

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.NO.135/2004

Tuesday, this the 30th day of November, 2004.

CORAM:

HON'BLE MR S.K.HAJRA, ADMINISTRATIVE MEMBER

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

Chellamma.K.R.,  
Gramin Dak Sevak Branch Postmaster,  
Kizhathiri.B.O., Ramapuram Bazar S.O.,  
Kottayam. - Applicant

By Advocate Mr OV Radhakrishnan

Vs

1. Post Master General,  
Central Region,  
Cochin-682 016.
2. Senior Superintendent of Post Offices,  
Ernakulam Postal Division,  
Ernakulam,  
Cochin-682 011.
3. Senior Superintendent of Post Offices,  
Kottayam Postal Division,  
Kottayam-1.
4. Union of India represented by  
the Secretary,  
Ministry of Communications,  
New Delhi.
5. V.V.Annie,  
Gramin Dak Sevak Mail Deliverer,  
Nettoor, Ernakulam. - Respondents

By Advocate Mr K.R.Rajkumar, ACGSC (for R.1 to 4)

By Advocate Mr P.C.Sebastian (for R.5)

The application having been heard on 22.11.2004, the Tribunal  
on 30.11.2004 delivered the following:

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O R D E R

HON'BLE MR S.K.HAJRA, ADMINISTRATIVE MEMBER

The 5th respondent who was Extra Departmental Delivery Agent (EDDA), Netoor, had filed O.A.No.1047/1999 for a direction to consider her transfer as Extra Departmental Branch Post Master (EDBPM), Pulickamaly Branch Office(B.O). This O.A. was disposed of by the Tribunal by order dated 20.9.2001 directing the Senior Superintendent of Post Offices, Ernakulam (the 1st respondent) to consider her request for transfer to the existing vacancy of EDBPM, Pulickamaly. Aggrieved by the rejection of her transfer as EDBPM, Pulickamaly, the applicant who was working as Extra Departmental Branch Post Master (EDBPM), Kizhathiri had filed O.A.1057/1999 seeking transfer as EDBPM, Pulickamaly before this Tribunal. The Tribunal disposed of that O.A. with a direction to Senior Superintendent of Post Offices, Kottayam to place the matter before the competent authority to consider the request of the applicant for appointment by transfer to the post of EDBPM, Pulickamaly B.O. afresh on merits along with similar requests from other working ED Agents. The conflicting request of the applicant and respondent No.5 for transfer as EDBPM, Pulickamaly was settled by order dated 16.2.2004 wherein the applicant was informed that the respondent No.5 who had been found meritorious selected for appointment as EDBPM, Pulickamaly(A-3). This prompted the applicant to file the present O.A. for the following reliefs:

- i) to call for the records leading to A-10 letter dated 16.2.2004 and the selection of the 5th

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respondent for transfer to the post of GDS BPM, Pulickamaly and as also the order appointing the 5th respondent to the post of GDSBPM, Pulickamaly, if any, issued and to set aside the same;

ii) to declare that the 5th respondent is not eligible and entitled to be appointed by transfer to the post of GDSBPM, Pulickamaly in the light of the declaration of law made by the Hon'ble High Court in the decision in Senior Superintendent of Post Offices Vs Raji Mol reported in 2004(1) KLT 183 and A-11 judgment and the selection of the 5th respondent for transfer to the post of GDS BPM, Pulickamaly is patently illegal and unsustainable;

iii) to issue appropriate direction or order directing the respondents 1 and 4 to transfer and appoint the applicant to the post of GDS BPM, Pulickamaly in compliance of A-5 order expeditiously and at any rate within a time frame that may be fixed by this Hon'ble Tribunal.

2. The submissions made on behalf of the applicant are in short as follows: The applicant requested transfer to the post of EDBPM, Pulickamaly to look after her children who are residing at Pulickamaly. This request was turned down summarily. Following a decision of respondent-department, the applicant filed O.A.1057/1999 before this Tribunal. It was ordered by the Tribunal to consider the applicant's case for

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transfer as EDBPM, Pulickamaly afresh on merits. Instead of acceding to the genuine request of the applicant for transfer, the respondent-department arbitrarily transferred the 5th respondent who was working as GDS Mail Deliverer(erstwhile EDDA) as EDBPM, Pulickamaly. The 5th respondent is not eligible to be appointed by transfer as GDSPM, Pulickamaly as she was not working as GDSPM (erstwhile EDBPM). Time Related Continuity Allowance(TCRA) in respect of EDDA/EDSPs upto 3 hours 45 minutes is Rs.1375-254-2125 and more than 3 hours and 45 minutes is Rs.1740-30-2640. TRCA for GDS BPM is R.1280-35-1960 for 3 hours and Rs.1600-40-2400 for more than 3 hours. The qualification for EDDA is VIIth standard, Matriculation being a preferential qualification whereas the qualification for GDBPM is Matriculation. Thus GDS BPM is higher post than GDS MD. The Hon'ble High Court of Kerala in Senior Superintendent of Post Offices v. Raji Mol reported in 2004(1) KLT 183, held that the person working in a lower post has no indefeasible right to be appointed by transfer to a higher post to the exclusion of any other eligible candidate. Ignoring the law laid down by the Hon'ble High Court, the 5th respondent, holding the lower post of EDDA (redesignated as GDSMD) was illegally transferred to the higher post of GDS BPM, Pulickamaly B.O. This apart, Hon'ble Supreme Court in JT 2001 9 SC 463 in Civil Appeal No.9643-9644/1995 held that transfer does not include promotion to a higher post.

