

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
ERNAKULAM

DATE OF DECISION

29TH MARCH 1990

PRESENT

Hon'ble Shri S.P. Mukerji, Vice Chairman

ORIGINAL APPLICATION No.570 OF 1989

N. Jerry Wilson

..Applicant

Vs.

1. Union of India represented by
Secretary to the Government,
Department of Communications,
Ministry of Communications,
New Delhi
2. The Chief General Manager,
Telecommunication,
Trivandrum
3. The Telecom District Manager,
Calicut

..Respondents

Counsel for the applicant

Mr.M.R.Rajendran Nair

Counsel for the respondents

Mr.P.S.Biju, ACGSC

O R D E R

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 27th September, 1989
filed under Section 19 of the Administrative Tribunals Act,
the applicant who has been working as Telephone Operator
in the Calicut Division Telecom District has prayed that
the impugned order dated 11.7.89 (Annexure I) transferring
him from Calicut Secondary Switching Area to Cannanore
SSA from where he had been transferred earlier to Calicut

Division under Rule 37 of the P&T Manual should be set aside and the respondent No.3 directed to transfer him from Kalpetta to Calicut proper within the Calicut Division on the basis of his representation dated 22.5.87 at Annexure II and the interim reply given by the respondent-3 at Annexure IV. The brief facts of the case are as follows.

2. The applicant was originally recruited in the Cannanore SSA in the Cannanore ~~Engineering~~ Division in 1975. He was promoted as Telephone Operator and posted at Chalakudy in Trichur Division. In 1981 he applied for a transfer under Rule 38 of the P&T Manual Vol.IV to Calicut ~~this~~ was which is near to his native place, but not granted. On the basis of mutual transfer he was transferred to Cannanore Division and posted at Tellicherry. In the month of May, 1982, there was a mass agitation by the National Federation of Telecom Employees and in the background of that agitation, he along with several other Telephone Operators, Technicians, Linemen, Telegraphists, etc were transferred out of Cannanore Division. The applicant was accordingly transferred to Sulthan Battery in Calicut Division in May, 1982. He, along with other applicants represented for reconsideration of the transfer out of Cannanore. Accordingly, all the 47 officials who were

subjected to Rule 37 transfer in May, 1982, were ordered back to their parent units. The impugned order at Annexure I transferring the applicant back to Cannanore SSA was the last of such orders by which the 47 transfers under Rule 37 were revised. While the applicant states that in November, 1983, he had submitted a representation withdrawing his earlier request for retransfer to Cannanore Division, according to the respondents, no such representation had been received and the earliest request for his transfer to Calicut was made in his representation dated 22nd May, 1987 at Annexure II. In that representation, though he had mentioned about his representation made in 1981 for a Rule (on request) 38/transfer to Calicut, he had not made any reference whatsoever to his representation which according to him he had sent in November, 1983 withdrawing his earlier request of 1982 for retransfer from Calicut to Cannanore. When he received no reply to his representation of 22.5.87 for his transfer to Calicut from Kalpetta, he sent another representation dated 30.5.1988 at Annexure III in which he made a reference to his representation which he had sent in April 1982 for transfer to Calicut Phones. On this, respondent-3 sent a reply on 23.6.1988 (Annexure IV) indicating that he has been placed in the waiting list for future consideration of

his transfer to Calicut, but denied having received any application on the subject prior to 1987. According to him, he is an active member of All India Telegraph Engineering Employees Union Class III and there were some ^{adverse} news paper 6 report regarding the functioning of the Telephone Department and the respondents suspected that the applicant was at the root of this report. It is on this basis, according to him, that the impugned order transferring him from Kalpetta to Cannanore Division was passed in a vindictive manner. He has argued that the District Manager, Cannanore, in his letter dated 5.8.89 had specifically informed that they will not be in a position to accept the applicant from Kalpetta to Cannanore SSA for want of vacancy. On the ^a other hand, there was vacancy in Calicut where the applicant 6 could be accommodated. Instead of accommodating him in that vacancy, the respondents have thought it fit to punish him by transferring him to Cannanore Division where there is no vacancy and they have now decided to transfer his post also from Calicut to Cannanore Division. He has quoted Rule 37 to say that transfers should not be ordered except ^{also} in the interest of public service and Rule 38 of the P&T 6 Manual to say that transfers ^{of} officials for their own convenience should not be discouraged if they can be made without injury to the rights of others. The applicant has mentioned

his domestic difficulties and stated that for the last 14 years he had been working away from his home town and his transfer under Rule 38 should not have been denied to him. He has mentioned that two Telephone Operators who were surplus at Cannanore are working at Calicut on temporary transfer and there is no rule which permits transfer of the post from one Division to another as has been contemplated by the respondents to ease him out of Calicut Division.

