

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 78/91
~~T. A. No.~~

199

DATE OF DECISION 14.8.91

M. Sivadasan Applicant (s)

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

Versus

The Chief Post Master Respondent (s)
General, Trivandrum and
another

Mr. K. Prabhakaran, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji Vice Chairman

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, as in*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes, as in*
4. To be circulated to all Benches of the Tribunal? *no*

JUDGEMENT

SHRI N DHARMADAN, JUDICIAL MEMBER

Within a span of about one year the applicant is forced to approach this Tribunal ^{twice, *h*} at the *h* end of his official career, resisting his transfer to a distant place from his native district. This time he is attacking the order, Annexure I which was partially modified during the pendency of the application by Annexure I-A.

2. While working at Calicut in 1990 the applicant requested for a transfer to his native place on account of his family problems and personal ailments. Accepting the request Annexure II order dated 18.4.90 was passed by the Assistant Post Master General transferring him as

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Director (Establishment and Mails) Circle Office, Trivandrum. He thought he could retire on 30.6.92 while at Trivandrum. But to his surprise before completing at least one year at Trivandrum he was transferred to Lakshdweep Island Division, Kavarathy, w.e.f. 21.12.90 as officiating Superintendent of of Post Office. This was stated to have been passed on the basis of a write-up in Kerala Kaumudhi daily dated 5.11.90 highlighting the inconveniences caused to the public in the matter of delivery of postal articles through speed post handled by the applicant. The applicant was not responsible for it. He filed OA-960/90 against the transfer order, on 8.11.90. We stayed the transfer order and directed the respondent to clarify the following 3 points.

- "1. Why the applicant who had been transferred to Trivandrum only in April 1990, and has got less than two years of service to retire has been specifically chosen to be transferred to Lakshadweep; and
2. if a new office is to be organised at Lakshadweep why the department has chosen the applicant, a person who had no training and never worked in Postal Division; and
3. whether the impugned order of transfer has any relation with the facts mentioned in para 9 and 10 of the application."

Ultimately the said application was allowed by

Annexure III judgement dated 31st December, 1990

with the following directions:

- "(i) The first respondent should consider and dispose of Annexure-IV representation filed by the applicant against the impugned order of transfer in the light

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of the aforesaid observations in this judgment and contentions raised by the applicant as indicated in the judgment with special reference to the norms and guidelines of transfer and the fact that he has only one year and six months to go in service; and

(ii) the first respondent shall pass orders as expeditiously as possible, at any rate, within a period of two months from the date of receipt of the copy of the judgment.

(iii) We further direct the respondents that, till the disposal of Annexure-IV representation as directed above, the impugned order transferring the applicant to Kavaratti Island shall not be given effect to."

The impugned order Annexure I had been passed

pursuant to the judgement in implementation of the

directions posting him again at Calicut. This

according to the applicant is a vindictive and

malafide action.

3. When the matter came up for hearing it was brought to our notice that the applicant is to retire

on 30.6.92 and there are some posts vacant at

Trivandrum in which the applicant can be accommodated.

Hence, we directed the learned counsel for the

respondents to seek the possibility ^{of} posting the

applicant in any of the vacancies either at Trivandrum

or its neighbourhood. The order reads as follows:

" When the matter came up for hearing it was suggested that the applicant's case will be considered by the respondents for a posting to some other place in Trivandrum or in its neighbourhood, in view of the fact that he is to retire shortly. The respondents may issue orders to this effect. Post this case for further hearing on 24.6.91. This case be treated as part heard."

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4. Again when the matter came up for further hearing on 10.6.91 Annexure I (A) order was produced indicating that the respondents considered the and the ^h directions/order was passed in partial modification of the impugned order by which the applicant has been transferred as Superintendent of Post Office, Mavelikkara Division. This being a posting at a distant place from Trivandrum the applicant challenged this order by amending the application on the ground that this is a transfer not in conformity with the direction and there are the following vacancies available at Trivandrum. One vacancy of Group (B) officers as Sr. Post Master, Trivandrum G.P.O. which is vacant from February, 1990-91 and occupied by an unapproved person. There is another vacancy of the Assistant Director (Estt. and Technical) in the office of the Chief Post Master General, Trivandrum. The post of Welfare Officer in which one ^{and who ^h} Shri Raveendran is working is willing to be transferred to Calicut. The applicant can be accommodated at Trivandrum for few months till his retirement on 30.6.92 in any of the aforesaid vacancies. He further submitted that despite specific instruction issued

by this Tribunal on 7.6.91 to consider the posting of the applicant "in Trivandrum or in its neighbourhood, in view of the fact he is to retire shortly " the respondents are not posting the applicant either in Trivandrum or in its neighbourhood in spite of the fact that there are existing vacancies. This according to the applicant is a ^{retaliatory and} vindictive action on the part of the respondents only to deprive him of the financial benefit of Rs.200/- which he is now getting as Special Pay due to his working at Trivandrum.

