

IN THE ARMED FORCES TRIBUNAL
(REGIONAL BENCH) KOLKATA

APPLICATION NO. O.A. 44/2012

THIS 30th DAY OF AUGUST, 2013

CORAM : Hon'ble Mr. Justice Raghunath Ray, Member (Judicial)
Hon'ble Lt. Gen. K.P.D. Samanta, Member (Administrative)

K.P. Mohammed Rafi, Son of Late Kunhothi Haji, working as
Naik/PO, Unit 2 Central Base Post Office, C/o 99 APO, Army
Postal Service, Pin 9000099, residing at Barrack No.8 at 2,
Central Base Post Office, C/o 99 APO, Army Postal Service,
Pin 900099

.....Applicant

-Vs-

1. Union of India, Service through the Secretary, Defence, South Block
New Delhi
2. Chief of Army Staff, Army Headquarters, South Block, New Delhi-
110001
3. Addl Director General, Army Postal Service (APS 1C), Pin : 908 700
C/o 56 APO
4. Officer-in-Charge, Army Postal Service Records, Pin : 900 746, C/o
56 APO
5. Commandant, P&T Administration Cell, Army Postal Service Centre,
Pin : 900 746, C/o 56 APO
6. The Chief Postmaster General, Kerala Circle, Trivandrum, Pin 695033

.....Respondents

For the petitioner : Mr. Sudip Krishna Datta, Advocate

For the respondents : Mr. B.K. Das, Advocate

ORDER**Per Hon'ble Lt Gen KPD Samanta, Member (Administrative)**

In this Original Application filed under Section 14 of the Armed Forces Tribunal Act 2007, the applicant, who is working in the Army Postal Service, has prayed for a direction upon the respondent authorities (Army) to repatriate/discharge him from Army Postal Service in order to enable him to join his parent Department i.e. Civil Postal Department.

2. The facts of the case, stated in brief, are the applicant was initially appointed as Extra Departmental Mail Carrier (EDMC) in Valiyaparamba Branch Post Office under Kerala Postal Circle on 5-5-97. While he was continuing as such, he was selected for appointment on deputation in the Army Postal Service (APS for short). Since he was only an ED Agent at that point of time and not a regular employee of the Postal Department, in order to facilitate his joining the Army Postal Service, the Postal Authorities appointed him against a Group 'D' vacancy for one day, i.e. on 17-1-1998 (Technical Appointment) and thereafter vide Memo dated 17-1-98 he was relieved of the said post in the afternoon with a direction to report before the Branch Recruiting Officer, West Hill Barracks, Calicut on 19-1-98 (Annexure A2 and A3 respectively). Accordingly, the applicant was enrolled and appointed on deputation in the rank of Packer for 18 months in the APS. His term of appointment was governed by the Ministry of Defence OM dated 19-3-1985 (Annexure A4). The applicant even though was initially appointed for 18 months, but he continued in the APS since then without reverting back to his parent department though there is no formal order of extension of deputation. In the year 2007, the applicant appeared in the examination conducted by his parent Department (Postal Department) for promotion to Postman cadre, which was held on 22-4-2007 under Direct Recruitment Merit Quota and was selected. He

was issued with an officiating certificate on 18-1-2008 by his parent department on the basis of which his pay in his Deputation department, i.e. APS was fixed in Group 'D' cadre on Performa basis. Subsequently, the applicant also appeared in the Selection Examination for promotion to the cadre of Postal Assistant, which is a Group 'C' post in the parent Department and was selected. On this occasion also, he was issued with an officiating certificate by his parent Department on 30-12-2011 and his pay was also accordingly fixed on Performa basis at higher stage in the Army Postal Department. By letter dated 23-9-2011 the applicant was directed to undergo induction training for Postal Assistant in his parent Department but he could not attend the training as he was not spared by his Deputation Department i.e. APS. The applicant submitted his unwillingness certificate dated 21-6-2011 (Annexure A13) to undergo Clerical cadre course initiated vide Army Postal Service Records letter dated 8.6.11 (Annexure-A12).

3. According to the applicant, in the circular letter dated 15-11-1983 issued by ADG APS, it has been provided that personnel who have been appointed/promoted in higher post in Civil and who have passed Departmental Examination but are unwilling for promotion to the corresponding rank in APS will be discharged with utmost speed (extract of the circular is available at Annexure-A14). The applicant submitted a representation on 11-3-2011 for his discharge from APS but no response was given to his representation by the authorities. The applicant also submitted further representation for his release from Army Postal Service on extreme compassionate ground and his case was also recommended by the Zila Sainik Welfare Office in view of his family problem, but the authorities yet did not accede to his request and rejected his representation vide order dated 25-8-2011 (although no copy of such order was served on him).

