

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No.174/2002

Friday, this the 16th day of July, 2004.

C O R A M

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER  
HON'BLE MR.H.P.DAS, ADMINISTRATIVE MEMBER

Rafeeka Beevi R,  
Gramin Dak Sevak Sub Post Master, Pachallur,  
Residing at : Melekalathuvilakam,  
Pachallur P.O., Trivandrum. : Applicant

[By Advocate Mr. M.R.Rajendran Nair.]

v e r s u s

1. The Superintendent of Post Offices,  
Trivandrum South Division,  
Trivandrum.
2. The Director of Postal Services (SR),  
O/o. the Chief Post Master General,  
Kerala Circle, Trivandrum.
3. Union of India represented by  
The Secretary to Government of India,  
Ministry of Communications,  
New Delhi.
4. Vijayalakshmi,  
Extra Departmental Packer,  
Kudappanakkunnu Post Office,  
Trivandrum. : Respondents

[By Advocates Mr. C. Rajendran, SCGSC for R-1 to R-3 and  
Mr. K.S. Bahuleyan for R-4.]

The application having been heard on 08.07.2004, the  
Tribunal on 16.07.2004, delivered the following.

O R D E R

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

The applicant, Gramin Dak Sevak Sub Post Master (GDSSPM)  
against termination of her service and appointing the 4th  
respondent as GDSSPM, aggrieved by Annexure A-1 memo dated  
13.03.2002 has filed this O.A seeking the following reliefs:-

- (i) " Quash Annexure A-1 and A-12;
- (ii) To declare that the 4th respondent is not eligible  
to be appointed by transfer to the post of GDSSPM,  
Pachallur, by transfer ;

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- (iii) To direct the respondents to reinstate the applicant as GDSSPM, Pachallur with all consequential benefits and to allow her to work in an alternative post in case of termination of her service being upheld;
- (iv) Grant such other relief as may be prayed for and the Tribunal may deem fit to grant; and,
- (v) Grant the costs of this Original Application."

2. This Tribunal vide order dated 23.05.2003 has passed the following order directing the respondents to reinstate the applicant and declare that the 4th respondent is not eligible to be appointed by transfer to the post of GDSSPM, Pachallur. For better elucidation the operative portion as quoted as follows :-

" It, therefore, follows that the declaration to the effect that the 4th respondent is not eligible to be appointed by transfer to the post of GDSSPM, Pachallur cannot also be granted. The prayer for issuing directions to the respondents to reinstate the applicant as GDSSPM, Pachallur, with all the consequential benefits, has also no merit and hence is rejected. With regard to the applicant's prayer seeking alternative post in case of termination of her service is a matter which the applicant is to take up with the respondent Department and it is for the respondent Department to consider the matter in accordance with the extant rules, orders and instructions. We express no opinion on their merit."

3. The matter was taken up before the Hon'ble High Court in W.P.No.19566 of 2003 (S) and vide order dated 08.03.2004, the Hon'ble High Court has set aside the order of this Tribunal and directed this Tribunal to consider the O.A and take a fresh decision in accordance with law. The operative portion of the said judgment of the Hon'ble High Court is reproduced as under :-

" A perusal of Ext.P 17 order shows that the above contention of the applicant was not considered by the Tribunal. Learned counsel for the petitioner submits that the above mentioned contention of the applicant is liable to be upheld in view of a decision of the Division Bench of this court in Senior Superintendent of Post Offices vs. Raji Mol (2204 (I) KLT 183). However, learned counsel for the fourth respondent submits that the above decision of the Division Bench has no application to the particular facts in this case. In our view, it is for the Tribunal to consider and decide whether the contention raised in Ground 'C' in the original application is liable to be upheld or not. We need only observe that the Tribunal will have to consider the applicability of the above mentioned decision of the Division Bench reported in Senior Superintendent of Post Offices Vs. Raji Mol (2004 (1) KLT 183)."

4. The order of this Tribunal, set aside by the Hon'ble High Court on the observation that the applicability of the decision of the Division Bench of the Hon'ble High Court in Senior Superintendent of Post Offices Vs. Raji Mol (2004 (1) KLT 183) will have to be considered. Ofcourse, this Tribunal had no occasion to consider the said judgment since the order in OA 174/2002 was passed on 23.05.2003 much before the pronouncement of the said order. However, in furtherance of the directions, we propose to analyse the legal point and the applicability of the said case in this OA, to be evaluated. In the said judgment two issues arose for consideration of the Hon'ble High Court.

