
(2003) 10 KL CK 0033

In the High Court Of Kerala

Case No : Writ Petition (C) No's. 32571, 32757 etc. of 2003

Senior Superintendent of Post Offices

APPELLANT

Vs

Raji Mol

RESPONDENT

Date of Decision : 21-10-2003

Acts Referred:

Department of Posts Gramin Dak Sevaks (Conduct and Employment) Rules, 2001 — Rule 3

Citation : (2004) 1 ILR (Ker) 255 : (2004) 1 KLT 183

Hon'ble Judges : Jawahar Lal Gupta, C.J.; R. Basant, J

Bench : Division Bench

Advocate : S. Krishnamoorthy, I. Sheela Devi, A.C.G.S.C. and P.S. Sreedharan Pillai, S.C.G.S.C, for the Appellant; O.V. Radhakrishnan, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, C.J.—The respondents in these four cases approached the Central Administrative Tribunal with the prayer that the Department be directed to consider their claims for appointment by transfer to the available posts. The Tribunal having accepted their claims, the Department has filed these four Writ Petitions.

2. The two issues that arise for consideration are:

(1) Does a Rule, which says that "Sevak shall not have any transfer liability", debar the employee from claiming appointment by transfer?

(2) Does an employee have a right to claim appointment by transfer to a post in a higher scale of pay than the one in which he is working?

3. Learned counsel for the parties have referred to the facts as mentioned in W.P. (C) No. 32814 of 2003. These may be briefly noticed.

4. In April 2001 the respondent was appointed as a Gramin Dak Sevak Mail Carrier. The post was in the scale of Rs. 1220-20-1600. On December 4, 2002

the Department invited applications for the post of Gramin Dak Sevak Branch Postmaster. This post was admittedly in a higher scale of pay. In the case of persons with workload of three hours, the scale is Rs. 1280-35-1980. If the workload is of more than three hours, the scale of pay is admittedly Rs. 1600-40-2400.

5. The claim of the eligible persons was considered. Inter-se merit was determined on the basis of the marks secured by the candidates in the S.S.L.C. examination. The respondent was provisionally selected. Despite selection, the order of appointment was not issued. On the contrary, a notice dated May 8, 2003 was issued for making a fresh selection. Aggrieved by the action, he approached the Central Administrative Tribunal through a petition u/s 19 of the Administrative Tribunals Act, 1985. He prayed that the notice dated May 8, 2003 be quashed and that the respondents be directed to consider his claim for appointment.

6. The Department contested his claims. It was pleaded that there were complaints that the candidate, viz., the present respondent did not have "independent property and income". Still further, it was also pleaded that the Gramin Dak Sevaks have no transfer liability. Thus the post could not be filled up by transfer of an employee from one place to another. On these premises it was claimed that the petition be dismissed.

7. The Tribunal considered the matter and found that the provision in the Circular that an employee is not liable to be transferred cannot mean that he cannot exercise his right "for seeking appointment by transfer subject to fulfillment of other conditions as per the instructions contained in the Director's letter.....". Thus the petition was allowed. It was held that the applicant was entitled to be considered for appointment by transfer "on the basis of the selection already done by the respondents". Aggrieved by the order the department has filed the present petition.

8. The factual position in the connected cases is broadly similar. However, the primary distinction lies in the fact that the respondents therein, viz., the applicants before the Tribunal, had not competed for selection with the other eligible candidates, but had claimed appointment by transfer, as a matter of right. It is in the background of his position that the counsel for the petitioners have contended that since the employees have no liability to be transferred, they have no right to claim appointment by transfer. Secondly, it has also been contended that no employee can claim, as a matter of right, that he should be appointed by transfer to a post higher than the one in which he is already working.

9. The claim as made on behalf of the petitioners has been controverted by the counsel for the respondents. Mr. Radhakrishnan has contended that the employees have not only a right to be considered for appointment by transfer, but such transfer should also include an appointment to a higher post.

10. It is in view of the above contentions that the two questions as noticed at the outset have to be examined.

Regarding (1):- Does the provision, which lays down that "Sevaks shall not have any transfer liability", precludes the employees from applying for appointment by transfer?

11. Admittedly there are no statutory rules governing the appointment etc. of the Sevaks in the Department of Posts. However, instructions have been periodically issued. Initially the Department had issued instructions by which "Posts and Telegraph Extra Departmental Agents (Conduct and Service) Rules, 1964, were circulated. These so-called Rules were superseded by the "Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules, 2001". Rule 3 Note II(iv) provides that "Sevak shall not have any transfer liability". The clear intention of the authority appears to be that since the Sevaks are low paid employees and do not hold whole time jobs, they would be entitled to continue to work at the place of their posting. They will not have to face periodic transfers from one place to another, which may dislocate their family life. Normally, transfer is an incidence of service. However, in case of persons working on the posts of Sevaks the competent authority has decided to make an exception.

12. On behalf of the petitioners it has been contended that the provision carries with it a corresponding bar on the employees to seek transfer. We are unable to accept this contention. The plain language of the provision militates against the submission. The provision embodies the protection to the employee. It does not place a restriction on his right to claim transfer to another post. If the authority had wanted to place such a restriction it should have specifically provided that the employee in a particular circle or place shall not be entitled to claim appointment by transfer to another post in any equivalent scale or a higher post. Then it would have been possible for the Department to contend that the employee cannot claim appointment by transfer. However, in the absence of such a provision, the contention as raised now cannot be accepted. Thus, we find that the view taken by the Tribunal that the provision does not place a bar on the employee to seek transfer does not suffer from any infirmity. It was a possible view. It is reasonable. It is not shown to be contrary to any express provision of any law. Thus it calls for no interference. Accordingly, the first question is answered against the petitioners.

