

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.296/07

Friday this the 8th day of August 2008

C O R A M :

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mrs.K.N.K.KARTHIYANI, ADMINISTRATIVE MEMBER**

Baby Mathew,
S/o.late P.P.Mathai,
Gramin Dak Sevak Mail Deliverer,
Pooyamkutty Branch Post Office,
Kothamangalam Sub Office.
Residing at Parackal House,
Nellikuzhy B.O., Kothamangalam.Applicant

**(By Advocate Mr.O.V.Radhakrishnan,Sr., Mrs.K.Radhamani Amma,
Mr.Antony Mukkath & Mr.K.Ramachandran)**

Versus

1. Union of India represented by its Secretary,
Department of Posts, Ministry of Communications,
New Delhi.
2. Director General of Posts,
Department of Communications, Dak Bhavan,
Sansad Marg, New Delhi – 110 001.
3. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
4. Senior Superintendent of Post Offices,
Aluva Division, Aluva.
5. Inspector of Post Offices,
Perumbavoor Sub Division,
Perumbavoor – 683 642.Respondents

(By Advocate Mr.Varghese P Thomas,ACGSC)

**This application having been heard on 5th August 2008 the Tribunal
on 8th August 2008 delivered the following :-**

ORDER

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

**The applicant was appointed as Extra Departmental Delivery Agent
(presently known as GDS MD) at Pooyamkutty Branch Office in 1989. In**

May 2006, he had made Annexure A-1 representation to the 4th Respondent, i.e. the Senior Superintendent of Post Office, Aluva Division, requesting that he be transferred and posted in the same capacity i.e. GDS MD Kothamangalam College SO on compassionate Grounds. The grounds mainly related to the ailment of his wife and aged parents. This was followed by another representation (Annexure A-2), addressed to the 5th respondent, i.e. the Inspector of Post Offices, Perumbavoor Sub Division, vide representation dated 10-08-2006. This latter representation had been rejected by the Inspector of Post Offices vide Annexure A-3 communication dated 24-04-2007, stating that the applicant does not satisfy the conditions prescribed in the Directorate letter dated 17-07-2006 which inter alia provides for transfer 'to look after the welfare of a physically/mentally handicapped person' but in the case of the applicant he has sought transfer due to illness of wife/age old parents and there is no such provision under limited transfer facility.

2. The post of GDS MD at Kothamangalam College has been notified for being filled up by way of recruitment vide Annexure A-4.

3. According to the applicant, as per the decisions of the Hon'ble High Court dated 01-09-2003 in Civil Writ Petition O.P. No. 17514 of 2002(S), (vide Annexure A-5) in the absence of a rule to the contrary, the competent authority can follow any reasonable method for appointment to a post. Filling up a vacancy by transfer of an eligible person is not unknown to law. This should hold good even as at present, as change in nomenclature cannot in any way take away the concessions already available, as confirmed in Annexure A-6 order dated 24th April 2001.



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4. The respondents have, in the wake of the abovestated decision of the High Court, laid down vide Annexure A-7 that "*a Sevak shall not be eligible for transfer in any case from one post/unit to another post/unit except in public interest.*" As the term 'public interest' has not been defined, vide Annexure A-8 communication dated 17th July, 2006, certain contingencies on the basis of which transfer could be effected have been enumerated. It is with reference to this order that the Inspector of Post Offices had rejected the case of the applicant, vide Annexure A-3 impugned herein.

5. The contention of the applicant is that his case is a simple transfer in the same capacity as GDS MD from one post office to another, falling within the same unit, and it does not involve change in posts or Units. And, order dated 17th July 2006 pertains to cases which involves either change in post or unit and hence, conditions attached to the said inter post/inter unit transfer cannot be extended to the case of the applicant. His case should not have been rejected by the respondents and on the basis of the decision of the High Court, vide Annexure A-5, the case of the applicant should have been favourably considered as such a transfer is also one of the recognized modes of recruitment.

6. Respondents have contested the O.A. According to them, initially the policy was inflexible that there was no scope of any transfer. This was later on diluted to the extent that transfer in public interest could be effected and the latest communication dated 17th July 2006 provide for certain contingencies under which the requests for transfer could be considered.

The case of the applicant does not come within the purview of the above and hence, his case has been rejected. Respondents have also annexed

7. Counsel for the applicant extensively argued that the applicant is holding a civil post (on the strength of the decision of the Apex Court in the case of Superintendent of Post Offices vs P.K. Rajamma (1977) 3 SCC 94) and that there is absolutely no bar for his applying for transfer and as per the decision in the case of Senior Superintendent of Post Offices vs Raji Mol (2004 (1) KLT 183) Rules do not place a restriction on employee to seek for and claim transfer to another post and the earlier view taken by the Tribunal that the provision does not place a bar on the employee to seek transfer does not suffer from any infirmity. Annexure A-7 amendment to the Rules in fact runs counter to the decision made by the High Court. It has further been contended that the contingencies contained in Annexure A-8 orders are not inflexible or exhaustive but only inclusive and as such even if it be assumed that the case of the applicant falls within the purview of such a communication, respondents cannot dismiss the case stating that the contingency as available in the case of the applicant is not provided for in the said Annexure A-8. It has been strenuously argued that the term 'from one post to another post' occurring in the order dated 17th July 2006 should mean two different posts, while the case of the applicant is that he should be posted in the same post of GDS MD. Reference had been made to the decision of the Apex Court in the case of R.K. Sabharwal vs State of Punjab (1995 (2) SCC 745). The applicant had also relied upon the decision by the High Court reported in 2000(3) KLT 541.

