

.1.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.229/2013

.....FRIDAY this the 14th day of November 2014

C O R A M :

HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER

Gopalan.N.T.,
s/o.Chathappan,
Sub Post Master,
Ponnani South Post Office.
Residing at Neduveditharayil,
Adalur (PO),
Thavannur – 679 573.

...Applicant

(By Advocate Mrs.R Jagada Bai)

V e r s u s

1. Union of India,
represented by the Secretary,
Department of Posts,
New Delhi – 110 001.
2. The Post Master General,
Northern Region,
Kerala Circle,
Kozhikode – 673 011.
3. The Superintendent Post Offices,
Tirur Division, Tirur – 676 104.Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC)

This application having been heard on 4th November 2014 the
Tribunal on ...14th November 2014 delivered the following :-

✓

ORDER

HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER

Applicant is a Postman presently working at Ponnani South in Tirur Postal Division. His grievance is that while working in that Post Office he was transferred to Marancheri Post Office which is 22 kms away from his residence at Adalur. He states that he being 50% disabled, for travel from Adalur to Marancheri there is no direct bus route. Therefore he has to travel from Adalur to Chamravattom and from Chamravattom he has to walk about 10 minutes to the next bus point to Marancheri. According to him, his order of transfer to Marancheri is vitiated by colourable exercise of power and *malafide* only to placate the needs of some politicians and union leaders including the Municipal Chairman who was also a Mahila Pradhan Agent and is on the basis of an oral complaint made by the Member of Parliament from that area. It is also alleged that his transfer is in violation of the transfer policy which provides a normal tenure of 4 years at a place. He was originally working at Thavannur Post Office from where he was transferred to Ponnani South and within 9 months of working at Ponnani South he was again transferred vide the impugned order. He further points out that he has been denied the provisions under Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. He prays for the following reliefs :

1. Quash the order at Serial 10 of Annexure A-3 transferring the applicant from Ponnani South Post Office to Marancheri and order that the applicant be retransferred to Ponnani South Post Office till the completion of his tenure.



.3.

2. Any such remedy deemed fit and proper as this Hon'ble Tribunal may be pleased to order.
2. This O.A has witnessed a flurry of pleadings and counter pleadings.
3. In the reply filed by the respondents it is stated that on 31.10.2012 Shri.E.T.Muhammed Basheer, Hon'ble Member of Parliament of Ponnani Constituency made a complaint to the 3rd respondent against the applicant. It was reported by the Member of Parliament that many other people had informed him that the applicant was behaving badly with the public and that they were not satisfied with his service and suggested that there is no remedy other than transferring him from Ponnani South instantly. An inquiry was conducted by the Inspector of Posts, Ponnani Sub Division which revealed that the applicant was not following the SB Rules properly. Smt.P.Beevi, Chairperson of Ponnani Municipality who is also a Mahila Pradhan Agent to Ponnani South SO was contacted among other Mahila Pradhan Agents and the Members of the public and their statements were recorded. As the complaint was from the Member of Parliament the case was brought to the notice of the Regional Office, Calicut. The Regional Office observed that the applicant was not fit to hold "charges" of the office and directed 3rd respondent to transfer him to another office during the forthcoming rotational transfer. On an earlier occassion also while applicant was working at Tavanur Post Office disciplinary action was taken against him on the basis of a complaint made by Smt.P.U.Pankajakshi.

✓

Mahila Pradhan Agent alleging non acceptance of RD schedules by the applicant and a penalty of withholding increment for a period of 6 months was imposed on him. In 2009 also Mahila Pradhan Agents attached to Tavanur SO has personally lodged complaints against the applicant that he was not accepting their deposits. At that time he was severely warned by the then Superintendent on 21.1.2010. But the applicant has not shown any improvement in the work and continued to misbehave with the Mahila Pradhan Agents. He was transferred as a Postal Assistant to an office where another senior official is incharge of the Sub Postmaster so that the applicant would find himself relieved of the strenuous duties of overall supervision. Ponnani South is 12 Km away from his residence whereas Marancheri is 'only' at a distance of 19 Km and he has to travel only an additional distance of 7 Km. As such no physical hardship will be caused to him. According to respondents there is no ill motive in transferring the applicant.