The respondents have stated that the applicant along with others were transferred out of Cannanore temporarily under Rule 37 and they have to be posted back to their unit of recruitment. The applicant was transferred last of all, back to his parent unit and the question of his request transfer under Rule 38 to Calicut ~~to Calicut~~ can be considered even after he joined at Cannanore. They have stated that the earliest request for transfer to Calicut under Rule 38 was received in May, 1987 which shows that the applicant himself is aware that he belongs to Cannanore Division.

They have stated that the applicant is at the top of the waiting list for transfer to Calicut and his case will be taken up only after 19 surplus Telephone Operators at Calicut alone and 36 Telephone Operators in the whole of Calicut SSA and 11 other Telephone Operators as also the RTP

candidates are accommodated. They have denied that the applicant's transfer was as a sequel to certain news paper reports, but have stated that 'the applicant's involvement in leaking out the Departmental information to the Press can only be suspected.' They have explained that the two Telephone Operators of Cannanore Division working at Calicut Exchange were posted under extreme compassionate grounds.

3. We have heard the arguments of the learned counsels of both the parties and gone through the documents carefully. The main thrust of the argument of the learned counsel for the respondents is that the transfer of the applicant from Cannanore to Calicut Division in 1982 was made under Rule 37 of the P&T Manual Vol.IV ~~which~~ ⁶ which according to the respondents, is meant only to be temporary and the respondents are obliged to restore the transferees back to their original units. The respondents have retransferred back all the transferees of 1982 and the applicant has been transferred by the impugned order last of all. Rule 37 of the P&T Manual Vol.IV 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 Group D servants should not, except for very 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."

4. There is nothing in the text of the aforesaid Rule to indicate that the transfers under that Rule are only of temporary nature and the transfer ees will have to be restored back to their original posting. The applicant has also mentioned the cases of Shri K. Prabhakaran and Shri P.K. Sahsranamam, who though transferred under Rule 37 along with him in 1982 were not retransferred back to Cannanore as they had not requested for retransfer. On the other hand, ever since 1981 the applicant had been applying for transfer under Rule 38 of the P&T Manual to Calicut Division to be near his native place because of his family circumstances. Though the respondents have denied having received his representation of 1983 for transfer to Calicut withdrawing his earlier request of 1982 for retransfer from Calicut to Cannanore, he did make a reference to that withdrawal request in his representation

dated 30.5.1988. He has also mentioned the reference number of the forwarding letter with which the Sub-Divisional Officer, Accounts, Tellicherry had forwarded his representation made in April, 1982, for his transfer to Calicut Division under Rule 38. The respondents' argument that in his representation dated 22nd May, 1987, when the applicant was working in the Calicut Division at Kalpetta, he represented for transfer to Calicut shows that the applicant was aware that his parent unit was Cannanore, is not convincing. As explained by the learned counsel for the applicant, the Annexure II representation dated 22.5.87 was not for transfer to Calicut Division, but transfer to Calicut proper. The following extracts from his representation will make the position clear.

" Being away from my home town, I am not in a position to fulfil the social responsibilities towards my aged parents in their ailing stage. In addition I have an intention to acquire family and it will be more convenient for me, if I get a transfer to Calicut without much delay. I am not in a position to settle at Kalpetta as my mother is a rheumatic patient.

In this circumstances, I once again request your goodself to be kind enough to consider this application for transfer to Calicut, Feroke or to the proposed TD at Elathur at an early date."
(Emphasis added).

5. The fact that the applicant sought transfer to Calicut, Feroke or Elathur which are all within Calicut Division shows that he wanted a transfer within the Calicut Division where he was working, to a place which is near his native town. Kalpetta Sub-Division where he was working though within the Calicut Division was at a distance from his native place.


6. Rule 37, as quoted above, if at all, indicates that transfers should not be ordered except when advisable in the interest of the public service. I am afraid the interest of public service is not apparent in the impugned order of the applicant's transfer back to Cannanore. This is because the Asstt. Director of Cannanore Division in his letter dated 5th August, 1989 at Annexure VII has specifically indicated that Cannanore SSA was not in a position to accept the applicant in Cannanore for want of vacancy. If there was any need of public service, the question of Cannanore authorities refusing to accept the applicant would not have arisen. In order to get round this difficulty, the respondents thereafter transferred the applicant along with his post to Cannanore. This shows that the transfer was more to get rid of the applicant from Calicut Division

