

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 206 of 2010

TUESDAY, this the 27th day of July, 2010

CORAM:

**HON'BLE Mr. JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

P.S. Ramachandran,
S/o. Sankaran,
Cash Overseer,
Kattapana Head Post Office, Kattapana,
Residing at Pamparackal House,
Maniyarkudi P.O., Idukki Colony-685602 **Applicant.**

(By Advocate Mr. M.R. Hariraj)

v e r s u s

1. Union of India, represented by its
Secretary to the Government,
Ministry of Communication,
Department of Posts, New Delhi.
2. The Chief Post Master General,
Kerala Circle, Trivandrum.
3. The Superintendent of Post Offices,
Idukki Division, Thodupuzha.
4. T.N. Mollykutty,
Postman, Kattapana South Post Office,
Kattapana. **Respondents.**

(By Advocate Mr. Thomas Mathew Nellimoottil, ACGSC (R1-3) and
Mr. P.C. Sebastian (R-4)

The Original Application having been heard on 21.07.2010, this Tribunal
on 27.07.2010 delivered the following :

O R D E R
HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

By filing this O.A., the applicant mainly seeks a direction to the
respondents to consider him for appointment as Mail Overseer, Kattapana, in



preference to his juniors, including the 4th respondent.

2. The applicant joined the Postal Department as Extra Departmental Agent. He was promoted to Postman cadre on 12.02.1991. On completion of 16 years of service, he was given the higher grade under TBOP Scheme. While working as Postman, Kallar, he was given posting as Mail Overseer, Thodupuzha Sub Division, with effect from 01.10.2007. He had requested for a transfer as Mail Overseer, Kattapana. He was posted as Cash Overseer, Kattapana, vide Annexure A-1 transfer order dated 22.04.2009, which was styled as one under request. Overlooking his request for a posting as Mail Overseer, Shri S. Rajappan, his junior, was posted as Mail Overseer, Kattapana. As he had a few months left to retire, the applicant did not object to his transfer and posting. But he had pointed out in his representation dated 28.04.2009 that his transfer as Cash Overseer could not be styled as one under request and had prayed for a posting as Mail Overseer or continuance at Thodupuzha as Mail Overseer. He made another representation dated 5.8.2009 for appointment if any vacancy of Mail overseer arises in Kattapana Sub Division. When Shri Rajappan retired, another junior of the applicant, 4th respondent, was appointed by transfer as Mail Overseer, Kattapana. As the respondents have not taken any action on his representation, he filed the present O.A.

3. The applicant submits that he never made a request for transfer and posting as Cash Overseer, Kattapana. The Annexure A-1 transfer order to the extent to post him as Cash Overseer, Kattapana, is unsustainable. The respondents are consistently overlooking his claim for being posted as Mail

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Overseer at Kattapana and postings given to the freshers on the arisen vacancy. It has been a long standing practice in the department to prefer seniors who are willing to be posted as Mail Overseers. The work content of Mail Overseer is different from that of Cash Overseer. In such circumstances, the refusal to consider the applicant for appointment as Mail Overseer in preference to his juniors is arbitrary, discriminatory, unjust and in violation of Articles 14 and 16 of the Constitution of India.

4. The respondents contested the O.A. It was stated on their behalf that there were several complaints against the applicant from various GDS officials including lady Branch Post Masters. Nobody was willing to give a written complaint against the Mail Overseer as he is the immediate supervisor to Branch Postmasters and GDS Mail Deliverers. The then Inspector of Posts, Thodupuzha Sub Division gave a confidential report to the Superintendent of Post Offices, Idukki Division, regarding applicant's non cooperation in canvassing business products in the Sub Division. The then Superintendent of Post Offices made an entry in the file that the applicant should not be posted as Mail Overseer. Therefore, while considering his request for transfer to Kattapana he was posted as Cash Overseer instead of Mail Overseer. Seniority alone could not be treated as a criterion for continuing in the post of Mail Overseer. He was not posted as Mail Overseer on the basis of his poor performance in the past. The post of Mail Overseer and Cash Overseer are interchangeable. Both are promotional posts to Postman. Mail Overseers work only 5 days per week and Cash Overseers work 6 days per week. His performance as Mail Overseer at Thodupuzha was not satisfactory in terms of business canvassed. In the letter dated 17.04.2009 (Annexure R-1), the

