

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00909/2018

Wednesday, the 13th day of February, 2019

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

Jayachandran Nair.K.R.,
S/o.N.Ramachandran Nair, aged 45 years,
Postal Assistant, Puthuppally Post Office,
Kottayam Division-686 011.
Residing at Kanjirathumootil,
Collectorate P.O., KottayamApplicant

(By Advocate : Dr.V.N.Sankarjee)

v e r s u s

1. The Post Master General,
Southern Region, Kerala Circle,
Thiruvananthapuram - 695 033.
2. Senior Superintendent of Post Offices,
Kottayam Division, Kottayam,
Kerala – 686 001. ...Respondents

(By Advocate: Mr.Sinu.G.Nath, ACGSC)

This application having been taken up on 5th February, 2019, this Tribunal delivered the following order on 13.02.2019

O R D E R

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

The applicant Shri.Jayachandran Nair K.R, Postal Assistant, Puthuppally M.D.G in Kottayam District since May 2017 is aggrieved by the impugned orders at Annexure A-2 dated 29.6.2018, Annexure A-4 dated 9.8.2018 and Annexure A-9 dated 2.11.2018 issued by Senior Superintendent of Post Offices, Kottayam Division who is Respondent No.2. The reliefs sought in the Original Application are as follows :

“ a) Call for the records leading to the issue of Annexure A2, A4 and A9 and quash the same as much as it relates to the applicant;

b) To direct the 2nd respondent to retain the applicant in the Puthuppally MDG as Postal Assistant;

c) To direct the 2nd respondent either to retain him in the same office or to post him at an alternate place at Meenadom, Kottayam as PA.

d) Pass such other orders as are deemed fit and proper in the facts and circumstances of the case.”

2. The facts of the case are as below :

Applicant had been appointed as Postal Assistant at his present station only in May 2017 and has been working therein since. By Annexure A-2 order he was transferred to Nattakom as Sub Post Master. He submits that the said transfer which has been done in the middle of the academic year caused great inconvenience to his family and himself. His wife is working under the same respondents and has been transferred to Chinghavanam, making the care of his school going son difficult. Now his son is studying in +2 and there is no direct bus route from Paruthumpara to Puthuppally and vice-versa. Hence applicant's presence is necessary at Puthuppally for his son's journey to and from the school. The impugned transfer as per Annexue A-2 has been made in the middle of the academic year and hence is causing much hardships and inconvenience to the applicant and his family members. If the applicant is transferred to Nattakom, his son has to travel through Kottayam daily 32 kms to and fro.

3. More importantly, it is submitted that he has completed only seven years of service as Postal Assistant and is not qualifying for MACP 1 to post as S.P.M. As these are necessary pre-requisites for being posted as SPM, the

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impugned order is illegal. The applicant had filed Annexure A-3 representation before the 2nd respondent, but the same was rejected. Applicant approached this Tribunal by filing O.A.No.672 of 2018 against the transfer. The said O.A was disposed of by this Tribunal directing 2nd respondent to consider his representation within 10 days. But the representation was again rejected vide Annexure A-4.

4. Applicant has filed another O.A.No.708/2018 and the same was also disposed of by this Tribunal by a common judgment directing the 2nd respondent to consider applicants' representation after giving a personal hearing to the petitioners individually. A copy of the said order of this Tribunal is at Annexure A-6. Accordingly, the applicant was called for personal hearing and had appeared before the 2nd respondent on 17.10.2018. He submitted all the facts mentioned in the O.A before Respondent No.2 and he also made a further representation on the same lines, copy of which is available at Annexure A-7. He draws our attention to Annexure A8 and Annexure A8(a) orders which are issued in compliance with this Tribunal's order cancelling/amending the transfer orders of other incumbents. However, he finds that despite all facts being brought before Respondent No.2, his case was rejected by Annexure A-9 order. Hence, this Original Application. In the gradation list of PAs of Kottayam Division, the applicant is at Serial No.142.

5. There are 56 persons senior to the applicant who are retained as PAs, out of whom, 28 persons have obtained MACP-I and earning the corresponding gradation allowance and are still retained as PAs, while the

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applicant alone has been posted as SPM out of turn. He has challenged Annexure A-9 also on the ground that he has not completed his normal tenure of 3 years at the present station. Thus he was not liable to be included in the Compulsory Thrown Out Transfer List.

6. Respondents have filed a reply statement stating that the rotational transfer order of Kottayam Division for the year 2018 was issued on 29.6.2018 after it had been duly approved by the Placement Committee. The transfers had been ordered after examining different factors and in the interest of service it was found necessary to transfer the applicant as SPM Nattakom SO as the existing incumbent at Nattakom had completed his tenure. It is submitted that “almost” all the junior MACP I/MACP II officials are posted as SPMs in class B/Class C offices. Kottayam Division is facing acute staff shortage and no other suitable official is available to be posted as SPM Nattakom at present and no choice station requests were received for 15 posts for which the incumbents in charge of the offices had to be compulsorily transferred on completing their tenure. It is often necessary to post officials having less than 10 years to C class offices for the reasons of administrative expediency and public interest.

7. As ordered by this Tribunal in O.A 708/18, Respondent No.2 had given a detailed personal hearing to the applicant and Annexure A-9 speaking order has been issued after considering all aspects. It is submitted that as the rotational transfer 2018-19 was kept in abeyance due to the process of cadre restructuring, the transfer order was issued after the

commencement of the academic year. Respondents produced Annexure R-2(b) Directorate letter to state that Central Government employees are liable to be transferred and moved before completion of their tenure on administrative exigencies and such transfers are not in violation of the rules and regulations. Respondents relied upon the Hon'ble Supreme Court's judgment in **Union of India v. S.L.Abbas** to show that the question as to who should be transferred where, is a matter for the authority to decide and the Court cannot interfere with it unless the order is vitiated by *malafides* or is made in violation of any statutory provisions. Respondents pray for dismissal of the O.A as devoid of any merit.

