

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

Original Application No. 183 of 2006

*Wednesday*, this the 21<sup>st</sup> day of March, 2007

**C O R A M :**

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

P.I. Moldeen,  
S/o. E.U. Ismail,  
Mail Man, Sub Record Office,  
Trichur (Under orders of transfer to HRO, Ernakulam),  
Residing permanently at Panikkaveettil House,  
P.O. Vadookkara, Kurukkanchery, Trichur.

... Applicant.

(By Advocate Mr. M.R. Hariraj)

v e r s u s

1. Union of India, represented by  
The Secretary to Government of India,  
Ministry of Communications, New Delhi.
2. Senior SuperIntendent of RMS,  
Ernakulam Division, Ernakulam.
3. Sub Record Officer,  
Sub Record Office, RMS, Trichur.

... Respondents.

(By Advocate Mr. T P M Ibrahim Khan, SCGSC)

The Original Application having been heard on 14.3.07, this Tribunal on ~~21.3.07~~ delivered the following:

**O R D E R**

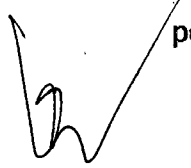
**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

The Chief Post Master General, Trivandrum ordered reduction of 8  
Mallmen posts in Railway Mail Service, Ernakulam Division. Of these 8, two are



stated to be surplus posts at Sub Record Office, Thrissur. The axe fell on the applicant for the reason that he happened to be the junior most at Thrissur and the applicant was transferred from Thrissur to Ernakulam, which he assails on various grounds.

2. Now a vignette of the facts of the case with terse sufficiency. The applicant was appointed as Mailman, a Group D post at Head Record Office at Ernakulam, vide Annexure A 2 order dated 20-03-1991. In November, 1991, on a mutual transfer, the applicant got himself transferred to Sub Record Office, Thrissur. By Annexure A-3 order dated 21-05-1993, he was confirmed w.e.f. 01-04-1993. It was in 1995 that the applicant was, in the interest of service, transferred to Kunnankulam, vide Annexure A-4 order of the Senior Superintendent, RMS Ernakulam Division, dated 24-05-1995. Again, under Rule 38 of the P & T Manual Volume IV, vide Annexure A-5, the applicant was, at his request, transferred to Sub Record Office, Thrissur. In 2001, the Senior Superintendent, R.M.S. Ernakulam Division had published a Gradation list as of July, 2001 in which the Mailmen of all the units (HOR, SRO Thrissur, Kunnankulam, Alleppey, UK etc.) have figured in and the applicant's seniority was 131 therein. However, the Thrissur Unit had, of its own, vide Annexure A-1, published a Gradation list, wherein the applicant's seniority position had been thoroughly upset to this extent that even one individual who was temporary at the time when the applicant had been confirmed and posted at Thrissur was shown senior to the applicant. And on the basis of that seniority position, he was treated as the junior most and as stated in para 1 above, the



axe of surplusage fell upon him and he was transferred to Ernakulam, though according to the applicant, the order was not served upon him. Hence, he filed OA No. 98/06 which was disposed of by the Tribunal vide Annexure A-7 order dated 21-02-2006, whereby the applicant was given liberty to submit a comprehensive representation in regard to his grievance against his seniority position and the respondent (Senior Superintendent, RMS, EK Division) was directed to dispose of the same. As the applicant was apprehending transfer on account of surplusage on the basis of the seniority list published by Thrissur Unit, the Tribunal directed that the respondents shall not take any action against the applicant on the ground of surplusage. Accordingly, the applicant penned Annexure A-8 representation dated 24-02-2006 contending that Sub Record Office is not a recruiting Unit and hence transfer from one SRO to another cannot in any way affect the seniority position of mailmen. However, by Annexure A-9 order dated 17-03-2006 the applicant's representation was rejected and his request for retention at Thrissur not acceded to. It is against the said order dated 17-03-2006 coupled with the Gradation list at Annexure A1 that this OA has been filed.

3. The applicant has taken up the following grounds:-

- (a) Incompetence of Superintendent, SRO, Thrissur to publish gradation list, as the authority competent to publish such gradation list of all mailmen is the Senior Superintendent, RMS, EK division, as did in 2001. Hence, gradation list published by the Superintendent, Thrissur is liable to be quashed and set



aside and consequently, action taken on the basis of the said gradation list is also liable to be quashed and set aside.


(b) There is no apparent reason for surplusage. Even if there be, there cannot be a surplusage at Thrissur, where no post stands abolished. Generally, unfilled posts are abolished and not the one where there is an incumbent.

(c) Provisional Seniority list of 2006 was not circulated at all.

(d) The transfer order does not conform to the rules of transfer as contained in Rules 37, 37A and 38 of the Postal Manual Vol. IV.

