

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

MA No. 60/373/2018, 60/696/2018, 60/927/2018 & 60/1118/2018

ORIGINAL APPLICATION NO.060/00481/2015

**Pronounced on :14.09.2018
Reserved on :04.09.2018**

**CORAM:HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

Mam Chand son of Sh. Atma Ram, aged 51 years, working as Gramin Dak Sewak Mail Career/Mail Deliverer, in the office of Buria SO, Yamunanagar.

....Applicant

VERSUS

1. Union of India through Secretary to Government of India, Ministry of Communication & IT, Department of Posts, Dak Bhawan, New Delhi.
2. Senior Superintendent, Post Office, Ambala Division, Ambala – 133 001
3. Assistant Superintendent, Post Office, Yamunanagar Sub Division, Yamunanagar – 135 001.

....Respondents

Present: Mr. Rohit Seth for the applicant
Mr. Ram Lal Gupta for the respondents

ORDER

HON'BLE Ms.P.GOPINATH, ADMINISTRATIVE MEMBER

60/373/2018

Heard.

2. This MA has been filed for seeking execution of order dated 19.11.2016 passed in OA No. 060/00481/2015. The operative portion of the order reads as follows:-

“3. Sh. Ram Lal Gupta submitted that this order does not talk of consideration given by respondents to the order of Ernakulam Bench in V. Mohan s case; therefore, he submitted that a fresh order will be passed after taking the aforesaid judgment in view.

4. Considering above, order dated 25.03.2015 is set aside and matter is remitted back to the respondents to reconsider claim of the of the applicant by taking into account what we have observed in preceding paras by passing a reasoned and speaking order in accordance with law and rules. Order so passed be duly communicated to the applicant.”

3. Applicant filed CP seeking implementation of the above order passed by the Tribunal. The respondents filed compliance report, rejecting the case of the applicant vide letter dated 04.10.2017. The Tribunal closed the CP vide order dated 20.12.2017.

4. The applicant in this execution application submits that the order of the Tribunal has not been implemented in letter and spirit. The respondents were directed to re-consider the case of the applicant in the light of the judgement dated 20.11.2011 passed by the Ernakulam Bench in OA No. 574/2011 titled **V. Mohanan Vs. UOI & Ors.** which reads as follows:-

“5. Arguments were heard and documents perused. **The Full Bench of this Tribunal in OA 270 of 2006** considered the extent of TRCA admissible under various transfer contingencies and ultimately held as under:-

49. Now, the entire situation would be summarised and references duly answered as under:

(a) As per the rules themselves, in so far as transfer within recruitment unit and in the same post with

identical TRCA, there shall be no depletion in the quantum of TRCA drawn by the transferred individual.

(b) In so far as transfer from one post to the same Post with Diff. TRCA and within the Same Recruitment Unit, administrative instructions provide for protection of the same vide order dated 11th October, 2004, subject only to the maximum of the TRCA in the transferred unit (i.e. maximum in the lower TRCA).

(c) In so far as transfer from one post to a Different Post but with same TRCA and within the same Recruitment Unit, as in the case of (a) above, protection of TRCA is admissible.

(d) In respect of transfer from one post to another within the same recruitment unit but with different TRCA (i.e. from higher to lower), pay protection on the same lines as in respect of (b) above would be available.

(e) In so far as transfer from a post carrying lower TRCA to the same category or another category, but carrying higher TRCA, the very transfer itself is not permissible as held by the High Court in the case of Senior Superintendent of Post Offices vs. Raji Mol, 2004 (1) KLT 183. Such induction should be as a fresh recruitment. For, in so far as appointment to the post of GDS is concerned, the practice is that it is a sort of local recruitment with certain conditions of being in a position to arrange for some accommodation to run the office and with certain income from other sources and if an individual from one recruitment unit to another is shifted his move would result in a vacancy in his parent Recruitment Unit and the beneficiary of that vacancy would be only a local person of that area and not anyone who is in the other recruitment unit. Thus, when one individual seeks transfer from one post to another (in the same category or other category) from one Recruitment Unit to another, he has to compete with others who apply for the same and in case of selection, he shall have to be treated as a fresh hand and the price he pays for the same would be to lose protection of his TRCA."

6. The case of the applicant falls under (b) above. It is made clear that there is no distinction between transfer on request or otherwise as all such transfers are considered as transfer in public interest vide order dated 11.10.2004."

5. The OA was, therefore, disposed of with a direction that the TRCA which the applicant was drawing at the earlier post office, will be the same as he will draw in the new post office where he stands transferred.

6. In pursuance of the order of this Tribunal in this OA, the respondents have passed order dated 04.10.2017 produced as Annexure MA R-1. The main contention taken by the respondents in MA R-1 is that the applicant had applied for transfer from Karera Kurd PO to Buria Post Office on his own volition. Here, it would be necessary to mention that the GDS, once appointed to a post are generally never transferred. Besides in terms of amendment to Rule 3 of GDS (Conduct and Employment) Rules, 2001, “a GDS is not eligible for transfer in any case from one post/unit to another post/unit except in public interest”. What constitute a “Public Interest” has been interpreted differently by different Circles. In order to have a uniform criteria, it has been decided to allow limited transfer facility to GDS from a post/unit to another under the existing provision of amended Rules 3 of GDS (Conduct and Employment) Rules, 2001 on the following grounds:-

- I. A GDS who is posted at a distant place on redeployment in the event of abolition of the post.
- II. GDS appointed on compassionate grounds and posted at different place.
- III. Woman GDS on her marriage/remarriage
- IV. Where the GDS himself/herself suffers from extreme hardship due to a disease and for medical attention/treatment, such transfer may be allowed on production of a valid medical certificate from the medical officer of a Government hospital.
- V. Where the GDS is looking after the welfare of a physically handicapped/mentally handicapped person/dependant and he/she requires to move a different places to give support to such physically/mentally challenged person/dependant.

