

**Central Administrative Tribunal
Ernakulam Bench**

OA No.180/00327/2019

Tuesday, this the 19th day of November, 2019.

CORAM

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

Hon'ble Mr.Ashish Kalia, Judicial Member

Roy V.S., aged 55 years,
S/o Skaria V.S.,
Assistant Postmaster (Accounts),
Malappuram Head Post Office
(Manjeri Postal Division).
Residing at: Vettath House,
PHC Road, Pandikkad P.O.,
Malappuram District-676 521.

Applicant

(Advocate: Mr.T.C.Govindaswamy)

versus

1. Union of India, represented by
the Secretary to the Govt of India,
Ministry of Communications & Information Technology,
(Department of Posts), Dak Bhavan,
New Delhi-110 001.
2. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram-695 033.
3. The Postmaster General, Northern Region (Kerala),
Kozhikode-673 011.
4. The Superintendent of Post Offices,
Manjeri Division, Department of Posts,
Manjeri-676 121.
5. The Postmaster, Malappuram H.O.,
Malappuram District-676 505.

Respondents

(Advocate: Sri Thomas Mathew Nellimoottil, Sr.PCGC)

The OA having been heard on 14th November, 2019, this Tribunal delivered the following order on 19.11.2019:

ORDER

By Ashish Kalia, Judicial Member

Applicant is presently working as Assistant Postmaster (Accounts) at Malappuram H.O., of Manjeri Postal Division. He is aggrieved by an order transferring him to Calicut H.O., of Calicut Postal Division, allegedly in violation of the transfer policy. The applicant has assailed the transfer order on the ground that he has not completed his tenure of three years at Malappuram and if at all rotational transfer is warranted, he could still have been accommodated in the same division against the vacancy of HSG-II APM Accts at Manjeri and his wife is an employee of the GHSS nearby Manjeri. The representation submitted by the applicant, marked as Annexure A7 dated 22.2.2019, still remains unattended to. Feeling aggrieved, the applicant has approached this Tribunal for the following reliefs:

- (i) *Quash Annexure A1 to the extent it relates to the applicant.*
- (ii) *Direct the respondents to allow the applicant to continue in his present position at Malappuram H.O., as if Annexure A1 had not been issued at all or in the alternative,*
- (iii) *Direct the respondents to consider and post the applicant at Manjeri against the vacancy of HSG II in the Accounts Line, which post is now being held by an Accountant on officiating basis.*

2. Notices were issued and the respondents filed reply through Sri Thomas Mathew Nellimoottil, learned Sr.PCGC. It is submitted in the reply that Annexure R1 transfer guidelines of 2019 superseded the earlier transfer guidelines of 2018. The applicant had been informed of the transfer liability by the respondents vide letter dated 11.1.2019 and he was asked to submit three options as place of posting/station on completion of his tenure at Malappuram

Head Post Office. The applicant had submitted three options, i.e. (i) LSG APM Accts, Calicut Head Post Office (ii) LSG APM Accts, Calicut Civil Station Head Post Office and (iii) LSG APM A/cs, Olavakott Head Post Office. The applicant's request/choice of station had been accepted by the respondents and he was posted to the place of his first choice i.e., LSG APM A/cs, Calicut Head Post Office. Now the applicant has assailed his transfer to Calicut HPO by assailing the transfer policy. It is further stated that the applicant was transferred and posted as LSG APM (Accounts), Calicut Head Post office as per the transfer policy of the Department of Posts after completion of his tenure.

3. Learned counsel for the respondents has drawn our attention to Clause 5 Sub Clause (vi) of Annexure R1 wherein it is stated thus:

“(vi) On completion of post tenure of three years, all officials will be posted in same station to the extent possible. Where it is not possible to do so without shifting some of them outside their present stations, they may be posted outside their present stations to the extent administratively feasible.”

Lastly, it is submitted that the transfer is made as per the exigency of service within the rules. There is only one post on which applicant was working. Thus he has to be transferred to other place on completion of his tenure. The officiation on the higher post is not possible.

4. Heard Sri T.C.Govindaswamy, learned counsel for the applicant and Sri Thomas Mathew Nellimoottil, Sr.PCGC on behalf of the respondents, parties at length.

