

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATED: 16.6.93

O.A.No. 512/92

Mr. G. Ramachandran
Driver, Mail Motor Service,
Ernakulam

Applicant

vs.

1. The Manager,
Mail Motor Service, Ernakulam
2. The Post Master General,
Central Region, Kochi
3. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram
4. Shri D. Pushparaj, Driver,
Mail Motor Service,
Thiruvananthapuram

Respondents

Mr. Thomas John

Counsel for applicant

Mr. Mathews J. Nedumpara, ACGSC

Counsel for respondents

CORAM:

THE HON'BLE MR. N. DHARMADAN JUDICIAL MEMBER

JUDGMENT

MR. N. DHARMADAN JUDICIAL MEMBER

Applicant is coming for the second time for getting
apposting at Thiruvananthapuram invoking Rule 38 of the
P & T Manual Vol.IV.

2. Applicant is at present working at Ernakulam as
Driver in the Mail Motor Service. He filed representation on
26.6.90, Annexure A-3 seeking a transfer to Thiruvananthapuram
under Rule 38 of the P & T Manual Vol.IV on the ground that
he is a permanent resident of that place and his family
is also staying at ^{that} place. Since the said request was not
considered and disposed of in accordance with law he filed
O.A. 1639/91 which was disposed of at the admission stage
itself on 30.10.91 directing third respondent to consider
his representation and pass orders within a period of two

months from the date of receipt of the copy of the judgment. The impugned order Annexure A-I has been passed in implementation of the direction in Annexure A-8 judgment referred to above. Applicant's claim was rejected. Hence, he has filed the present application for quashing Annexure A-1 and directing respondents 1 to 3 to transfer applicant from Ernakulam to Thiruvananthapuram considering his representation dated 26.6.90.

2. I have heard learned counsel on both sides and perused the documents. The impugned order itself shows that one Shri Pushparaj, the fourth respondent who was also working in MMS Ernakulam was transferred to Thiruvananthapuram considering the representation filed by him under Rule 38 transfer. His representation was dated 3.7.90, subsequent to the date of filing of representation of the applicant. No reason is given in the order for giving earlier transfer to the fourth respondent ignoring the request of applicant. The further reason that has been stated in the impugned order is that there are ~~no~~ vacancies in the departmental quota. For considering Rule 38 transfers, the department is not maintaining separate vacancies for departmental candidates and direct recruitees. It is also stated that since disciplinary proceedings are contemplated against the applicant, his request was not considered. ^{It is} It is admitted by the respondents that the notice issued for taking disciplinary action was dropped and the said fact is stated in the impugned order. So much so, the reasons given in the order are not supportable. However, it is not necessary for me to go into the details and quash the order in ~~xxx~~ view of the fact stated in para 5 that there are 3 existing vacancies and the applicant's case deserves consideration after disposal of the original applications referred to in reply. Learned counsel for applicant submitted that the cases referred to have been disposed of and during the pendency of this original application

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Annexure A-9 order has been passed on 18.1.93 giving Rule 38 transfer to one Sri S. Mohandas Driver who was also working in the MMS, Ernakulam. It is brought to my notice that the above posting order was passed considering the representation filed by Mohandas subsequent to the date of filing of the representation ~~(xxx of)~~ the applicant.

4. Since there is an assurance in the impugned order that applicant's case will be considered and disposed of after disposal of the original applications referred to in para 5 of the order, I think it is not necessary to quash ^{in the reply 4} ~~Annexure A-1~~. The original applications referred to/are disposed of and there is existing vacancy at Trivandrum. I am satisfied that interest of justice will be met in this case if the application is disposed of with appropriate directions.

5. At the time when the application was admitted on 9.4.92 we have passed an I.R. directing respondents to keep one post of driver at MMS Trivandrum as vacant till the disposal of the original application. On the basis of the I.R. one post at MMS Trivandrum is kept vacant and the applicant can be posted considering his representation dated 26.6.90.

6. In the light of the aforesaid fact, I am not finally deciding the legality of impugned order; but I make it clear that in view of the assurance given in para 5 of the impugned order third respondent is bound to pass appropriate orders on the representation filed by the applicant for Rule 38 transfer which is pending before him. Accordingly I dispose of the application directing third respondent to consider the request of the applicant and pass appropriate orders within a period of two months from the date of receipt of a copy of this judgment.

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7. The application is accordingly disposed of.
8. There shall be no order as to costs.

N. Dharmadan

(N. DHARMADAN)
JUDICIAL MEMBER
16.6.93

16.6.93

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- Index: 1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reported or not?
 3. Whether their Lordship wish to see the fair copy of the judgment?
 4. To be circulated to all Benches of the Tribunal?

List of Annexures

1. Annexure A-3: representation of the applicant dated 26.6.90
2. Annexure A-1: Order of CPMG dated 6.3.92
3. Annexure A-8: Judgment of this Tribunal on O.A. 1639/91 dated 30.10.91
4. Annexure-A9 : Transfer Order No.B/MS/75-II dated 18.1.93 at Kochi.