

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 550/91 & OA No. 856/91
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DATE OF DECISION 9.8.1991

1. PM Elias _____ Applicant (s) in OA 550/91
2. KK Ramakrishnan _____ Applicant in OA 856/91.

Mr K Karthikeya Panicker _____ Advocate for the Applicant (s) in both case.

Versus

Union of India rep. by the _____ Respondent (s) in both case.
Director General, Deptt. of
Post, New Delhi & another

Mr NN Sugunapalan, Sr CGSC _____ Advocate for the Respondent (s) in
Mr VV Sidharthan, ACGSC _____ Advocate for OA 550/91.
CORAM: Respondents in OA 856/91.

The Hon'ble Mr. NV Krishnan, Administrative 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

These two applications impugn the order dated 27.3.91 of the Senior Superintendent of Post Offices, Aluva Division. By that order the two applicants, holding the post of Group 'D' in the Divisional Office, Aluva, have been transferred respectively to the same post in Aluva Bazar and Aluva Head Post Office. The transfer is challenged on the ground that the Departmental Rules governing the terms and conditions of Group 'D' officials do not envisage the transfer of such officials from the Divisional Office to other places. For the sake of convenience, we are taking for consideration the facts in OA 550/91.

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2 The applicant, PM Elias was working on Group D post in the Divisional Office, Aluva, one among the 11 Units in Aluva Postal Division. He commenced service as an Extra Departmental Mail Career in 1966. He was regularly promoted to Group D post in the Aluva Head Office in February, 1982. He requested for transfer under Rule 38 of the Posts & Telegraphs Manual Vol IV on compassionate ground to the Divisional Office, Aluva and this was agreed to by the order dated 5.7.82. Since then he is continuing in the Divisional Office. He has now been transferred by the impugned Annexure A2 ^{is} order to a Group D post in the Aluva Bazar Post Office vice Shri TA Purushothaman Nair transferred to the Divisional Office in his place.

3 The only ground of challenge is that the Annexure A1 order lacks competence, it being contrary to the provisions of P&T Manual.

4 The learned counsel for the applicant has made out his case as under.

(i) Only those persons for whom a tenure is fixed can be transferred, because a transfer is inevitable at the end of the tenure period.

(ii) Rules 57 to 62 of the Manual prescribe the tenures for certain officials of the Department.

(iii) Among Group D officials, tenure is fixed for only Class IV officials in the Foreign Post Units vide Sl. 6(b) of Rule 60.

(iv) Therefore, other Group D officials do not have any tenure fixed for them and therefore, they are not liable for transfer except when they themselves make a request under Rule 38.

5 We are of the view that the interpretation placed on these Rules by the learned counsel is illogical and he has misconstrued the tenure principle. All persons having a tenure are liable for transfer, but all persons liable for transfer do not necessarily have a tenure. That is the flaw in the learned counsel's reasoning. The object of prescribing a tenure is different. When tenure is prescribed, ordinarily, a person will hold the tenure post for the tenure period and likewise, ordinarily, he will be transferred after the tenure is over.

6 The applicant has given an extract of Rules 37 of the P&T Manual which applies to all officials in the Department which reads as follows:-

"37. All officials of the Department are liable to be transferred to any part of India unless it is expressly ordered otherwise for any particular class or classes of officials. Transfers should not, however, be ordered except when advisable in the interests of the public service. Postmen, Village Postmen and Class IV servants should not, except for every special reasons, be transferred from one district to another. All transfers must be subject to the conditions laid down in Fundamental Rules 15 and 22."

It is clear from this rule that all persons, without exception, are liable to be transferred. The only

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special provision is that Class IV servants like the applicant should not, except for a very special reasons, be transferred from one District to another. The transfer in the present case is not from one District to another to be justified by special reasons but it is only from one office in a town to another office in the same town. Rule 37 does not bar such transfer.

7 The applicant has also impugned the Annexure A1 order dated 19.1.90 of Respondent-1 by which a tenure has been fixed for the first time for Mailman and SG Mailman in RMS Divisional Office and Group D Staff in Postal Division Offices. The tenure fixed is 5 years. The learned counsel contended that the Rules 57 to 62 relating to tenure cannot be amended by such executive instructions and therefore, this instruction is invalid.

8 The learned counsel for the applicant was asked whether the so-called Rules have been framed under Article 309 of the Constitution or under any enactment of Parliament so as to describe them legitimately as Rules. His reply was in the negative. Obviously, the so-called Rules in the P&T Manual are nothing but executive instructions and they can be amended by issue of instructions as in Annexure A1. Therefore, the ground taken that there is no authority for the 1st Respondent to prescribe a tenure for a Group D Official like the

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applicant has no basis. This has to be rejected. That apart, we have already found that the liability of the applicant to be transferred arises not because of the prescription of tenure for the first time by the Annexure A1 letter, but because of the fact that all officials of the Department without exception, are likely to be transferred under Rule 37.

9 The period of 5 years having been fixed as the tenure for the applicant, his transfer by the Annexure A2 order of 27.3.91 cannot be questioned, as he has been on this post since 1982.

10 The learned counsel for the applicant contends that the transfer affects his conditions of service because he will be required to work for 6 days in the office to which he is transferred, while he is required to work only for 5 days in the Divisional Office. This argument is to be summarily rejected as there is no contract between the Government servants and the employer. The moment ~~he~~ becomes a government servant, all rules framed by Government unilaterally in regard to the conditions of service will be applicable. Therefore, his transfer to Aluva Bazar cannot be objected to ^{on} this ground.

11 He has one more contention that there would be a loss of seniority as a result of this transfer. He claims that Group D officials in the Divisional Office are borne on a separate seniority list and the Group D officials

in Offices other than the Divisional Office. In support of this contention, he produced the Gradation List of Group D Officials as on 1.7.89 at Annexure A5. He points out that this is a seniority list of Group D Officials other than the Divisional Office because his name is not there.

12. The respondents have disputed this contention. It is submitted that there is only one seniority list for the Group D officials both of the Divisional Office as well as of the other Units. The learned counsel for the respondents submitted that it is due to a mistake that the name of the applicant, while working in the Divisional Office, has not been included in the Annexure V combined seniority list for the Division. He submitted that in the combined seniority list, the applicant's place would be at Sl. No.13(a) below TR Balan at Sl.No.13.

13. We are not satisfied with this clarification and find that there will be no loss of seniority to the applicant if his transfer to Aluva Bazar has been done by the impugned order.

14. We, therefore, hold that the contention that the applicant cannot be transferred as there is no provision for transfer is without any foundation and it is rejected. For these reasons, we see no merit in the application and it is dismissed.

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- 15 For the same reason, OA 856/91 is also dismissed.
- 16 There will be no order as to costs.



(NV Krishnan)
Administrative Member
9.8.1991