

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.338/2003

Monday this the 12th day of December 2005.

CORAM:

**HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR. N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

(By Advocate Shri. Vishnu S. Chempazhanthivil)

VS.

1. Assistant Superintendent of Post Offices,
South Sub Division, Kollam.
2. Senior Superintendent of Post Offices,
Kollam Postal Division, Kollam.
3. Chief Postmaster General,
Kerala Postal Circle, Thiruvananthapuram.
4. Union of India, represented by its
Secretary, Ministry of Communications,
New Delhi.
5. A. Balan, EDDA (GDSMD),
Adichanalloor P.O., Kollam.

(By Advocate Smt.K.Girija, ACGSC)

The application having been heard on 22.11.2005
the Tribunal on 12.12.05 delivered the following

ORDER

HON'BLE MR. KV SACHIDANANDAN, JUDICIAL MEMBER

The applicant while working as Extra Departmental Mail Carrier (EDMC for short) Chirakkara B.O. was appointed on transfer as Extra Departmental Delivery Agent, (EDDA for short) Adichanalloor, on selection from among the

Extra Departmental Agents who applied for the post on 20.10.2000. But on 12.4.2003, after a lapse of twelve and half years, he was relieved from the post and directed to go back to his original post i.e. Chirakkara B.O. vide A-2 order for the reason that his original selection was not in order. He pleads that he was not given any notice before cancelling his original appointment. Aggrieved by the said action on the part of the respondents, the applicant has filed this O.A. seeking the following main reliefs:

- i. Call for the records and quash Annexure A2.
- ii. Declare that the applicant is entitled to continue as EDDA, Adichanallur (GDSMD) and direct the respondents to take action accordingly.
- iii. Direct the 1st respondent to retransfer the applicant back to Adichanallur as EDDA with consequential benefits including arrears of allowance in lieu of the reduction from 12.4.2003 on account of Annexure A2.

2. The respondents 1-4 have filed a detailed reply statement contending that the EDDA post at Adichanallur fell vacant on 25.10.2000, on discharge of the incumbent of the post from service on attaining the age of 65 years and the post EDDA was re-designated as Gramin Dak Sevak Mail Deliverer (GDSMD for short) with effect from 24.4.2001. Applications were invited both from Employment Exchange and Open Market on 23.8.2000. A list of 9 candidates was received from the Employment Exchange and 28 applications were received in response to the open notification. Two applications for transfer were also received among which, one was that of the applicant in this O.A. When the vacancy was notified, there was no provision for transfer of ED Agents. Later the 3rd respondent, vide letter dated 28.9.2000 intimated that, one or two EDAs who applied for transfer can be permitted in obedience

to the order in O.A.45/98 of this Tribunal. This was communicated to all sub appointing authorities. Thereafter, three more serving GDS officials were applied for transfer to the post of GDSMD, Adichanallor i.e. S/Shri K.Chandran Pillai, K. Gopinathan Pillai and Shri A.Balan before finalising the selection process. These applications were forwarded to the 1st respondent by the 2nd respondent with a direction to consider all the transfer applications till 24.10.2000 and to make selection to the post only on 25.10.2000, on which date the vacancy was due to arise (Annexure R-2(a)). But the 1st respondent finalized the selection on 6.10.2000 and issued orders on 20.10.2000 appointing the applicant (K.Sudhakaran Nair) giving him the status of retrenched GDS. One of the Service Unions took up the issue stating that the transfer arrangement was irregular, as the post was filled with a junior official. Shri Balan (the 5th respondent) submitted representation to the 3rd respondent contending that the person who was selected, was junior to him and finally, on a review conducted as per the direction of the 3rd respondent it is found that the applicant was selected irregularly as he was not eligible to be treated as retrenched GDS after 18 years.

