

CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 350 OF 2007

Dated the 19th November, 2008

CORAM:-

HON'BLE Mr. GEORGE PARACKEN, MEMBER (JUDICIAL)
HON'BLE Dr. K.S.SUGATHAN, MEMBER (ADMINISTRATIVE)

J.Shahabudeen,
S/o Jamaludeen,
GDSMD Paruthipally, Thiruvananthapuram,
South Division, residing at Kulangara
Roadarikathu Veedu, Konniyor,
Povachal PO-695 573
Thiruvananthapuram.

.. Applicant

[By Advocate: Mr. M.R.Hariraj]

-Versus-

1. Union of India, represented by
The Secretary to Government of India,
Ministry of Communication and IT, New Delhi.
2. Chief Post Master General,
Kerala Circle, Thiruvananthapuram.
3. Superintendent of Post Offices,
Thiruvananthapuram South Division.
4. Assistant Superintendent of Post Offices,
Nedumengad.

...Respondents

[By Advocates: Mr S Abhilash, ACGSC]

This application having been heard on 6th November, 2008
the Tribunal delivered the following -

ORDER

(Hon'ble Dr.KS Sugathan,M[A])

The applicant is working as a GDSMD at Paruthipally in Trivandrum South Division under the respondents. He is aggrieved by the rejection of his request

for transfer to Kattakada as GDSMD (A/1). He is also aggrieved by the issue of a notification vide letter dated 25.9.2006 inviting candidates for filling up the posts of GDSMD at Kattakada (A/8). He was earlier working as EDMC Kallayil and was transferred on his request to Paruthipally on 4.9.2000. In July 2003 the applicant was directed to perform duty as Postman at Kattakada on the basis of "extra cost" arrangement (A/2). The vacant post of Postman in which the applicant was working on "extra cost" arrangement was abolished in June 2006 and in its place two posts of GDSMD were created. The applicant was asked to perform duty as GDSMD in one of the two GDSMD posts for about a month. Thereafter on 8.7.2006 he was relieved to report back to his original post of GDSMD at Paruthipally (A/3). The applicant then made a request on 11.7.2006 for transferring him to one of THE GDSMD posts at Kattakada (A/5). The applicant filed OA806 /06 for his transfer to Kattakada. The said OA was disposed by this Tribunal by order dated 6.3.2007 by directing the respondents to consider the representation of the applicant for transfer. In accordance with the said direction the representation of the applicant was considered and rejected by the second respondent by his order dated 9.5.2007 (A/1). Aggrieved by the rejection of his representation for transfer, the applicant filed this OA seeking the following relief:

i] To quash Annexure A1 and A8 and Annexure A6,

ii] To direct the respondents to consider the applicant for appointment by transfer to the post of GDSMD, Kattakada in preference to others and outsiders,

iii] Grant such other reliefs as may be prayed for and the Court may deem fit to grant, and

iv] Grant the costs of this Original Application."


[2] The respondents have FILED the first reply statement in October 2007. It was stated therein that only limited transfer facility is available to GDS as per Department order dated 17.7.2006 (A/7) subject to fulfilment of certain conditions. As per the said order a GDS would be entitled to only one transfer in his entire service. The applicant has already availed of this facility by virtue of his request transfer from Kallayil to Paruthipally. The second respondent considered the representation of the applicant as per the directions of the Tribunal in OA806/06, but it was not possible to accept the representation. Moreover, the applicant is now working in a post carrying lower TRCA, whereas the post at Kattakada is having a higher TRCA. Transfer from lower TRCA to higher TRCA is not permissible. The applicant was engaged to work in the post of postman in Kattakada only on "extra cost arrangement" in June 2006. In para 16 of the reply it was also stated that the contention of the applicant that he was working in Kattakada for the last three years is totally false and highly misleading. The GDS are governed by a separate set of rules and they cannot be equated with the regular employees of the Department.

Q1 [3] The applicant filed a rejoinder in November 2007. Besides making other contentions, it was also stated therein that the averment of the respondents that the applicant was directed to work at Kattakada from 2.6.2006 to 30.6.2006 in the leave vacancy of Shri Ravindran Nair is incorrect. By A/2 the applicant was directed to work against

the vacancy of Sri Dharamdas who was on leave for one year. The applicant continued to work in that capacity for three years till the post was abolished on 1.6.2006.