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Inspector of Post Offices (Public Grievances), Idukki Division, Thodupuzha, who was holding the additional charge of the Thodupuzha Postal Sub Division, has mentioned that periodical visits by the applicant to the branch post offices were not sufficient. For e.g., he visited Moolakkadu and Pulikkathottu branch offices only once during the year 2008. He did not encourage the GDS to canvass Rural Postal Life Insurance. It is one of the reasons for the poor performance of Thodupuzha Sub Division in Rural Postal Life Insurance during 2008-2009. As the applicant did not cooperate with his boss in business canvassing, he was forced to send a confidential report to the Superintendent of Post Offices, Idukki Division, Thodupuzha. His request for transfer to the native place has been considered favourably. He cannot allege arbitrariness in this case. In the light of the above submission, the O.A. is liable to be dismissed. The respondents relied on the decisions of this Tribunal in O.A. Nos. 670/2007 and 393/2008 to support their contentions.

5. In the rejoinder, the applicant submitted that the allegation that there are oral complaints, is totally unsustainable. No action can be taken against the applicant on such complaints without any notice. By no stretch of imagination, the applicant's work at Thodupuzha can be branded as insufficient. During 2008-2009, he has visited Moolakkad on 17.04.08, 09.07.08, 28.11.08 and 20.02.09 and Pulikkathottu on 25.03.08, 25.07.08, 02.12.08 and 31.03.09. The Director of Postal Services, Central Region, has complimented the applicant for visiting the branch offices more than the required times. The policy canvassing at Pulikkathottu during 2008-2009 was above the prescribed target. Even though the Moolakkad is a tribal settlement and inhabitants are poor, policies more than 1 lac were canvassed there also. In this

background, the confidential report made by the Inspector of Post Offices (Public Grievances) has to be put to strict proof since he was not in-charge of the Sub Division at the relevant point of time. The only reason to refuse a posting as Mail Overseer to the applicant is oral complaints against which he was never given an opportunity and non-communicated confidential report adverse to him. This is illegal and unjust. In the light of the above submission, the applicant prays for allowing the O.A.

6. Arguments were heard and documents perused. In spite of having been served with a notice, the 4th respondent has chosen not to respond. The present O.A. is about non-consideration of a Mail Overseer on the basis of alleged unsatisfactory performance for a posting as Mail Overseer at a place to which he sought a transfer as a Mail Overseer. This O.A. is not about the discretion of the appointing authority to appoint a suitable employee as Mail Overseer as in OA No. 393/2008 or about the right of an employee to insist on a posting/transfer to a particular post as in O.A. No. 670/2007. Facts and circumstances being different, the decisions in the cited O.As are not relevant here.

7. The post of Mail Overseer and the post of Cash Overseer are interchangeable. They are equivalent in terms of pay and allowances and are also promotional post to the Postman cadre. The respondents have full discretion to promote a postman as Mail Overseer or Cash Overseer. While considering his request for a posting as Mail Overseer, Kattapana, the respondents claim that they had considered his poor performance as Mail Overseer, Thodupuzha, and also certain complaints against him and posted

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him as Cash Overseer, Kattapana. In support of their contention regarding poor performance as Mail Overseer, a letter dated 17.04.09 from the Inspector of Post Offices (Public Grievances), Idukki Division, Thodupuzha, is produced wherein it was mentioned that periodical visits by the applicant were not sufficient. For example, he visited Moolakkadu and Pulikkathottu branch offices only once during 2008, between the dates of two annual inspection and that he did not encourage the GDS to canvass RPLI and that was one of the reasons for the poor performance of Thodupuzha Sub Division in RPLI during 2008-2009. He also recorded his opinion that it is better to shift him from the post of Mail Overseer. This letter was written by the Inspector of Post Offices (Public Grievances), Idukki Division, while he was holding the additional charge of SDI (P), Thodupuzha, during February and March, 2009. In the rejoinder, the applicant has stated very clearly with dates that he visited Moolakkadu branch office 4 times during 2008-2009, out of which 3 visits were during 2008 itself. He visited Pulikkathottu branch office also 4 times during the same period, out of which 3 visits were during 2008 itself. This statement which demolishes the statement of the Inspector of Post Offices that he visited Moolakkadu and Pulikkathottu branch offices only once during 2008 is not refuted by the respondents. The contention that the Director of Postal Services, Central Region, has complimented the applicant for visiting the branch offices more than the required times, is not contested by the respondents. That policy canvassing at Pulikkathottu during 2008-2009 was above the prescribed target and that even from the tribal inhabited Moolakkadu, policies worth Rs. 1 lac were canvassed during the relevant period, were ignored by the respondents. Therefore, it is to be concluded that the observation made by the Inspector of Post Offices (Public

