
(2023) 11 CAT CK 0016

In the Central Administrative Tribunal

Case No : Original Application No. 180, 312 Of 2023

Vinitha P

APPELLANT

Vs

Chief Post Master General, Kerala Circle Office Of The Chief
Postmaster General PMG Junction Thiruvananthapuram -
695033 & Ors

RESPONDENT

Date of Decision : 15-11-2023

Acts Referred:

Citation : (2023) 11 CAT CK 0016

Hon'ble Judges : K. Haripal, Member (J)

Bench : Single Bench

Advocate : U. Balagangadharan, S.R.K. Prathap

Final Decision : Dismissed

Judgement

K. Haripal, Member J

1. Applicant, who is a Lower Selection Grade Sub Post Master, LSG SPM for short, is presently working in Mankara Post Office, has presented a novel grievance. She stands transferred from Mankara as LSG OA(Establishment) in Divisional Office, Palakkad. That order was issued on 26.04.2023. Even though such an order was passed, now the respondents are hesitating to relieve her and are not facilitating the implementation of the order, which prompted her to approach this Tribunal seeking a direction to the 3rd respondent to permit her to join the Divisional Office, Palakkad as LSG OA(Establishment), for a declaration that she is entitled to join as LSG OA(Establishment) in Divisional Office, Palakkad untrammelled by the objections raised by the Bharatiya Postal Employees Association Group C, to restrain the 3rd respondent from inviting fresh willingness for being posted as LSG OA and seeking a direction to the 3rd respondent to relieve the applicant from the post of LSG SPM, Mankara.

2. The applicant was working as Postal Assistant in Palakkad Head Office. By Annexure-A1 order dated 20.12.2022, she was promoted as LSG SPM and posted

at Mankara as per her choice. She had given certain choices and second choice station was granted and thus was posted in Mankara. While, so, according to the applicant, she gave Annexure-A2 representation expressing her willingness, realising that the post of LSG OA(Establishment) in Palakkad Division is going to fall vacant soon. Highlighting certain personal inconveniences she also gave certain choice stations, in the event of considering her request for transfer. By Annexure-A3 order she stands posted as LSG OA(Establishment). But the rival union did not relish this posting. They raised Annexure-A4 representation before the 3rd respondent. According to the applicant, it is highly tarnishing her image that the said association is indulging in the habit of raising imputations against herself and her family, which is demoralising and thus she gave Annexure-A5 complaint, on which no decision has been taken. According to her, the Central Civil Services (Recognition of Service Associations) Rules, 1993 prevents a service association espousing or supporting the cause of an individual in service matters. But here, the said association has highlighted her transfer and raised complaints and also made personal imputations against her, which is illegal. Therefore, she wanted her to be immediately relieved in terms of Annexure-A3 order. Later, she filed M.A.705 of 2023, along with it has produced certain additional documents obtained under the Right to Information Act; she understands that the 3rd respondent had reported to the 2nd respondent that she was found as the suitable person out of four candidates applied for the post of LSG OA(Establishment) in Divisional Office, Palakkad. She was the best candidate and thus she stands posted after making a selection by the 3rd respondent. She also pointed out that one of the candidates, Parthasarathy, had earlier suffered punishment and was found not fit for the post. Annexure-A12 also was highlighted to say that the appeal preferred by the said Parthasarathy was rejected by the 2nd respondent. Therefore, she has an indefeasible right to be posted as LSG OA(Establishment) in the Divisional Office.

3. The 3rd respondent filed reply on behalf of the respondents, denying the contentions in the O.A. According to them, the applicant was working as Postal Assistant in Palakkad from 2005 onwards and then was promoted as LSG General Line in Pay Matrix Level-5 in Cadre Restructuring. She was asked to give her choice stations, then she submitted four choice stations and thus was posted in Mankara on 16.01.2023. But within a few months, she was again transferred and posted as LSG OA(Establishment), violating the norms. The said association had raised complaints against the posting which was considered by the 2nd respondent; finding that there is substance in the complaint the transfer of the applicant has been kept in abeyance and now Annexure-A13 direction has been issued for calling fresh willingness to fill up the post of LSG OA(Establishment) in the Divisional Office. The respondents say that there were complaints against the postings under Annexure-A3 that opportunity was not given to others also to apply for the post. It is also submitted that it is their prerogative to revoke the orders of the 3rd respondent in the interest of justice and the act of the 2nd respondent is well within Rules, that the applicant does not have any vested right

to call it in question. So, the O.A. is sought to be dismissed.