(e) The LIFO method applicable for retrenchment cannot be extended to surplusage.

4. Respondents have contested the O.A. According to them, the applicant having sought a transfer at his own request from Kunnankulam to Thrissur and as such, provisions of Rule 38(2) applies in so far as taking the bottom most seniority is concerned. As such, it was perfectly right on the part of the respondents to have moved the applicant out of Thrissur, as two posts of Mailmen at Thrissur were rendered surplus and the applicant is the junior most in that grade. The respondents have relied upon the decision dated 21-04-2005 of the High Court of Kolkata in APO No. 11 of 2005, wherein the prerogative of the employer in respect of power to order transfer has been crystallized. As



regards power to issue gradation list, since the provisions of Schedule 1 A of Postal Manual Vol III clearly specifies that the appointing authorities for Group D officials are the Head Record Officers/Sub Record Officers, vide Annexure R-6, publication of gradation list by the S.R.O. Thrissur for its employees is perfectly valid.

5. Applicant has filed his rejoinder in which he contended, apart from reiterating the stand he has taken in his OA, that the Annexure A-10 format prescribed for giving undertaking under Rule 38 of the P & T Manual Vol. IV is specific and what has been obtained from the applicant at the time of his application for transfer from Kunnampulam to Thrissur was not in the said format.

6. The respondents have furnished certain other documents by way of additional reply, which have been taken on record.

7. Counsel for the applicant submitted that there is no question of gradation list unit-wise. Assuming without accepting, still then, since the applicant's transfer from Kunnampulam to Thrissur is within the same Circle gradation, there cannot be any change in the seniority. The transfer has been effected without following any of the stipulations as in Postal Manual Vol. IV. There is absolutely no necessity to resort to surplusage and in fact, the records available would manifest that overtime is being paid to a number of mailmen which would prove that there is requirement of manpower and, under such circumstances,



rendering certain posts of Mailmen as surplus would be incompatible. Assuming without accepting that such gradation list issued by the Thrissur Unit is valid and that the applicant's seniority position as shown in the list is correct, as there is a vacancy likely to be arising in the near future, the applicant be permitted to be accommodated against the said likely vacancy and even if he be shifted to Ernakulam, the same be only with that provision to bring the applicant back to Thrissur. This prayer of the counsel for the applicant was as a last resort.

8. The senior standing counsel, with his own usual art of brevity, without making clarity a casualty, highlighted that the case is one of transfer simpliciter necessitated due to rendering of two posts of Mailmen at Thrissur surplus and the applicant, by virtue of having furnished the undertaking at the time of his request transfer accepting bottom most seniority, had to be posted out.

9. Arguments were heard and documents perused. The rule position is that on certain posts being rendered surplus, it is the junior most holding the posts as per the seniority list in vogue that should be shifted. If such surplus results in transfer, that transfer be not confused with the general transfer. Thus, Rule 37 etc., which talks of transfer normally mean the routine transfer and not a transfer warranted by virtue of certain posts having been rendered surplus. Hence, contention of the applicant that the transfer is in the middle of the academic session or the like cannot be considered. The spinal issue involved in this case is whether the Superintendent, SRO, Thrissur is competent to draw a



gradation list and if not whether the applicant could be treated as the junior most in the cadre of mailmen to be transferred out of Thrissur. That far and no further. Reliance is placed upon the gradation list, rule as provided for in Rule 32-B. First, it is to be seen as to who was the appointing authority in the case of the applicant. The counsel for the applicant argued that Annexure A-2 is the order dated 20-03-1991 passed by the Senior Superintendent of R.M.S. "EK" Division whereby the applicant selected as Mailman was 'allotted to the unit' of HRO. The appointment of the applicant was done at the Divisional level. Thus, by Annexure A-2 it is clear that the authority competent to make appointment of Mailmen is the Senior Superintendent, RMS, EK Division. That Superintendent, SRO has been shown as appointing authority, vide Annexure R-6 is purely for a limited purpose for awarding penalty as itemized from (1) to (iv) of Rule 11 of the CCS (CC&A) Rules. Per contra, the contention of the respondents is that the appointing authority as per Annexure R-6 for all Group D employees is inter alia, the Sub Record Officer of the unit and thus, the SRO, Thrissur is competent to prepare the gradation list. The argument advanced by the counsel for the applicant, gets eclipsed when Annexure R-2 is taken into consideration. For, the appointing authority in this case is the Head Record Officer, as is evidenced by Annexure R-2.

