
(2021) 11 CAT CK 0015

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00039 Of 2021

Bindu. K.S

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 10-11-2021

Acts Referred:

Citation : (2021) 11 CAT CK 0015

Hon'ble Judges : P. Madhavan, Member J;K.V .Eapen, Member (A)

Bench : Division Bench

Advocate : Rekha Vasudevan, P.R. Sreejith

Final Decision : Disposed Of

Judgement

K V Eapen, Member A

1. This is the second round of litigation in this matter. The applicant is a Gramin Dak Sevak Branch Post Master (GDS BPM) at Pallarimangalam Branch Post Office under the Aluva Division. She has been trying to get a transfer as GDS BPM at Parakkadavu Post Office from 2016. She claims that the distance between Pallarimangalam and Poickattussery her native place is 60 kms and she has to arrange a rented house at a high rate for her stay at Pallarimangalam. She has been at Pallarimangalam from 2012. Her aged mother developed certain health issues which required frequent medical attention. Thus, when a vacancy arose in the post of GDS BPM, Parakkadavu, which is only 4 kms away from her permanent residence, she approached the 4th respondent, the Senior Superintendent of Post Offices, Aluva Division, Ernakulam, seeking transfer to the said Parakkadavu Post Office as GDS BPM in view of the health situation of her mother. However, her various representations and declarations having borne no fruit, she finally approached this Tribunal in O.A.No.655/2019. During the pendency of the O.A., a new set of guidelines for transfer were issued vide O.M.No.17-31/2016-GDS dated 22.01.2020, produced in this O.A at Annexure A-8. As per this guidelines transfer from ABPM/Dak Sevak Level-2 (postal) to

BPM Level-1 in the same TRCA slab was permissible on the condition that the GDS would provide for accommodation for managing the Branch Office. Subsequently, another clarification was also issued by the Assistant Postmaster General (Staff), clarifying that the process of fixation of TRCA to a lower level will be applicable only for initial engagement and not for transfer vide their Letter No.ST/120/GDS Tfr/2020 dated 09.06.2020, produced in this O.A at Annexure A-9. The applicant therefore made another representation vide Annexure A-10 seeking transfer to the vacant post of BPM, Parakkadavu Post Office in terms of these new (Annexure A-8 and Annexure A-9) guidelines/instructions. She also undertook to arrange accommodation for the Branch Office as mandated in the Annexure A-8 guidelines. This Tribunal then disposed of the O.A on 01.10.2020 directing the 4th respondent therein (who is the 3 rd respondent herein) to consider her Claim in the representation, in the light of the Annexure A-8 and Annexure A-9 guidelines, within a period of three months. However, it is submitted that the respondents (3 rd respondent, PMG Central Region (Kerala Circle), Cochin issued an order rejecting the claim for her transfer, produced at Annexure A-12, as the impugned order. It has been stated in the order as follows :

" In compliance to the order dated 01.10.2020 of the Hon'ble Tribunal, Annexure A-11 representation preferred by Smt.Bindu K.S., BOM Pallarimangalam BO was considered in the light of Annexure A-9 and Annexure A-10. In accordance with the Directorate OM No.17-31/2016-GDS dated 22.01.2020 (ie. Annexure A-9) transfer can be granted to her/his own request and own cost to a vacant post at his/her place of choice to her/her/spouse home village or home division or a place recommended for medical treatment. In her representation dated 25.07.2020 she requests for a transfer to the post of BPM, Parakkadavu BO citing that the TRCA slab of both the posts are identical and also mentions about her earlier representation dated 18.12.2017 in which she sought transfer on the ground of illness of her mother. The ground on which the transfer sought does not come under any of the eligibility criteria stipulated in O.M.No.17- 31/2016-GDS dated 22.01.2020 (Annexure A-9). Therefore her transfer request cannot be acceded to.

The order dated 01.10.2020 of the Hon'ble Tribunal in O.A.No.655/2019 is complied herewith."

2. The applicant has filed this O.A as the transfer to Parakkadavu B.O has been denied to her as per this order. She submits that similar requests have been acceded to by the 3rd respondent (vide order dated 16.10.2020 produced at Annexure A-13) wherein requests for transfer to spouse home village and home village have been sanctioned. It is submitted that she had sought for transfer to her own home village because her mother is old and sick and is unable to take care of herself. The request for transfer was solely on the ground of her mother's illness. This has been rejected by the 3 rd respondent on the ground that a mother's illness is not a ground for transfer stipulated in Annexure A-8 transfer

guidelines. However, she submits that this reasoning given in the Annexure A-12 order, is contrary to the guidelines set out in Annexure A-8, as no clause in Annexure A-8 stipulates the transfer to be based on certain reasons only. The Conditions of Transfer in the transfer guidelines at Annexure A-8 are only regarding the number of transfers permissible, minimum tenure prior to transfer, loss of seniority on transfer on request, mutual exchange transfer and the levels in which the transfer is permissible. Thus, it can be seen that the reason stated by the 3rd respondent to reject her claim is not supported by any clause in Annexure A-8 guidelines. The only clause guiding the transfer of GDS is Clause 1(ii) of the Conditions of Transfer which reads as follows :

1(ii). The transfer will be at his/her own request and own cost to a vacant post at his/her place of choice to her/her/spouse home village or home division or a place recommended for medical treatment.

