

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.365/08

Monday, ... this the 16th day of March 2009

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

P.D.Sukumaran,
S/o.Damodaran,
Assistant Superintendent of Post Offices (HQRS),
O/o.Sr. Superintendent of Post Offices,
Kottayam Division.
Residing at Ambadi House, Kollad P.O.,
Kottayam - 686 029.

...Applicant

(By Advocate Mr.P.C.Sebastian)

Versus

1. The Post Master General,
Central Region, Kochi - 18.
2. The Chief Post Master General,
Kerala Circle, Thiruvananthapuram - 695 033.
3. The Senior Superintendent of Post Offices,
Kottayam Division, Kottayam.
4. Union of India represented
by the Secretary to Govt. of India,
Ministry of Communications,
Department of Posts, New Delhi.

...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan, SCGSC)

This application having been heard on 18th February 2009 the Tribunal on 16th.... March 2009 delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant's grievance is against the Annexure A-6 memo dated 10.6.2008 by which he has been transferred from Kottayam Division to Irinjalakuda Head Office vice Smt.I.K.Lalithakumari who has been




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transferred as ASP (HQ), Aluva Division. He is also aggrieved by the Annexure A-8 memo dated 26.6.2008 by which he has been relieved from Kottayam Division to join at Irinjalakuda Head Office.

2. The brief facts relevant to the disposal of the case are that the applicant while working as Upper Division Clerk was promoted as Inspector of Post Offices with effect from 13.3.1993 and thereafter as Assistant Superintendent of Post Offices in Tiruvalla RMS with effect from 17.10.2002. On his request he was transferred as Assistant Superintendent of Post Offices, Changanasserry Sub Division with effect from 18.10.2003. Again, he was transferred as Assistant Superintendent to RMS Ernakulam on 27.1.2005, to Kottayam East Sub Division vide Annexure A-1 memorandum dated 9.10.2007, to Assistant Superintendent (HQ) Kottayam vide Annexure A-2 memorandum dated 19.2.2008, to Alappuzha Division as ASP (HQ) vide Annexure A-4 memorandum dated 29.5.2008. On the next day on 30.5.2008, the said transfer to Alappuzha Division was cancelled vide Annexure A-5 dated 30.5.2008 and now he has been transferred to Irinjalakuda Head Office by the present Annexure A-6 memo dated 10.6.2008.

3. According to the applicant, he was admitted in Medical College Hospital, Kottayam during the period from 24.3.2007 to 13.4.2007 and was still continuing the treatment from the same hospital. He made Annexure A-7 representation to the respondents requesting to allow him to complete his tenure at Kottayam Division and also for a posting at Alappuzha or at Ernakulam in case he cannot be allowed to continue at Kottayam on the grounds that (i) he was getting treatment from the



Medical College Hospital, Kottayam, (ii) his house is at Kottayam and (iii) he has only three years left for superannuation. Since there was no response to his aforesaid representation from the respondents, he has decided to comply with the transfer order and availed the TA Advance. However, suddenly he was afflicted with viral fever as per Annexure A-9 medical certificate and he refunded the TA Advance as he was not in a position to join Irinjalakuda as ordered by the respondents. Thereafter, he has filed this O.A to quash Annexure A-6 and Annexure A-8 memos and to direct the respondents to allow him to continue at HQ, Kottayam at least for a tenure in the normal course or in the alternative transfer him to any vacancies now existing in Alappuzha or Ernakulam. The main ground adduced by the applicant in this O.A in support of the aforesaid reliefs is that he has been transferred frequently as under :-

17.10.2002	as ASP Tiruvalla RMS
18.10.2003	as ASP Changanassery Sub Division
27.10.2005	as ASP Ekm RMS
11.10.2007	as ASP Kottayam East Sub Division
04.03.2008	as ASP (HQ) Kottayam
29.05.2008	as ASP (HQ) Alappuzha (which was cancelled on 30.5.2008)
10.06.2008	as Postmaster Irinjalakuda

He has also submitted that in terms of Rule 59 of P&T Manual Vol.IV as extracted below, he is entitled for a station tenure of 4 years and, therefore, his transfer from the post of ASP (HQ) Kottayam before completing even 6 months is illegal and against the rules.

"59. An Assistant Superintendent of Post Offices or RMS and a Sub Divisional Inspector (Postal) or RMS should not ordinarily remain in the same Division, or Sub Division, as the case may be, or at the same post for more than 4 years at a time.

While ordering transfer or promotion of the officials, care should be taken to ensure that they are not transferred to or posted in their home areas."

He has also alleged that the said transfer is in contravention of the Rule 37 A of P&T Manual Vol.IV, according to which, transfers should be made in the month of April so as to safeguard children's education.