3. The applicant has filed a rejoinder contending that there was no irregularity in considering the applicant's claim for transfer, since the Tribunal had declared the law as on 25.2.99 that transfer of ED Agents was permissible and the department is considering the claims for transfer made by ED Agents after 25.2.1999.

4. The respondents have filed an additional reply statement reiterating their earlier stand taken in the reply statement and further adding that the



applicant was retrenched on 2.2.82 and was given alternative appointment on the next date itself i.e. on 3.2.82 and therefore, he could not be given the benefit of retrenched GDS. As per rules, the benefit of retrenched status could not be given beyond a period of one year from the date of retrenchment and the applicant who was retrenched 18 years back was already given alternative employment on the next day itself, he should not have been given appointment as GDS MD, Adichanallur on the retrenched status. The controlling authority of the Ist respondent found that the selection conducted by the Ist respondent was irregular, he by exercising the powers of the controlling authority, set aside the said selection since other eligible applications were not considered earlier.

5. We have heard Shri Vishnu S Chempazhanthiyil, learned counsel appearing for the applicant and Smt. K.Girija, learned ACGSC appearing for the respondents 1 to 4. The private respondent (R5) did not file any reply.

6. Learned counsel have taken us to various pleadings, evidence and material placed on record. Learned counsel for the applicant argued that the 2nd respondent has no power to conduct a review of A1 appointment, that too without any notice to the applicant. The application of the 5th respondent was not considered in 2000 since it was belated. Reviewing an earlier order, after a spell of two and half years, is arbitrary, discriminatory and illegal. The respondents 1-3 faced with unreasonable pressures from the Unions and have issued impugned order under dictation.

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7. Learned counsel for the respondents, on the other hand argued that, the 1st respondent who originally made the selection had not given due weightage to Annexure R-2(a) letter directing him to consider all transfer applications received till 24.10.2000. The 1st respondent finalized the selection on 6.10.2000 and the order was issued on 20.10.2000 appointing the applicant as GDS MD Adichanallur giving the status of retrenched GDS and without considering the other eligible candidates like that of 5th respondent. Later, when the mistake was noticed, the order was reviewed. No matter, it was done after two and a half years. The respondents are authorized to correct such mistake by invoking the powers of review.

8. We have given due consideration to the arguments. It is an admitted fact that the 1st respondent notified the vacancy of EDDA Adichanallur which fell vacant on 25.10.00 by open notification. The applications both from the Employment Exchange and Open Market were invited on 23.8.2000 and the respondents had received 9 + 28 applications in response to the said notification. The applicant along with another also had made application for transfer. Though the notification was from open market or Employment Exchange, the question is, whether the applicant's request could have been entertained or not? The matter was under consideration before this Bench of the Tribunal in O.A.45/98 and this Tribunal by order dated 25.2.99 had declared the law that serving GDS officials would also be entitled for transfer. Admittedly, as per this declaration the department had to consider all the claims for transfer made by ED Agents after 25.2.99. This position was also upheld by the Hon'ble High Court of Kerala in its decision dated 6.8.2000 reported in Sub Divisional Inspector of Posts Vs. CAT. (2000(3) KLT



541). The Hon'ble High Court has held that, ED Agents are entitled for transfer as per the norms. Admittedly, the selection process was finalized on 6.10.2000 and the orders appointing the applicant to the post of GDSMD, Adichanallur were issued on 20.10.2000, when the applications of other candidates including the 5th respondent for transfer were not received by the 1st respondent. It is borne out from the records that, the practice that is followed by the respondents in the case of appointment and transfer is by volunteering the applications not by any public notification. In other words, those who are interested will make applications and the respondents will consider their claim for transfer. Evidently the applications from other persons including the 5th respondent were received well before, subsequent to issuance of Annexure R-2 letter. Therefore, the 1st respondent by any stretch of imagination, could not have been waited upto 25.10.2000. Therefore, the question involved is, whether the selection made by the 1st respondent on 6.10.2000 and orders issued on 20.10.00 is vitiated because of Annexure R-2 (a) letter or not ? This Court has specifically directed the respondents to ascertain when exactly R-2 was served on the 1st respondent. They were not able to enlighten this Court anything on the point. On the other hand, it is evident that, this was issued on 20.10.2000. Admittedly by that time the selection was finalised by the 1st respondent and the orders were issued to the applicant. Now, the question is, whether the 1st respondent should have been waited for the circular from the higher authorities so as to get posted the eligible candidates as per the legal position or not? This Court has declared the law permitting the right of transfer for the ED Agents on 25.2.99. The Hon'ble High Court has also affirmed the principles of granting transfer to ED Agents on 6.8.2000. By the said decision the respondents had not

