

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.39/2003

Friday, this the 1st day of August, 2003.

CORAM;

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR K.V.SCAHIDANANDAN, JUDICIAL MEMBER

Deepa.M,
Gramin Dak Sevak Mail Deliverer,
Vannathichira B.O.
Kavilampara via
Vadakara. - Applicant

By Advocate Mr OV Radhakrishnan

Vs

1. Superintendent of Post Offices,
Vadakara Division,
Vadakara-673 101.
2. Director General of Posts,
Dak Bhavan, Sansad Marg,
New Delhi-110 001.
3. Chief Postmaster General,
Kerala Circle,
Thiruvananthapuram.
4. Union of India represented by
its Secretary,
Ministry of Communications,
New Delhi.
5. Assistant Director General(GDS),
Dak Bhavan, Sansad Marg,
New Delhi. - Respondents

By Advocate Mr M.R.Suresh, ACGSC

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicant, a Gramin Dak Sevak Mail Deliverer(GDSMD for short), Vannathichira, Vadakara Division since 9.3.2002 applied for the post of Gramin Dak Sevak Branch Post

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Master(GDS BPM for short), Kallanode falling under the same Division in response to A-2 notice dated 29.11.2002. He has filed this O.A. challenging A-3 notification dated 23.12.2002 issued by the 1st respondent and A-6 letter dated 26.12.2002 of the 5th respondent addressed to the Chief PMG, Bihar Circle in so far as those adversely affect her interest and are not in conformity with the instructions issued by the authorities superior to the respective respondents. The applicant seeks the following main reliefs:

- i) To call for the records leading to A-3 dated 23.12.2002 and to set aside the same to the extent it imposes the condition that GD Sevaks appointed after the coming into force of the Gramin Dak Sevak (Conduct and Employment) Rules, 2001 are not eligible for transfer and also to set aside A-6 letter dated 26.12.2002 of the additional 5th respondent;
- ii) To declare that the applicant is eligible and entitled to seek for transfer and appointment to another post of Gramin Dak Sevak notwithstanding the fact that she came to be appointed as Gramin Dak Sevak after the issuance of the Gramin Dak Sevaks (Conduct and Employment) Rules, 2001 regardless of the condition incorporated in A-3 and A-5;
- iii) To declare that the competent authority to consider the request for transfer and appointment of GDS BPM/SPM is the head of the Division if the transfer is sought within the division; and

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iv) To issue appropriate direction or order directing the 1st respondent to consider the candidature of the applicant for transfer and appointment to the post of GDS BPM, Kallanode on merits without regard to the condition of eligibility incorporated in A-3 that the GD Sevaks who came to be appointed after the coming into force of the new Rules, 2001 are not eligible for transfer and to call the applicant for interview and selection to the post of GDS BPM, Kallanode and to transfer and appoint the applicant to the post of GDS BPM, Kallanode in accordance with the law declared in A-9 order of the Tribunal and the decision reported in 2000(3) KLT 541.

2. Shri M.R.Suresh, learned ACGSC filed a counsel statement stating:

"2. At the outset itself, it is most humbly and respectfully submitted that the 1st respondent of the O.A. has issued Annexure A2 notification based on Annexure A5 orders of the 3rd respondent. Subsequently Assistant Director General(GOS) Department of Post as the superior and competent authority issued orders vide their letter No.17-103/2002-GDS dated 26.12.2002 clarified how the case of transfer of GDS be regularised. As such, in view of the above said order Annexure A3 and A5 had lost its significance and relevance, and, now it become inoperative. Moreover, as per the Chief PMG, Trivandrum letter No.57/120/1/RIOS/VII dated 24.1.2003 Annexure A3 and Annexure A5 stands withdrawn (i.e. letter dated 9.10.2002 of the 3rd respondent).

3. Hence at present the 3rd respondent is the competent authority to consider transfer case of GDS. Hence, if the applicant submit a fresh application to the 3rd respondent, the 3rd respondent will consider such application on its own merits based on the instructions and rulings prevailing on the subject."

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3. We have heard Shri O.V.Radhakrishnan, learned counsel for the applicant and Shri M.R.Suresh, learned ACGSC for respondents who have agreed that the O.A. can be disposed of on the pleadings on record. According to Shri O.V.Radhakrishnan, in view of the 1st respondent's letter dated 12.9.88(A-7) and the further clarification dated 28.8.96(A-7[a]) considered in detail in this Tribunal's order in O.A.No.45/98 dated 25.2.99 which was upheld by the Hon'ble High Court in the decision in Sub Divisional Inspector of Posts, Vs CAT [2000(37) KLT, 541], the impugned A-6 clarificatory letter dated 26.12.2002 cannot operate against the applicant's right to be considered for appointment by transfer. The rule does not say that GDSSs are not entitled to transfer. It only says that they are not liable to be transferred, the learned counsel for the applicant would maintain. The applicant being a GDSMD in Vannathichira is seeking transfer within the same recruiting unit and hence is eligible to be considered for the same, it is urged.

4. Shri M.R.Suresh, learned ACGSC has reiterated the submissions made in the counsel statement dated 27.2.2003 and has pleaded that the applicant's case could be considered on merit in the light of the rules and instructions prevailing on the subject.

