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CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 217 of 2013

Monday, this the 14th day of October, 2013

CORAM:

Hon'ble Dr. K.B.S. Rajan, Judicial Member

P. Hrishikesh Kumar, aged 50 years, S/o. P.I. Gopalakrishna Menon, Postal Assistant (BCR), Tirur HO (under orders of Transfer), Tirur Division, residing at Sreelakshmi, Thekkumuri, Tirur – 676 105. **Applicant**

(By Advocate – **Mr. Shafik M.A.**)

V e r s u s

1. Union of India, represented by Chief Postmaster General, Kerala Circle, Trivandrum-695 033.
2. The Postmaster General, Northern Division, Calicut – 673 011.
3. The Superintendent of Post Offices, Tirur Division, Tirur – 676 104. **Respondents**

(By Advocate – **Mr. Sunil Jacob Jose, SCGSC**)

This application having been heard on 27.09.2013, the Tribunal on 14.10.2013 delivered the following:

O R D E R

The facts as narrated by the applicant are, that he commenced his service as Postal Assistant in 1981 in Tirur division under the third respondent. After working in various offices, he was posted as Marketing Executive of Tirur Division (ME for short) with Headquarters at Tirur Head Office in Jun 2003. While so, R-2 viz, the PMG northern region ordered to transfer those MEs, who have completed more than 4 years as ME, to their substantive posts in the post offices (Annexure A-2). The applicant was

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relieved of his duties as ME and he joined as Postal Assistant in Tirur Head Office in obedience of the orders issued at Annexure A3. After joining at Tirur head office, on the instructions of the second respondent, the third respondent modified the earlier transfer order and transferred him to Ponnani Head Office. The applicant immediately submitted his Annexure A-6 representation to the second respondent to cancel the second transfer order. The applicant avers that there are many vacancies in the post of Postal Assistants at Tirur Head Office and hence, there was no need for his immediate transfer to Ponnani Head Office. Ponnani Head Office is at a distance of 40 kms from Tirur Head Office and he cannot be subjected to transfer within a period of 2 days. Therefore, the applicant contends that the second transfer order is arbitrary and discriminatory.

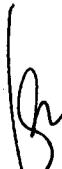
2. The application No. OA 290 of 2012 decided on 31st October, 2012, rendered the following finding in respect of the transfer liability of the applicant in his capacity as Marketing Executive or as P.A.:-

“9. The issue relating to fixation of tenure of ME was discussed in the RCM meeting held under the Chairman ship of CPMG, Kerala circle as item no.14/12. As per the Minutes the administration is yet to decide the term to be fixed for MEs. Infact, in the reply given to the staff it is noted that it is to be decided on a case to case basis depending on the effectiveness of MEs. Hence, it was the decision of the second respondent to transfer all those MEs who completed a term of four years even before the close of financial year. It is during the last three months of the financial year i.e; January to March that all efforts are made in all organisations to ensure that the allotted targets are achieved. So the shifting of MEs during the month of March will only retard the progress of garnering business and hence transferring all Mes out in mid March appears to be a little ill timed. However, it is solely the concern of R-2. Since there is only one post of ME in one Postal Division, it can only be treated as a Divisional posting, as contended by the applicant. It is a different matter that he was seated at Tirur Head Office. He was not to attend to any work of the Head

Post Office, but only managed the marketing work of the Division for various products coming under Business Post. Hence, the period spent as ME cannot be taken as a tenure in Tirur Head Office. Therefore, the third respondent has rightly posted him as Postal Assistant in Tirur Head Office. When he was posted as ME in Tirur Division in 2003, he has only done one year of his tenure starting from 15 July 2002. He was working as Sub Post Master Kadalundi Nagaram till 14.07.2002. Hence, the contention of the respondent that he has worked continuously for nine years in the head Post Office discharging the duty of a Postal Assistant of Tirur HO is also not correct. In that sense, he has not completed his tenure in Tirur HO as a Postal Assistant since he joined Tirur HO on 15.07.2002 and was relieved in May 2003 to join as ME.

10. It is seen that as per the rotation transfer policy guidelines of the respondent Department, the vacancies have to be notified in the month of February and those who are completing tenure are instructed to submit their request for three choice stations. The third respondent has followed these instructions when rotational transfer order was being processed for the year 2012. Annexure A-14 was produced by the applicant to prove this point. Therefore the proper course of action for R-3 would be to include the applicant for rotational transfer for the year 2013 if he holds the view that the applicant had completed a tenure in Tirur Head Office. Since he is granted second financial upgradation, if R-2 was of the opinion that he should be holding one of the supervisory post, he could have posted him as Sub Post Master in any of the Sub Post Offices in Tirur Division. For all this, the applicant should have been given an opportunity to give his option for three choice stations. By transferring him abruptly from Tirur to Ponnani such an opportunity was denied to the applicant. Unless there is mismatch of sanctioned establishment and available staff in Ponnani Head Office, and its Sub Post Offices there may not be any need to transfer any staff from Tirur Head Office to Ponnani Head Office. It is gathered that the staff are generally rotated between the Head Offices and nearby Sub Offices to Tirur or Ponnani head offices as the case may be to ensure that they are not put to inconvenience and also to see that economy instructions are followed to minimise the expenditure on transfer. As per the recommendations of VIth CPC when a transfer is ordered in public interest pay including grade pay of one month will be paid as transfer grant besides other expenditure on travel and conveyance of personal effects."