controverted nor denied in the reply statement that the department is not considering the claim of the applicant for transfer made by ED Agents at the relevant time. This is a clear indication that the practice that followed after 22.10.99 in the department to entertain such applications and one cannot find fault with the Ist respondent in finalizing the selection well before Annexure R-2(a) letter was received. Therefore, there is nothing irregular in the selection made by the Ist respondent on 20.10.2000. Now the question is, whether that order could be re-opened after two and half years, on the ground that the applicant is not eligible to be treated as retrenched GDS. Admittedly, the applicant is a GDS who is also entitled to get a transfer as per rules. Therefore, whether the retrenched status purported to the applicant is quite immaterial for the said selection.

9. Evidently, the Ist respondent had not so far taken any steps to withdraw A1 order and also it does not reveal that the applicant was granted the benefit of a retrenched status. On going through the reply statement(in paragraph 4) the respondents have stated that, the case was considered by the 3rd respondent and this respondent was directed to review the said selection and to report the result accordingly. Again it is stated in paragraph 3 that, "one of the service unions took up the matter as an item, that the transfer arrangement was irregular, as the post was filled with a junior official and one of the applicants who applied for transfer i.e. Shri K.Balan submitted a representation to the 3rd respondent stating that, the new incumbent who was appointed to the post was junior to him and that he had got 24 years of service." With due respect we will observe that, though one of the criterion for transfer is length of service , that could not be the sole reason for such a transfer. Nowhere it is stated that

the seniority is the criteria for granting such transfers. Therefore, even assuming that Shri K.Balan is senior to the applicant, he will not get a preferential treatment. Apart from that, the 3rd respondent who is the higher authority, after considering the case, directed the 2nd respondent to review the said selection and to report the result. It is a clear indication of "dictation" given by a higher authority to the lower authority in a selection process. Any selection to a civil post is a quasi judicial function and any such interference is not justified and it can only be treated as a 'dictation' given to the lower authority and therefore, lacking any transparency and own application of mind. Therefore, the reviewed order passed by the respondents is not in true spirit of law and will not stand in its legs as far as the applicant is concerned. Apart from that, the elementary rule that the respondents should have followed is, at least to issue a notice to the incumbent, when he is being displaced that too, after two and half years. The following decisions reported in Raghunath Singh Vs. Union of India and others (2002 (2) ATJ 606 and in C.C.Sasikala Vs. The Assistant Superintendent of Post Offices, Kochi and others (2000 (1) ATJ 63). The dictum laid down in the above decision is that, no employee should be displaced without issuance of a noitce.

10. For the above reasons we are of the considered view that, the Annexure A-2 as far as the applicant is concerned, will not stand in its legs and therefore to be set aside and Annexure A-1 restored.

11. In the conspectus of facts and circumstances, we set aside A-2 order and declare that the applicant is entitled to continue as EDDA,

Adichanallur, GDSMD. The 1st respondent is directed to issue appropriate orders re-transferring the applicant back to Adichanallur as EDDA forthwith.

12. The O.A. is allowed to that extent. No order as to costs.

Dated 12th December, 2005.

N.R.K.
N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

K.V.S.
K.V.SACHIDANANDAN
JUDICIAL MEMBER

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