[4] In the additional reply filed by the respondents in Jan 2008, besides reiterating earlier contentions it was also stated that the applicant was directed to work in the leave vacancy of Shri Ravindran Nair from 2.6.06 to 1.7.06, and that the applicant's statement that he is working continuously since 2003 at Kattakada on extra-cost arrangement is not true. The letter dated 5.7.2006 from the SPM Kattakada was also produced as evidence in this regard (R/6). Even if he had been working on extra-cost-arrangement since 2003, he is not entitled to the transfer.

[5] Thereafter the applicant secured copies of documents showing cost incurred in extra-cost arrangement during the period July 2005 to June 2006. These documents were produced along with MA80 of 2008 (A/10). The applicant also filed MA No.290 of 2008 for initiating proceedings under Section 340 of Cr.PC against the respondent for offence under Section 191 read with section 199 of IPC punishable under Section 193 of IPC.



[6] In response to MA 290 of 2008 the third respondent filed an affidavit in May 2008. It has been submitted in the said affidavit that in the reply statement and the additional reply statement the respondents refuted the claim of the applicant about working for 3 years in Kattakada fully relying upon the statement of SPM Kattakada at R/6. The above mistake occurred due to non-verification of records.

The respondent No.3 has also tendered his unconditional apology. There were three posts of Postmen lying vacant at Kattakada. Shri Dharamdas postman working in one of the posts was on leave from 22.12.2002 to 4.7.2003 and subsequently transferred out. The applicant worked against that vacancy from 1.2.2003 to 21.3.2003 and from 1.4.03 to 2.7.2003 and intermittently between 5.7.2003 to 11.6.2004. The applicant has also worked against the vacant post of one Shri Yohannan. Both those posts were lying vacant simultaneously. No record of the extra cost arrangement is available with the Division and therefore the version of the SPM Kattakada was relied upon while filing the reply. The applicant has worked for three years prior to 1.6.2006 in the vacancy of Mr. Yohannan and not against the post of Sri Ravindran Nair. Copies of the extra cost bills produced by the applicant do not mention the name of the person in whose vacancy the applicant worked on extra cost arrangement. The role of the third respondent is limited to sanction of extra cost bill. The wrong information given in the reply will not help the case of the respondents in any way. The applicant is not eligible for getting a transfer on the basis of "extra cost arrangement" as per rules. It is further stated in para 10 of the additional reply that even if the applicant has been working under extra cost arrangement against the vacant post of regular postman since 7.7.2003 he cannot stake a claim for transfer to the newly created post at Kattakada on the plea that he has worked as a substitute in that post. The mistake was unintentional.



[7] We have heard the learned counsel for the applicant Shri PAKumaran for Shri MR Hariraj and the learned counsel for the respondents Shri Abhilash. We have also carefully perused the documents.

[8] The applicant is aggrieved by the rejection of his request for transfer to Kattakada. Transfer of GDS is governed by the order issued by the Department of Posts on 17.7.2006 (A/7). The limited transfer facility envisaged in the said order is considered on the following grounds:

"I. A GDS who is posted at a distant place on re-deployment in the event of abolition of the post.

II. GDS appointed on compassionate grounds and posted at distant place.

III. Woman GDS on her marriage/remarriage.

IV. Where the GDS himself/herself suffers from extreme hardship due to a disease and for medical attention /treatment, such transfer may be allowed on production of a valid medical certificate from the medical officer of a Government hospital.

V. Where the GDS is looking after the welfare of a physically handicapped/mentally handicapped person/dependent and he/she requires to move to different places to give support to such physically/mentally challenged person/dependent. "

[9] The said order dated 17.7.2006 also stipulates seven conditions. One of the conditions is that a GDS will normally be eligible for only one transfer during his entire career. It is seen from the order dated 9.5.2007 (A/1) issued by the second respondent that the grounds cited by the applicant for his transfer has been listed and discussed before the request was rejected. Two reasons are cited for the rejection of the request, namely, (a) normally only one transfer request is allowed in the entire career of a GDS as per rules, and (b) transfer cannot be given on the ground

that the place where transfer is sought carries a higher allowance.

[10] We may now look at the grounds given in the transfer application dated 11.7.2006. There are two applications dated 11.7.2006 (A/4 and A/.5). The contents of these two applications are extracted below:

Annexure-A4

"To

Respected Assistant Superintendent,
Nedumengadu.