4. The grievance of the applicant is that even though in his case the respondent authorities did not accept his prayer for discharge from Army Service, in case of many other persons as named in Para 4(m) (page 8 of the OA) they were released/discharged and thus he was discriminated. The applicant, therefore, finding no other alternative, has approached this Tribunal with a prayer to issue direction upon the army authorities to discharge him from Army Postal Service immediately in order to enable him to join his parent Department.

5. The respondents have opposed the application by filing a reply affidavit. It is submitted that the applicant was initially appointed as ED Mail Carrier under Kerala Postal Circle and he volunteered for deputation to APS. Accordingly, he was enrolled in the rank of Packer with effect from 19-1-98 by giving him Technical promotion in the Postal Department for a day under a scheme of concessions to be given to GDS employees to become Group 'D' and earn more pay and perks. It is stated that the applicant was not a regular employee in his parent Department and did not hold any lien, but he was appointed to the APS in Gr. D and he served there all along and earned various privileges. Therefore, he has no right for discharge from the Army Postal Service prematurely. The respondents have further stated that the applicant was given pay protection while he was granted promotion to the postman cadre in his parent Department on 22-4-2007 and again in PA cadre in January 2012. He opted for continuing in APS till normal discharge on completion of terms and conditions, therefore, his prayer for discharge earlier could not be accepted by the competent authority. The respondents, in fact, have mainly laid emphasis on the fact that since the applicant has exercised option to serve APS till attaining the age of normal discharge; he is not entitled to be discharged prematurely in order to join in the parent department.

6. The respondent No.6, i.e. Chief PMG, Kerala Circle has filed a separate counter affidavit, wherein it is stated that the question of discharge/repatriation of the applicant

depends solely on the APS authorities where he volunteered to join and the applicant has no legally sustainable ground to claim repatriation as a matter of right. However, in case the APS authorities decide to repatriate him, he will be accommodated in his parent Department.

7. The applicant has also filed rejoinder reiterating his claim for repatriation so that he can join in his parent Department in higher post than what he is holding in the APS.

8. Mr. Sudip Krishna Datta, learned counsel for the applicant has submitted that it is true that the applicant was a GDS employee and he volunteered to join the APS in Group 'D' post on deputation and for that purpose he was granted one day's technical appointment in Gr. D post in his parent Department and thereafter he joined the APS. However, his name continued in the postal department and he was also allowed to appear in the examination against the Direct Recruitment Merit Quota in his parent department in which he became successful and his name was appearing at Sl No.4 (Annexure-A5) of the result of examination for promotion to Postman cadre held on 22-4-2007. Moreover, his parent department also issued an officiating certificate which is at Annexure A6. Subsequently the applicant was also allowed to appear in the next promotional examination, i.e. Postal Assistant Examination and after he qualified, they also issued an officiating certificate vide Annexure A-9. However, since he has now been eligible for appointment in Gr C post of Postal Assistant whereas he is working in Gr. D post in APS as packer, it will be beneficial for him to opt for his parent department posting and that is why he made representation for his discharge which has been illegally and arbitrarily denied to him. It is the specific case of the applicant in case of many others such early discharge was granted to join the parent department whereas it was denied to him which is a clear case of hostile discrimination. By filing a supplementary affidavit, the applicant has also pointed out that even in the year

2013; such premature discharge/repatriation was granted to some other persons while denying such benefit in his case.

9. Mr. B.K.Das has mainly contended that since the applicant had exercised option to continue in APS till his normal discharge as per age, he cannot now retract back from his option and ask for premature discharge which is not permissible as per policy decision. So far as granting release in respect of some persons as named in the OA, it is contended by Mr. Das that it was done by mistake and this cannot give a right to the applicant to claim similar benefit. But so far as the cases of discharge that was done in the year 2013, as indicated in the supplementary affidavit, Mr. Das has submitted that without obtaining instruction, he cannot make any submission on this point.

10. We have heard the learned counsels for the both parties and perused the documents placed on record. We have also given our thoughtful consideration to the rival contentions. The facts are not disputed in this case. It is the admitted position that the applicant was an ED Agent which was not a regular post in the Postal Department. But in order to facilitate his joining in the APS, he was given technical appointment in Gr. D for only one day and thereafter released to join at APS. It is, therefore, obvious that the applicant did not have any lien in his parent department and, therefore, has no legal right to claim repatriation. But it is also the admitted position that even though he had no lien, his name continued in his parent department record and he was allowed to avail opportunity to departmental examination for promotion as Postman and then as Postal Assistant and on both the occasions, certificate was issued to the effect that had he not been on deputation to APS, he would have been promoted as Postman or Postal Assistant, as the case may be. Therefore, for all practical purpose he was treated as a deputationist till he opted for

permanent secondment with certain conditions as is evident from the language of the said option certificate (Annexure R-6).