The limited transfer facility to GDS from post/unit to another will be subject to fulfillment of the following conditions. The conditions mentioned below are only illustrative:-

- (i) A GDS will normally be eligible for only one transfer during the entire career.
- (ii) Request for such transfer will be considered against the future vacancies of GDS and that too after examining the possibility of recombination of duties of GDS.
- (iii) TRCA of the new post shall be fixed after assessment of the actual workload of the post measured with respect to the cycle beat in respect of GDS MD/MC/Packer/Mail Messenger in terms of Directorate Letter No. 14-11/97-PAP dated 1.10.1987.
- (iv) Past Service of the GDS will be counted for assessing the eligibility for appearing in departmental examination. GDS will not have any claim to go back to the previous recruitment unit/division. When a GDS is transferred at his own request and the transfer is approved by the competent authority irrespective of the length of service, he/she will rank junior in the seniority list of the new unit to all the GDS of that unit who exist in the seniority list on the date on which the transfer is ordered. A declaration to the effect that he/she accepts the seniority on transfer in accordance with this should be obtained before a GDS is transferred.
- (v) Transfer will be at the cost and expenditure of GDS. No expenditure whatsoever on this account will be borne by the Department under any circumstances.
- (vi) Request for transfer of the GDS will be confined to transfer within the same Circle.
- (vii) No transfer request will be entertained within three years of initial recruitment.

Clause (iii) above has been set aside vide order in para 49(b) in V.

Mohnan's matter.

One man Committee with Shri R.. Nataraja Murti as Chairman, for examining Gramin Dak Sevaks system, studied the above issue and made recommendations in Para 16.12.1 of the report. The recommendations of the Committee were examined by the Department and after a period of consideration, the Competent Authority has ordered the following:-

- (i) All the five grounds stipulated for allowing the Transfer of Gramin Dak Sevak in Para 2 of Letter No. 19-10/2004-GDS dated 17.7.2006 will be retained. The transfer facility can be availed by Gramin Dak Sevaks only once in whole career. However, an exception has been made for women Gramin Dak Sevaks, who availed the transfer facility on the ground of extreme hardship due to a disease and for medical attention/treatment before their marriage, can avail the facility for a second time in the event of their marriage/remarriage.
- (ii) Past service of Gramin Dak Sevaks will be counted for the eligibility for appearing in the Departmental Examinations and for ex gratia gratuity and will rank junior in the seniority list of new unit.

This is the first transfer requested by applicant and hence is covered by above condition of one transfer in whole career.

7. On the application for transfer made by the applicant from Karera Kurd to Buria Sub Post Office, the applicant was informed that on transfer to a new post, TRCA would not be protected as per instructions issued by DG Post letter No. 19-10/2004-GDS (Part) dated 22.07.2010. The applicant vide letter dated 17.08.2011, submitted that he was ready to accept TRCA of GDS MC Buria's sub post office. Based on the above acceptance, he was transferred to Buria sub post office on his own request without protecting TRCA.

8. The Tribunal in OA No. 1584/HR/13, issued directions to the respondents to re-examine the claim of the applicant for enhanced TRCA in view of number of number of sub post offices under Buria SO, the distance to be traversed by the applicant for covering the sub post offices and the protection of the TRCA in case of transfer of GDS from one location to another.

9. The order of the respondents dated 04.10.2017, in compliance of the Tribunal's directions, does not cover the aove issues raised by the Tribunal for consideration. The OA V. Mohanan (supra) cited by the applicant is similar in so far as he was transferred from one GDS post office to another on his own request.

10. Further, the Full Bench of the Tribunal in OA No. 270/2006 has addressed the issue of TRCA under various transfer contingencies and passed the order that has already been reproduced in para 4 above of this order. The applicant's case comes under para 49(a) and 49(b) of the said para and the respondents should have similarly protected the TRCA as the

transfer was within the same recruiting unit and from an identical post i.e. GDS MC to another identical GDS MC post.

11. It is our observation that the respondents despite being given specific instructions for considering the case of the applicant with reference to orders passed by the Ernakulam Bench of the Tribunal in Mohanan (supra), did not pass an order in the light of the said judgement. Hence, this Bench is forced to record what should have constituted as the order of the respondent as per law laid down by the Tribunal in the case of Mohanan (supra) and by application of para 49(a) and 49 (b) laid down thereon.

12. In view of the above, this Execution Application succeeds. The respondents will protect TRCA of the applicant drawn in Karera Kurd Post Office in the light of judgement of Ernakulam Bench in V. Mohanan (supra) in respect of the applicant now working in Buria Post office.

13. With the disposal of Execution Application No. 60/373/18, MAs No. 60/696/2018, 60/927/2018 & 60/1118/2018 are also disposed of accordingly.

**(P. GOPINATH)
MEMBER (A)**

**(SANJEEV KAUSHIK)
MEMBER (J)**

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