

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.Nos.183/11 & 200/11

Thursday... this the 3rd day of November 2011

C O R A M :

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER

O.A.No.183/11

Remya Raj,
W/o.Prabha Kumar,
GDSBPM, Maniyaru-Punalur.
Having permanent residence at Neerkuzhi-Puthenveedu,
Thekkaitheri PO, Pattazhi, Pathanamthitta District.

...Applicant

(By Advocate Mr.V.Sajith Kumar)

V e r s u s

1. Union of India,
represented by the Secretary to the Government,
Ministry of Communications, Department of Post,
New Delhi – 110 001.
2. The Chief Post Master General,
Kerala Circle, Trivandrum – 695 101.
3. The Superintendent of Post,
Pathanamthitta Postal Division,
Pathanamthitta – 688 101.

...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil,ACGSC)

O.A.No.200/11

M.Asha,
W/o.Vinod Kumar G,
Department of Posts,
Grameen Dak Sevak Mail Deliverer,
Thattayil, Adoor.
Residing at Padinjere Adikkatu,
Neduman PO, Pathanamthitta.

...Applicant

(By Advocate Mr.M.R.Hariraj)



Versus

1. Union of India,
represented by Secretary to the Government of India,
Department of Post, New Delhi.
2. Chief Post Master General,
Kerala Postal Circle, Thiruvananthapuram.
3. Superintendent of Post Offices,
Pathanamthitta Postal Division,
Pathanamthitta. ...Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC)

These applications having been heard on 28th October 2011 this Tribunal on 3rd November 2011 delivered the following :-

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

As the two applications have one and same legal issue, these two are dealt with together and disposed of. Of course, the two applicants are in rivalry position and as such, the facts in each case would be essential to be mentioned here and the same are as hereunder :-

(a) OA No.183 of 2011 :

2. The applicant Ms.Remya Raj entered the services of the respondents on 15-11-2006 as a compassionate appointee, as her father a GDS died in harness. She has been posted as GDSBPM at Maniyaru-Pulalur Post Office. Her appointment is at a place situated far away from her parental place at Pattazhi. Later, she got married and her spouse is a resident of Elamannur, which is 22 km away from the place of work. The applicant came to know that a vacancy of GDSBPM has arisen at Chelikkuzhy, which is within five kilometers of her matrimonial home and

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some of her close relatives are residing at Chelikkuzhy itself. Hence, the applicant made a representation on 08-09-2010 for posting her as GDSBPM at Chelikkuzhy, vide Annexure A-3.

3. According to the applicant, since she was informed that residing at the delivery village is a pre-requisite, she had furnished the address of her close relative i.e. Thenguvila Veedu, Chelikkuzhy informing that the applicant was residing. On verification the same was found to be untrue in that the applicant was not residing at that residence. The applicant again gave a declaration, this time intimating the name of the house owner one Shri.Padmarajan, Thenguvila Veedu, H. No.CP/II/86, Chelikkuzhy. This again, on verification, was found not true in that the applicant was not found residing there. As false information has been given, explanation was called for from the applicant. Meanwhile, the vacancy for the post of GDSBPM was notified for being filled up from open market, vide Annexure A-1.

4. In view of the fact that if the post of GDSBPM at Chelikkuzhy gets filled up in pursuance of the notification, the chance of the applicant in getting herself posted to that place would be diluted and hence, the applicant has filed this OA seeking the following reliefs :-

1. To quash Annexure A-1
2. To direct the 3rd respondent to consider the applicant for transfer against the post of GDSBPM, Chelikkuzhy.
3. Such other order or orders as deemed fit to meet the ends of justice.



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5. Respondents have contested the O.A. According to them, the declaration furnished by the applicant about her residence at Chelikuzhy is utterly false as has been verified and explanation has been called for from her in this regard. Apart from the above, her matrimonial house is not in that village where the BO was located. The settled position is that while applying for transfer under marriage ground, the husband of the applicant must be a permanent resident of the village where the BO is located. Though transfer to a place near the matrimonial house is permitted, as this condition (of the residence in the village where the BO is located) is not fulfilled, the applicant cannot be accommodated as GDSBPM Chelikuzhi.

