

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.177/98

Wednesday this, the 28th day of April, 1999.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI B.N.BAHADUR, MEMBER(A)

Sadasivan K.K.,
Kappakasseril House,
Chottanikkara P.O.

..Applicant

(By Advocate Mr.Anil Babu)

vs.

1. The Union of India represented by the Secretary,
Ministry of Communications,
Sanchar Bhavan,
New Delhi.
 2. The Director General of Posts,
Dak Bhavan,
New Delhi.
 3. The Assistant Post Master General,
Central Region,
Kochi-16.
 4. The Senior Superintendent of Post Offices,
Ernakulam Division,
Kochi-11.
- ..Respondents

(By Advocate Mr.James Kurien, ACGSC)

The Application having been heard on 30.3.99, the Tribunal on 28.4.99 delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant who commenced his service as an Extra Departmental Packer, Cheranalloor within the Ernakulam Postal Sub Division was transferred as Extra Departmental Packer, Arakkunnam Post Office in Thrippunithara Sub Division on 4.1.1997 where he is presently working. He submitted Annexure A IV representation requesting for a transfer and appointment as Extra Departmental Branch Post Master, Thalacode under the Trippunithara Postal Sub Division stating that he is eligible and qualified to hold that post. The grievance of the applicant is that the fourth respondent is refusing to consider his request for transfer as the third respondent

had issued Annexure A-V clarificatory order interpreting the D.G, P&T's letter dated 12.9.1988 where it was stipulated that while an E.D post falls vacant in the same office or in the same place if one of the existing E.D.Agent prefers to work against that post, he may be allowed to be appointed without coming through the Employment Exchange provided he or she is eligible and suitable in a distorted manner saying that the transfer would be permissible only when an E.D.Agent is rendered surplus, or had been accommodated on being surplus on another post in a far off place. The applicant has alleged that the third respondent who is subordinate to respondents 1 and 2 is incompetent to issue such an order contrary to the order issued by the D.G, Posts on 12.9.98. The applicant therefore has filed this application challenging the validity of Annexure A.V, seeking to set aside the same and for a direction to the 4th respondent to appoint the applicant by transfer as E.D.B.P.M, Thalacod e in the existing vacancy.

2. The respondents in the reply contend that D.G, P&T had in its letter dated 6.5.1985(Annexure R1) observed that for transfer EDAs should apply through Employment Exchange and the appointment would be under the normal rules for appointment of EDAs and that in letter dated 14.2.1997(Annexure R2) clarifying the D.G.'s letter dated 12.9.1988 the Member(Personnel) had made it clear that transfer would be allowed only in the case of abolition of posts or surplusage and to accommodate an E.D agent transferred being surplus to far off place and that otherwise EDA seeking appointment to another post would be considered only according to the normal rules of selection and appointment.

3. The respondents have contended that in the light of the above instructions, especially the one dated 14.2.1997 issued under direction of this Tribunal in its order in O.A.612/95, the applicant is not entitled to be transferred as E.D.B.P.M, Thalacode Branch Post Office and that the challenge against the Annexure A5 is also unsustainable.

4. The short question that arises for consideration is whether according to the instructions on the subject a working E.D.Agent is entitled to be transferred and appointed on another E.D post arising in the same office or in the same place, if he is eligible and qualified without being sponsored by the Employment Exchange and without being subjected to a selection alongwith outsiders?. Learned counsel of the applicant inviting our attention to the order No.43-27/85/Pen(EDC & Trg) dated 12.9.1988 of the Ministry of Communications, Department of Posts, New Delhi, argued that though E.D.Agents are not to be transferred freely from one post to other, an exception has been made in the case of E.D.Agents seeking transfer to another post in the same office or in the same place and that therefore the clarifications contained in the impugned order dated 16th October 1997(Annexure AV) issued by the third respondent contrary to the spirit of the order dated 12.9.1988 (Annexure A III) issued by the second respondent is unsustainable and that therefore the applicant a working E.D. Agent is entitled to be considered for transfer and appointment as Extra Departmental Branch Post Master, Thalacode Branch Post Office. The learned counsel of the respondents on the other hand argued that the D.G, Posts had in his letter dated 6.5.1985 made it clear that EDAs