11. Admittedly, the post of Postal Assistant is in Gr. C clerical post whereas the applicant is presently working in Gr. D post as Packer in the APS. Obviously, therefore, the applicant would be interested to work in higher post in his parent department and aspire for higher career progression.

12. Now the main contention of the respondents is that the applicant gave an undertaking on 6-7-2007 wherein he clearly opted to continue in APS till attaining the age limit. In such circumstances the applicant cannot be released or discharged earlier. It will be relevant to quote the said option certificate which is available at Annexure R-6 of the reply of the respondents:-

“SERVICE AND PENSIONARY BENEFITS TO GDS
ON DEPUTATION TO APS AS GROUP ‘D’

OPTION CERTIFICATE

1.....

OR

2. I, No.8374666K Rank Sep Name Mohammed Rafi who is GDS in civil and deputation to APS as GP ‘D’, opt to continue in APS till I am discharged on attaining the age limit. In case, there is no vacancy, in civil in GP ‘D’ at the time of my discharge from APS, I am willing to proceed on retirement direct from APS.

3. It is certified that I understand the following conditions on exercising my option and I am willing to accept the same:-

- (a) I will be reverted back to civil immediately as GDS (in case of option for clause 1).
- (b) In case I am reverted back to civil for any reason I will rank Junior most in civil gradation list and my seniority will be counted from the date of assumption of charge in civil post, but my services in APS will be counted as regular service for all other purposes.

Date : 06 July 07

Sd/- Sep. Mohammed Rafi”

13. From a perusal of the aforesaid option it is clear that the applicant, while opting to continue in APS till he is discharged on attaining the age limit, had also stated that *in case*

there is no vacancy in Civil in GP 'D' at the time of his discharge from APS he would proceed on retirement direct from APS. There is also a clause in Para 3(b) that in case he is reverted back to civil "for any reason" he will rank Junior most in civil gradation list etc.. Therefore, it is clear from this option that the applicant never gave unconditional option to continue in APS till his date discharge but there was also a rider which shows that he also visualized the eventuality of his early discharge for any other reason.

14. It appears that this option was exercised by the applicant based on a circular issued by the Postal Department on 13-6-2007 (annexure-R4) and Kerala Circle Circular dated 1-12-2008 (annexure-R5). It will also be relevant to quote Annexure R4 dated 13-6-2007 in full for understanding the dispute which is a matter of interpretation:-

" No.47-1/2003-SPB-I
Government of India
Ministry of Communications & IT
Department of Posts
Dak Bhawan, Sansad Marg,
New Delhi – 110 001

Dated 13-06-2007

To

The Additional DG APS,
Quartermaster General's Branch,
Army Headquarters,
West Block III, R.K. Puram,
New Delhi – 110 066

Subject : Service and pensionary benefits to GDSs on deputation to
APS as Group 'D'

Sir,

I am directed to refer to your letter No.90413/APS 1C/R-341(b)(Pt) dated 9-0502007 on the subject mentioned above and to state that it has been decided by this Department that the 847 GDSs, presently, on deputation to APS may be regularized from the date of entry in APS/from the date the GDSs have been conferred technical promotion as Group 'D'.

2. In addition, these 847 GDSs, who have been deputed to APS may be offered an option to return to civil side and accept GDS posts. Those who are prepared to revert should be reverted immediately.

3. *GDS officials who are now proposed to be regularized as Group 'D' from the date of their entry in APS/technical promotion given earlier will not be reverted to civil till they are discharged from APS on the date of retirement as applicable in APS. However, AP Dte will make efforts to retain officials in APS itself till the civil date of superannuation. In case of reversion from APS to Civil side after attaining the retirement age in APS or thereafter, these officials will be deployed to the extent Group 'D' vacancies are available in Civil. In case there are no Civil Group 'D' posts available to accommodate these personnel, then there will be no option but to proceed on retirement direct from APS. An undertaking to this effect should be obtained.*

4. **In case the GDSs who are now proposed to be regularized as Group 'D' are reverted to Civil for some reason or the other, such personnel will rank junior most in seniority in the civil gradation list.** The date of assumption of charge in a civil post will be deemed to be the date of entry in the grade in the civil gradation list for the purpose of seniority. However, the service rendered in APS as Group 'D' will for all purpose be counted as a regular service except in claiming seniority in the Civil side. **An undertaking to this effect should be obtained.**

5. All the consequential benefits including TBOR/BCR will accrue since the date of regularization of these personnel in APS. Statutory deductions such as GPF etc., will have to be made in accordance with the rules on the subject.