5. The short question raised by the applicant in the present OA is whether he can be transferred on completion of 3 year tenure posting or 6th year in the

same station. It is admitted fact that the applicant has completed the 3 year tenure period at the present place of posting at Malappuram though he has been temporarily given charge at Manjeri Postal Division on officiating basis. As per the revised transfer guidelines, officials can be posted to the extent possible after completion of 3 years. Where the applicant was lastly posted, there was only one post of APM LSG Accounts. Thus he could not be considered continuation in the same station though in the representation the applicant has cited that he can be accommodated by giving officiating charge of HSG-II at Manjeri HO. Learned counsel for the respondents submitted that HSG Grade-II is a higher post and the applicant cannot be considered for tenure posting.

6. Learned counsel for the applicant has submitted that the applicant, though was working as APM Accounts (LSG) at Malappuram HO with effect from 28.1.2016, after joining the post, he was officiating in the post of APM (Accounts) (HSG-II), Manjeri HO, for the period 2016 to 2018 and temporarily till January 2019. Literally, the applicant has not worked at Malappuram HO on tenure post. So he should have been given one more tenure at Malappuram to complete his 3 year term. The fact remains that the respondents had asked the applicant to submit, on completion of his tenure, his choice of posting. The applicant had chosen LSG A/cs Calicut HO.

7. Now he cannot be allowed to wriggle out from his preference for posting. We are in agreement with the the stand of the respondents that the applicant cannot be allowed to assail the transfer after his choice of posting, which was duly accepted by the respondents. On the other hand, there are two more reasons for not considering the request of the applicant. Firstly, there is only

one post available and as per the transfer guidelines, an official can be accommodated to the extent possible. Secondly, the applicant, in fact, was accommodated by the department by giving him his first choice of posting. As per the legal position, the Apex Court decision in the matter of *Rajinder Singh vs. State of U.P.* 2010 SLJ (1) 366, “a Government servant has no vested right to remain posted at place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to another. The transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary.” the only exception being that if the transfer is vitiated by violation of some statutory provision or suffers from malafides, then only it can be interfered with by the Courts.

8. In view of the facts and circumstances of the case and the legal position discussed herein above, we find that there is no merit in the present OA and the same is liable to be dismissed. Accordingly the OA is dismissed with no order as to costs.

(Ashish Kalia)
Judicial Member

(E.K.Bharat Bhushan)
Administrative Member

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Annexures filed by the applicant:

- Annexure A1: Copy of memo bearing No.Staff/1-7/2015 dated 15.3.2019, issued from the office of the 3rd respondent.
- Annexure A2: Copy of the order bearing No.ST/5-2/Accts/2014 dated 28.12.2015 issued from the office of the 2nd respondent.
- Annexure A3: Copy of the communication bearing No.06-12/2010-SPB.II dated 7th March 2011 issued by the 1st respondent.
- Annexure A4: Copy of the representation dated 7.1.2019.
- Annexure A5: Copy of the representation dated 16.1.2019 addressed to the 3rd respondent.
- Annexure A6: Copy of the representation dated 12.2.2019 addressed ti the third respondent.
- Annexure A7: Copy of the representation dated 22.2.2019 addressed to the 2nd respondent.
- Annexure A8: Copy of the memo bearing No.B1/HSG dated 26.4.2019 issued by the 4th respondent.
- Annexure A9: Copy of the representation dated 30.4.2019 submitted by the applicant addressed to the 4th respondent.
- Annexure A10: Copy of the transfer guidelines downloaded from the website, bearing F.No.141-141/2013-SPB-II dated 31 July 2018.
- Annexure A11: Copy of the order posting one Smt. Sudhalakshmi on adhoc basis as HSG II bearing No.ST/42-2/2018 dated 8.4.2019 issued on behalf of the Postmaster General, Central Region.
- Annexure A12: Copy of the order bearing No.ST/42-2/2014 dated 6.12.2018 issued by the Postmaster General, Central Region.
- Annexure A13: Copy of the relevant pages of memo bearing No.EST/1-6/2017 dated 30.8.2019 issued by the second respondent.
- Annexure A14: Copy of order bearing No.ST/42-2/2018 dated 8.4.2019 issued by the Postmaster General, Central Region.

Annexures filed by the respondents:

- Annexure R1: Copy of communication letter No.141-141/2013-SPB-II dated 17.1.2019 issued by the Postal Directorate.
- Annexure R2: Copy of representation of the applicant dated 30.1.2019 choosing three choice of stations for rotational transfer, 2019.
- Annexure R3: Copy of Directorate letter No.9-3/94-SPB II dated 13.2.1995.
- Annexure R4: Copy of letter no.4-09/2011-SPG(Pt) dated 30.3.2015.