already in service should apply for appointment to another post through the employment exchange and that their application/appointment should be accepted or rejected under the normal rules for appointment of EDAs and that the only exception made in the Ministry's letter dated 12.9.1988 was in the case of E.D.Agent who has become surplus on account of abolition of posts or who had been accommodated in far off place on account of surplusage. He further argued that as Annexure A-III was misinterpreted by officers in charge of appointment to E.D. posts, a clarification was issued by the Member(Personnel) wherein it has been clearly indicated that clauses 1 and 2 of the letter dated 12.9.1988 should not be read in isolation but to be read in continuation of the pre para which would clearly mean that the question of transfer would arise only in exceptional circumstances like abolition of post of an E.D.Agent and that therefore a working E.D.Agent is not entitled to seek a transfer to another E.D post falling vacant either in the same office or in the same place. To resolve this issue and to see whether the letter dated 14.2.97 is in effect a clarification of the Ministry's order dated 12.9.99(Annexure A III), it is profitable to extract the relevant portions of these two orders. The Annexure A III letter dated 12.9. '88 of the Ministry of Communications reads as follows:-

"Subject: Transfer of E.D.Agents from one post to another.

As per orders contained in this letter No.43-27/95/Pen dated the 6th May,1985(copy enclosed for ready reference), the E.D.Agents desirous of seeking transfer from one post to another are required to seek it through the agency of Employment Exchange like any other applicant for fresh appointment. Normally the

Employment exchange does not register/sponsor the names of persons already in employment except in the cases for appointment to higher posts.

A proposal that EDAs may, therefore, be considered in a limited manner for appointment in other ED Posts without coming through the agency of Employment Exchange in exceptional cases been under examination.

Normally EDAs are to be recruited from local area and they are not eligible for transfer from one post to another but in cases where a post has been abolished EDAs are to be offered alternate appointment within the Sub Division in the next available vacancy, in accordance with Directorate orders No.43-24/64-Pen dated 12.4.64 and further clarified in No.43-4/77-Pen dated 23.2.1979, as per orders, those of EDAs who are held as surplus consequent to the abolition of ED Posts are to be adjusted against the posts that may occur subsequently in the same office or in the neighbouring offices. In view of this it will not be correct to allow transfers of EDAs freely from one post to other. However, it has now been decided that exception may be made in the following cases:-

- (i) When an ED Post falls vacant in the same office or in any office 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 vacant post without coming through the Employment Exchange provided he/she is suitable for the other post and fulfils all the required conditions.

(ii) In cases where EDAs become surplus due to abolition of posts and they are offered alternate appointments in a place other than the place where they are originally holding post, to mitigate hardship they may be allowed to be appointed in a post that may subsequently occur in the place where they are originally working without coming through Employment Exchange."

A careful reading of the above extract makes it clear that in cases where a post has been abolished EDA has to be offered alternate appointment within the Sub Division in the next available vacancy according to the Directorate's order dated 12.4.64 and further clarified in the letter dated 23.2.1979, and that in view of this position it would not be correct to allow transfers of E.D.Agents freely from one post to another and that it was decided to make an exception in the cases where an ED post falling vacant in the same office or in the same place and a working E.D.Agent preferring to work against the post permitting his appointment if he is otherwise suitable and qualified to hold the post and in cases where EDAs rendered surplus and accommodated on vacancies in places other than the place where they were originally holding the post to accommodate them in the vacancies subsequently arising with a view to mitigate their difficulties. In the clarificatory letter issued by the Director General of Posts dated 14.2.97(Annexure R2), paragraphs 5 and 6 read as follows:

