

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.372/03

Wednesday this the 30th day of November 2005.

CORAM:

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

K. Anil Kumar, GDS BPM,
Varayinkal P.O., Thekkedara,
Mavelikkara Division, residing at
Haribhavanam, Nangyarkulangara. Applicant

(By Advocate Shri M.R.Hariraj)

V.S.

Union of India, represented by the Secretary,
Ministry of Communications, New Delhi.

**Chief Postmaster General, Kerala Circle,
Trivandrum.**

**Post Master General, Central Region,
Cochin 682 016.**

Superintendent of Post Offices, Mavelikkara Division,
Mavelikkara- 690 101. Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC)

The application having been heard on 30.11.2005 the Tribunal on the same day delivered the following

ORDER (Oral)

HON'BLE MR. KV SACHIDANANDAN, JUDICIAL MEMBER

The applicant was working as Extra Departmental Messenger (ED Messenger for short), Pallippad Sub Office w.e.f. 4.3.1997 and on abolition of the said post with effect from 24.9.2002, the applicant was declared surplus. When the post of Varenikkal Branch Postmaster became vacant, the applicant made a request to be accommodated there, reserving his right for appointment to a nearby post office as and when vacancy arises(A2). The applicant was appointed as Gramin Dak Sevak Branch Post Master, Varenikkal, Post Office which is 25 kms away from Pallippad, where he was working earlier. When the Post of GDS SPM, Mannarassala became vacant on 24.2.2003, the

applicant made a representation(A3) requesting that he may be considered for the said post for appointment by transfer. Without considering his claim, the 4th respondent issued a notification for recruitment to the post of GDSSPM, Mannarassala from open market which is reserved for Scheduled Tribe. The applicant made another representation on 27.3.2003 (A4) for considering his claim., which was not responded to. Aggrieved by the inaction, the applicant has filed O.A.279/2003 which was disposed of with a direction to consider and pass order on A-3 representation. Now by impugned order(A1) the applicant was informed that since the 3rd respondent found that there is no case for transfer, his claim was rejected. Aggrieved by the said rejection the applicant has filed this O.A.seeking the following main reliefs:

- i. Quash Annexure A-1
- ii. To call for the notification dated 31.3.2003 issued by the 4th respondent for appointment from open market to the post of GDSSPM, Mannarassala and records leading to the same and quash them.
- iii. To direct the respondents to consider the applicant for appointment by transfer to the post of GDSSPM, Mannarassala in preference to any candidate from open market.

2. The respondents have filed a reply statement contending that, treating the applicant as a retrenched GDSBPM, he was appointed to the post of GDSBPM, Varenical with effect from 25.9.2002, which was a newly created post on that day. While various other GDS posts were fallen vacant in 2002-2003 in Mavelikara Postal Division at Naduvattom, Pallipad, Puthiyacavu and Karipuzha, for which the applicant did not make any representation for transfer. The post of GDS SPM, Mannarassala became vacant on 22.2.2003 due to promotion of the incumbent. As there is no ST person in GDS SPM category, it was decided to fill that post by selection from ST candidates. ST reservation in respect of Gramin Dak Sevak Officials in Mavelikara Division is only 0.61% against the required 1%. If the applicant wants to get a posting nearer to his residence, he could have applied for any of the vacant posts mentioned in para 3 of the reply statement. It is further submitted that, in O.A.1157/99 filed by one Shri Venugopalan Pillai, the Tribunal held that, once a process of selection for filling up a GDS post by recruitment was started, request from a GDS for transfer to that post

should not be considered.

3. The applicant filed a rejoinder reiterating the contentions raised in the O.A. and further submitting that the principle adopted in the reply statement on the strength of O.A.1157/99 is unsustainable as there is obvious and factual differences between the two cases. It is also submitted that there is no mandate in any rule or instruction that the applicant must have applied for the other posts which arose near to his residence and there is no roster operating on the cadre of GDS for the purpose of reservation of SC & ST. Even if the applicant is appointed by transfer, the post becoming vacant by his transfer can be reserved for such category of employees.

4. The respondents have filed a counsel statement on 9.2.2005 wherein it is stated that one of the GDS Mail Deliverers was provisionally permitted to work as GDS SPM subject to the outcome of the Original Application. The GDS Mail Carrier is now working as GDS Mail Deliverer/Mail Carrier and the arrangements are going on satisfactorily from 10.8.2004 onwards and there is no need for Direct Recruitment to the post of GDS SPM Mannarassala. The O.A. being devoid of any merit is liable to be dismissed.

5. Mr. M.R.Hariraj, learned counsel appeared for the applicant and Shri TPM Ibrahim Khan, SCGSC appeared for the respondents.

6. Learned counsel for the parties have taken us to various pleadings, evidence and material placed on record. Learned counsel for applicant argued that there is no rule or instruction enabling reservation of GDS Posts. When an ED post becomes vacant and another agent of the same recruitment unit is willing to work against the post, the right of the agent to be considered for appointment by transfer to the said post crystallizes. It cannot be effected by a subsequent administrative action of reserving/notifying the vacancy. The position of the applicant is even better than that of an aspirant for simple request transfer, because he was in fact sent away from Pallippad to a far off place due to

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administrative exigencies. It is a clear case of hardship and hence, there is no meaning in saying that there is no case for transfer.

