexure.A3 letter dated 16.6.2006. This was followed by Annexure.A4 letter dated 28.6.2006 by which the Headquarters of LRPA, Kottayam Head Office itself has been changed to Ernakulam HO and attached to the ICO (SB), RO, Kochi. Again vide the Annexure.A5 letter dated 17.7.2006 an addendum to the Annexure.A4 letter dated 28.6.2006 was issued and the post of LRPA (SBCO) attached to Kottayam HO has also been transferred to Ernakulam HO as LRPA and the incumbent was attached to ICO (SB), RO, Kochi. The applicant in this O.A has challenged the aforesaid Annexure.A3 order dated 1.6.2006 also.

3 The applicant while working against the said LR post, one

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Smt. Janaki, PA SBCO, Kunnamkulam proceeded on leave for 30 days and the applicant was relieved and deputed against the said leave vacancy. The applicant made the Annexure.A7 representation dated 13.11.2006 against the said deputation to Kunnamkulam HO to the 1st respondent. He submitted that he is the senior BCR PA SBCO having 32 years of service and not a leave reserve and that he should not have been sent to Kunnamkulam HO against the Leave Reserve Vacancy when there were other leave reserves available in the unit. He has also submitted that he was not in a position to undertake long journey as he is 55 years old and suffering from vertebral complaints. He has also cited his wife's illness and daughter's pregnancy as other reasons for him to refuse the posting to Kunnamkulam. While the said representation was pending the respondents issued Annexure A8 letter dated 17.11.2006 by which the post of LRPA SBCO Ernakulam HO which was attached to the RO, Kochi was transferred to Kunnamkulam HO as LRPA SBCO with immediate effect as working arrangement. The applicant again made the Annexure.A9 representation dated 7.12.2005 to the 1st respondent pointing out that he was working as BCR PA and he was not informed that he was to work as leave reserve when transferred to ICO SB. He has also reiterated his medical problems and willingness to appear before the medical board to prove the same. Without considering all his representations, by the Annexure. A10 order dated 15.12.2006 the applicant was designated as LRPA SBCO Ernakulam HO and has been posted as LRPA, Kunnamkulam HO against the transferred post with immediate effect. The applicant again made Annexure.A11 representation dated 19.12.2006 to the 1st respondent detailing all his grievances with the medial certificate

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issued by the Principal, Government Ayurveda College, Tripunithura. Since there was no response again from the respondents, he approached this Tribunal with the present OA.

4 The applicant has relied upon Rule 250 of the P&T Manual Vol.IV according to which a new entrant should invariably fill an appointment in the reserve staff and the appointment to operative staff should be made from the reserve staff in the strict order of seniority. Though it is permissible for an Assistant not belonging to the reserved staff to be transferred to the vacancy caused by leave, an operative staff cannot be appointed as leave reserve. According to NOTE.2 below Rule 250 ibid, a departure from strict seniority is permissible only for administrative reasons and in such cases, report to the Head of the Circle must be made. He has also submitted that there was no justification to appoint him as Leave Reserve when many of his juniors are in fact working as Leave Reserves in the HO of the Central Region. He has also relied upon Rule 50 of the P&T Manual Vol.IV according which the transfer of non gazetted officials to fill up temporary vacancy should be avoided wherever practicable. In cadres where promotions were made, officiating arrangements for vacancies not more than one month should be made. He has submitted that he was appointed as BCR PA at Ernakulam only on 1.3.2004 and the normal tenure is four years and the attempt to transfer him on the ground that he is an LRPA in the above circumstances is grossly illegal and arbitrary.

5 In reply the respondents have stated that from 1984, except for a spell of 4 years he worked as HSG PA, Chalakkudy from 30.5.2000 to 12.4.2004, he has been working in and around Ernakulam. According to

them, the applicant was posted as LRPA (SBCO) of Kottayam HO transferred to the newly created ICO(SB) assuming that it would meet his pending request and it would also help the administration to utilize him in the ICO (SB) Cell as the applicant was a capable officer who could be entrusted with the operative jobs. He joined the said post on 26.6.2006 knowing fully well that he was being posted against the post of LRPA, Kottayam HO, the Headquarters of which was changed to ICO (SB) RO, Kochi. The applicant was posted against the leave vacancy of Smt. Janaki, PA (SBCO), Kunnamkulam as only the SBCO staff was conversant with the work of the Control Organization. There was also frequent problem of not getting substitutes in locations like Vadakkanchery and Kunnamkulam where the SBCO is manned single handedly and where total absence of manpower was bringing Saving s Bank work to a standstill and affecting customer service. After careful consideration, it was decided that the best option to maintain customer services without frequent disruption was to transfer the LRPA post (brought from Kottayam HO to Ernakulam HO and used in RO Kochi) to Kunnamkulam and manage the work during leave vacancies in both these operative units using this LR post. The respondents have also submitted that it was to avoid undue disturbances in operative offices by effecting transfers which will have a chain effect in the middle of the academic year, the incumbent along with the post was transferred to Kunnamkulam HO with the understanding to review the situation about posting a suitable incumbent in the LR post at the end of the academic session. The respondents have also submitted that once the applicant has accepted the Annexure A3 posting and joined on 26.6.06, he cannot now say that the duties of LRPA post are not applicable to him