8. Counsel for the respondents submitted that the law is clear. One can apply for transfer within the parameters prescribed in Annexure A-8 order and on such application, the same would be judiciously considered by the authorities and decision taken. The applicant does not enjoy any right, as a matter of rule, to insist that he shall be posted to the place he has

requested for, even if vacancy exists. As regards the distinction attempted to have made by the applicant relating to the term, 'from one post to another' appearing in order dated 17th July 2006, counsel stated that the said order covers all cases i.e. from one post in an unit to another in the same post as in the case of the applicant.

9. Arguments were heard and documents perused. In so far as transfer of GDS is concerned, initially, there was no transfer liability. In 2004, by way of amendment transfer eligibility "in public interest" was provided for. In order to elucidate as to what the public interest is, order dated 17th July 2006 came to be passed. The respondents have rejected the case of the applicant as the ground for transfer sought for by the applicant was not provided for in the aforesaid order dated 17th July 2006. Counsel for the applicant argued that the said order of 17th July 2006 would apply only in such cases where the transfer sought is from one post/unit to another post/unit, whereas what the applicant seeks is transfer to the same post from one office to the other. In V. Jagannadha Rao v. State of A.P., (2001) 10 SCC 401, the Apex Court has held "*Though definitions may differ and in many cases transfer is conceived in wider terms as a movement to any other place or branch of the organization, transfer essentially is to a similar post in the same cadre as observed by this Court in B. Varadha Rao v. State of Karnataka*. Thus, we would like to confirm that this order dated 17th July 2006 is applicable to all kinds of transfer, be it from one post of Gramin Dak Sevak to another or transfer from one post (as in the case of the applicant) from one post office to another in the same post. The distinction sought to be made by the applicant's counsel is thus only artificial.

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10. Reliance to the decision of the High Court reported in 2004(1) KLT 183 had been placed to hammer home the point that when the vacancy exists at the place where the applicant seeks transfer, appointment by transfer being one of the reasonable modes of recruitment, the respondents ought to have considered the case of the applicant. True, in so far as the entitlement or eligibility of any serving G.D.S. to apply for the post notified, the same is not prohibited, provided they are eligible in which event, such an individual who is already holding a post of GDS in any post office should compete with others. But what the applicant claims is that he has a pre-emptive right and once he has applied, his case should be favourably considered and he should be posted to the place he has sought for where the vacancy is available. This claim is without any substance for no one has any right to seek posting to a particular place or remain in any particular post (See *B. Varadha Rao vs State of Karnataka*).

11. Thus, there is no vested right which has been hampered by the action on the part of the respondents in rejecting the request of the applicant for transfer from Pooyamkutty to Kothamangalam.

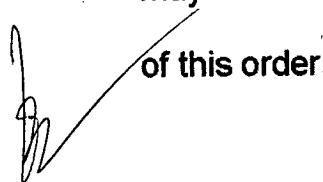
12. Notwithstanding the fact that there is no vested right available to the applicant, whether the authorities have no discretion to accommodate the applicant under the facts and circumstances is the next question. In Union of India vs. S.L. Abbas, (1993) 4 SCC 357, the Apex Court has held, "Who should be transferred where, is a matter for the appropriate authority to decide". In fully deserving cases, without affecting the vested rights of any others, the authorities could certainly consider such cases for transfer and when an authority utilizes powers vested with it justifiably and judiciously, such an action would not be viewed as violative of Art. 14, for, it

is trite law that in administration, there must be some play at the joints to dispense even-handed justice. (See Ganga Sugar Corpn. Ltd. v. State of U.P., (1980) 1 SCC 223). Again, vide the decision reported in 2004(1) KLT 183 relied upon by the counsel for the applicant provision exists for filling up of the post by transfer of an existing employee.

13. It is stated that the authorities have not proceeded further with the selection for which Annexure-4 notification has been issued.

14. In the instant case, rejection of the request of the applicant was by the fifth respondent. In the interest of justice, it is felt that the Chief Post Master General may consider the case of the applicant and if he is of the opinion that the request of the applicant be acceded to, he may cause instructions issued to the authorities concerned to pass suitable orders. In that event, the vacancy caused by such a transfer (i.e. vacancy to the post held by the applicant at present at Pooyamkutty Branch Post Office) may well be thrown open to general public for being filled. It is made clear that this observation does not give any vested right to the applicant and the decision of the Chief Post Master General shall be entirely within his discretionary powers.

15. In view of the above, the OA is disposed of with the direction to the Chief Post Master General to consider the case of the applicant for transfer from Pooyamkutty Branch Post Office to Kothamangalam Post Office as suggested in the preceding paragraph and communicate his decision. This may be done within a period of two months from the date of communication of this order.



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16. Under the circumstances, there shall be no orders as to costs.

(Dated this the 8th day of August 2008)



K.N.K.KARTHIYANI
ADMINISTRATIVE MEMBER



K.B.S.RAJAN
JUDICIAL MEMBER

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