Yours faithfully,

Sd/-
(V.C. Kajla)
Director(SPN)"

15. Annexure-5 is the circular issued by the Postal Department, based on the aforesaid circular of Department of Post. The said circular is also quoted for the sake of convenience.

"DEPARTMENT OF POSTS, INDIA
Office of the Senior Superintendent of Post Offices
Calicut Division, Calicut 673 003

Memo No.B3GDSAPS

Dated at Calicut 673 003 the 01-12-2008

In pursuance to Directorate letter No.47-1/2003-SPB-I dated 13-06-2007 the services of the undermentioned GDS officials on deputation as Group D at APS are regularized with effect from their date of entry in APS:

Sl No	Name and designation	Date of entry in APS	Army No.	Rank	Remarks
1				
2				
3				
4	K.P. Mohammed Rafi, GDSCMC, Valiyaparamba	19-01-98	8374666K	Sep/Pkr	Qualified in the Post Man Exam held on 22-04-07 but

					not reverted to civil side
5				
6	...				
7.				
8				

2. *GDS officials now regularized as Group 'D' from the date of entry in APS will not be reverted to civil till they are discharged from APS on the date of retirement as applicable in APS. In case of reversion from APS to Civil side after attaining the retirement age in APS or thereafter, these officials will be deployed to the extent Group 'D' vacancies are available in Civil. In case no Civil Group 'D' posts are available to accommodate these personnel, they will have to proceed on retirement direct from APS.*
3. **In case the GDSs now regularized as Group 'D' are reverted to Civil for some reason or other, such personnel will rank junior most in seniority in the Civil Gradation list.** The date of assumption of charge in a Civil post will be deemed to be the date of entry in the grade in the Civil Gradation List for the purpose of seniority. However, the service rendered in APS as Group 'D' will for all purpose be counted as a regular service except in claiming seniority in the civil side.

Sd/-
(P. Ramakrishnan)
Senior Superintendent of Post Offices
Calicut Division, Calicut 673 003

Copy to :

1(Regd) The Commandant, P&T Admn Cell, APS Centre PIN 900 746, C/o 56 APO for kind information and necessary action w.r.t. APS letter No.3366/Adm dated 05-10-07 (4 copies together with a copy of divisional gradation list as on 01-07-2008 including the names of the above officials).

2....."

16. From perusal of the conditions stipulated in the afore-quoted circulars and the option exercised by the applicant, it is clear that there is no specific bar for repatriation. Although in Para 3 of the circular dt. 13.6.07 it is mentioned that Gr. D staff who are being regularised, will not be reverted to civil till they are discharged from APS on the date of retirement as applicable in APS, at the same time Para 4 speaks of unforeseen circumstances in which one may also be reverted to civil side for any reason or other. In the option exercised by the applicant the eventuality of reversion for any reason is also indicated in Para 3(b). Therefore, exercise of option by the applicant does not debar him

from claiming repatriation in changed circumstances which in this case is that he has been selected for higher promotion post of Postal Assistant (Gr. C) in his parent department, while the applicant had exercised option when he was in Gr. D. In our considered opinion, the option so exercised by the applicant cannot act as an estoppel against him so as to deny him from claiming repatriation, especially when the authorities have repatriated many other similarly situated persons. Moreover, the applicant is not holding any sensitive or specialised technical post in the army so that his discharge may prejudice the operational or administrative interest of the Army. The army authorities should not stand in the way of the applicant's working in a higher post in his parent department and earn further promotions. Only because the applicant has exercised option to continue till normal discharge, because of changed circumstances, his career progression in his parent department should not be blocked by the authorities.

17. Considering all aspects as discussed above, we are of the opinion that the decision of the army authorities not to discharge the applicant is not justified and should be quashed.

18. Accordingly, the original application stands allowed. The APS authorities are directed to discharge and release the applicant immediately in order to enable him to join his parent department. Upon such release from APS, the respondent No. 6 shall accommodate the applicant in his entitled post as undertaken in the reply affidavit filed by him in this case. This order shall be implemented by the respondents including respondent No. 6 within 45 days from the date of communication of this order. There will no order as to costs.

19. Let a plain copy of this order duly countersigned by the Tribunal Officer be furnished to both sides on observance of due formalities.

(LT. GEN. K.P.D.SAMANTA)

MEMBER(ADMINISTRATIVE)

(JUSTICE RAGHUNATH RAY)

MEMBER (JUDICIAL)