3. It is therefore submitted that there is no reason which needs to be given for transfer to the vacant post at his/her place of choice. Though she had given the illness of her mother as the reason for her transfer request, it is not even required to be given as per the guidelines dated 22.01.2020 (Annexure A-8). The 3rd respondent has only stated that the reason stated by her is not there in the guidelines and that she is not eligible for the requested transfer. Thus, there is no proper application of mind by the 3rd respondent as the guidelines do not stipulate that there should be any reason or ground on which the transfer could be sought by the GDS. She submits that Annexure A-12 therefore fails and is liable to be set aside. There is a clear misinterpretation of the Clause 1(ii) of Annexure A-8 that such transfers can be sought only on medical grounds of the GDS concerned. The term in Clause 1(ii) "a place recommended for medical treatment" is construed that transfer to the home village is only for medical treatment. This interpretation is highly misplaced and by no stretch of imagination the correct one. What is meant by the Clause 1(ii) is that the GDS is eligible for transfer to his/her home village or division, to his/her spouse's home village or division and apart from the aforesaid two stations, the GDS could also seek transfer to any place recommended for medical treatment. Further, if any other interpretation is accorded, it would mean that the transfer to GDS is permissible only on medical grounds, which is not the intended purport of the Annexure A-8 transfer guidelines.

4. In response, the respondents have filed a reply statement in which they have mentioned that in compliance with the order of this Tribunal in O.A.No.180/655/2019 the transfer case of the applicant was considered. Orders were issued by the 3rd respondent rejecting the request of the applicant (vide Annexure A-12 Memo) stating that the ground on which the transfer was sought does not come under any of the eligibility criteria stipulated in Directorate O.M dated 22.01.2020 (Annexure A-8). It is also submitted by the respondents that the applicant belongs to Poickattussery which comes under Nedumbassery village whereas Parakkadavu, the place to which transfer sought comes under

Parakkadavu village. Hence she cannot be granted the transfer as the ground on which it was sought does not come under any of the eligible grounds mentioned in the Annexure A-8 guidelines dated 22.01.2020.

5. The applicant in her rejoinder to the above reply statement has reiterated that an incorrect interpretation to the clause in Annexure A-8 transfer guidelines has been given, as a proper reading of the transfer guidelines would show that the transfer to the vacant post at his/her place of choice can be granted without any reason, as is evident from the conditions stipulated in Clause 1(ii) of the guidelines. In fact no clause in the guidelines stipulates transfer to be on specific reasons only. With regard to the contention to the effect that transfer between two villages is not permissible under the transfer guidelines, it is submitted that the appointments of GDS are on Divisional basis and not on village basis. Therefore no such conditions in the guidelines. Further, it is submitted that no such rules were considered in the case of Smt.Honey Chandran (at Annexure A-13), who had been granted transfer ostensibly under the category of spouse home village. It is submitted that the actual spouse village of Smt.Honey Chandran is Palarimangalam, while the transfer given to her is to Kadavoor. This, the applicant submits, proves that the interpretation that Annexure A-8 transfer guidelines mandates transfer to the same village alone is incorrect and it actually allows flexibility to choose. However, the respondents have filed a response to this rejoinder reiterating their position that mother's illness cannot be considered as a ground and the choice of the applicant was neither to her own home village or spouse's home village.

6. An important development has also since been taken place in this regard while this O.A has been under consideration. The Department of Posts have since issued new guidelines regarding limited transfer facility for all categories of GDS vide their O.M.No.17-31/16-GDS dated 15.07.2021 produced by the applicant in her Rejoinder at Annexure A-16. As per these guidelines, the maximum number of chances to be provided for male GDS will be two and for female GDS will be three in their entire term of engagement. These guidelines at Annexure A-16 have been issued in supersession of all previous orders on the subject. Another important condition of transfer shown in these guidelines is that the GDS may apply for transfer to a maximum of ten GDS posts in order of preference, in one Division at a time. The transfer will be at the own cost of the GDS. At Paragraph 2 of these guidelines relating to "Competent Authority for Approval of Transfer" it is shown that if the transfer request was within the Division, the competent authority is Divisional Head. Similarly, if transfer request was outside Division but within the same Region, the competent authority is Regional Head (PMG); if transfer request was outside Division/Region but within the same Circle, the competent authority is Circle Head (CPMG) and if transfer request was outside Circle, the competent authority is Circle Head of both the Circles. It is submitted by the applicant therefore now that there is no bar for her transfer to be considered to the Parakkadavu Post Office under these new guidelines by ignoring the contention of the respondents that she belongs to Poickattussery

which comes under the Nedumbassery village. The Divisional Head can clearly consider her transfer as per these guidelines by Clause 3 (ii). This particular Clause states that necessary action on the applications received for transfer within division will have to be taken by the Head of the Division within 30 days of receipt of application. It is submitted by the applicant that Annexure A-16 thus fortifies the contention that transfer of GDS is on a Division basis and not on the basis of Village.

7. During the course of hearing, learned counsel for the applicant has submitted that she would be satisfied in case the respondents would consider the case of the applicant in the light of the above latest guidelines. The learned counsel for the respondents did not have strong objections in this regard. We note that these new guidelines also apparently allow the consideration of the representation of the applicant for transfer within the Division.

8. Accordingly, we direct the applicant to submit a fresh representation to the Division Head (4th respondent, Senior Superintendent of Post Offices, Aluva Division, Ernakulam) within a period of 15 days from the date of receipt of a copy of this order. As per the new guidelines it is for the Division Head to consider the same and pass orders on the transfer within a period of 30 days after receipt of the application as per Clause 3 (ii) of the Annexure A-16 guidelines. The Division Head should accordingly do so within this prescribed period by way of a clear speaking order or by way of issue of a transfer order, after the representation is received.

9. The O.A is accordingly disposed of with the above directions with liberty granted to the applicant to approach this Tribunal again if so necessary. No orders as to costs.