3. When the above order was taken up with the Hon'ble High Court in OP (CAT) No. 4278 of 2012(S), the High Court in its judgment dated 11th December, 2012 had dismissed the same, however, observing as under:-



"6. We are unable to appreciate the stand of the Department that none of the general procedure required for general transfer would apply to the present case. As a matter of fact, if it was general transfer or rotational transfer he has the option of choosing three choices which was denied to him and there is no justification in the stand of the Department that he was allowed to work in the same place for the last 9 years from 2002 onwards. It is not even the case of the Department that by virtue of any court orders they stopped such recourse to the respondent. In the absence of any positive direction sending him out of Tirur Division, there is no justification in the action of the Department to send him to Ponnani on the very same day he took charge at Tirur as Postal Assistant."

4. Holding that the Tribunal has observed that the applicant should be considered for rotational transfer in 2013 and in tune with the same the High Court also had made the observation while dismissing the writ petition, respondents have asked the applicant to indicate three choice stations and on his failure to so indicate, had posted him to Kuttayi, for which there were no takers. Hence this OA, seeking the following reliefs:-

- "(i) To call for the records leading to Annexure A-1 to A-13 and to quash A-1 and A-12 and to permit him to continue as PA Tirur HO;
- (ii) To declare that the applicant is not liable to be transferred from Tirur HO before he completes his tenure;
- (iii) To direct the respondents to post the applicant back to Tirur HO immediately;
- (iv) To grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just, in the circumstances of the case;

And

- (v) To award costs of this proceeding to the applicant."

5. Respondents have contested the O.A. According to them, the applicant having been at Tirur since 2002 onwards, is liable to rotational transfer.

6. Counsel for the applicant argued that the applicant had been in Tirur as Postal Assistant for a period of eight months only from 15-07-2002 to May, 2003 and beyond that he was posted as Marketing Executive and posted at Tirur. It was thereafter in 2012 that he was posted back as Postal Assistant at Tirur. However, within two days of his posting as Postal Assistant at Tirur, reckoning the services rendered at Tirur as M.E., respondents effected the rotational transfer out of Tirur, which the applicant challenged contending that he had not completed his full tenure at Tirur since the period of service rendered as M.E. cannot be counted for the purpose of rotational transfer. It was also pointed out that normally in such rotational transfer three choice stations are also called for, which in the case of the applicant was not so called for. While allowing the application, the Tribunal held in the order at Annexure A-3 that in so far as the post of M.E. is concerned, it is one of Divisional Posting and it was incidental that the applicant was retained at Tirur itself as M.E. And, no decision had been taken to include the period spent as M.E. for the purpose of working out the rotational transfer. The Tribunal has thus, clearly held that the period of service spent as Marketing Executive should not be reckoned for working out the period of service at Tirur. As a passing reference, it had however, held that the respondents should have considered the case of the applicant for rotational transfer in 2013. The respondents took up the matter with the High Court, which had dismissed, with the observation that the respondents could consider the transfer of the applicant in accordance with the prevailing rules. The counsel stated that from 2002 till date, when the applicant had been retained in Tirur, if the period of service rendered from

2003 to 2012 as M.E. is excluded, till now, the applicant has not completed the full tenure of four years. As such, there is no question of his case falling under the guidelines for transfer for the year 2013, though the Tribunal had held so. For, when the Tribunal has so observed, obviously the same has to be read in tune with the guidelines and the High Court has also held as such only. Thus, there is no question of the applicant being transferred under the guidelines of rotational transfer.

7. The Senior Central Government Standing Counsel for the respondents, argued that the observation of the Tribunal as well as the High Court cannot be brushed aside and as such, the applicant was asked to give three choice stations, which he had chosen not to give. Since there had been no taker for being posted at Kuttayi the respondents have posted him to that station. The order thus does not call for any judicial interference.

8. Arguments were heard and documents perused. It is not the case of the respondents that a decision has since been taken to reckon the period of service rendered as Marketing Executive for the purpose of rotational transfer. Hence, keeping in view the finding that the period of service rendered by the applicant at Tirur in his capacity as Marketing Executive cannot be reckoned to work out the period spent in one station, if the total period of service of the applicant at Tirur from 2002 is calculated, the same works out as under:-

(a) From July, 2002 to May 2003	1 year
(b) From 26-03-2012 till date	1 year and 6 months

9. Thus, the total period spent at Tirur by the applicant which qualify for calculation under the Rotational Transfer Policy is only 2 years and six months, while the total tenure period as per the guidelines is four years. Thus, notwithstanding the fact that there had been an observation by the Tribunal that the applicant should be considered for rotational transfer in 2013, since the full tenure has not been completed by the applicant at Tirur, his transfer vide the impugned order is violative of the professed norms. As such, the same cannot stand.

10. In view of the above the OA succeeds. The impugned order of transfer at Annexure A-1 is quashed and set aside in so far as it relates to the applicant. Respondents are at liberty to effect the rotational transfer as and when the applicant completes full tenure of four years at Tirur. If a decision is taken, any time in future, to include even the period of service as Marketing Executive by virtue of which the applicant would complete the full tenure, then again such a transfer can be effected only in the ensuing year under the Rotational Transfer policy and that too on his being asked to give choice stations.

11. No orders as to costs.



(DR. K.B.S. RAJAN)
JUDICIAL MEMBER

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