

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 37 of 2004

Monday, this the 16th day of February, 2004

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

1. Nisha C.G,
D/o Sri N Gangadharan Nair,
Gramin Das Sevak Branch Postmaster,
Yordanapuram BO, Kalady SO, Aluva Division,
residing at Moolleth House, Nayathode PO,
Angamali.Applicant

[By Advocate Mr. O.V. Radhakrishnan]

Versus

1. Senior Superintendent of Post Offices,
Aluva Division,
Aluva - 683 101
2. Director General of Posts,
Dak Bhavan, New Delhi.
3. Union of India, represented by its
Secretary, Ministry of Communications,
New Delhi.Respondents

[By Advocate Mrs. P. Vani, ACGSC]

The application having been heard on 16-2-2004, the
Tribunal on the same day delivered the following:

O R D E R


HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant, who was initially appointed as ED Packer, Chengamanadu, applied for a transfer to the post of Gramin Dak Sevak Branch Postmaster (GDSBPM for short), Yordanapuram as she was eligible and qualified to hold the post and as that place was nearer to the place of residence of her husband. With the intervention of this Tribunal in OA.No.578/01, the respondents were granted the request for a transfer and the applicant took over as GDSBPM, Yordanapuram on 7-2-2003. Finding that a vacancy in the post of GDSBPM,

Nayathode, which is the place of residence of her husband, the applicant submitted a representation for a transfer to that post. Finding that the vacancy has been notified for recruitment from open market by Annexure A3 and that her request has been rejected by Annexure A4 order on the ground that as per the GDS (Conduct and Employment) Rules, 2001 frequent transfer of GDSs is not permitted, the applicant has filed this application seeking to set aside the notification Annexure A3 as also Annexure A4 order declaring that the applicant is eligible and legally entitled to seek a transfer to the post of GDSBPM, Nayathode and for a direction to the 1st respondent to consider the candidature of the applicant for transfer to the post of GDSBPM, Nayathode.

2. Smt.P. Vani, ACGSC took notice and filed a statement on behalf of the respondents opposing the grant of prayers in the application. The application is resisted on the ground that the applicant has already been given one transfer and that in terms of the provisions of GDS (Conduct and Employment) Rules, 2001, GDSs are not to be transferred from one place to another.

3. The applicant has filed a rejoinder producing Annexure A5 letter dated 28-9-2000 of the Chief Postmaster General, Kerala Circle, Thiruvananthapuram, wherein it has been stated that an ED Agent can be given one or two transfers during his tenure subject to his eligibility for the post in accordance with the instructions contained in DG (Posts)'s letter dated 12-9-1988.



4. We have gone through the pleadings and materials placed on record and have heard Shri O.V.Radhakrishnan, learned counsel of the applicant and Smt.P.Vani, ACGSC appearing for the respondents.

5. The question whether an ED Agent can be transferred from one place to other on request despite the provisions there being no transfer liability in the GDS (Conduct and Employment) Rules has been considered by the Tribunal in a number of cases. It was held by the Tribunal in a catena of decisions that an ED Agent, if qualified and eligible to be appointed to another ED post falling vacant in the same recruitment unit, can be considered for appointment by transfer without being subjected to a competition with outsiders. This view has been upheld by the Hon'ble High Court of Kerala in Sub Divisional Inspector of Post Offices vs. C.A.T [2000 (3) KLT 541]. In paragraph 8 of the said ruling, the Hon'ble High Court has observed as follows:-

"... We are not impressed by the contention that even if a claim is made by an EDA for transfer and appointment it is within the discretion of the department to allow it or not. According to us, the word 'may' used in Cl.(i) does not import a discretion. The provision is made for the benefit of EDAs. If that be so, if the EDA satisfies all the conditions required in Cl.(i) his claim cannot be denied. In that sense the word 'may' is used as equivalent to 'shall'. In Julius v. Bishop of Exford, (1880) 5 App.Cas.214, Lord Cairns has observed as follows:-

"where a power is deposited with a public office for the purpose of being used for the benefit of persons who are specially pointed out, and with regard to whom a definition is supplied by the legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised and the court will require it to be exercised."

According to Lord Blackburn, "The enabling words are construed as compulsory whenever the object of the power is to effectuate a legal right." A reference to Annexure-A3 would clearly show the provisions in Cl.(i) were brought in for the benefit of EDAs in service. The detailed provisions contained in Annexure-A4 also

W

would make it clear that the respondents are bound to act as per the norms contained therein when an application for transfer and appointment is received."

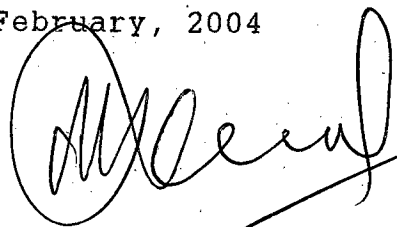
6. Still more recent ruling reported in Senior Superintendent of Post Offices vs. Rajimol [2004 (1) KLT 183], the Hon'ble High Court of Kerala has upheld the view taken by the Tribunal that absence of a provision for transfer liability in GDS (Conduct and Employment) Rules does not put an embargo against a GDS in seeking a transfer to a more convenient and profitable place. Therefore, the contention of the respondents that GDS (Conduct and Employment) Rules does not provide for a transfer liability and therefore the claim of the applicant cannot be entertained and has only to be rejected. Learned counsel of the respondents argued that very recently the applicant has already been given one transfer and therefore the applicant cannot be permitted to make frequent requests for transfer. We find considerable force in the argument. However, the applicant needed a posting to Nayathode where her husband's house situated. Finding that there was no vacancy at Nayathode and there was a vacancy at Yordanapuram, which is closer to Nayathode than Chengamanad, the applicant sought a transfer to Yordanapuram. Now an opportunity has arisen for the applicant to seek a posting to a place which is nearer to the place of residence of her husband, namely Nayathode. Another opportunity for her may not arise during the tenure of her service to get a posting there. Therefore, the applicant has applied for the second transfer. As admittedly one or two transfers can be given to an ED Agent throughout service and granting such a request would not cause any administrative hardship, while the applicant would be immensely benefitted, the rejection of the applicant's request does not appear to us to be justified or on public interest. Public interest can better be served by giving the applicant a more convenient posting which would enable her to perform her duties more

effectively especially granting such a posting would not in any manner adversely affect the administrative interest. It is up to the respondents to take an undertaking from the applicant that she would not make another request for transfer, if this transfer is granted.

7. In the light of what is stated above, we dispose of this application setting aside Annexure A4 and directing the respondents to consider the applicant for transfer to the post of GDSBPM, Nayathode along with other requests, if any, already received from willing and eligible GDSBPMs and give the applicant an appropriate reply. Only if the applicant or any other GDSBPMs who have applied for transfer is found ineligible or unsuitable for appointment, recruitment from open market notified by Annexure A3 shall be proceeded with. The above exercise shall be completed within a period of one month from the date of receipt of a copy of this order. There is no order as to costs.

Monday, this the 16th day of February, 2004


H.P. DAS
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

Ak.