Sir,

I was working as postman at Kattakada Post Office from 07.07.2003 onwards. Consequent on the abolition of the said post on 01.06.2006 I was posted as GDSMD there. I was paid an amount of Rs. 1682 + 1247 as TRCA for the month of June. On 08.07.2006 I was send back to Paruthipally. Therefore I request your good self to be kind enough to post me in one of the GDS post at Kattakada. Two outsiders are posted temporarily in the newly created GDS post.

Dated : 11.7.2006

Place Kattakada.

Yours faithfully,
Sd/- J Shahabudeen."

Annexure-A5

"To

Respected Superintendent of Post Offices,
Thiruvananthapuram.

Sir,

While I was working a EDMC, Kallayil on an allowance of Rs. 1545+DA, requested for a transfer to the post of EDDA Paruthipally having an allowance of Rs.1740+DA, which became vacant. But an order was issued reducing the allowance, eight days before my transfer. I was paid an allowance of Rs.1740+DA per month for six months and thereafter it was reduced. The excess amount of Rs.7500/- paid to me is being recovered from my allowance. I am getting only Rs.700/- after the recovery from my allowance of Rs.13785+DA. Therefore I humbly request your good self to be kind enough to grant me a transfer to the post of GDSMD Kattakada which is having an allowance of Rs. 1740+DA. I was informed by ASP Nedumengadu that EDs are not entitled to transfer. An ED packer of Poovachal Post Office has been given a transfer to Aryanad Post Office last month. Five years back he came on transfer from Kuttyil to Poovachal Post Office.

Dated : 11.7.2006

Place Kattakada.

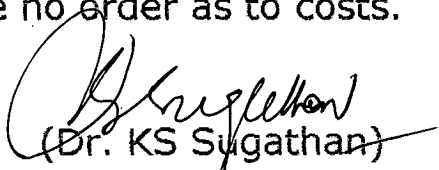
Yours faithfully,
Sd/- J Shahabudeen"

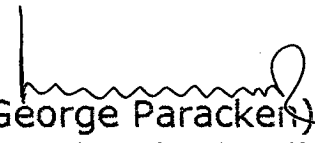
[11] It is evident from the above extracts that the transfer is sought on grounds related to TRCA and the posting ^{of} an ED packer of Poovachal on transfer for the second time. Both these grounds are discussed in the impugned order signed by respondent No.2. Higher TRCA is not one of the grounds included in the order dated 17.7.2006 which provides for limited transfer facility. Working on extra-cost arrangement in the place of his choice for certain length of time also does not entitle the applicant for any special consideration for a regular transfer under the guidelines. The instance of the second transfer given to another employee has been explained by the respondent No.2 in the impugned order. We are, therefore, of the considered opinion that there is no illegality in the decision taken by the respondents to reject the request for transfer. As regards the issue of discrimination, vis-à-vis, regular departmental officials this matter was considered by this Tribunal in OA 156/07. The Tribunal did not accept the contention that the GDS should be considered as regular government servants. The GDS are governed by a separate set of rules. It is also a part time employment. Conditions of service are entirely different. Detailed reasons have been given in the order in OA 156/07 why GDS cannot be treated as government servants. We cannot therefore accept the prayer for quashing the amendment to GDS (Conduct and Employment) Rules, 2004 (A/6) on the grounds of discrimination.

[12] We shall presently discuss the MA 290 of 2008. The prayer in the MA 290 is for initiating criminal proceedings against respondents for giving wrong information in the

reply statement. We have carefully perused the reply filed by the respondent No.3 in this regard. We are not fully satisfied by the explanation given by the respondent No.3. He should have verified the records before making the averment that the applicant has not worked for three years prior to June 2006. The respondent NO.3 did not exercise due diligence while signing the reply. However we do not consider that the wrong information was given intentionally. The respondent No.3 has also tendered an unconditional apology. We are therefore not inclined to initiate criminal proceedings as prayed for in the MA. We would however like to invite the attention of the respondent No.2 to this episode and also give a direction to him to take suitable steps to ensure that such things do not happen in future. We would also record a note of appreciation for the applicant's counsel Shri M.R.Hariraj for his efforts to bring the correct position on record.

[13] For the reasons stated above, the OA is dismissed. MA290/08 is closed with a direction to the respondent No.2 to take suitable steps to ensure that the mistake in giving wrong information does not happen in future and that replies to the OA are filed after due verification of records. Under the circumstances, there shall be no order as to costs.


(Dr. KS Sugathan)
Member (Administrative)


(George Parackal)
Member (Judicial)