

Central Administrative Tribunal
Ernakulam Bench

OA No.180/00767/2016

Tuesday..... this the *18th* day of June, 2019

CORAM

Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Judicial Member

Rema Paul
Accountant-II
Thiruvananthapuram General Post Office
Thiruvananthapuram-695 001.
Residing at T.C. 7/1129-2, Vattiyoorkavu P.O.,
Thiruvananthapuram-695 013.

Applicant

(Advocate: Mr. Vishnu S.Chempazhanthiyil)

versus

1. Union of India rep by the
Secretary, Department of Posts
Dak Bhavan, New Delhi-110 001.
2. The Chief Postmaster General, Kerala Circle
Thiruvananthapuram-695 033.
3. APMG (Vigilance) & APMG (Staff)
Office of the Chief Postmaster General, Kerala Circle
Thiruvanahtapuram-695 033
4. The Senior Superintendent of Post Offices
Thiruvananthapuram North Postal Division
Thiruvananthapuram-695 001.
5. Sri M.Mohandas
Senior Superintednet of Post Offices
Thiruvananthapuram North Postal Division
Thiruvananthapuram-695 001.
6. The Superintendent of Post Offices
Thiruvananthapuram South Postal Division
Thiruvananthapuram-695 036.
7. P.Suseelan APMG (Vigilance) & APMG (Staff)
Office of the Chief Postmaster General,

Kerala Circle,
Thiruvananthapuram-695 033.

Respondents

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

The OA having been heard on 10th June, 2019, this Tribunal delivered the following order on 18/06/2019:

ORDER

By Ashish Kalia, Judicial Member

The grievance of the applicant is against the proposal of the respondents to transfer her from Thiruvananthapuram North Postal Division to Thiruvananthapuram South Postal Division.

2. The applicant is presently working as Accountant II in Thiruvananthapuram GPO under Senior Superintendent of Post Offices, Thiruvananthapuram North Postal Division. She entered service on 2.4.1990 and was posted as Accountant on 22.4.2003. It is stated that there is no adverse remark in her entire service record. The normal tenure for the post of Accountant is 4 years. The applicant who joined as Accountant-III in January 2012 completed the 4 years in 2016. When a vacancy of Accountant arose in Divisional Office consequent on transfer of one Harikumar, the applicant being the only person whose tenure was complete as an Accountant, put forth her claim, specifically requesting for posting at Postal Stores Depot. Having knowledge about vacancy in view of transfer of Mr.Harikumar, the applicant personally met SSPO (Senior Superintendent of Post Offices), Thiruvananthapuram North Postal Division to request for transfer to Divisional Office. It is further stated that the 5th respondent made a totally unjustified demand as a precondition for granting transfer to the applicant.

The applicant was also informed that if the said vacancy in the 5 day week Divisional Office is filled up, the next vacancy would arise in Attingal only, that too, next year. It is further contended that she was the only eligible person for transfer to the arising vacancy. On 28.1.2016, the 5th respondent passed an order giving additional charge to one Sri Viswanathan Nair, as a tentative posting. Later, this additional charge was given permanence as per order dated 8.2.2016. Sri Viswanathan Nair was not eligible for such a posting. According to the applicant, the 5th respondent submitted motivated reports to the Chief PMG on 12.2.2016, which is marked herein as Annexure A3, wherein it was indicated that an inspection report of 2010 had contained certain adverse remarks against the applicant during her tenure in the Divisional Office in 2010 and therefore, the applicant is not fit to be posted in Divisional Office. Hence permission was sought to extend the applicant's tenure for one more year.

3. Thereafter, permission to retain the applicant at Thiruvananthapuram GPO by shifting her from the post of Accountant-III to the post of Accountant-II. As per Annexure A6 order, the applicant was retained as Accountant-II was granted. One Sri Saji Sam George, Accountant-II, Thiruvananthapuram GPO was transferred to the Divisional Office. Aggrieved by the aforesaid action of the respondents, the applicant made a complaint to the CPMG on 14.4.2016 alleging conspiracy and ulterior motive behind the move.