"The DG P&T order dated 12th September 1988 has been issued to deal with redeployment made from one post to another in exceptional circumstance like where an ED post has been abolished and the EDA has to be offered alternative appointment within the sub division in the next available vacancy. This order also clarifies that it would not be correct to allow transfer of EDAs freely from one post to another. However, in

exceptional circumstances where a post of ED Agent has been abolished and consequently the extra departmental agent is rendered surplus, the procedure enunciated in clauses (i) and (ii) of the DG P&T letter No.43-27/85-Pen (EDC & Trg) dated 12th September, 1988 will operate namely:

i) When an ED post falls vacant in the same office or in any office in the same place (read as "recruiting unit") and is one of the existing (read as "surplus") EDAs prefers to work against the post he may be allowed to be appointed against that vacant post without coming through the employment exchange, provided he is suitable for the other post and fulfills all the required conditions.

ii) In case where EDAs become surplus due to abolition of posts and they are offered alternative appointments in a place other than the place at which they were originally holding the posts to mitigate hardship, they may be allowed to be appointed to posts they may subsequently occur in the place where they were originally working without coming through Employment Exchange.

Clauses (i) and (ii) of 12th September, 1988 orders cannot be read in isolation. It has to be read in continuation of its pre para which clearly states that it will operate only in exceptional circumstances like abolition of an ED post.

6. PMG, Northern Region, Calicut has sought to read clause (i) of this office order dated 12th September 1988 in isolation and has

overlooked the fact that clause (i) is to be applied with reference to the specific situations quoted in pre para occurring therein. The orders R-2 issued by PMG, Northern Region, Calicut vide his letter No.staff/25/7/94 dated 6.9.94 are, therefore, not in consonance with or in the spirit of the DG(P&T) letter dated 12.9.88. The orders of 12th September, 1988 issued by DG(P&T) will, therefore, prevail as detailed in pre para 5."

According to the above clarification, the word "existing" in clause (i) of the last paragraph of letter dated 12.9.88 (Annexure A-III) should be read as surplus. We are of the considered view that if the word "existing" is to be read as surplus, it would amount to a misreading and would defeat the purpose for which the exception was made in the Ministry's letter dated 12.9.88. Accommodating an E.D.Agent who has become surplus on account of abolition of post is provided in the Directorate letters dated 12.4.64 and 23.2.79 as stated in the pre para and the two clauses in the last paragraph of the order provide for transfer under exceptional circumstances, namely when a working E.D.Agent prefers to work against another post which falls vacant in the same office or in the same place and in the case of redeployed surplus E.D.Agents requiring to be accommodated in vacancies arising in his initial place of posting subsequently. The clarification given to the word "existing" in Annexure A-III in the letter of the Member(Personnel) dt. 14.2.97 therefore being contrary and repugnant to the spirit of the Ministry's letter Annexure A-III, the same is unsustainable. This Bench had in an earlier case O.A.45/98 considered the validity of the clarification given in the letter dated 14.2.97 and held that the clarification cannot stand. The Bench of which one of us (Hon'ble Shri

A.V.Haridasan, Vice Chairman) was a party, has observed as follows:

"4. If the intention was that there should be selection then it would have been clearly stated that if an E.D.Agent applies he shall also be considered for selection along with persons who might be sponsored by the Employment Exchange. To our mind it appears that the intention of the above quoted clause was that if a working E.D.Agent in the same office or in the same place prefers to work against a post which has fallen vacant he can be appointed if he is eligible and qualified to be appointed to that post without subjecting him for a selection alongwith outsiders. It is true that a clarificatory letter was issued on 14.2.97(A7) by the Member(Personnel) on the basis of certain directions given in an order of the Tribunal. If the A7 has been issued in supersession of the A5 order from the date of issue of A7 it can be said that the intention was only to allow working E.D.Agents to be considered for selection not being sponsored by the Employment Exchange and not for being appointed without such a selection. A clarification cannot change the meaning of the original order. A reading of A5 and A7 leads to an anomolous situation that we are asked to give an interpretation to a clause in A5 which is repugnant to the literal meaning of what is contained therein. If the D.G.(Posts) is of the opinion that even for E.D.Agents working in the same office or in the same place for being