than in the public interest. The respondents' contention that there is a surplusage of Telephone Operators in Calicut Division and, therefore, the applicant has to be transferred back to Cannanore, in the above context is not very convincing. If there was a surplusage of Telephone Operators and the number of posts was less than those required to accommodate the Telephone Operators, it is not understood why the respondents are prepared to transfer even a post of Telephone Operator from Calicut to Cannanore Division. On the other hand, the respondents have conceded that 2 Telephone Operators have been posted at Calicut from Cannanore Division. There is also an oblique acceptance by the respondents of the allegation made by the applicant that his transfer to Cannanore Division is a sequence to certain Press reports which had appeared in the local papers. The respondents have stated that "evidently the involvement of the applicant can only be suspected and not proved in this case". The impugned order, therefore, has an odour of punishment also.

7. In the facts and circumstances, ^g ~~we~~ allow the ₅

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application, set aside the impugned order at Annexure I
with no order as to costs.


29.3.90
(S.P. MUKERJI)
Vice Chairman

29.3.90

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No.
~~T.A. No.~~

570

1989

DATE OF DECISION 18.3.91

N. Jerry Wilson Applicant (s)

Mr. M R Rajendran Nair Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)
Secretary to Govt., Department of Communications
New Delhi and others

Ms. K B Subhagamani, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

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

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. To be circulated to all Benches of the Tribunal? *no*

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicant is a Telephone Operator working in the Telephone Exchange, Kalpetta. He is aggrieved by the order of transfer Annexure-I dated 11.7.89 transferring him from Kalpetta in Calicut Secondary Switching Area hereinafter referred to as SSA, under Rule 37 of P & T Manual, to Cannannore SSA.

2. He is attacking the order on the ground that he is a Class III employee and has put in 14 years service outside his home town and he is entitled to remain in Calicut SSA on the basis of his request made under Rule 38 of the P & T Manual. He further submitted that the transfer has been effected by way of punishment and it is clear from Annexure-8 order of the Divisional Engineer (A) dated 1.9.89 transferring one post of Telephone

Operator to Cannanore SSA as per the instructions of the Chief General Manager for accommodating the applicant. According to the applicant, transferring one post of Telephone Operator from Calicut Division to Cannanore Division for implementing the transfer of the applicant cannot be in the interest of exigency of service especially when two Telephone Operators who are surplus at Cannanore are working at Calicut Division on temporary transfer basis. There is no provision to enable the respondents for the transfer of posts from one Division to another under such circumstances. Hence, this present transfer of the applicant has been ordered for ulterior object of shifting him from Calicut to Cannanore Division. This is an exercise of power with an extraneous purpose of victimising the applicant.

3. The respondents in the counter affidavit stated that the applicant was transferred from Cannanore Division to Calicut Division in the interest of service under Rule 37 of P & T Manual Vol. IV in connection with the agitation by the National Federation of Telecom Employees in the month of May, 1982 in the Kerala Circle. This transfer under Rule 37 is not a regular or permanent transfer and his lien remains in the Unit of recruitment namely Cannanore Division. Hence his request under Rule 38 can be considered only after transferring him back to the parent Unit of recruitment. All the 47 officials who were subject to Rule 37 transfer in May, 1982 were ordered to be re-transferred to the parent Unit and the applicant is the last official to be transferred back to Cannanore Division. If the applicant wants a transfer to any Unit other than his Unit of Recruitment, he has to

make a request for such transfer in accordance with Rule 38 of the P & T Manual Vol. IV. He has already submitted his application for Rule 38 transfer to Calicut and this will be considered even after he joins at Cannanore. His application stands first in the waiting list for transfer to Calicut.

4. The applicant also filed a rejoinder. He submitted that officials who have been transferred in exercise of the powers under Rule 37 need not necessarily be transferred back to the Unit of Recruitment for considering their claims when they submit claim for transfer under Rule 38 on the basis of their request. In fact, the applicant has applied for transfer under Rule 38 as early as in April, 1982. He further submitted that transfer under Rule 37 can also be treated as regular and permanent transfer. The respondents have passed such permanent transfers in respect of M/s. K. Prabhakaran and P. K. Sahasranam who were transferred from Calicut Division to Ernakulam Division in 1971 on a permanent basis and their seniority were fixed in the transferred Unit without any loss. If in the exigencies of service a Telephone Operator is to be transferred from Calicut Division, many of the juniors of the applicant who are now working at Calicut requested for transfer and they can be transferred. Under these circumstances, the transfer of the applicant is vindictive and really intended to be a punishment.