4. At the time of admission, an undertaking was given by the learned Standing Counsel that the post to which the applicant stands transferred under Annexure-A3 shall not be filled up; that interim order continues.

5. I heard the learned counsel for the applicant, Shri. U.Balagangadharan and Sri.S.R.K.Prathap, Additional Central Government Standing Counsel, for the respondents.

6. According to the learned counsel for the applicant, out of all the officers transferred and posted under Annexure-A3, except the applicant all have been relieved and joined the new stations. According to him, there are other persons also who were transferred before completion of the tenure and therefore, the case of the applicant alone cannot be highlighted. Moreover, there were four applications to the post of LSG OA(Establishment) and suitability of all the four persons were considered by the 3rd respondent and the applicant was found most suitable and that was how she was posted. The respondents should not have yielded to the pressures raised by an organisation, which is supporting the ruling party at the Centre. The respondents are bound to honour the order of transfer passed under Annexure-A3.

7. On the other hand, according to Sri.S.R.K.Prathap, Annexure-A3 order as far as the posting of the applicant cannot be upheld. According to him, by the order, the applicant should have joined new station on or before 31.05.2023. That has not been done. Therefore, it is not in existence now. Moreover, on the basis of the complaint raised by a recognised registered organisation, the 2nd respondent had found that the transfer was not made in a transparent manner, after calling willingness and after properly assessing the suitability of the candidates. When a recognised union raises a complaint, it could not have been ignored. Moreover, it came out that the applicant was given a transfer within a period of four months from the date of posting in Mankara; that was a promotion transfer. The learned counsel also invited my attention to the guidelines issued by the Department of Posts, Personnel Division on 17.01.2019. He highlighted clause 5(1) and said that rotational transfer cannot be issued before completion of the tenure of three years in a station. According to the learned counsel, the applicant is the wife of the leader of a union which is holding affiliation to the ruling party in Kerala. Now the 2nd respondent has directed to keep her transfer in abeyance and to call for fresh willingness. According to them, if the applicant is interested, she can also apply for the post.

8. Rivalry between two unions is reflected in this proceedings. Applicant is the wife of Sri.Anand, who is the president of an organisation of employees in the Postal department; it is a union having affiliation to the ruling party in Kerala, whereas the transfer of the applicant has been questioned by Bharatiya Postal Employees Association Group C, which is affiliated to the ruling party at the Centre. The said union raised protests against the transfer and posting of the

applicant to the LSG OA(Establishment), which was done without giving publicity. According to them, interested persons could not give willingness, so that the selection was done in an arbitrary manner. They have also called in question transfer of persons, who have not completed tenure, as part of rotational transfer. The 2nd respondent took seisin of this protest and called for reports from the 3rd respondent and on finding substance in the complaint, directed the 3rd respondent to keep the posting of the applicant in abeyance and then by Annexure-A13 order directed to call for fresh willingness to fill up the post of LSG OA(Establishment) in the Divisional Office.

9. After hearing counsel on both sides and considering relevant materials, I do not find valid reasons to interfere with the decision taken by the 2nd respondent. The intra-divisional transfers were made by the 3rd respondent, Superintendent of Post Offices. While the applicant was promoted as LSG(SPM), she was allotted to Palakkad Division and thus after calling for choice stations, was given posting at the 2nd choice station at Mankara. She joined duty in Mankara on 16.01.2023. Meanwhile, the respondents issued Annexure-R3(1) alert notice intimating 20 persons informing that they are bound to be transferred as part of rotational transfer, asking to give their places of choice. In response to the same, the applicant also gave Annexure-A2/R3(3) request. In Annexure-A2 it is stated that she has understood that post of LSG OA(Establishment) at the office of the SSPO Palakkad Division is going to fall vacant by that month and expressed her willingness to be considered. She also gave seven other choice stations. By Annexure-A3 she was posted as LSG OA(Establishment), irked by the same, the said Employees Association Group C gave Annexure-A4 representation. The 2nd respondent enquired into the same and understood that there was lack of transparency in the matter of transfer and posting of the applicant and that was how her transfer was kept in abeyance and Annexure-A13 order was issued to call for fresh willingness.