4. A rejoinder was filed by the applicant producing the documents marked as Annexure A-8 to Annexure A-21, which include copies of the complaints he had received against Smt.P.Beevi, Mahila Pradhan Agent, Ponnani and certain informations he obtained under the RTI Act relating to another complaint lodged by the Municipal Chairperson, Ponnani and by the Member of Parliament from Ponnani, his appeal to the Chief Postmaster General against the order of penalty imposed on him while he was working at Tavanur and the order thereon by the Appellate Authority and two letters

of accolades he has received in 2010-2011 for the excellent work done by him. It is contended in the rejoinder that Smt.P.Beevi used to enter inside the post office and take out records,, the applicant restrained her from doing so invoking her wrath. He has also produced Annexure A-9 complaint from Smt.Fathima alleging he fraud practised by Smt.P.Beevi by not depositing in the post office the amount collected by the latter to the tune of Rs.54,000/-.. From Annexure A-12 reply to the information sought under RTI Act, it was stated by the respondents that no written complaint was received from Smt.P.Beevi or from the Member of Parliament. Annexure A-14 is the copy of the inquiry report submitted by the Inspector of Post Offices regarding the allegation made against Smt.P.Beevi wherein it was found that she had not credited the deposit amount collected from the depositors amounting to grave fraud and criminal misconduct. But the said misconduct of Smt.P.Beevi was hushed up by the Inspector of Posts in view of her influential position as the Municipal Chairperson. Hence 3rd respondent made an evasive Annexure A-15 report only to the Block Development Officer – a junior authority incompetent to take penal action against Smt.P.Beevi. He has also produced Annexure A-16 copy of the report applicant had made against another Mahila Pradhan Agent Smt.M.Sushama which boomeranged against the applicant by way of a disciplinary action which was officially dropped by the Appellate Authority vide Annexure A-18 order. According to the applicant, he has been vigilantly following the misconducts and frauds of Mahila Pradhan Agents which invited displeasure from the politically influential people. The

.6.

present incumbent who has replaced the applicant at Ponnani Post Office is also an influential trade union leader who maintained close relationship with 3rd respondent. Immediately on transferring the applicant to Marancheri the then Superintendent of Post Office, Shri.K.Narayanan was gratified with a desired transfer to Kannur.

5. Additional reply was filed by the respondents refuting the contentions of the rejoinder and stating that the applicant was shifted purely in the interest of public service on administrative grounds also ensuring that the applicant being a physically handicapped person was not put to any physical hardship.

6. Additional rejoinder was filed by the applicant pointing out that 2nd respondent was trying to safeguard Smt.P.Beevi-[Mahila Pradhan Agent -cum- Municipal Chairperson of Ponnani, who had indulged in a high level fraud by misappropriating Government money.

7. Second additional reply was filed by the respondents stating that while transferring the applicant from Ponnani South they have given due concern to the complaint lodged by Member of Parliament and Chairperson of Ponnani Municipality.

8. The turbulent and acrimonious pleadings in this case undoubtedly points to high level political interference in the imbuoyed transfer of the

applicant. Pleadings and records further reveal that allegations made by the applicant against a Mahila Pradhan Agent who appears to have committed misappropriation of post office money has boomeranged on him due to her position as the Municipal chairperson having political connections. The entire scenario in this case appears to be murky and smacks of the spine less genuflections of the respondents officials in the face of powerful politicians when applicant pointed out the miasappropriation by a Mahila Pradhan holding the position of Municipal Chairperson.

9. Respondents picturise the applicant as an official in the habit of not accepting the schedules produced by the Mahila Pradhan agents for which he was proceeded against under CCS (CCA) Rules, 1965 while he was working at Tavanur Post Office. Applicant states that the aforesaid proceedings were set aside and dropped vide Annexure A-18 order. Nevertheless, the pleadings of the respondents make it abundantly clear that transfer of the applicant from Ponnani South to Marancheri was made on the basis of the complaints of Smt.P.Beevi-Chairperson of Ponnani Municipality, other members of the public and also on the basis of the complaint made by the Member of Parliament from Ponnani Constituency. It appears from the pleadings of the respondents that compliant made by the Member of Parliament was given more importance and hence an inquiry was conducted by the Postal Inspector by which the allegations against the applicant were proved. But it is seen from Annexure A-13 information obtained under the RTI Act 2005 that no written complaint was received

either from Member of Parliament or from Smt.P.Beevi. Though it is stated in Annexure A-13 that a copy of the report of the inquiry based on the oral complaint is enclosed. However, that report is not forthcoming either from the applicant or from the respondents.