5. The contentions of the respondents that the transfer of the applicant from Cannanore Division to Calicut Division in 1982 was only a temporary one effected under Rule 37 of the P & T Manual Vol. IV and they are obliged to restore him back to the original Unit for enabling them to consider

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his request for a transfer under Rule 38 cannot be appreciated. The Rule 37 of the P & T Manual Vol. IV reads as follows:

"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 Group 'D' servants should not, except for very special reasons, be transferred from one district to another. All transfers must be subject to the conditions laid down in Fundamental Rules 15 & 22."

6. There is no mention in this Rule that the transfer effected under Rule 37 to any part of India is only a temporary measure and that the request of the transferee under Rule 38 can be considered only after re-transfer of such transferee to the Unit of Recruitment. Even before his transfer to Calicut in 1982 he submitted his request for transfer under Rule 38 of the P & T Manual to get a transfer over to Calicut Division near his native place because of his long outside service. In 1981 also he made such request and it is admitted in the reply statement that the applicant's request under Rule 38 stands first in the waiting list for a transfer to Calicut and that the same will be considered.

7. Rule 38 of the P & T Manual reads as follows:

"Transfers of officials when desired for their own convenience should not be discouragaged if they can be made without injury to the rights of others. However, as a general rule, an official should not be transferred from one unit to another either within the same Circle, or to another Circle unless he is permanent. As it is not possible to accommodate an official borne on one gradation list such transfers should not ordinarily be allowed except by way of mutual exchange. Transfers by way of mutual exchange, if in themselves inherently unobjectionable, should be allowed, but in order to safeguard the rights of men borne in the gradation lists of both the offices, the official brought in should take the place, in the new gradation list; that would have been assigned to him had he been originally recruited in that unit or the place vacated by the official with whom he exchanges appointment, whichever is the lower."

8. In this case the respondents have no case that by grant of the request of the applicant for a transfer over to Calicut the rights of any other official will be affected adversely. As indicated above the transfer of the applicant under Rule 37 is not a temporary transfer as alleged by the respondents and their case that Rule 37 does not contemplate permanent transfer is belied by their own action particularly when they had granted permanent transfer under Rule 37 to M/s. K. Prabhakaran and P. K. Sahasranamam conferring them the benefit of fixation of their seniority without any loss or detrimental effects. The respondents had also not produced any records satisfying us that the applicant's seniority and lien has been maintained in the Cannanore Division even after his transfer over to Calicut eventhough they have stated so in the reply statement. It is true that all the other officers who had been transferred to Calicut Division along with the applicant in 1982 in connection with an agitation were retransferred to Cannanore Division. But this will not make it imperative on the part of the respondents to transfer the applicant also to Cannanore Division for considering his rights to get transfer in terms of Rule 38. In fact for avoiding decision interpreting the scope of the rules 37 and 38, we granted sufficient time to respondents to consider the claim of the applicant for a transfer and posting to somewhere in the Calicut Division without affecting the rights of others as provided in Rule 38 taking into account the statement in the reply affidavit that the applicant's request stands first in the priority list. But the learned counsel for the respondents reported^{5/2} us the inability of the respondents and insisted for a decision on merits. Accordingly we are forced to decide the issue arising in this case. This case was originally heard by the Hon'ble Vice Chairman sitting single and allowed the application. But by the order of the Bench dated 25.4.90 recalled the judgment after the judgment

of the Hon'ble Supreme Court in Amulya Chandra Kalita Vs. Union of India and others, 1990 (1)JT 558 and placed before us for disposal in accordance with law.

9. In the course of the argument, the learned counsel for the applicant also submitted before us the seniority list of Telephone Operators of Cannanore Division as on 1.1.1988 and stated that the name of his client is not included among the list of Telephone Operators in that Division. So the applicant is not at present borne out in the seniority list and his lien is not also maintained there so as to enable the respondents to bring him back in to that Division and consider his request under Rule 38. The fact that the respondents have accepted the request of the applicant for a transfer under Rule 38 to Calicut Division while he was working at Kalpetta in the Calicut Division shows that they are prepared to consider his case even without re-transferring him from Calicut Division to Cannanore Division. If that was not permissible the respondents ought to have rejected the request in 1987 itself stating that his request for transfer under Rule 38 would be considered only after his re-transfer to Cannanore Division. The transfer of post for accommodating the applicant especially when surplus hands available at Cannanore Division cannot be considered to be a transfer in the exigencies of service as contended by the respondents.

10. For the reasons mentioned above, we are of the view that the impugned order is unsustainable and it is liable to be quashed. Accordingly, we do so and allow the application. There will be no order as to costs.


(N. DHARMADAN)
JUDICIAL MEMBER

18.3.91


(N. V. KRISHNAN)
ADMINISTRATIVE MEMBER