10. It is very clear that at the time of issue of Annexure-R3(1) the said post of LSG OA(Establishment) was not vacant. It was not notified also. From the rival contentions of the parties, it is apparent that it is a key post. May be because establishment matters are dealt with, it is considered a sensitive post and the associations have an eye over the same; they are interested in getting their nominee posted in the seat. In such a situation, it was incumbent on the part of the respondents to notify the vacancy and call for willingness, especially when some sort of selection is involved. Only persons with unblemished service records can be nominated to such a post. Only persons who are unbiased and non-controversial should occupy posts. After the issue of Annexure-R3(1) the post fell vacant owing to voluntary retirement granted to the O.A. who occupied the seat. The applicant had known this in advance and expressed willingness to be considered. Three other aspirants also applied. Whatever it may be, when Annexure-R3(1) notification was issued on 18.01.2023, such a post had not fallen vacant. That is evident from Annexure-A2/R3(3) also. So, only those who were keenly watching developments might have understood that, that important

post is falling vacant, that was how the applicant gave a specific submission that she may be considered for the post.

11. Materials produced by the applicant show that four persons had applied for the post and the 3rd respondent had considered comparative merit and shortlisted the applicant and thus she was posted there. From the reply, it is very clear that the 2nd respondent has not approved the conduct of the 3rd respondent in the manner of selection. The arguments of the learned Standing Counsel also indicate that the 3rd respondent had not acted in an unbiased manner and some highhandedness had taken place in the selection. But in view of the course proposed to be taken, I do not want to dilate upon such aspects of the matter. It is suffice to say that when posting is made to such an important post, the matter should have been done cautiously. Here, the selection was done without making any publicity or notifying the same. Only four persons had applied for the same. From the version of the respondents also it is clear that if it was publicised, selection process would have become wider and they would have been able to find the best suitable person. Such an opportunity was not made available by the 3rd respondent and that prompted the 2nd respondent to intervene and direct to keep the post unfilled. I do not find any illegality or impropriety in the course adopted by the 2nd respondent.

12. It is the settled proposition of law that no one has any vested right over any particular post or seat. The argument of the applicant that she has an indefeasible right to hold the post cannot be accepted. It is for the employer, the competent authority to decide who should work where. If there are controversies in the matter of posting of a particular person, it is for the competent authority to take a call, taking into account all the relevant aspects, in the overall interest of the organisation. Now the applicant has also joined issue with the union, which indicates that she has over enthusiasm in getting her posted in a particular seat. That cannot be approved in right earnest.

13. It was urged by the learned counsel for the applicant that the 2nd respondent is yielding to the pressures exerted by the union having affiliation to the ruling party. Applicant has a further case that the service association espousing individual cases is uncalled for. Annexure-A4 has highlighted certain unhealthy practices and the case of the applicant was mentioned as an illustration. The enquiry done by the 2nd respondent revealed that the 3rd respondent was not acting fairly. The enquiry further brought out that persons who have not completed tenure were transferred; secondly, vacancy of O.A. Establishment was filled up without calling willingness. Both these circumstances warranted interference at higher level. An employees association is duty bound to point out such unhealthy practices and the 2nd respondent is expected to undo such mishievs.

14. In the circumstances, having regard to the given facts, I do not want to say more about it. There is absolutely nothing in the act of the 2nd respondent deciding to call for fresh applications or willingness and to find out the best

person suitable to be posted therein. I have no doubt that when employees are selected to work in such an important post, selection process should be done in a transparent, unbiased manner, and non-controversial person should be posted. Therefore, there is absolutely nothing to issue any direction interfering with the decision of the 2nd respondent.

The Original Application lacks merit and is dismissed. I make it clear that pursuant to the fresh notification, if the applicant also applies, her case will be considered untrammelled by any observation made hereabove or the earlier decision taken by the respondents.

(Dated, this the 15th November, 2023)