10. Applicant has produced Annexure A-10, Annexure A-14 and Annexure A-15 communications to show that Smt.P.Beevi acting as Mahila Pradhan Agent did not credit the amounts collected from depositors to the Post Office and also to show that she has acted in a high handed manner by entering inside the Ponnani Post Office which act was resisted by the applicant who was working there as Sub Postmaster. It appears that though Annexure A-14 inquiry was conducted by the Inspector of Posts, Ponnani Sub Division on the allegations made against Smt.P.Beevi and found that she did not credit the amount collected from the depositors to the Post Office Accounts, no serious action was taken except by sending a not-too-serious Annexure A-15 letter to the Block Development Officer, Edappal Block to inquire into the matter and to take action against Smt.P.Beevi 'to stop such malpractices'.

11. Although the allegations against Smt.P.Beevi is not a matter directly connected with the issue involved in this case, it can be seen from Annexure A-10 that Smt.P.Beevi had reasons for being not happy with the applicant. It is absolutely shocking to note that Inspector of Posts Offices, Ponnani Sub Division and the Superintendent of Post Offices, Tirur Sub Division



trivialised the allegations against Smt.P.Beevi by sending Annexure A-14 and Annexure A-15 communications in a lackadaisical and light-hearted manner. It is worth noticing that non credit of deposits collected by Smt.P.Beevi in her capacity as the Mahila Pradhan Agent amounted to a very serious criminal offence, for which, the Postal Department ought to have lodged a report with the police or other competent agency for investigation, ignoring her political connections and her clout as Municipal Chairperson.

12. It is obvious from the multiple pleadings of the parties in this case that displeasure of Smt.P.Beevi towards the applicant paved way to his transfer to Marancheri. Since no documents are coming forth in relation to the oral complaint admittedly made by the Member of Parliament, nothing is discernible as to what was the content of the complaint against the applicant. Respondents do admit that the main reason for immediate shifting of the applicant from Ponnani to Marancheri was the complaint made by the Member of Parliament. Therefore, it is established beyond doubt that the complaints of the Member of Parliament and Smt.P.Beevi, Municipal Chairperson spurred the decision for transferring the applicant from Ponnani to Marancheri. Since the contents of the oral complaints and the report of inquiry conducted by the Inspector of Posts are not brought on record in this case, it has to be held that the respondents have acted on extraneous considerations, bordering on malicious action. A court of law or Tribunal cannot countenance administrative actions taken on extraneous

considerations. Though respondents contend that disciplinary action was taken against applicant while he was working in Tirur, Annexure A18 order shows that the penalty imposed on him was set aside by the appellate authority.

13. Referring to **Somesh Tiwari v. Union of India and others** 2009 (2) SCC 592, Smt.Jagada Bai, learned counsel for the applicant submitted that a transfer based on a mere complaint cannot be treated as a transfer on administrative ground. In that case, transfer of the Government servant was based on an anonymous complaint against him. The Apex Court held that the action of the respondents' authority is tainted with *malice in fact*. It has been held by the Apex Court in **Kedarnath Bahl v. State of Punjab** AIR 1979 SC 220 that malice allegations of malafide action are to be pleaded and proved. In *Somesh Tiwari's* case (*supra*) the Apex Court held that malafide is of two kinds ie. **malice in fact** and **malice in law** and held that in that case the transfer of the Government official on anonymous complaint was a malice in fact.