5. On a consideration of the relevant facts brought on record and having regard to the arguments of the learned counsel for the parties, we find that the applicant's case for appointment by transfer to the post of GDSBPM, Kallanode

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falling within the same recruiting unit deserves to be considered. In our opinion, the applicant's right cannot be denied by placing an interpretation of the rules which has no factual and legal basis. The E.D.Aagents' terms of employment and conduct were earlier governed by P&T ED Agents(Condu& Service) Rules, 1964. These rules were amended/revised and a new set of rules applicable to 8 categories of GDS was issued as Gramin Dak Sevaks(Conduct and Employment) Rules, 2001. In the circular letter No.22-1/2000-ED&TRG dated 24.4.2001, the amendments made in the then existing rules of 1964 are explained. In paragraph 4(iv), it is stated that the word 'employee' in the existing rules has been substituted with the words 'Gramin Dak Sevak'. Paragraph 4(v) requires to be quoted in full as it deals with the terms and conditions of the existing employees redesignated as GDS:

"(v) Notes below Rule 3 of the revised rules set out the distinct features of the Gramin Dak System Making it quite clear that the Gramin Dak Sevaks are a class apart and, notwithstanding the changes in their nomenclatures, the same shall not in any manner, alter the existing terms and conditions of employment of now designated Gramin Dak Sevaks in terms of non-statutory P&T ED Agents (C&S) Rules, 1964, now called 'Gramin Dak Sevaks (Conduct & Employment) Rules, 2001'."

It is thus clear that the change of nomenclature from EDA to GDS would not alter the content and character of the already existing terms and conditions of employment of the redesignated GDS. It cannot be denied that as per instructions and orders issued under the earlier rules an EDA was eligible to be appointed by transfer to another vacant ED post subject to the fulfilment of the required conditions. There is no provision in the new rules taking away this right.

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In a large number of orders, this Tribunal has upheld the right of the ED employees for consideration for appointment by transfer in the light of the DG, Posts letter dated 12.9.88(A-7) read with the subsequent clarificatory letter dated 28.8.96(A-7[a]) - vide orders in O.A.No.45/98 dated 25.2.99 for instance. It is to be mentioned that that order has been upheld by the Hon'ble High Court of Kerala reported in 2000(3) KLT, 541. This legal position has not been changed with the introduction of the 2001 rules. Note I occurring below Rule 3 of the GDS(Conduct and Employment) Rules, 2001 makes it clear that EDAs working under the Posts and Telegraphs Extra Departmental Agents(Conduct and Service) Rules, 1964 on regular basis on the date of commencement of the 2001 rules shall be deemed to have been appointed to and hold the post of GDS in accordance with the provisions of the new rules. Thus, EDAs like the applicant who were continuing as on the date of introduction of the new rules have been redesignated as GDS and their service conditions as mentioned already would remain unaltered.

6. Now the question of liability and eligibility of EDA(GDS) to transfer requires to be examined: Note II clause(iv) below Rule 3 of the 2001 Rules states: "Sevak shall not have any transfer liability." The above clause does not mean that the Sevaks have no right to seek appointment by transfer as provided under the existing instructions. While transfer liability is expressly prohibited as a necessary incident of service, as per the GDS Rules, transfer involved in appointment by transfer of a GDS from one post to another

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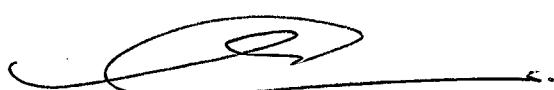
is not prohibited. In fact, it is a right subject to fulfilment of the conditions prescribed in the instructions contained in by the D.G. as per A-7 and as clarified in A-7(a). That being the position, we hold that the applicant is eligible to be considered for appointment by transfer to the post of GDSBPM, Kallanode falling within the same Division. While holding that the conditions stipulated in the GDS(Conduct and Employment) Rules, 2001 to the effect that GDS shall not have any transfer liability does not mean that the GDS cannot exercise their right to be considered for appointment by transfer in accordance with the extant instructions and orders, the impugned A-3 notification in so far as it states that GDS who are appointed on or after the issue of the new GDS (Conduct and Employment) Rules, 2001 are not eligible for transfer is unsustainable and hence deserves to be struck down. We hold that the expressions 'not liable' and 'not eligible' connote two different meanings. The expression 'not liable' protects the interest of the employee while the expression 'not eligible' means the employee cannot ask for a transfer. Since the rule only says there is no transfer liability, there is no justification for interpreting it as meaning there is no transfer eligibility. The impugned A-6 is a letter written by the additional 5th respondent to the Chief PMG, Bihar Circle. The observation in the said letter to the effect that there is no provision in the rules for the transfer of GDS and they are selected and engaged for specific part time jobs at specific places and are expected to have alternative employment/source of income at the same place does not, in our opinion, call for any interference. We do not know under what circumstance such a communication was

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sent. In so far as there is no order taking away the right of the GDS employees to seek appointment to another vacant post, there is no scope for interference. In our opinion, for the purpose of this O.A. our above findings would suffice.

7. In view of the above, we direct the respondents to consider the applicant's candidature for transfer and appointment to the post of GDSBPM, Kallanode, subject to her fulfilling the other criteria in accordance with the extant rules and instructions, particularly A-7 and A-7(a). The respondents are further directed to issue appropriate orders if they find the applicant to be otherwise eligible by granting her appointment as GDSBPM, Kollanode. The above exercise shall be completed within a period of three months from the date of receipt of copy of this order. The O.A. is allowed to the extent indicated above. There is no order as to costs.

Dated, 1st August, 2003.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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