



Friday, this the 23rd day of December, 2005

CORAM

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

OA 413/2005

A Sathyan S/o Ayyappan Achari
residing at Charuvila Puthenveedu
Elicodu PO, Punalur,
Kollam District.
(GDSMD-ED Postman, Rosemala PO
Kalthuruthy Kollam District.)

Applicant

By Advocate Mr. K P Satheesan

Vs.

1 Union of India represented by
its Secretary, Department of Communications
New Delhi.

2 Superintendent of Post Offices
Pathanamthitta Division
Pathanamthitta.

Respondents

By Advocate Mr. Varghese P. Thomas, ACGSC

✓ OA NO. 493/2005

Anoop V. S/o B. Unni Pillai
Padinjattinkara,
Anchal PO.

Applicant

By Advocate Mr. G. Sasidharan Chempazhantiyil

Vs.

1 Assistant Superintendent of Post Offices
Pathanamthitta Sub Division
Pathanamthitta.

2 Superintendent of Post Offices
Pathanamthitta Division
Pathanamthitta.

3 Chief Postmaster General
Kerala Circle,
Thiruvananthapuram.

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

5 Mili Krishnan
Elanthavikla Veedu
Kottathala PO
Kottarakkara.

Respondents

By Advocate Mr. TPM Ibrahim Khan, SGGSC for R 1-4

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

Since the reliefs sought for in both the OAs are inter-linked, they were heard together and are disposed of by this common order.

OA No. 413/2005

2 The applicant in this O.A is aggrieved by the rejection of his request for a transfer from Rosemala Post Office to Elampal Post Office in an existing vacancy. It is submitted that he is presently working at Rosemala Post Office which is at a distance of more than 55 Kms from his residence. He has to travel by bus to 50 Kms and thereafter walk a distance of more than 5 Kms to reach the Post Office. The post of ED Postman at Elampal Post Office fell vacant on the retirement of the incumbent on 22.1.2005. The applicant submitted a representation before the second respondent that he be given a transfer to the said vacancy at Elampal Post Office. Since the second respondent did not take any action he approached this Tribunal by filing O.A. 185/2005. The Tribunal directed the second respondent to consider his representation within a period of three months. After considering the representation the second respondent has now issued the impugned order Annexure A-3 rejecting his request on the ground that as per the Department of Post GDS (Conduct and Employment) Amendment Rules 2004, a Sevak shall not be eligible for transfer in any case from one post/unit to another post/unit; except in public interest. It is the contention of the applicant that his request for transfer is in public interest as his residence is near to the Post Office and all the inhabitants there are known to him.

3 The respondents have filed a reply statement. They have denied the averments of the applicant that he is residing at a place 55 kms away from the post office in which he is presently working and thus has to travel by bus for 50 Kms and thereafter to walk 5

kms to reach the office. They submitted that one of the essential conditions before the appointment of GDS is that they should take up residence in the nearby locality of the Post Office in which they are employed and as such the applicant has to reside within the locality of Rosemala Post Office where he is employed. The respondents after taking in to account the revised rules have issued another order in accordance with the direction of this Tribunal which is enclosed as Annexure R-1 stating that GDS are not eligible for transfer from one post to another except in public interest and the applicant is seeking the transfer in his own personal interest and for his personal convenience. It is also stated that the post of GDS at Rosemala and Elampal are not identical in that the post at Rosemala carries the TRCA of 1740-30-2640 while the post at Elampal carries the TRCA of 1375-25-2125

4 We have heard the learned counsel on both sides. On the applicant's side the judgment of the Hon'ble High Court in the Senior Superintendent of Post Offices Vs. Raji Mol (2004(1)KLT 183) was relied upon. In this judgment, this Tribunal found that the provision in the circular of the Department that a Sevak shall not have any transfer liability cannot mean that he cannot exercise his right for seeking an appointment by transfer subject to fulfillment of other conditions. The Hon'ble High Court has confirmed the view taken by the Tribunal that the provision does not bar an employee to seek a transfer.

5 The respondents on the other hand contended that the GDSs in the Department are a separate class governed by different set of rules and have a social acceptability in the area where they are working and the idea of transferring a GDS will be contrary to the basic features of GDS employment scheme. Therefore to bring the rule position in tune with the need of the system, the rules were amended as per Annexure R-2 order dated 1.9.2004 which now specifically lays down that the GDS shall not be eligible for transfer except in public interest.