Regarding (2) :- Can an employee claim a right to be appointed by transfer to a higher post to the exclusion of other eligible candidates?

13. On behalf of the petitioners, it is contended that Gramin Dak Sevak Mail Carrier, Packer or Messenger working in the pay scale of Rs. 1220-20-1600 cannot claim appointment by transfer to the post of Branch Postmaster or any other post in a higher scale of pay. On the other hand, Mr. Radhakrishnan, learned counsel for the respondents, has contended that appointment by transfer

is permissible. This can even embody an element of promotion.

14. Admittedly, the Constitution guarantees equality of opportunity to eligible persons in the matter of appointment to civil posts. Thus, whenever a post becomes available, every eligible person has a right to compete. The competent authority has to fill up the post in accordance with the prescribed criteria. The normal method followed by the authorities in different departments is direct recruitment, promotion or by transfer. Whatever be the method, the persons who are eligible for the post are entitled to equality of opportunity in accordance with the prescribed criteria.

15. In the case of direct recruitment the posts have to be advertised. All eligible persons have a right to compete. Similarly, in case of promotion, the claim of all the eligible persons have to be considered on the basis of the provision in the Rules. Normally a senior person is considered before any one junior to him can be promoted.

16. So far as the appointment by transfer is concerned, the normal rule is that a person working on one post can be transferred to another, provided, the post is in a same rank and scale of pay. In certain services even appointment by transfer to a higher post is permissible. This depends upon the provision in the rules. However, in a case where a person working on a lower post is appointed by transfer to a higher post, every eligible person has a right to be considered.

17. In the present context, it may be mentioned that if the post of a Branch Postmaster in the scale of Rs. 1280-35-1980 or Rs. 1600-40-2400 has to be filled up by transfer, every eligible person who may be in the feeder category shall have a right to be considered. But in the event of there being no provision for transfer, the appointing authority is entitled to fill up the post by inviting applications from one market and considering the applications of all eligible persons. Subject to a specific provision to the contrary, every eligible person working in the department shall be eligible to apply and compete.

18. Mr. Radhakrishnan contends that the respondents have a right to be considered for appointment by transfer to the exclusion of all other persons.

19. Learned counsel has not been able to refer to any rule providing that appointment to the post of Branch Postmaster or any other equivalent post shall be made only by transfer. In the absence of such a rule, the existing employees working in comparatively lower scales of pay cannot claim that they have a right to be appointed by transfer. Equally, they cannot also say that the department cannot consider the claims of such persons, who fulfill the prescribed qualifications and may be willing to compete for the post. Since every person has the right to equality of opportunity and there is no rule specifically providing that the post shall be filled up exclusively by transfer of the existing employees, the contention as raised on behalf of the respondents cannot be accepted.

20. Mr. Radhakrishnan has referred to the decision of a Division Bench in Sub

Divisional Inspector of Post Office v. The Central Administrative Tribunal 2000 (3) KLT 541. In this case it was held that an Extra Departmental agent was entitled to be considered for appointment by transfer. However, the issue of appointment to a post in the higher scale than the one in which the agent was working was not considered by their Lordships. It is undoubtedly true that persons working as ED Mail Carriers etc. had also claimed transfer to the post of Agents and that their claim had been upheld. Yet, a perusal of the judgment clearly shows that the issue, of one post being higher than the other was never raised or considered. In this situation the decision cannot be read as an authority for the proposition that a person working in the lower post has a right to be appointed to a higher post by transfer and that too, to the exclusion of other eligible persons. Thus, the respondents can derive no advantage from this decision.

21. Faced with the situation, Mr. Radhakrishnan has contended that such a contention was not raised by the petitioners before the Tribunal. On the other hand, counsel for the petitioners have pointed out that the Tribunal was considering the claims for appointment of Mail Carriers for the post of Branch Postmaster or the Sub Postmaster etc. The direction by the Tribunal is only for consideration. Since the Tribunal has directed the Department to consider the claims for appointment by transfer to higher posts, the issue has arisen on account of the direction.

22. We have heard the learned counsel for the parties at length. Thus it does not appear to be necessary to remand the matter. In our view, a person working on a lower post cannot claim that he has an indefeasible right to be appointed by transfer to a higher post to the exclusion of every other eligible candidate. This is all the more so in a case where there is no rule specifically providing for appointment by transfer. In this situation we are of the view that the claims of the respondents have to be considered only along with the other eligible persons who may be sponsored by the Employment Exchange or may otherwise apply for the post. Thus, the second question is answered in favour of the petitioners.

23. In view of the above it is held that:

(1) A provision providing that the employee is not liable to be transferred does not debar an employee from seeking transfer.

(2) If an employee seeks transfer to a post equivalent to the one held by him, the rules as at present do not place any bar and his claim has to be considered by the authority. In case an employee seeks appointment by transfer to a higher post than the one or which he is working, the Department can consider his claim subject to his fulfilling the conditions of eligibility along with that of the eligible persons who may offer their candidature for appointment.

In view of the above, we find no merit in W:P.(C) No.32814 of 2003. It is consequently dismissed. The remaining petitions are disposed of in the above terms. No costs.