

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 51 of 199 3.

DATE OF DECISION 29.4.1993

M.Perumalsamy Applicant (s)

M/s Vellayani Sundara Raju & Vellayani Robinson Advocate for the Applicant (s)  
Versus

The Director General, Department of Posts, New Delhi and others Respondent (s)

Mr. S.Krishnamoorthy, ACGSC Advocate for the Respondent (s)

CORAM : (R.1 to 3)

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

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1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

## JUDGEMENT

The applicant who is working as Accounts Officer in the Office of the PMG, Central Region, Ernakulam is aggrieved by the Annexure-A order dated 29.12.92 by which the 4th respondent was transferred from Coimbatore (Tamil Nadu Circle) to a vacancy in Trivandrum which was offered, according to the applicant, to him as indicated in Annexure-G, while disposing his representation.

2. According to the applicant, he worked in various places outside Kerala as JAO and got a compassionate transfer to the <sup>2</sup> Home state of Kerala (Cochin) as per Annexure-AI order dated 7.12.87. By the said order he was promoted as Accounts Officer and posted in Kerala Circle w.e.f. 1.1.88. Due to some personal ailment and invalid condition of his mother, he filed Annexures E and F representations before the Director General for getting a transfer over to Trivandrum considering his seniority as Accounts Officer. He also pointed out the vacancy position at Trivandrum in the

representation. While disposing of the representation, the Asstt. Director General (Administration) sent a communication, Annexure-G, to the applicant in January, 1992 in which it has been stated that the applicant's request for transfer to Trivandrum has been noted for consideration against a future vacancy. The indication in the said communication is that the claim of the applicant will be considered in the light of the existing orders for a transfer to Trivandrum as and when a regular vacancy arises in that place.

3. According to the applicant after Annexure-G a vacancy of Accounts Officer arose at Trivandrum on 1.4.92 on account of retirement on attaining super-annuation of one Shri M.R.Ramachandra Panicker. That vacancy was filled up with another officer who is senior to the applicant. Hence the applicant did not file his objections. But when a further vacancy arose at Trivandrum when the incumbent Shri G.R.Gopalan was posted temporarily as Asstt. Chief Accounts Officer in December, 1992 the applicant made his claim for a posting. It appears that a proposal has been initiated for transferring the 4th respondent, who is junior to the applicant from Coimbatore and filling up the vacancy at Trivandrum. This was objected to by the applicant personally meeting the authorities and requesting them to give the applicant a posting on the basis of the letter at Annexure-G. Notwithstanding the request ~~the~~ Annexure-A transfer order dated 29.2.92 was issued transferring and posting the 4th respondent at Trivandrum. The applicant is aggrieved by this order and he filed this application under Section 19 of the Administrative Tribunals Act for quashing the order.

4. The respondents have filed a reply and additional reply statement denying all the averments and allegations in the O.A. According to them the present transfer had been issued in the exigency of the service. They admit that the criterion followed in the matter of transfers is seniority of officers. Considering the seniority of the applicant he was given a compassionate transfer to Kerala on his promotion in 1988; so he cannot rely on the same criterion for getting another transfer in the home state. The 4th respondent was given a transfer considering his earlier request to come to Kerala State and the order is legal and valid.

5. The applicant has raised an allegation of malafide by stating that the third respondent has strongly recommended the transfer of the 4th respondent from Coimbatore to Trivandrum and the impugned transfer order has not been issued in exigency of service but it is the result of influence of the third respondent on the first respondent. This allegation was denied by the respondents. But the learned counsel for the applicant submitted that there is an admission of this fact in the statement of facts sent by the department for preparing reply. However, the position has been clarified by the respondents in the additional reply filed in this case.

6. Having heard the learned counsel on both sides, I am of the view that the Asstt. Director General while considering and disposing of the representations at Annexures E and F stated that the applicant's request will be considered when a regular vacancy arises. A regular vacancy at Trivandrum will arise on 1.5.93. Admittedly the applicant is the seniormost Accounts Officer. His claim for a posting on the regular vacancy that may arise in Trivandrum has not been considered after Annexure-G. Hence in the facts of the case it requires consideration by the concerned authority before filling up the vacancy which is to arise on 1.5.93.

7. When Shri G.R.Gopalan was temporarily posted as Assistant Chief Accounts Officer a vacancy of Accounts Officer arose in December, 1992 at Trivandrum. In that vacancy the 4th respondent has been posted after transferring him from Coimbatore on compassionate ground and the 4th respondent is now working in that post. But according to the applicant a regular vacancy of Accounts Officer will arise on 1.5.93 and the applicant's claim for getting a posting requires to be considered in the light of Annexure-G letter.

8. Having regard to the facts and circumstances of the case I am satisfied that in the light of the statement in Annexure-G the applicant's request for a posting in the regular vacancy at Trivandrum deserves consideration and accordingly this original application can be disposed of in the interest of justice with the following directions.

9. The applicant shall file a detailed representation stating his claim for getting transfer to Trivandrum in the light of Annexure-G order. This shall be filed before the first respondent within a week from today. If such a representation is received, the first respondent shall consider and dispose of the same in accordance with law within a period of one month from the date of receipt of the same, till which date a permanent vacancy of Accounts Officer which is to arise at Trivandrum from 1.5.93 shall not be regularly filled-up.

10. The application is disposed of as above.

11. There is no order as to costs.

  
29.4.93  
(N. DHARMADAN)  
JUDICIAL MEMBER  
29.4.93