8. Applicant has filed rejoinder to the reply statement wherein it is clear from Annexure R2(c) that, by overlooking 21 persons in the transfer list, the applicant has been posted as SPM.

9. Heard Mrs.Suseela representing Dr.V.N.Sankarjee, learned counsel for the applicant and Mrs.Thanuja representing Mr.Sinu G Nath,ACGSC, learned counsel for the respondents. Perused the records.

10. This is the third round of litigation entered into by the applicant on the issue of his transfer. The main grievance of the applicant centers around the fact that he was transferred out of his present station and duties before completion of his term. It is admitted that the applicant has not obtained MACP I nor has he completed full tenure at his present station. The respondent department itself has issued certain guidelines on posting of official incharge of single handed and B Class offices quoted as

Annexure R-4 in O.A.No.180/601/2018 which is one of the O.A dealt through common order dated 4th October, 2018. The relevant part of it is reproduced :

“4. While following the above instructions, the hierarchy to be followed is to post willing MACP-3 officials, followed by MACP-2 and MACP-1 officials. However, it may be ensured that MACP-3 and MACP-2 officials are not posted against single-handed, B-Class and also at A-Class and LSG Offices, keeping the HSG-I and HSG-II posts vacant or manned by MACP-2 and MACP-1 officials in respectively. There is no dearth for MACP-3, MACP-2 and MACP-1 officials in any postal division. Hence there is no justification in posting newly recruited officials as SPMs in single-handed and B-Class offices. It is reiterated that, time scale P.As should not be posted as SPMs of any post offices under any circumstances.”

11. Learned counsel for the applicant also drew our attention to Annexure R-2(c) where it could be seen that some MACP I, MACP II and MACP III officials are still continuing as Postal Assistants and not given charge of Post Offices.

12. Thus the applicant does not qualify due to his non MACP status and also on account of non-completion of his tenure, to be moved out of his present post. On the other hand, information at Annexure R-2(c) indicates that 21 persons in the transfer list at Annexure A-2 have been overlooked while appointing the applicant who has only 7 years experience as Postal Assistant as SPM. It also seems to go against the prohibition in the quoted guidelines relating to non-MACP grantees.

13. In the common order, this Tribunal had given an opportunity to the Respondent No.2 to re-consider the case in line with the guidelines as well as individual circumstances mentioned by each applicant including the applicant in this case. However, Annexure A-9 order, purportedly issued in

compliance with our direction, is inadequate in many respects. While admitting that no employee can have a vested right to continue in a particular station as declared in a catena of judicial orders, Respondent No.2 has discounted the transfer policy to the extent of saying that MACP are mere financial upgradations and has no relevance to one's eligibility for transfer. This is entirely contradictory to the guidelines issued by the department itself. We also find there is no justification in cherry picking the applicant alone, who is not eligible for transfer whereas several others continue at their stations despite being eligible.

14. For these reasons we see that the O.A has merit. Accordingly, the O.A is allowed. The prayer is granted and the orders referred to are set aside *qua* the applicant. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/909/2018

Annexure A1 - True copy of the Senior Superintendent of Post Offices Circular No.B1/RT/2018 dated 25.6.2018

Annexure A2 - True copy of the Senior Superintendent of Post Offices Circular No.B1/3/RT/2018 dated 29.6.2018

Annexure A3 - True copy of the representation by the applicant to Senior Superintendent of Post Offices dated 5.7.2018

Annexure A3(a) - True copy of the order in O.ANo.672 of 2018 of this Tribunal dated 31.7.2018

Annexure A4 - True copy of the order No.B/CAT/14/2018 dated 9.8.2018 of the 2nd respondent

Annexure A5 - The gradation list of Pas as on 1.7.2017 of Kottayam Division

Annexure A6 - True copy of the order dated 4.10.2018 in O.A 708/2018 and connected cases passed by this Tribunal

Annexure A7 - True copy of the letter of 2nd respondent dated 10.10.2018 and applicant's representation dated 17.10.2018

Annexure A8 - True copy of the order No.ST/42-43/2014 dated 10.10.2018

Annexure A8(a) - True copy of the order No.B/8-5/2018 dated 23.10.2018 Supt of Post Offices Changanassery

Annexure A9 - True copy of the Memo No.B/CAT/14/2018 dated 2.11.2018 issued by the 2nd respondent

Annexure R2(a) - True copy of Choice Station request dated 20.2.2017 submitted by the applicant

Annexure R2(b) - True copy of the Postal Directorate letter No.4-7/2009-Vig dated 8.3.2018

Annexure R2(c) - True copy of the Transfer & Placement Committee minutes dated 29.6.2018

Annexure R2(d) - True copy of order dated 2.2.2017 in O.A No.624/2016

Annexure R2(e) - True copy of judgment dated 15.3.2017 in OP(CAT) No.48/2017

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Annexure A-10 - True copy of the judgment dated 6.12.2018 in O.A 901 of 2018

Annexure A-11 - True copy of the judgment dated 6.12.2018 in O.A 912 of 2018

Annexure A12 - True copy of the order bearing No.B1/GL/1 dated 30.11.2018

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