on the ground that he is one of the senior-most officials in his cadre. According to them, the incumbent of the LR post have to fulfil the responsibilities of the post and one cannot accept only the advantage accruing from the posting and expect other LRPA's in operative offices to fulfil those responsibilities of the post, which are inimical to him. They have submitted that the reliance of the applicant on Rule 250 of P&T Manual Vol.IV is misplaced, as the Notes 1&2 below the said Rule provide for flexibilities that can help the Department tide over administrative exigencies and the applicant's transfer to Kunnamkulam was under such an exigency of service. They have rather relied upon Sub Section(3) of Rule 50 of P&T Manual Vol.IV which provides that in special circumstances in which strict adherence to the procedure may not be practicable or desirable from the administrative point of view and the sanctioning authority may at his discretion make acting arrangements according to administrative requirements. They have also rejected the applicant's request on his alleged medical condition because he had accompanied the AAO ICO (SB) on his inspection visits to different units during his tenure at the Office of the 1st respondent as evident from the TA bills submitted by him. They have also submitted that if the applicant is not in a position to discharge his responsibilities in "far off places" due to medical reasons, he has to prove so and the department would take a considered view as to whether he is fit to continue in service and discharge the responsibilities entrusted to him.

6 The respondents have also fairly submitted that the exigency that occurred in November, 2006 does not exist at present as the same was resolved recently through separate measures and now they are in a

position to consider the request of the applicant favourably. They have also submitted that the applicant can be given a suitable posting befitting his seniority as PA (SBCO).

7 The applicant in his rejoinder expressed his apprehension that if the Annexure A3 order dated 16.6.2006 posting him against the LR post is allowed to stand, he will be put to a perennial threat of temporary postings. He has also apprehended that the 1st respondent is trying to transfer him out of Ernakulam in one manner or other because he approached this Tribunal to agitate his rights. According to him the concession that a suitable posting will be given to him as Postal Assistant, SBCO befitting his seniority as PA (SBCO) is only a prelude to post him out of Ernakulam.

8 In the additional reply to the rejoinder, the stand of the respondents was as under:

"The allegation of the applicant in para 32 is due to a misplaced apprehension. It is the prerogative of the government to decide how to utilize the services of its employees. No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice and therefore the respondents need have no prelude for an order of transfer."

9 I have heard Advocate Mr. M.R Hariraj for the applicant and Advocate Mr. Sunil Jose, for the respondents. No doubt the postings and transfers of the employees are the prerogative of the Department concerned. The Courts and Tribunals would interfere in such transfers and postings only in rare cases when there are clear violation of rules/guidelines of transfer or there is malafide in the transfer orders or when the transfers are punitive in nature. No such allegations are made by the applicant in this OA. However, looking at the series of orders

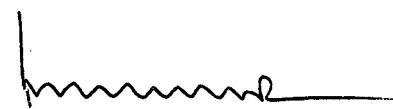
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issued by the 1st respondent in quick succession starting from the Annexure.A3 letter dated 16.6.2006 and ending with the Annexure.A6 and Annexure.A10 orders posting the applicant as LRPA, I do not consider the applicant's transfer to Kunnamkulam is purely on administrative grounds. The applicant is a very senior Postal Assistant in the BCR Grade. His Annexure.A1 request dated 19.4.2006 was to post him to the Office of the Internal Check Organization, Central Region, Kochi against the vacancy of the Postal Assistant. If the 1st respondent was of the considered opinion that the applicant was mostly working in and around Ernakulam from 1984, his request need not have been accepted. On the other hand, the 1st respondent posted him against the LR post at Kottayam HO, HQ of which has been changed to ICO (SB), Kochi. Thereafter, vide the Annexure.A6 order dated 13.11.2006 he was deputed to Kunnamkulam HO as a Leave Reserve against the leave vacancy of the incumbent PA (SBCO) Kunnamkulam. Again vide Annexure.A10 letter dated 15.12.2006 he was posted as an LRPA, Kunnamkulam PO against the transferred post. The 1st respondent did not even consider the Annexures A7 and A9 representations made by the applicant. It is only through the reply to this OA, the 1st respondent has informed the applicant that the exigencies that existed in November, 2006 are over and he can now be given a "suitable posting befitting his seniority as PA (SBCO)". It is in this background that the applicant apprehends that the 1st respondent is going to take vindictive action to transfer him out of Ernakulam and such an apprehension cannot be treated as misplaced. Their stand in the additional reply also supports his apprehension. I, therefore, quash and set aside the Annexure.A6 letter dated 13.11.2006 and the Annexure.A10



letter dated 15.12.2006. In the above facts and circumstances of the case, the applicant, if he so desires, may make a representation to the Respondent No.2, namely, the Chief Postmaster General, Kerala Circle, Thiruvananthapuram if any posting as PA (SBCO) is issued and if he is aggrieved by the same. In that event, the 2nd respondent shall take appropriate decision in the matter and convey the same to the applicant at the earliest. Till such time, the applicant shall not be transferred from the present place of posting as PA (SBCO) ICO (SB), Regional Office, Kochi. There will be no order as to costs.

Dated this the 11th day of July, 2007


GEORGE PARACKEN
JUDICIAL MEMBER