- (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 ?

In issue No. (1), the Hon'ble High Court has declared that the provision providing that an employee is not 'liable to be transferred' does not debar the employee from seeking transfer, is germane as far as this case is considered. Regarding the 2nd issue, the Hon'ble High Court has declared as follows:-

"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 in 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."

5. With regards to legal point the Hon'ble High Court has in the said judgment observed as follows:-

"Mr. Radhakrishnan has referred to the decision of a Division Bench in Sub Divisional Inspector of Post Office vs. The Central Administrative Tribunal (2003 (3) KLT 541). In this case it was held that an Extra

Departmental agent was entitled to be considered for appointment by transfer. However, the issue of appointment to a post in the higher scale than the one in which the agent was working was not considered by their Lordships. It is undoubtedly true that persons working as ED Mail Carriers etc. had also claimed transfer to the post of Agents and that their claim had been upheld. Yet, a perusal of the judgment clearly shows that the issue of one post being higher than the other was never raised or considered. In this situation the decision cannot be read as an authority for the proposition that a person working in the lower post has a right to be appointed to a higher post by transfer and that too, to the exclusion of other eligible persons. Thus, the respondents can derive no advantage from this decision.

Faced with the situation, Mr. Radhakrishnan has contended that such a contention was not raised by the petitioners before the Tribunal. On the other hand, counsel for the petitioners have pointed out that the Tribunal was considering the claims for appointment of Mail Carriers for the post of Branch Postmaster or the Sub Postmaster etc. The direction by the Tribunal is only for consideration. Since the Tribunal has directed the Department to consider the claims for appointment by transfer to higher posts, the issue has arisen on account of the direction.

We have heard the learned counsel for the parties at length. Thus it does not appear to be necessary to remand the matter. 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. This is all the more so in a case where there is no rule specifically providing for appointment by transfer. In this situation we are of the view that the claims of the respondents have to be considered only along with the other eligible persons who may be sponsored by the Employment Exchange or may otherwise apply for the post. Thus, the second question is answered in favour of the petitioners."

6. From the above observation of the decision of the Hon'ble High Court, it is clear that persons 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.

7. In this case, since the legal point has been settled, the applicant is qualified in seeking the post of GDBPM through open market whereas the rival candidate Respondent No.4 working as Sub Post Master by transfer. Applicant came meritorious and her claim that she should have been considered because the 4th

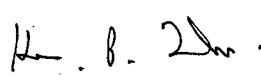



respondent cannot seek transfer to a higher post. The decision of the Hon'ble High Court is very clear to the fact that "a persons working on a lower post cannot claim that he has an indefeasible right to be appointed by transfer to a higher post to the exclusion of every other eligible candidate".

8. On going through the pay scales (TRCA) of EDSPM and EDBPM, it is seen that the responsibilities/nature of job etc. of these two posts are also different. Therefore, the post of EDSPM is a higher post than that of EDBPM. We are of the considered view that the fourth respondents claim to the post of EDSPM cannot be granted since she is working as EDBPM which is a lower post. In the circumstances, the fourth respondent is to be accommodated to the same post as that of GDSSPM elsewhere in the same unit if she cannot be accommodated to her earlier place of posting, since the applicant is having a better claim. It is corollary that the applicant must be considered and given the posting since she has already been selected and came meritorious in the selection list to the post of GDSSPM, Pachallur as per the ruling of the Hon'ble High Court.

9. With the above observation, Annexure A-1 and A-12 are set aside. The O.A is disposed of directing the respondents to take appropriate steps to appoint the applicant to the post of EDSPM, Pachallur and accommodate the 4th respondent to her earlier engagement in the same place, if not in the same unit as per the vacancy forthwith. The entire exercise of implementing this order shall be done within 45 days from the date of receipt of a copy of this order. No order as to costs.

Dated, the 16th July, 2004.

  
H.P.DAS  
ADMINISTRATIVE MEMBER

  
K.V.SACHIDANANDAN  
JUDICIAL MEMBER