4. Subsequently, the 5th respondent deputed one of his junior officers to take a statement from the applicant to proceed further pursuance to her

complaint against SSPO. In the statement, the applicant pointed out that the SSPO had demanded a bribe of Rs.10,000/- and she sought an inquiry by the CVO of the Department or the Central Vigilance Commission. While so, the applicant was issued with a notice dated 87.2016 by the CPMG proposing to transfer the applicant under Rule 37 of P&T Manual Vol.VI for having made wild and defamatory allegations against the Divisional Head. It is stated that the proposal to transfer the applicant is nothing but victimization of a complainant, which is totally unjust, illegal and arbitrary. The applicant has prayed for the following reliefs:

- (i) Set aside Annexure A1 & A1(a)*
- (ii) Declare that the applicant is entitled to continue as an Accountant in Trivandrum North Postal Division.*
- (iii) Set aside Annexure A18 Inquiry Report, Annexure A22 and Annexure A23.*

5. Sri Sinu G.Nath, ACGSC appeared on behalf of the respondents and filed a reply statement. It is submitted that on 18.1.2016, the respondent department issued orders posting Smt.Rema Paul in Thiruvananthapuram GPO as Accountant II, Sri Viswanathan nair as Accountant I in Thiruvananthapuram GPO and Sri Saji Sam George as Accountant in Divisional Office. The applicant preferred two complaints dated 14.4.2016 and 6.5.2016 before the CPMG, Kerala Circle against the 4th respondent alleging that bribe was demanded during January 2016 for a transfer to Trivandrum North Divisional Office as Accountant. On the basis of the complaint, an inquiry was conducted by the Assistant Postmaster General (Vigilance) who submitted his inquiry report dated 13.6.2016 finding that the

allegations put forth by the applicant against the 4th respondent are malicious and vexatious.

6. As the continuance of the applicant Trivandrum North Division under the same officer against whom she had raised defamatory allegations was not good either in her interest or in the interest of the administration, the applicant was informed of the proposal to transfer her from Trivandrum North Division to another division in the Southern Region in public interest, without prejudice to any disciplinary action that might also be taken by the concerned disciplinary authority. Against the said proposal, the applicant had approached this Tribunal with OA No.653/16. On the direction of the Tribunal, a copy of the inquiry report was supplied to the applicant on 12.8.2016 and the applicant had submitted a representation dated 19.8.2016. A personal hearing with the Chief PMG had also been afforded to her.

7. After considering the representation submitted by the applicant as also the hearing note dated 31.8.2016, the competent authority had ordered the transfer of the applicant to Trivandrum South Division against the existing vacant place in public interest in exercise of the administrative power contained in Rule 37 of Posts and Telegraph Manual IV. The transfer to TVM South Division cannot be seen as a punishment transfer as Poojappura HO is only 4 kms from her present office and much nearer to her home than Thiruvananthapuram GPO/Divisional Office.

8. It is further submitted by the respondents that the applicant was denied transfer to her desired choice station on the ground that there existed adverse remarks in the IR of Divisional Office 2010 by the Chief PMG against the

applicant. Even though the applicant was not posted in Divisional Office, she was not transferred to any other office. She was only given an extension in Thiruvananthapuram GPO. The Accounts Branch of Thiruvananthapuram GPO and the Divisional Office are in the same building and on the same floor. Since 3.8.1999 when the applicant became an Accountant, she had worked in the same building while all other Accountants had been transferred to other offices.

9. After going through the entire gamut of the facts on record, it seems that the applicant, though has made an allegation of bribery against the top officials under whom she was posted, did not divulge the names of those officials. It seems that she has not informed this incident to anyone and she even doesn't know the date when this incident of asking for bribe took place. However, respondents informed that a proper inquiry by the Head of the Vigilance Department was conducted into the alleged incident in which the allegation was found to be untrue and not tenable, by submitting a detailed report and the applicant had not filed any objection to it.

10. The entire episode had arisen from the fact when applicant had visited the SSPO office without taking prior appointment on the pretext of giving a statement connected with his income tax deduction. On the same day, she had also requested to the respondent No.4 that she is eligible for transfer to the post of Accountant at Divisional Office.

11. The fact remains that if respondent No.4 had demanded bribe from her, she should have intimated the incident to the CPMG or to the Vigilance Department. But she did not take any action till her transfer order was issued

by the respondents. The applicant had not shared the said conversation between her and the SSPO to anybody in the office either on the same day or subsequently till May 6, 2016 when her transfer order came.

12. The Apex Court has ruled in several cases that the Tribunal or High Courts has very limited role in the inquiry conducted by Inquiry Officer unless the inquiry is perverse or the punishment shocks the conscience of the Tribunal/Court or rule of natural justice has not been followed, which is not the case here. The Tribunal cannot take the role of inquiry officer or appellate authority. The applicant should not have approached the SSPO for seeking favour by way of transfer if she was so sure about the most eligible candidate for transfer in the department.