7. Learned counsel for the respondents on the other hand persuasively argued that it is the prerogative of the respondents to reserve a post for SC/ST community and when there was a shortfall from the required percentage to be engaged under SC/ST cadre, it was decided to fill that post by selection from ST candidate. It is also stated in the reply statement that the post which was holding by the applicant as GDSM/EDM, Pallippad was subsequently abolished with effect from 25.9.2002. The applicant did not apply to any of the vacant posts available in Mavelikara Postal Division as mentioned in para 3 of the reply statement. For all these reasons the O.A. deserves to be rejected.

8. We have heard the arguments advanced by the learned counsel for the parties.

9. It is the well settled position that as per DG Posts letter No.43-27/85-Pen.dated 12.10.1988, if an employee is found being surplus hand redeployed, he has a right to be considered for transfer to a post nearer to his original place. Even otherwise, as per the same instruction as interpreted by this Hon'ble Tribunal in O.A.45/1998 declaring that such employees are eligible to claim transfer even without going into the question of public interest. This decision was later upheld by the Hon'ble High Court of Kerala. Therefore, the legal position as of now is that the applicant is entitled for transfer. Now, the question is, whether the applicant is entitled to further transfer since he has already been accommodated as GDSBPM at Varenickal Post Office on abolition of EDM post at Pallippad Sub Post Office, where he was working and declared surplus. According to the respondents, as per the representation submitted by Annexure A-2 he was posted in a far of place nearer to his residence and now he has sought a transfer to Mannarassala where the post was vacant. The contention of the respondents is that the post of Mannarassala is reserved for ST candidate and therefore, the applicant could not be accommodated.

9. When the matter came up for hearing on 4.11.2005, learned counsel for the



respondents submitted that he has filed a statement contending that one of the GDSMDs, was provisionally permitted to work as GDSPM, keeping in mind the interim orders of the Hon'ble Tribunal dated 2.5.2003, subject to the outcome of this O.A.. He has already been promoted as Postman and therefore, that contention will not stand. This Court has directed the respondents to get instructions as to the factual position and how they will manage the post and whether they are engaging outsiders.

10. In response to the above query, today, the learned counsel for the respondents has produced a letter dated 9.11.2005 issued by the Superintendent, Department of Posts, Mavelikara Division stating that the post is now fallen vacant. The said letter is quoted below:

**DEPARTMENT OF POSTS, INDIA
Office of the Superintendent of Post Offices
Mavelikara Division, Mavelikara-690101**

To

The Postmaster General,
Central Region,
Kochi-18.

No.B/OA/372/2003

dated at Mavelikara the 9.11.2005

Sub: O.A.No.372/03

Ref: RO No.CC-2-29/03 dtd 7.11.05

The post of GDSSPM, Mannarasala has again become vacant with effect from 18.8.2005 consequent on the promotion of the provisionally appointed GDSSPM to the cadre of Postman, in the exam held on 22.5.2005/10.7.2005. From 18.8.2005 onwards stop gap arrangement is continuing. No surplus GDS was available, when the post became vacant i.e. on 18.8.2005. Now that orders have been received from the Directorate that GDS Messenger post is not required for delivery of telegrams and that no GDDSO/BO should have a strength of more than 3 GDS, surplus GDS were identified; one each at Haripad MDG, Thamallackal GDDSO and Eruva GDSSO. One of such GDS, namely Sri S.Sreejith GDSMD of Eruva and who has to be retrenched on implementation of the Directorate orders is proposed to be accommodated as GDSSPM, Mannarasala, subject to the outcome of the O.A.No.372/03 and keeping in mind the interim orders of the Hon'ble Tribunal in the said O.A. dated 2nd May 2003. The measure is proposed to be given effect from 10.11.2005.

Sd/-

R.RAVINDRAN PILLAI
Superintendent



10. From the above instructions that has received from the respondents, it is obvious that the incumbent holding the post at Mannarasala was promoted to the post of Postman on the basis of the examination held on 22.5.2005/10.7.2005 and from 18.8.2005 onwards a stop gap arrangement is continuing. The Department has proposed to engage one GDS namely, Sri.S.Sreejith GDSMD, who was also a retrenched employee, for the post at Mannarasala subject to the outcome of this O.A. It is also not clear from the said instructions as to whether Sri Sreejith belongs to SC/ST or not? However, the fact remains that these posts are not specifically earmarked for ST candidate and consecutively ST candidates are not available. We are of the view that even otherwise if it is being considered other than a ST reservation point, this can be adjusted from ensuing vacancy for the ST reservation. Respondents are aware that the applicant has filed an O.A. praying for consideration of his transfer to the post at Mannarasala and on the other hand, one Shri S.Sreejith is proposed to be engaged as a stop-gap arrangement for the said post. In our view, this is not correct. .

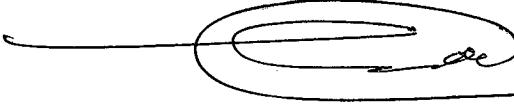
11. In the circumstances mentioned above, we are of the view that the applicant should get preference over any other candidates to the post in question at Mannarasala.

12. In the conspectus of facts and circumstances, we direct the 4th respondent to consider and pass appropriate orders granting the benefit to the applicant within a time frame of three weeks from the date of receipt of a copy of this order.

13. O.A. is allowed . In the circumstances, no order as to costs.

Dated the 30th November, 2005.


N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER
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K.V. SACHIDANANDAN
JUDICIAL MEMBER