3. The submissions made on behalf of the respondent-department in brief as follows: In compliance with the orders of the Tribunal in O.A.1047/1999 and 1057/1999, the

respondents considered the question of appointment to the post of BPM, Pulickamaly on merit. Three working EDAs viz, the applicant, the 5th respondent and Asokan K Vettath GDS MD, Arakunnam applied for transfer as BPM, Pulickamaly. Asokan K Vettath was ranked first, the 5th respondent second and the applicant last in the order of merit. Asokan K Vettath declined to accept the post. The 5th respondent who was the next meritorious candidate was appointed as BPM, Pulickamaly. The decision to transfer the 5th respondent as BPM, Pulickamaly was taken in compliance with the direction of this Tribunal in O.A.1057/99 and 1047/99.

4. The submissions made on behalf of the 5th respondent are summarised below: The 5th respondent requested transfer to the vacant post of BPM, Pulickamaly as she is a chronic blood pressure patient and has to look after the physically handicapped child. After a round of litigation, the 5th respondent was rightly selected for appointment by transfer to the post of BPM, Pulickamaly on merit. The applicant being less meritorious than the 5th respondent has no valid ground <sup>her</sup> to challenge ~~the former's~~ appointment as BPM, Pulickamaly. The applicant cannot claim higher status than the 5th respondent as the 5th respondent was selected for appointment as BPM on the basis of higher marks in SSLC and following the standing instructions and extant rules.

5. We heard the learned counsel for the applicant, official respondents and 5th respondent and perused the pleadings.

6. The bone of contention is the rival claims of the applicant and 5th respondent to appointment by transfer to the post of BPM, Pulickamaly. Learned counsel for the applicant relied on the judgement of the Hon'ble High Court of Kerala in W.P.(C) No.37904/2003 S dated 16.1.2004 and W.P.(C) No.32814/2004 reported in 2004 (1) KLT 183 in support of his contention that the respondent No.5 holding the post of GDS MD which is lower than the post of BPM held by the applicant is not eligible for appointment by transfer as BPM, Pulickamaly. The Hon'ble High Court of Kerala in KLT 2004 (1) 183 Senior Superintendent of Post offices v . Raji Mol observed as follows:

"..In our view, a person working on a lower post cannot claim that he has an indefeasible right to be appointed by transfer to a higher post to the exclusion of every other eligible candidate"

As regards the question whether an employee has a right to be appointed by transfer to a higher post to the exclusion of other eligible candidates, the High Court held as follows:

"If an employee seeks transfer to a post equivalent to the one held by him, the rules 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 or which he is working, the Department can consider his claim subject to his fulfilling the conditions of eligibility along with that of the eligible persons who may offer their candidature for appointment."

7. It is clear from the reading of the judgement of the Hon'ble High Court that the transfer of an employee to a higher post is permissible subject to fulfilment of the condition of eligibility along with consideration of claims of

eligible person who may offer their candidature for appointment. Since the claim of the 5th respondent to appointment by transfer to BPM, Pulickamaly was considered not exclusively but along with the applications of the applicant and Shri Asokan K Vettath for the same post, ~~of~~ the appointment by transfer of the 5th respondent as GDS BPM, Pulickamaly was in keeping the law laid down by the Hon'ble High Court in W.P.(C) No.32814/2003 reported in 2004(1) KLT 183.

8. The judgement of the Hon'ble Supreme Court on which the applicant relied is of no avail as the facts of the case are at variance of the facts of this O.A.

9. It is clarified in the clarifications regarding recruiting unit of transfer of ED officials (A-4) as follows:

"However, if the placement is from one post office to another outside his own recruitment 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 transfer of GDS to any post outside the recruiting unit is to be treated as fresh appointment. In case of fresh appointment, the merit of the candidate applying for the post is the criterion for appointment subject to reservation. The official respondents in the reply statement averred, among other things, that 3 working EDAs viz, Shri Asok K Vettath, the 5th respondent and the applicant who had requested appointment as BPM, Pulickamaly were ranked as first, second and last in the order of merit. Shri Asokan declined to

accept the post. Thus the 5th respondent being ranked more meritorious than the applicant for the post BPM, Pulickamaly was appointed to the post. There is no ground for interfering with the selection of the 5th respondent which was based on merit.

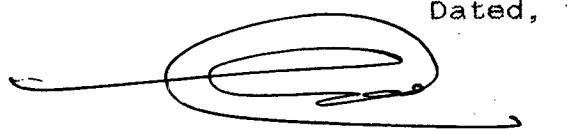
10. The decision of the official respondents in keeping with the direction given in the order in O.A.1057/99 (A-5) filed by the applicant. The Tribunal ordered as follows:

"We direct the second respondent to place the matter before the competent authority of the department to consider the request of the applicant for appointment by transfer to the post of EDBPM, Pulickamaly BO afresh on merits untrammelled by the fact that she is working in another recruitment unit. If as a result of such consideration the competent authority accept the request then the respondents shall consider her case along with similar requests received from other working ED AGents on merit, and resort to recruitment from open market only if none of the working ED Agent is found eligible and suitable."

Thus merit determined consideration of 3 working EDAs for placement as BPM, Pulickamaly as directed by this Tribunal. The 5th respondent having been found more meritorious than the applicant was rightly selected for appointment by transfer to the post in question.

11. In the light of the discussion, there is no ground for giving relief as prayed for in the O.A. The O.A. is accordingly dismissed. No costs.

Dated, the 30th November, 2004.

  
K.V.SACHIDANANDAN  
JUDICIAL MEMBER

  
S.K.HAJRA  
ADMINISTRATIVE MEMBER