6. Applicant has filed her rejoinder. She has contended that residence within the delivery area is not a pre-requisite. As per the rules, need to reside within the delivery area arises only on appointment to the post. And the applicant is ready and willing to reside at the delivery area on appointment. In so far as the earlier declaration is concerned, the applicant submitted that what the applicant meant was her intention to reside on her appointment in Chelikuzhi in the house of Shri Padmarajan, Thenguvila Veedu, Chelikuzhy, who is a relative of the applicant.

(b) OA No.200 of 2011 :

7. The applicant was appointed as GDSMD, Thattayil under the 3rd respondents on 30-08-2008. After her marriage, she had requested for a transfer to the post of GDSBPM, Mannam Nagar, which was nearer to her matrimonial home. It was however, rejected as the applicant did not

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have three years of service and that she was not residing within the delivery zone of the proposed BO. Annexure A-2 refers. It was at this juncture that a vacancy for the post of GDSBPM arose at Chelikuzhi Branch Office and the applicant who was qualified for the post applied for the same. In fact the domestic circumstance (her spouse serving in the Army, there is none to look after the old aged and ailing mother in law. Annexure A-3 refers. The request of the applicant was reinforced by a representation from the husband of the applicant vide Annexure A-4 and was in fact recommended by his Commanding Officer, vide Annexure A-5. However, the respondents have rejected the request of the applicant vide Annexure A-1 stating that the post of GDSBPM, Chelikuzhi carries a lower TRCA. The respondents have also notified the vacancy for selection from open market, vide Annexure A-6. The applicant has thus, challenged Annexure A-1 and A-6 orders and has prayed for the following :-


- (a) Quashing of Annexure A-1 and A-6.
- (b) For a direction to the respondents to consider the applicant for appointment by Transfer as GDSBPM, Chelikuzhy B.O. in preference to outsiders.

8. Respondents have contested the O.A. According to them, transfer on limited grounds are no doubt permitted. And whenever any vacancy to any of the GDS posts arises on regular basis, the first step is to see whether there are any transfer requests pending to the post. In the case of GDSBPM, Chelikuzhy, the applicant and another GDSBPM, Maniyaru Punalur (Applicant in OA 183/2011) were the aspirants to the post. Request of the other candidate has been rejected on account of

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submission of false information relating to her residence, against which OA No.183 of 2011 has been filed, while the request of the applicant was sent to the Inspector of Posts, Adur Sub Division, her appointing authority for report. The case was not recommended by the IP since the GDS had not completed 3 years of service, one of the conditions prescribed in Annexure A-7 guidelines. Hence, the transfer request was forwarded to the office of the Chief PMG in January 2011 without recommendation since she had not completed 3 years of service and the residence of her husband and Chelikuzhy B.O. are at two different villages. Further a declaration accepting the lower TRCA is required before such transfer and the trend is that GDS do give such declaration but soon after taking over the post, move the Tribunal for restoration of their TRCA and the Tribunal and the High Court have been giving verdicts in favour of these GDS taking a stand that the pay of an official cannot be reduced other than by punishment and that when a GDS is transferred from a post carrying a higher TRCA to another post with lower TRCA, the pay has to be protected in the lower TRCA. But the Chief Postmaster General also had rejected the case of the applicant for transfer as the post of GDSBPM, Chelikuzhi carries a lower TRCA.

9. Counsel for the applicant in OA 183 of 2011 argued that it was by a sheer error that the applicant had indicated that she has been residing in Thenguvila Veedu, Chelikuzhy and she had already given her explanation in this regard. As a matter of fact, such a declaration is not required to be given for applying for the transfer to Chelikuzhy.



Rules warrant that before appointment (here transfer) the individual should have the residence in the village in which the B.O. is situated. That would be carried out by the applicant. Other requirements are fulfilled by the applicant. Hence, rejection of her request is illegal and the proposed step to fill up the post of GDSBPM, Chelikuzhy from open market is against the rules of considering the case of transfers in preference to such selection of outsiders.

10. Counsel for the applicant in OA 200/2011 submitted that in the case of the applicant in the said O.A. the lone ground for rejection is lower TRCA attached to the post of GDSBPM, Chelikuzhy. Two other grounds have been mentioned in the counter viz. (a) the applicant had not completed three years of service and (b) the applicant has no permanent residence in the village in which the B.O. is situated. None of the grounds is legally sustainable in view of the following :-

(a) Full Bench of this Tribunal in O.A.No.270/06 and connected cases has held as under :-

"49. Now, the entire situation would be summarised and references duly answered as under :-

(a) As per the rules themselves, in so far as transfer within recruitment unit and in the same post with identical TRCA, there shall be no depletion in the quantum of TRCA drawn by the transferred individual.