14. In the instant case, it has been admitted by the respondents in a repeated and elaborate manner that the impugned transfer order of the applicant was issued on a complaint made by Member of Parliament and Smt.P.Beevi, Municipal Chairperson, Ponnani. As stated above, the information received under RTI Act, 2005 shows that no written complaint was received from them. Although it is stated that the complaint was

.11.

inquired into by the Inspector of Posts, no record is forthcoming. Therefore, from the available records before this Tribunal it has to be presumed that the action of the respondents in transferring the applicant on 'administrative ground' and in 'public interest' are based on extraneous and malicious considerations which vitiate the decision making done by the respondents. It appears to this Tribunal that the respondents and the political persons involved in this case wanted to transfer the applicant in order to down play the serious allegations of financial misappropriation made against Smt.P.Beevi. It further appears that the respondents were over-awed by the oral complaints admittedly made by the Member of Parliament and by an equally influential Smt.P.Beevi who was the Municipal Chairperson of Ponnani. As stated earlier, this certainly amounts to extraneous consideration in the decision making process. Respondents could request the Member of Parliament and the Municipal Chairperson to put their complaints against the applicant in writing. But the respondents out of cowardliness simply acted upon their oral complaints. As stated earlier, the report of inquiry based on such oral complaints also is not forthcoming.

15. Yet another aspect to be considered in this case is that the applicant is a person with disability. He states in Annexure A-17 Appeal that he acquired disability while he was in service, at the age of 51. Therefore, under the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the applicant is entitled to a special treatment in the matter of his employment. Applicant



.12.

states that Marancheri, where he is transferred to, can be accessible to him only by changing two buses. Respondents contend that he has to travel for an additional 7 Km only, which will not cause any serious problem to him. It appears that the respondents were ignoring the physical disability of the applicant when confronted with the political power wielded by the persons who made oral complaints to the respondents. Even though the respondents pointed out certain other complaints made by other Mahila Pradhan Agents, on a close perusal of such complaints, it can be seen that the applicant was proceeded against for disciplinary action only on the allegation that he is not accepting all the R.D schedules produced by them. But all such allegations, even according to paragraph 3 of the reply statement filed by the respondents, was related to the period when applicant was working at Tavanur - not at Ponnani South. As observed earlier, the reason for transferring him from Ponnani South is admittedly the oral complaint of the Member of Parliament and the Municipal Chairperson. Such oral complaints weighed more with the respondents than the other complaints. In the above circumstances, this Tribunal is of the view that the transfer of applicant from Ponnani South to Marancheri was actuated by extraneous consideration falling within the ambit of malice in fact, as explained by Hon'ble Apex Court in *Somesh Tiwari's case*.

16. Smt.Jagada Bai, learned counsel for the applicant, has produced *Shri.Arvind Dattatraya Dhande v. The State of Maharashtra* a judgment dated 10.7.1997 by the Supreme Court of India and Annexure A-5 and

.13.

Annexure A-7 decisions of this Tribunal in O.A.No.290/2012 and O.A.No.449/2010 respectively. She further referred to the administrative instructions on the posting of physically handicapped candidates, copy of which is produced at Annexure A-6.

17. Taking into the totality of the facts and circumstances involved in this case, this Tribunal is of the view that impugned Annexure A-3 transfer order *qua* the applicant was vitiated by unsubstantiated extraneous considerations and was based on the pressure exerted on the respondents by Member of Parliament from Ponnani Constituency and also by the Municipal Chairperson of the Ponnani Municipality. The Tribunal is of the view that 1st respondent Secretary, Department of Posts, has to take serious steps for reporting the matter to the police or other competent investigating agency for investigating the misappropriation of money by the aforesaid Mahila Pradhan Agent as found in Annexure A-14 and A-15 documents.

18. In the result, Annexure A-3 transfer order *qua* the applicant is quashed and set aside. Respondents shall consider posting the applicant at a place that would facilitate easy access for him from his house without involving multiple changing of buses or other public transport.

19. Registry is directed to send a copy of this order to Respondent No.1 to consider the observations in paragraph 17 of this Order and to examine the circumstances under which the allegations against Mahila Pradhan

.14.

Agent were played down by the 3rd respondent by Annexure A-14 and Annexure A-15 communications, without reporting the matter to the appropriate investigating agency for investigating into the crime involved in such allegations.

(Dated this the 14th day of November 2014)



U.SARATHCHANDRAN
JUDICIAL MEMBER

asp