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Grievances), Idukki Division, Thodupuzha, who was holding the additional charge of SDI (P), Thodupuzha, was not based on facts and his conclusion that one of the reasons for poor performance of Thodupuzha Sub Division in RPLI during 2008-2009, is due to applicant's failure to encourage GDS to canvass, runs contrary to facts. Therefore, the adverse opinion recorded by the Inspector of Post Offices (Public Grievances), Idukki Division, Thodupuzha, during his brief tenure in holding additional charge as SDI (P), Thodupuzha, in respect of the applicant is baseless. The applicant's performance as Mail Overseer as evident from the rejoinder and the compliment of the Director of Postal Services, Central Region, have not been appreciated by the respondents while considering his request for appointment as Mail Overseer, Kattapana Sub Division. It would appear that his past performance would justify his posting as Mail Overseer, Kattapana. In the reply statement, the respondents have stated that as the applicant did not co-operate with his boss in canvassing the business products, he was forced to send the confidential report to the 3rd respondent, the Superintendent of Post Offices, Idukki Division, Thodupuzha. Evidently it is the non-cooperation with the boss who held additional charge of SDI(P), Thodupuzha, for a brief period of two months that has been given more weightage than the performance of the applicant in the field for about 19 months. If non-cooperation amounted to misconduct, disciplinary action should have been taken. That the respondents do not specify the exact nature of non-cooperation on the part of the applicant in canvassing, goes against them. The adverse report at Annexure R-1 is dated 17.04.2009. The transfer order posting the applicant as Cash Overseer at Kattapana is dated 22.04.2009. It would appear as if the respondents were just waiting for the adverse report to issue the transfer order.



8. With regard to complaints against the applicant, they are only oral. Nobody is willing to give a written complaint against the applicant. Even the Inspector of Post Offices (Public Grievances), Idukki Division, Thodupuzha, who gave an adverse confidential report to the 3rd respondent regarding applicant's non-cooperation in canvassing business products, has not made a mention about any complaint against the applicant. Unverifiable complaints cannot be a basis for denying consideration of the request of the applicant for a posting as Mail Overseer. Nothing prevented the respondents from making a covert enquiry against the applicant if they found that the GDS officials including the lady Branch Postmasters were so terrified as not to make a complaint against the applicant. In the absence of any action from the respondents to verify the alleged complaints against the applicant, they cannot take the complaints as a cover to deny him consideration for a posting as Mail Overseer.

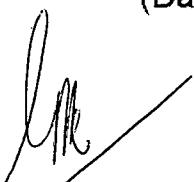
9. In the light of the above, it would appear that there is no justifiable ground to deny the applicant consideration for a posting as Mail Overseer, Kattapana. Alleged non-cooperation with his boss in additional charge at Thodupuzha in canvassing the business products or unverified complaints against him cannot be taken as a valid grounds, inspite of the apparently good performance as Mail Overseer at Thodupuzha, to deny him a chance of being posted as Mail Overseer at Kattapana. Therefore, we have no hesitation to declare that the applicant is entitled to be considered for appointment as Mail Overseer, Kattapana. Accordingly, the respondents are directed to consider him for a posting as Mail Overseer, Kattapana in

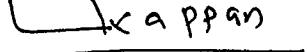


preference to his juniors including the 4th respondent within a period of 60 days from the date of receipt of a copy of this order.

10. The O.A. is allowed as above with no order as to costs.

(Dated, the 27th July, 2010)


K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE K THANKAPPAN
JUDICIAL MEMBER

cvr.