(b) In so far as transfer from one post to the same post with diff. TRCA and within the same Recruitment Unit, administrative instructions provide for protection of the same vide order dated 11th October, 2004, subject only to the maximum of the TRCA in the transferred unit (i.e. maximum in the lower TRCA).

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(c) In so far as transfer from one post to a different post but with same TRCA and within the same Recruitment Unit, as in the case of (a) above, protection of TRCA is admissible.

(d) In respect of transfer from one post to another within the same recruitment unit but with different TRCA (i.e. from higher to lower), pay protection on the same lines as in respect of (b) above would be available.

(e)

(b) As regards permanent residence, this requirement has been held to be unconstitutional vide the decision of the Tribunal in O.A.No.1018/90 reported in 1993 (24) ATC 59 which reads as under :-

"11. In the light of the above analysis I resolve the difference of opinion in the following terms. I agree with the learned Judicial Member that the impugned Annexure 1-A circular No.43-84/80-Pen., dated 30-01-1981 of D.G., P&T cannot be sustained to the extent it mandates residence in the village where the post office is located for appointment as EDBPM/EDSPM in violation of Article 16 of the Constitution. The argument of the learned counsel for the applicant that residential qualification is only a condition to be enforced subsequent to the appointment cannot be accepted in view of the fact that the circular prescribes not merely residential qualification, but on the other hand, 'permanent' residential qualification. It will be contrary to common sense and natural interpretation that one who is a total stranger to the village where the post office is situated can be deemed to be a permanent resident overnight on being appointed as EDBPM. Such a reading down of this qualification is not possible unless the word 'permanent' in Annexure 1-A is abrogated. Subject to this, agreeing generally with my learned brother, the Hon'ble Judicial Member Shri.N.Dharmadan, I find that the selection of the 4th respondent requires to be set aside and a fresh selection conducted by respondents 1 to 3 for the post of EDBPM, Ayyampuzha village by replacing the 'permanent' residential condition at Annexure 1-A by a condition of residence simpliciter in the village concerned and that too as a condition to be fulfilled subsequently and not precedent to selection and appointment to the post of EDBPM/EDSPM.

12. Registry is directed to place my opinion before the appropriate Division Bench for final orders.

Order of the Bench dated 16-11-1992

13. In the light of the judgment of the Hon'ble Vice Chairman resolving the difference the 4th respondent's selection as EDBPM, Ayyampuzha is set aside and we direct the 2nd respondent to conduct a fresh selection to the post after replacing the word 'permanent' residential condition at Annexure A-1 with a condition of 'residence simpliciter' in the village concerned as explained in the judgment making it clear that such a condition is to be satisfied only subsequent to the selection and appointment to the post of EDBPM/EDSPM."

(c) As regards non completion of three years, by now the applicant completes three years and even other wise, the following decisions of the Apex Court support the case of the applicant :-

1. Ram Sarup vs State of Haryana 1979 (1) SCC 168 wherein it has been held as under :-

"3. The question then arises as to what was the effect of breach of clause (1) of Rule 4 of the Rules. Did it have the effect of rendering the appointment wholly void so as to be completely ineffective or merely irregular, so that it could be regularised as and when the appellant acquired the necessary qualifications to hold the post of Labour-cum-Conciliation Officer. We are of the view that the appointment of the appellant was irregular since he did not possess one of the three requisite qualifications but as soon as he acquired the necessary qualification of five years' experience of the working of Labour Laws in any one of the three capacities mentioned in clause (1) of Rule 4 or in any higher capacity, his appointment must be regarded as having been regularised."