appointed to another post falling vacant, he should compete with those who are sponsored by the Employment Exchange, it is upto the D.G. to issue such a direction in supersession of the existing instructions contained in Annexure A.5. So long as that has not been done we are of the considered view that the clarification contained in A7 and A8 to the extent they are repugnant to the original instructions contained in A5 cannot stand. Therefore, the impugned letters A7 and A8 are set aside."

We find no reason to deviate from the above considered view.

5. The present stand taken by the respondents in Annexure A V order on the basis of the clarificatory letter dated 14.2.97 can also be found to be inconsistent with the other earlier instructions issued by the Director General of Posts on the question of transfer of E.D. officials from one post to another. Clarification on certain points were issued by the Ministry in its letter No.17-60/95-ED & TRG dated 28.8.1996 addressed to all Chief Postmasters General etc. which read as follows:-

"Sub: Transfer of ED official from one post to another
clarifications of certain point of doubt.

Sir,

I am directed to invite your kind attention to this office letter No.43-27/85/Pen.(ED & Trg) dated 12.9.1988 on the above mentioned subject. Attention is also invited to this office letter No.19-21/94-ED & Trg., dated 11.8.1994 where the work "place" occurring in Sub Sec.(a) of this office above mentioned letter has been defined.

1. In the context of the provisions contained in this office letter under reference, communications have been received from certain quarters seeking clarifications on the various points mentioned under. The matter has been examined in this office

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and the point with position is clarified below:

QUERY

CLARIFICATION

1. Whether preference can be given to the EDAs for transfer against a vacant ED post working in the same office or whether the request Senior EDA should be given preference.
 1. The transfer request may be considered in the following orders of preference.
 - a) Surplus ED agents whose name for deployment appear in the waiting list.
 - b) Surplus ED Agents are not available, the seniormost ED Agent working in the same office and or in 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.
 2. (a) Preference may be given to ED Agent having higher marks in matriculation examination when selection is made for the post of EDBPM/SPM, if they otherwise satisfy the eligibility criteria.
 - (b) For the other ED preferences may be given to seniors if they otherwise satisfy the eligibility criteria.
 3. Under the normal circumstances ED Agents do not carry any transfer liability
2. Whether EDAs having higher marks can be given preference for transfer irrespective of their seniority in the existing post.
 2. (a) Preference may be given to ED Agent having higher marks in matriculation examination when selection is made for the post of EDBPM/SPM, if they otherwise satisfy the eligibility criteria.
 - (b) For the other ED preferences may be given to seniors if they otherwise satisfy the eligibility criteria.
 3. Under the normal circumstances ED Agents do not carry any transfer liability
3. Whether there is any limit for number of choice posts/offices for which he/she may apply for transfer and is so, how many times.
 3. Under the normal circumstances ED Agents do not carry any transfer liability

and are not liable to be transferred from one post to another or from one place to another. However, interest cases where ED Agents are posted far away from their original post offices of posting on being rendered surplus, they may be allowed one or two transfers in their entire service in order to enable them to be posted back to their parent post office or any nearby post office.