4. Respondents in their reply statement submitted that out of the 6 transfers/posting as stated by the applicant, excluding his transfer as ASP (HQ) Alappuzha which was cancelled subsequently, the three transfers, namely, (i) as ASP Ernakulam RMS on 27.10.2005 (ii) as ASP (HQ) Kottayam on 4.3.2008 and (iii) as Postmaster, Irinjalakuda on 10.6.2008 were made on administrative grounds and the remaining three transfers, namely, (i) as ASP Tiruvalla RMS on promotion on 17.10.2002 (ii) as ASP Changanacherry Sub Division on 18.10.2003 and (iii) as ASP Kottayam East Sub Division on 11.10.2007 were made on his request. The present transfer to Irinjalakuda is necessitated as there was allegation that he has appointed his own son Shri.Sandeep.S to the post of Gramin Dak Sevak Mail Deliverer, Thiruvanchoor for which he was the appointing authority, circumventing rules and adopting dubious methods. For the said alleged misconduct, inquiry under Rule 14 of the CCS (CCA) Rules 1965 was also contemplated. If the applicant was allowed to continue in the post of ASP (HQ), Kottayam Division, he would have got direct access to the vital records relating to the disciplinary case and may tamper with them before the matter was fully investigated. Therefore, the Chief Post Master General, Kerala has directed that he should be transferred out of the division itself. The respondents have also acknowledged the receipt of his representation dated 16.6.2008, a copy of which has been annexed with Annexure R-1. They have pointed out that in the original representation given to the respondents the words "if it is not possible, I am willing to work

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as ASP (HQ) Alappuzha or ASP, Ekm RMS 2." written in hand was not there and those words were added in the Annexure A-7 representation only to file before this Tribunal to enable him to seek the alternative relief prayed for in the OA.


5. The respondents have relied upon the judgment of the Apex Court in Omkumar and others Vs. Union of India [2001 SCC (L&S) 1039] in which it has been held as under :-

" But where an administrative action is challenged as 'arbitrary' under Article 14 on the basis of Royappa (as in cases of punishments in disciplinary cases are challenged) the question will be whether the administrative order is 'rational' or 'reasonable' and the test is the Wednesbury test. The Court could then be confined only to a secondary role and will only have to see whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken."

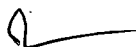
6. They have also relied upon the Government of India instructions No.9 in page 222 of Swamy's Compilation of CCS (CCA) Rules 31st edition (Annexure R-2) in which it has been stated as follows :-

" If the presence of the officer is considered detrimental to the collection of evidence etc or he is likely to tamper with evidence, he may be transferred on revocation of suspension order."

7. I have heard Shri.P.C.Sebastian for the applicant and Shri.M.L.George on behalf Shri.T.P.M.Ibrahim Khan,SCGSC for the respondents. When this O.A was initially heard on 14.7.2008, on the basis of the submissions made by the applicant, this Tribunal felt that there was a prima facie case in his favour. Therefore, the respondents were directed to keep the Annexure A-6 order transferring the applicant from his present place of posting at ASP (HQ) Kottayam to HO, Irinjalakuda in abeyance till



the disposal of this O.A. During the course of the arguments the respondents have produced a copy of the Memo No.ST/40-7/2003 dated 3.2.2009 served on the applicant proposing to hold an inquiry against him under Rule 14 of the CCS (CCA) Rules 1965. As per the charge, the applicant, while functioning as ASP Kottayam East Sub Division during the period from 11.10.2007 to 3.3.2008, has arbitrarily selected and appointed his son Shri.Sandeep S, Ambadi House, Kollad P.O to the notified post of Gramin Dak Sevak Mail Deliverer/Mail Carrier Thiruvanchoor without referring the matter to his superior officer and contravening Rule 4(3) of CCS (Conduct) Rules, 1964. However, the applicant has suppressed this fact from this Tribunal and obtained the interim relief in his favour. The applicant has in fact tried to paint a picture that he has been victim of 6 transfers during the period from 17.10.2002 to 10.6.2008 thereby the respondents have violated the Rule 59 of P&T Manual Vol.IV without any justifiable reason. However, the fact is that out of 6 transfers, 3 of them were made on his own requests. The respondents would have allowed the applicant to continue at the present place of posting but for his alleged involvement in appointing his son as GDS MD, Thiruvanchoor in contravention of the rules. The charge against the applicant is nepotism which is nothing but corruption. If the said allegation is proved against him in the inquiry, he will have to face serious consequence. It is quite possible that if the applicant is allowed to continue at the present place of posting at Kottayam, he would be in a position to tamper with the records against him. It is for this reason that the respondents have decided to transfer him out of the division itself. Applicant ought to have disclosed this fact to this Tribunal and he should not have feigned ignorance about it.



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8. I, therefore, do not find anything wrong with the action of the respondents in transferring the applicant from ASP HQ Kottayam to PM (IPO Line), Irinjalakuda vide Annexure A-6 dated 10.6.2008 and relieving him from the post of ASP (HQ) Kottayam vide Annexure A-8 memo dated 26.6.2008. It is only because of the stay granted by this Tribunal on 14.7.2008, the applicant has been able to continue at the present place of posting. I, therefore, hereby dismiss this O.A and vacate the interim order passed by this Tribunal on 14.7.2008. In the above facts and circumstances of the case, the applicant is liable to pay a cost of Rs.1000/- (Rupees One Thousand Only) to the respondents which can be recovered from his pay for the month of March, 2009 or from the pay of any subsequent months.

(Dated this the 16th day of March 2009)


GEORGE PARACKEN
JUDICIAL MEMBER

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