6 We have heard the learned counsel for both sides and considered the arguments. We take note of the fact that the transfer provision in the Rules has been amended by the Department and that the rule provision has undergone a change after the consideration of

the issue by us in the earlier OAs and the confirmation of the same by the Hon'ble High Court in the judgment referred to above. Therefore, the prayer of the applicant has to be decided with regard to the new amended rules which according to them is valid from the date of circular i.e. 1.9.2004. The vacancy in this case had also arisen after the amended rules came into force. It is evident from the wording of the amended rules that the transfer can be considered only in "public interest" only which is to be determined by the respondents in the context of administrative exigencies like posts being rendered surplus, combination of duties, etc. The request of the applicant that he belongs to the place, cannot be construed as public interest. Therefore in the context of the amended rules the applicant's prayer has no merit. The action of the respondents was in accordance with the provision of the amended rules. The OA is therefore dismissed. The interim order dated 8.6.2005 not to fill up the vacancy is vacated.

OA No. 493/2005

7 The prayer in this OA relates to filling up of the post of GDS MD.Elampel which is the subject matter of O.A. 413/05. The applicant seeks the following reliefs:-

- (i) Call for the records leading to the issue of Anneure A-4 and letter No. GD/8 dated 126.6.05 of Superintendent of Post Offices, Pathanamthitta Division and set aside the same.
- (2) Declare that giving repeated opportunity to the 5th respondent to qualify in the cycling test is illegal and arbitrary.
- (3) Direct the 1st and 2nd respondent to finalise the selection to the post of GDSMD, Elampel on the basis of the selection proceedings held on 26.5.05
- (4) Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
- (5) Award the cost of these proceedings.

8 Two posts of GDS MD at Elampel Sub Post Office fell vacant w.e.f. 24.10.04 and 23.1.05. A notification was published on 2.3.05 for selection to the two posts. Twenty candidates were sponsored by the Employment Exchange and 19 applications were received through open notification. Out of this, all candidates sponsored by the Employment Exchange and top six meritorious candidates from open notification were called for verification of documents and cycling test on 26.5.05. 15 candidates sponsored by the Employment Exchange and 5 from open notification attended verification of documents on 26.5.05. None of the candidates sponsored by the Employment Exchange

qualified the cycling test. The details of 5 candidates who attended the verification of documents are given below:

	<u>Name</u>	<u>Marks in SSLC</u>
1	L.Liji	516/600
2	Mili Krishnan	432/600
3	Adarsh VR	411/600
4	Anoop U	407/600
5	Ajith kumar PV	335/600

The candidates mentioned at Sl. No. 3, 4 & 5 participated in the cycling test and qualified. Candidates at sl. No. 1 & 2 did not participate in the cycling test on the ground that ladies cycle was not made available. The applicant who is at Sl. No. 4 came out successful in the cycling test. However, a fresh opportunity was given to the first and second candidates for a fresh cycling test to be held on 1.6.05. The first ranked person did not attend and the No.2 failed to qualify the cycling test. Then Smt. Mili Krishnan (Sl. No. 2) preferred a complaint against the mode of conducting the cycling test that the test was conducted on the terrace of a building so she could not perform well. When a third opportunity was sought to be given to the above two candidates the applicant has approached this Tribunal claiming the above reliefs.

9 The respondents have filed a reply statement confirming the above facts as stated by the applicant. However, they stated that a direction to conduct a cycle test afresh was given on the basis of a complaint preferred by Smt. Mili Krishnan at Sl. No. 2 that the that there was no ladies' cycle and the test was conducted on the terrace of a building therefore she could not perform well. As there was no ladies' cycle available in the day of the test it was decided to call again on the condition that lady cycle will be brought by them. The selection is finally based on merit and the marks obtained in the SSLC examination. The fifth respondent (Sl.No.2) has got 432 marks out of 600 whereas the applicant has got only 407 marks.

10 The applicant has filed a rejoinder stating that the action on the part of the Department amounts to hostile discrimination and the objections raised by Sl.Nos 1 & 2

regarding non-availability of Ladies' cycle and the venue of the cycle test are after thoughts and neither had any grievance nor they protested at the time of the test. The terrace where the cycling test was held is a fairly big one and the selection process have been held at this venue even prior to and even after the selection process to the post GDSMD Elampel was conducted. A candidate who did not participate in the test held on 1.6.05 is now being given another opportunity but the candidates at Sl.Nos 2, 3 and 4 who qualified in the first test are being once again directed to participate in the test for no fault of theirs. Therefore Annexure A4 notice is illegal and arbitrary.

11 - When the matter came up for hearing the respondents have produced the copy of the order dated 30.11.2005 from the office of the Superintendent of Post Offices, Pathanamthitta Division stating that the Chief Post Master General had reviewed the case and ordered to finalise the selection to the post of GDSMD Elampel on the basis of the cycle test held on 1.6.05 and hence the notice issued in Annexure A-4 orders is to be treated as cancelled. The applicant's side also concurred with the position. In these circumstances, as the prayer of the applicant has already been met, the OA has become infructuous. Hence it is dismissed as infructuous.

Dated 23rd December, 2005.

GEORGE PARACKEN
JUDICIAL MEMBER

SATHI NAIR
VICE CHAIRMAN

kmn

CERTIFIED TRUE COPY

Date

Deputy Registrar