10. According to the counsel for the applicant, if SRO, Thrissur is vested with the power of preparing a gradation list, then, there was no need for the Senior Superintendent RMS, EK Division to publish a combined seniority list of all the mailmen allotted to various units. There is substance in this contention. Even



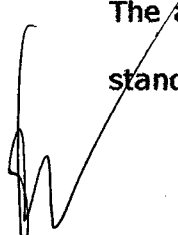
If unit seniority list is maintained, when the question comes as to promotion to a higher post, where the seniors in the post of mailmen are considered or when the issue of surplusage comes, when the junior most would be disturbed, it should be the Divisional Gradation list that should be considered and not the unit level seniority. This would, of course, then pose a question as to what is the purpose of provision 38 of the Manual, which deals with request transfer and condition attached to it, i.e. loss of seniority. Vide Rule 38(2) of the P & T Manual, Vol. IV, *"When an official is transferred at his request, but without arranging for mutual exchange, he will rank junior in the gradation list of the new unit to all officials of that unit on the date on which the transfer order is issued, including also all persons who have been approved for appointment to that grade as on that date."* Here exactly lies the cancerous root of dispute. While the applicant submits that the gradation list is of the Division, respondents contend it is of the unit. If literal meaning is considered, respondents are right in contending that gradation list should be of the unit and in this case, it is S.R.O. Thrissur. But then, the question is what is the utility of Divisional Gradation list. If unit gradation is the only list, whether the equality clause of the Constitution would be adequately followed? Take for example, the Senior Superintendent, RMS EK Division selects candidates for the post of Mailmen and at random, he allots them to various units. The most meritorious candidate, who in the order of merit is the senior most in that batch at the Division level, is allotted (without seeking his option) to a particular unit where he takes the junior most position by virtue of other Mailmen belonging to previous batches. And, one post of mailman has to be abolished and the same



Is from the Unit where the aforesaid most meritorious candidate has been posted. If on the basis of unit based gradation list, the most meritorious candidate is shunted out, would it satisfy the equality clause of the Constitution? Certainly not. For, others who are junior in the batch would continue to be in service, while the senior most would be out of service. Likewise, if the last candidate in a particular batch is allotted to a particular unit and vacancy to a higher post arises in that unit, would it be logical that disregarding the claims of other seniors, this junior most is promoted on the basis of unit based gradation list? Certainly not. Unit based seniority list could at best be useful for certain administrative purpose but not when the question of abolition of post or promotion is considered. (Here again, such a gradation list should broadly match with the Divisional Gradation list. ) For the purpose of promotion or surplusage, it is the Division based gradation list that alone would be taken into consideration. In the Division based gradation list, the name of KK Kumari figures in only in the temporary mailman at serial 18, while the name of the applicant figures in the list of permanent Mailman at serial No. 131, while in the unit based seniority list, the said KK Kumari is shown senior to the applicant, on the ground that his transfer to SRO Thrissur was on his own request. Counsel for the applicant argued that when the applicant sought transfer within his own Division, his seniority cannot be disturbed. Viewed from this angle, the applicant is thoroughly right when he agitates that the gradation list formulated by the unit cannot be pressed into service in this regard. Provisions of Rule 38 would come into play only when two Divisional Gradation lists are involved and the individual of one Division seeks transfer to another

Division. Intra Divisional Transfers do not involve loss of seniority, when promotion to the higher post is on the basis of Divisional Gradation list. From the Gradation list of the EK Division, vide Annexure A-6, it would be seen that the same has been prepared separately for different pay scales and also separately for permanent and temporary posts. When the question of surplusage arises, it is this Divisional gradation list that should be pressed into service and not the unit based gradation list.

11. In view of the above discussion, the **OA is allowed**. It is declared that the decision of the respondents that the applicant is junior most on the basis of his undertaking when he sought request transfer cannot be legally held valid. Respondents shall have to undertake the exercise of as to who is the junior most in the Division based seniority/gradation list to effect the surplusage. And, if by virtue of surplusage two posts of mailmen at Thrissur get reduced whereby two individuals from SRO Thrissur unit should be disturbed, it shall be only the senior most on the basis of 'station seniority' that may be disturbed. Impugned order dated 17-03-2006 (annexure A-2) is quashed and set aside. As regards gradation list at Annexure A-1, it is declared that the same cannot be the basis to effect the surplusage, notwithstanding the fact that it is only from out of the posts of Mailman of this unit that two posts have been rendered surplus. Showing the name of the applicant as the junior most in the unit is also declared illegal and consequently the same is also quashed and set aside. The applicant shall not be disturbed on the basis of the impugned order which stands quashed and set aside. However, if by virtue of longer station seniority,



he is the senior most, there should be no bar in effecting the transfer.

12. No costs.

(Dated, the 21<sup>st</sup> March, 2007)



**Dr. K B S RAJAN**  
**JUDICIAL MEMBER**

**cvr.**