5. The respondents in the additional reply affidavit filed on 26.7.91 submitted that Annexure-A(I)(A) order was passed posting the applicant as Superintendent of Post Office, Mavelikkara Division strictly in implementation of the order of this Tribunal passed on 7.6.91. The post in Mavelikkara is the only nearest post available place to accommodate him at present. There is no Group(B) posts in Quilon or Pathanamthitta which is nearer than Mavelikkara. Since the applicant is an RMS official he ^{would be} unable to manage the work of Trivandrum G.P.O., if he is posted as Senior Post Master. The applicant was found not suitable to continue as Assistant Director in the Circle Office and it is for this reason that a decision was

taken to transfer him from the post of Assistant Director (Maila). He is not capable of managing the Mail Section. It is in the exigency of service ^{that} he has been posted to Mavelikkara as per the Annexure-I(A) order.

6. Having heard the matter and after perusing the records we are of the view that this is a case in which the applicant has only few months to retire from service and he should get the benefit of the general policy of the Government to give a posting ^{on the basis of the} choice of the concerned officer ^h who has less than two years of service left before retirement. so that he can make advance preparations for settling down after retirement. In fact the applicant sought ~~for~~ ^h a posting at Trivandrum while he was working at Calicut presumably on the basis of the above policy for settling ^{down} ^h at Trivandrum on his retirement. This was accepted and he was given a posting to Trivandrum by Annexure II order. Normally the applicant would not have been disturbed from there before his retirement. But, it is seen that before completing at least one year at Trivandrum he was transferred to Lakshadweep, a very inconvenient place for him. This

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order was passed presumably based on some irregularity in his work, which he has denied. He was compelled to approach the Tribunal challenging the order.

We have asked three specific points for clarifications.

But respondents were unable to clarify the same. Hence,

we have quashed the order and directed the respondents

to reconsider the matter. Accordingly, the impugned

order was passed transferring him from Trivandrum to

Calicut again. This is rather harsh and appears to be

a punishment. There is no valid reason to post him

back to Calicut, a place from where he wanted to come

to Trivandrum, his native place, on request which was

accepted by the respondents by passing Annexure II

order. We were not satisfied with the manner in which

the respondents implemented our judgment Annexure III.

But, in order to avoid a pronouncement on merit and

complications of the department further we directed the learned counsel to seek the

possibility of the posting of the applicant either

in Trivandrum or its neighbourhood taking into conside-

ration the fact that he had only less than a year to

retire. We also passed an order on 7.6.91. But, it

appears that the respondents are not prepared to


accommodate the applicant for about 11 months either

in Trivandrum or Quilon in any of the available posts. Though they have passed Annexure I (A) order posting him at Mavelikkara they did not offer to give him a posting at Trivandrum in any of the vacancies pointed out by him in the amended application. In fact the applicant has pointed out half a dozen places in which he can be accommodated for the short period till his retirement. But the respondent is taking an attitude that he is incompetent to do the works in some of those offices. This appears to be unbelievable. Since the respondents are taking a very stern and recalcitrant attitude in the matter of giving a ^{suitable} posting to the applicant at the fag end of his official career ^{or} either at Trivandrum or Quilon in any of the vacancies pointed out by the applicant we are compelled to interfere in the transfer order and set aside the same. We would not have interfered in this case had the respondents shown a little indulgence and given him a posting at least to a place nearer to Trivandrum for eleven months following the policy statement of the Government of India referred to above. We have a feeling that the respondents could have ^{ed}avoided a pronouncement by this Tribunal in this case by giving him a posting either in Trivandrum or Quilon till his retirement on 30.6.92. The failure of the respondents to pass such an order as desired by us in the ~~interest~~

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interest of justice and accommodate the applicant
compels us to pass this order.

7. Under these circumstances we allow the
applicant and quash the impugned orders. There
will be no order as to costs.


14.8.91
(N Dharmadan)
Judicial Member


14.8.91
(SP Mukerji)
Vice-Chairman