

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 73 of 2004

Friday, this the 30th day of January, 2004

CORAM

HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. R. Sasi,
Group 'D' Official,
Office of the Executive Engineer,
Postal Civil Division, Manacaud PO,
Trivandrum-9Applicant

[By Advocate Mr. Thomas Mathew]

Versus

1. Chief Postmaster General
Kerala Circle, Trivandrum.

2. Executive Engineer,
Postal Civil Division, Manacaud PO,
Trivandrum-9

3. Union of India, represented by its
Secretary, Department of Posts,
New Delhi.Respondents

[By Advocate Mr. P.J. Philip, ACGSC]

The application having been heard on 30-1-2004, the
Tribunal on the same day delivered the following:

ORDER

HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

In pursuance of this Tribunal's order in OA.No.1279/96 dated 3-2-1997 (Annexure A1) the applicant had made a representation (Annexure A2) for a transfer from RMS, TV Division, Trivandrum to the Postal Civil Division, Chettikulangara, Trivandrum or to the office of the Deputy Director, Postal Accounts under Rule 38 of the P&T Manual Vol.IV. The reason for such a request for Rule 38 transfer was that the applicant was suffering from severe allergic complaints on account of dust and other allergens in the RMS

2

office. By Annexure A3 order dated 14th July, 1997, the 1st respondent, viz. Chief Postmaster General, disposed of the representation and issued the following direction:-

.... As there is vacant post of Group D in the office of the Executive Engineer (Civil), Trivandrum the applicant be transferred and posted against an appropriate Group D vacancy in the office of the E.E. Civil Postal Civil Division, Trivandrum immediately following the usual formalities. The representation of the applicant is disposed of accordingly."

2. It would appear that no follow up action was taken on the basis of the 1st respondent's direction. The applicant made a representation (Annexure A4) to the 1st respondent again. Although an Original Application was filed against the alleged non-feasance on the part of the respondents in the matter of transfer, the same was withdrawn with liberty to pursue the matter at the departmental level. Thereafter, the applicant made Annexure A6 representation, which was acted upon by the Director of Postal Services by issuing Annexure A7 order dated 18-3-1998 posting the applicant as Group 'D' in the office of the 2nd respondent on deputation basis. Annexure A8 is the follow up order issued by the Senior Superintendent, RMS TV Division, Trivandrum deputing the applicant to the office of the Executive Engineer, Postal Civil Division, Trivandrum in place of one C.Vamadevan, Group 'D'. The applicant joined the 2nd respondent's office on 1-4-1998 and has been continuing there eversince. While so, by Annexure A9 order dated 22-1-2004, the 1st respondent has ordered the applicant's transfer from the office of the 2nd respondent to Trivandrum (North) Division "in the interest of service under Rule 37". The applicant is aggrieved against the said order on the ground that the 1st respondent had appreciated the facts of the applicant's case and that the applicant was 'under the reasonable expectation that his transfer would be regularised under Rule 38 of the P&T Manual Vol.IV. The applicant has,

2..

therefore, filed this OA with a prayer to quash the impugned Annexure A9 order and declare that the applicant is entitled to be considered for absorption under Rule 38 of the P&T Manual Vol.IV in the office of the 2nd respondent in terms of Annexure A3 issued earlier by the 1st respondent and to direct the respondents accordingly.

3. Shri P.J.Philip, ACGSC has taken notice on behalf of the respondents.

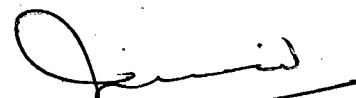
4. When the matter came up for consideration for admission, Shri Thomas Mathew, learned counsel for the applicant has submitted that the impugned Annexure A9 order appears to be issued by the 1st respondent without reference to Annexure A7 ordering the applicant's transfer from RMS, TV Division, Trivandrum to the Postal Civil Division, Chettikulangara, Trivandrum. The factual position being the same and the applicant being a patient of Asthmatic diseases, the present transfer would cause great hardship to him. The transfer without notice to a different recruitment unit was illegal, it is urged. However, the learned counsel submits that the OA could be disposed of by permitting the applicant to make a detailed representation to the 1st respondent explaining the factual background of the case and directing the 1st respondent to consider the same and issue appropriate orders within a time frame. Counsel would also submit that until appropriate orders are issued on the applicant's representation, the applicant may not be disturbed from the present place of his posting. Learned ACGSC does not have any objection to such a course of action being taken.

Q

5. On a consideration of the relevant facts and having regard to the submissions made by the counsel for the applicant, it would appear that although by Annexure A3 order the 1st respondent had specifically directed transfer of the applicant from RMS, TV Division to Postal Civil Division, Chettikulangara, where admittedly there was a Group 'D' vacancy, in accordance with the usual formalities, no such transfer order has so far been made. However, the applicant is continuing on deputation at Postal Civil Division, Chettikulangara, Trivandrum. It is, therefore, considered proper to dispose of this Original Application by permitting the applicant to make a detailed representation to the 1st respondent within two weeks from today and directing the 1st respondent to judiciously consider the applicant's representation, if received, and issue appropriate speaking order thereon within a period of one month from the date of receipt of such representation. Respondents are further directed that the applicant shall not be disturbed from the present place of his posting in pursuance of the impugned Annexure A9 order till one week after the issue of the order disposing of the applicant's representation, if received.

6. The Original Application is disposed of with the above directions. No order as to costs.

Friday, this the 30th day of January, 2004



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

Ak.