13. The conduct of the applicant in approaching the SSPO for grant of particular favour cannot be appreciated by this Tribunal. It is also not understood why she waited for almost 5 months to report the matter to competent authority or to anyone and this incident is not a small thing. This creates doubt in the mind of anyone.

14. Taking the entire gamut of the facts, we are of the view that the OA is devoid of merit and is liable to be dismissed. We do so. No order as to costs.

(Ashish Kalia)
Judicial Member

(E.K. Bharat Bhushan)
Administrative Member

Annexures filed by the applicant:

- Annexure A1: True copy of the order No.Vig/I-10/Misc/TV(N)/2015 (Pt) dated 8.7.2016 issued by the 2nd respondent.
- Annexure A1(a): True copy of the order No.Vig/I-10/Misc/TV(N)/2015 (Pt) dated 2.9.2016 issued by the 2nd respondent.
- Annexure A2: Copy of the certificate dated 31.12.2012 issued by the Senior Post Master GPO to the applicant.
- Annexure A3: Copy of the communication No.B/Rotational Transfer/2015 dated 12.2.2016 by the 4th respondent.
- Annexure A4: Copy of the communication No.ST/9-2/TV(N)/15(Pt) dated 8.3.2016 issued by the APMG (Staff).
- Annexure A5: Copy of the representation dated 8.4.2016 by the applicant to the 4th respondent.
- Annexure A6: Copy of the order No.B/Rotational Transfer/2016 dated 8.4.2016 issued by the 4th respondent.
- Annexure A7: Copy of the representation dated 14.4.2016 by the applicant to the 2nd respondent.
- Annexure A8: Copy of the representation dated 6.5.2016 by the applicant to the 2nd respondent.
- Annexure A9: Copy of the statement of the applicant dated 18.5.2016 before the ASP, Tvm(N) Sub Division.
- Annexure A10: Copy of the representation dated 23.5.2016 by the applicant to the 2nd respondent.
- Annexure A11: Copy of the notice No.VIG/I-10/Misc/TV(N)/2015 dated 27.5.2016 issued by the 3rd respondent.
- Annexure A12: Copy of RTI information vide communication No.CCC/TVN/RTI/R-66/16 dated 30.5.2016 by the 4th respondent.
- Annexure A13: Copy of representation dated 6.6.2016 by the applicant addressed to the 2nd respondent.
- Annexure A14: Copy of order No.B/Rotational Transfer/2015 dated 30.4.2015 issued by the 4th respondent.
- Annexure A15: Copy of representation dated 18.7.2016 addressed to the 2nd respondent.
- Annexure A16: Copy of submission dated 26.7.2016 before the 2nd respondent by the applicant.
- Annexure A17: Copy of the order dated 29.7.2016 in OA No.180/00653/2016 of this Tribunal.

Annexure A18: Copy of communication No. Vig/I-10/Misc/TV(N)/2015(Pt) dated 12.8.2016 issued by the 2nd respondent.

Annexure A19: Copy of the representation submitted by the applicant to the 2nd respondent.

Annexure A20: Copy of the hearing note submitted by the applicant to the 2nd respondent.

Annexure A21: Copy of communication No. BStaff TV/GPO dated 5.9.2016 issued by the 4th respondent.

Annexure A22: Copy of order No. B/Rotational Transfer/2016 dated 5.9.2016 issued by the 4th respondent.

Annexure A23: Copy of order no. B/Accountant/DLGS/2016 dated 5.9.2016 issued by the 6th respondent.

Annexure A24: Copy of ACRs of the applicant for the period 2009 to 2011.

Annexure A25: Copy of memo No. VIG/1-10/Misc/TV(N)/2015(Pt) dated 28.7.2016 issued by the 2nd respondent..

Annexure A26: Copy of show cause notice No. F1/Misc Part/CO-RP dated 13.10.2016 issued by the 6th respondent.

Annexure A27: Copy of relevant portion of the Vigilance Manual issued by the Central Vigilance Commission.

Annexure A28: Copy of relevant portion of the Handbook issued by the Department of Personnel & Training.

Annexure A29: Copy of the forwarding letter No. B/Staff/TVM GPO dated 23.5.2016 issued by the Senior Postmaster, GPO.

Annexure filed by the respondents:

Annexure R6(a): Copy of the IR of Chief PMG on DO in 2010.