

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION .. 26.2.1990

PRESENT

HON'BLE SHRI S.P.MUKERJI, VICE CHAIRMAN

AND

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

Original Application No. 578/89

1. P.Salini

2. P.Radhakshmi

3. M.M.Soumya ..

Applicants

Vs.

1. The Superintendent of Post Offices, Cannanore Division, Cannanore.

10.C.C. Padmaja.

2. Director of Posal Services, Calicut Region, Calicut.

11.M.Remavathi.

3. Chief Post Master General, Kerala Circle, Trivandrum.

12.T.V. Bela.

4. Director General of Posts, Sanchar Bhavan, New Delhi.

5. Union of India rep. by Secretary, Ministry of Communications, New Delhi.

6. A. Devaki, Analakat Illom, P.O.Kunhimangalam.

7. T.Asokan, Thekethil House, Kallumutti, P.O.Iritty, Cannanore.

8. M.K.Jayasree, Nhendamadam House, Kadaleyi, Cannanore.

9. K.Hamsakutty, Kozhukkal house, Pattuvam, Respondents

M/s A.K.Basheer & P.V.Surendranath ... Counsel for the Applicants.

Mr. Ibrahim Khan R. 1 to 5

Mr. M.K.Damodaran R. 6 to 9

Mr. P.V.N.Nambiar R. 10to 12

.. Counsel for the Respondents.

ORDER

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

The three applicants who have been selected as

R.T.P. Postal Assistants in the Cannanore Division under

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the Chief Postmaster General, Kerala Circle, have in this application dated 3.10.89 under section 19 of the Administrative Tribunals Act, challenged the impugned order at Annexure-I dated 26.9.89 issued by the Chief Postmaster General of Kerala Circle. In that order it was laid down that the seniority of 4 R.T.P. candidates of Kasaragod Division who were transferred to Cannanore Division when some officers of Kasaragod Division were transferred to Cannanore Division will have their seniority in Cannanore Division in accordance with the year of recruitment and marks obtained by them so long as the number of R.T.P. candidates transferred is in proportion to the posts transferred to Cannanore Division. The brief facts of the case are as follows:

2. The applicants were working as R.T.P. Postal Assistants in the Cannanore Postal Division having been selected in the second batch of the 1982 examination. In accordance with the R.T.P. scheme they are selected on a Division-wise basis and are appointed on daily wages in the Division of their examination till they are absorbed as permanent employees. In 1989 certain offices of the Kasaragod Division were transferred to Cannanore Division along with departmental officials

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and 28 Postal Assistants of Kasaragod Division were transferred to Cannanore Division. Along with them, 4 R.T.P. candidates were also transferred to Cannanore Division. On 28.8.89 the Director of Postal Services issued an order (Annexure-3) indicating that if R.T.Ps. of Kasaragod Division are taken to Cannanore Division on re-organisation, they will have to rank junior to the R.T.Ps. of Cannanore Division for two years so that the rights of the R.T.Ps. of Cannanore Division for regular absorption in the vacancies of that Division are not pre-empted by the R.T.Ps. of Kasaragod Division. The applicants' claim is that the R.T.Ps. of Kasaragod Division should accordingly be ranked junior to them on their transfer to Cannanore Division. Their fear is that ~~the~~ 3 R.T.Ps. transferred from Kasaragod Division will rank senior to them because of the order dated 26.9.89 at Annexure-1 and the vacancies of Cannanore Division will be pre-empted by the R.T.Ps. of Kasaragod Division. The respondents 1 to 5 have stated that since the R.T.Ps. of the Kasaragod Division were recruited in the first half of 1982 whereas the applicants were selected in the second half of 1982, the former will be senior to the applicants in accordance with the instructions issued by the 3rd respondent at Annexure-1. They have argued that

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the instructions at Annexure-1 issued by respondent-3, ^{ground} i.e., the Chief Postmaster General, hold the ~~Request~~ as against the instructions at Annexure-3 which was issued by respondent-2 who is a subordinate of respondent-3. They have argued that the transfer of 4 R.T.Ps. from Kasaragod Division was in proportion to the number of posts transferred to Cannanore Division and since the R.T.Ps. of Kasaragod Division came over to Cannanore Division because of re-organisation and ~~not~~ ^{on} their request, they cannot be given bottom seniority under Rule 38 of the P&T Manual which is applicable only where the transfer is made at the request of the transferee. In the rejoinder the applicants have stated that the R.T.Ps. of Kasaragod Division were picked up only to deprive the R.T.Ps. of Cannanore Division of their legitimate promotion when these R.T.Ps. could never expect promotions in their parent Kasaragod Division.

3. We have heard the arguments of the learned Counsel for both the parties and gone through the documents carefully. We have no doubt in our mind that the transfer of the R.T.Ps from Kasaragod Division to Cannanore Division was not on their ~~on~~ request and therefore Rule 38 for bottom seniority will not apply.

In Om Prakash Sharma and others Vs. Union of India & others (AIR 1985 SC 1276) the Supreme Court held that where staff employed in different units are brought on a common seniority list because of re-amalgamation, their original seniority must prevail and any other view would be denial of equality of opportunity under Article 16 of the Constitution. Though in the instant case before us there was no common seniority list between the applicants and respondents 6 to 12, the spirit of the aforesaid decision of the Supreme Court would indicate that the respondents 6 to 9 should not suffer in their seniority on their transfer to Cannanore Division because of re-organisation. The applicants' reliance on Annexure-3 issued by the Director of Postal Services of Calicut Region seems to be misplaced because a superior authority, i.e. the Chief Postmaster General, Kerala Circle, had subsequently issued instructions at Annexure-1 on 26.9.89 protecting the seniority of the R.T.P candidates coming over from Kasaragod Division in proportion to the number of posts transferred to Cannanore Division. It is not for this Tribunal to question the selection of R.T.P. candidates of Kasaragod Division for transfer to Cannanore Division. It is an administrative matter and since no malafide has been

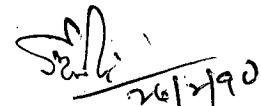
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alleged, the selection cannot be gone into by us.

In the facts and circumstances, we see no merit in the application and reject the same without any order as to costs.


26.2.90

(N.DHARMADAN)
JUDICIAL MEMBER


26.2.90

(S.P.MUKERJI)
VICE CHAIRMAN