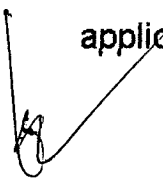
2. Bholanath Mukherjee vs Ramakrishna Mission Vivekananda Centenary College 2011 (5) SCC 464, wherein, the Apex Court has observed :-

"42. There is another reason why no relief, at present, could perhaps be granted to the appellants. Throughout the proceedings before the High Court as well as before this Court, no interim relief was granted by restraining Respondent 3 from performing the functions of a Principal. He has continued to function on the aforesaid



basis since his appointment on 14-5-1999 as Acting Principal and then on from 23-3-2001 onward as Principal. Even according to the appellants, at the time of his appointment, Respondent 3 had possessed the experience of only six years. Therefore, by now, he would have more than fifteen years of required experience for the post of Principal. Therefore, the ground that Respondent 3 was not qualified as he did not possess the necessary experience would also no longer be available to the appellants."

11. Arguments were heard and documents perused. In so far as the applicant in OA No.183 of 2011 is concerned, her desperate attempt in getting the transfer as GDSBPM Chelikuzhy is well evident when even prior to her taking up residence in the village where the B.O. is located, she has given the declaration. The case of the applicant has not reached that stage whereby such a declaration is needed. An undertaking would suffice or to establish the bonafide in the undertaking a consent letter from the land lord of the house where the applicant is desirous of residing may be filed. If such a declaration is needed as per the rules prior to the submission of application and if the declaration turns to be false, it could be construed that the transfer has been sought by the applicant by playing fraud. In the instant case, since such a declaration is not needed at that stage, all that could be attributed to the applicant in filing the declaration is that she is over enthusiastic in seeking the transfer. In any event, separately explanation has been called for and as such, filing of such a declaration alone should have invalidated her from seeking the transfer, if other conditions are fulfilled. There is no other ground of rejection of the application of the applicant.



12. In so far as the applicant is OA No.200/2011 is concerned, the counsel for the applicant is right when he argued that once a particular reason for rejection is given, respondents cannot add further grounds as opportunity to meet such further grounds would not be available to the applicant. His reliance on the decision of the Apex Court in the case of Mohinder Singh Gill vs Chief Election Commissioner, New Delhi and others (1978) 1 SCC 405 refers wherein the Apex Court has held as under :-

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out."

13. However even if all the three grounds of rejection are considered, there appears to be no substance in any of the grounds in view of the following :-

(a) Full Bench decision cited by the applicant clearly provides for transfer within the same unit to a post carrying lower TRCA scale, subject to the undertaking given by the individual but the TRCA already drawn shall be protected.

(b) The applicant has fulfilled three years of service as on date. This is not the case of any fresh appointment where one should apply only when any such condition stipulated is to be fulfilled as on the last date of the application. Even in such cases, the appointment is considered as only irregular and not illegal and the appointment is directed to be regularized. Transfer, if applied in advance of completion of three years, could well be kept pending till the applicant completes three years and subject to fulfilling other conditions, such a transfer be considered. Again, the decision relied upon by the applicant vide 1979 (1) SCC 168 and 2011 (5) SCC 46 supports her case.

(c) As regards permanent residence, the decision of the Tribunal reported in 1993 (24) ATC 59 is clear that such a stipulation is unconstitutional as it offends the fundamental right under Art. 14 and 16 of the Constitution. Insistence should be only for continued residence during the period the individual is holding the post of GDSBPM and not one of 'permanent residence'


(d) The reason given in para 4 and 5 of the reply in OA No.200 of 2011 that in view of the stand taken by the Court/Tribunal a decision was taken by the respondents to give transfer to the GDS only to posts having the same TRCA drawn by them at the time of transfer is thoroughly disapproved as the same is not supported by any amendment to the general transfer policy nor is the reason for such decision is legally sustainable.

14. In view of the above, respondents are directed to reconsider the cases of the applicants and on the basis of their merit, one of them be posted as GDSBPM Chelikuzhy. As it is the admitted case of the respondents that the first step is to see whether there is any transfer application pending, vide reply to OA No.200 of 2011 (already extracted above), till such time the two applications are duly reconsidered, the respondents shall not act on the notification at Annexure A-6 in OA No.200 of 2011. If for any other plausible and convincing reasons, none of the applicants could be transferred, the individuals be informed accordingly and it is only thereafter that further action in regard to the notification issued for selection from outsiders shall be considered.

(Dated this the 3rd day of November 2011)


K.NOORJEHAN
ADMINISTRATIVE MEMBER

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Dr.K.B.S.RAJAN
JUDICIAL MEMBER