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| 4. Whether an ED Agent having more service can be given preference in case more than one ED Agent of the same office applies for his transfer against the vacant post of ED Agent. | 4. Yes. |
| 5. Whether EDAs of HOs/LSG Sub Offices can be given transfer against the posts of ED Agents falling vacant in a Sub Division and vice versa. It may also be clarified whether an ED Agent other than EDBPM/SPM can apply for the post of an EDBPM/SPM, falling vacant outside his recruiting unit(Sub Division) but within the recruiting unit(is division). | 5. Yes. So long as the ED Agents seeking transfer from a Head Office or SLG Sub Division and vice versa are borne on the gradation list of the same division and the ED Agents seeking transfer to the post of EDBPM/EDSPM within the same division fulfil the eligibility criteria laid down for appointment as EDBPM/EDSPM. While doing so, the provisions against Item No.3 above may be kept in view. |
| 6. If the request for transfer of an ED Agent has been granted and if he again requests for another transfer clarify whether this can be considered? | 6. The position has already been explained against item No.3 above. |

n/

7. Whether any preference to E.D.M.C. whose post are abolished due to administrative reasons can be given priority/transfer over other categories of ED officials whose requests are also pending.

7. The E.D.M.C. who has been rendered surplus may be given preference over other."

(emphasis supplied)

It can be seen from the instructions contained in the above letter especially in reply to the queries 1 and 2 that requests for transfer of ED Agents from one post to another would be entertained and that in the absence of surplus E.D.Agents the seniormost E.D.Agent working in the same office or the seniormost E.D. Agent in the same recruitment unit is to be given preference for transfer. This shows that the intention of the Ministry while it issued Annexure A-III letter was that in addition to appointment of E.D. Agent rendered surplus on vacancies occurring in the same office or in the same place, transfer of working E.D.Agents to another post falling vacant in the same office or in the same place if the incumbent fulfills the conditions of eligibility and suitability were also permitted. Therefore the impugned order issued by the 3rd respondent basing on the Annexure R2 letter dated 14.2.97 which has already been set aside by the Tribunal to the extent it is repugnant to the stipulations in the Annexure A-III letter in its Order in O.A. No.45/98 is unsustainable and therefore the refusal on the part of the 4th respondent to consider the appointment of the applicant as E.D.B.P.M., Thalacode by transfer in the light of Annexure A III (Ministry's letter dated 12.9.1988) is arbitrary. In the result the application is disposed of with the following

declarations and directions:

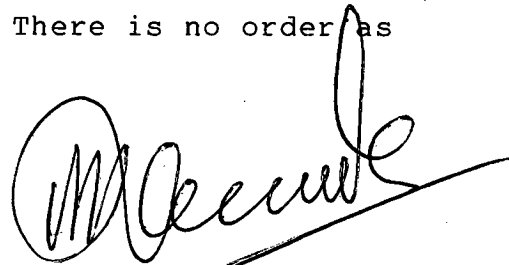
(a) The impugned order dated 16th October, 1997 (Annexure AV) of the third respondent basing on Annexure A II letter dated 14.2.97 is quashed and set aside.

(b) The 4th respondent is directed to consider the Annexure A IV request of the applicant for appointment by transfer as EDBPM, Thalacode Branch Post Office as a working E.D. Agent in accordance with the guidelines contained in the Ministry's letter dated 12.9.1988 in the light of the observation made in the foregoing paragraph and to give the applicant a speaking order on that within a period of two months from the date of receipt of a copy of this order. There is no order as to costs.

B.N. Bahadur

28/4/99

B.N. BAHADUR
MEMBER(A)



A.V. HARIDASAN
VICE CHAIRMAN

/njjj/

List of annexures referred to in the Order:

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| 1. | Annexure A III | The true copy of D.G. letter No.43-27/85/Pen(EDC & Trg) dated 12.9.1988. |
| 2. | Annexure AIV | True copy of the English translation of the request for transfer submitted by the applicant dt. 9.12.97 before the 4th respondent. |
| 3. | Annexure AV | True copy of the letter No.CC/2-85/96 dated 16th October 1997 issued by the 3rd respondent. |
| 4. | Annexure-R1 | True copy of letter No.43-27/85-Pen dt.6.5.85. |
| 5. | Annexure -R2 | True copy of extract of Director General Posts Order No.19-72/96-ED & TRG dated 14.2.97 |