

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 99 of 2009

Thursday, this the 28th day of May, 2009

CORAM:

Hon'ble Dr. K.B.S. Rajan, Judicial Member

K.V. Manjula Menon, W/o. Nandakumar R.,
 aged 35 years, Postal Assistant, Mulangunnathukavu PO.,
 Trichur, residing at D1, MRG Sree Priya Apartments,
 Chittilangattu Lane, Patturaicaki,
 Thiruvampady P.O., Trichur-680 022.

Applicant

(By Advocate - Mr. M.R. Hariraj)

V e r s u s

1. Union of India, represented by the Secretary to
 Government of India, Department of Posts, New Delhi.
2. The Chief Post Master General, Kerala Circle, Thiruvananthapuram.
3. The Post Master General, Central Region, Ermakulak.
4. The Senior Superintendent of Post Offices, Trichur Division,
 Trichur.
5. The Post Master General, Northern Region, Calicut.
6. The Superintendent of Post Offices, Ottappalam Division,
 Ottappalam.

Respondents

(By Advocate – Mr. George Joseph, ACGSC)

This application having been heard on 28.05.2009, the Tribunal on the
 same day delivered the following:

ORDER

The applicant had made a request of inter-regional transfer from
 Ottappalam to Trichur. Ottapallam comes under the jurisdiction of PMG
 Northern Region while Trichur, that of Central Region. Vide Annexure A-7,
 the Senior Superintendent, Ottapallam has forwarded the request of the

applicant to the Post Master General, Northern Region, Calicut with his recommendation stating, "the official can be relieved when newly recruited PAs join after their training in Jan-09". It was on consideration of the aforesaid request of the applicant that an order was passed by PMG, Northern Region vide letter dated 20.11.2008 addressed to the Superintendent of Post Office, Ottappalam by Northern Region, Calicut intimating concurrence of the Post Master General, Central Region, Kochi for transfer under Rule 38 of the applicant to Trichur Division. It has also been stated that reliever could be arranged as and when newly recruits join the post. Taking the above communication as a concurrence of Regional PMG the applicant was relieved on 24.1.2009 and she joined as a PA, Mulangunnathukavu on 27.1.2009 vide Annexures A-4, A-5 and A-6. The transfer order was issued by the Superintendent in pursuance of order dated 20.11.2008 of the PMG Calicut referred to above. The said order also states that the transfer was made "in consultation with SSP Thrissur". The applicant has drawn her pay from the new region after her transfer. While so, the Senior Superintendent of Post Offices, Trichur was directed by the PMG Northern Region, Calicut to relieve the applicant and direct her to report back to her earlier place of posting on the ground that the official was relieved without concurrence of original PMG. This resulted in passing of Annexure A-1 order dated 9.2.2009 directing that the applicant be relieved immediately to report back to the office where she was earlier working (PA, Shoranur MDG). Immediately on receipt of the above order the applicant has moved this Tribunal and by order dated 16.2.2009 after issuing notice the stay on the impugned order was granted.

2. In their counter filed by the respondents the following averments were made:

"3. It is submitted that Postmaster General, Northern Region, Calicut (respondent-5) informed respondent-6 in letter No. Staff/24-52/2007 dated 20.11.2008 that "concurrence of PMG, Central Region, Kochi has been received for the transfer under Rule 38 of the above official to Thrissur Division. Therefore, you may register the case and take it as a vacancy while computing the direct recruitment vacancies next time treating it as a Rule-38 outward transfer. Relief can be arranged as and

when the new recruits join the post". True copy of the letter dated 20.11.2008 issued by Sri A.N. Unnikrishnan Nair, Assistant Director (Staff), Office of the Postmaster General, Northern Region to the Superintendent of Post Offices, Ottapalam is produced herewith and marked as Annexure R-1. This was only an advance intimation given to respondent-6, for administrative convenience, regarding the decision of the competent authorities, approving the transfer of the applicant. But no formal order, ordering transfer of the applicant from Ottapalam division to Thrissur division, and stipulating the conditions thereof, was issued, either by respondent-3 or respondent-5, the competent authorities. No order permitting relief of the applicant from Ottapalam division was also issued by Respondent-5, which could have been done only after assessing the staff position of that division on joining of the newly recruited Postal Assistants and on consultation with respondent-3. Respondent-6 however, misconceived the message as a formal order for transfer of the applicant to Thrissur division, and took further action to carry out the instructions. Thus, his office addressed the office of respondent-4 to intimate the name of the office where the applicant was proposed to be accommodated on transfer in the new unit. Respondent-4, on his part, without any order from respondent-3, communicated the office of posting as Wadakkancheri-TC HO in his letter No. BB-30/inward dated 15.1.2009. Later, the office of posting was changed as Mulangunnathukavu SO. Thus, respondent-6 issued formal transfer/relief orders on 22.1.2009 (Annexure A-4), and the applicant was relieved from Shoranur on the afternoon of 24.1.2009. She joined the new station, Mulangunnathukavu on 27.1.2009 forenoon. In short, a Rule 38 transfer was given effect to, without proper orders from the competent authorities, Postmaster General, Central Region, Kochi (respondent-3) and Postmaster General, Northern Region, Calicut (respondent-5).

4. It is submitted that since the transfer was given effect to without following the prescribed formalities and without proper orders from the competent authorities, respondent-5 in letter No. Staff/24-52/07 dated 3.2.2009 issued orders for return of the applicant to her parent unit. True copy of the letter bearing Number Staff/24-52/07 dated 3.2.2009 sent by Sri A.C. Philip, Assistant Director (staff), Office of the Postmaster General, Northern Region, Calicut to Senior Superintendent of Post Offices, Thrissur is produced herewith and marked as Annexure R-2. Hence, Annexure A-2 order was issued by respondent-4 directing the applicant to report back to Shoranur. The competent authority has inherent powers to cancel transfer orders issued erroneously. The circumstances under which Annexure A-1 order was issued have been clearly mentioned therein. If the applicant had any grievance on the actions of the respondents, she could have sought departmental remedies. She has approached the honourable Tribunal, before exhausting the normal channel of remedies. Transfer is an administrative action and unless malafides are proved, there is no scope for legal remedy in this case. Respondent-2 has no role in this

transfer and is unnecessarily cited as a respondent in this Original Application.

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8. With regard to the contention raised in para 4.6 of the Original Application, it is submitted that salary of the applicant for the month of January 2009, was paid from Thrissur Postal Division cannot be a reason for ratifying her irregular joining at Mulangunnathukavu. The transfer was given effect to without proper orders from the competent authorities, and had to be cancelled. The contention of the applicant that the post vacated by her at Shoranur has since been filled up, is also not correct. Consequent to the transfer of the applicant, two posts of PA at Shoranur had become vacant. One of these two posts has been filled up by transferring one Smt. Kathikarani, PA, Pulasseri to the office. The post vacated by the applicant is still vacant."

3. The applicant has filed her rejoinder reiterating her stand and also enclosing a copy of Annexure A-7 communication from Sr. Superintendent, Ottappalam to the Postmaster General, Northern Region, Calicut.

4. Respondents have filed their additional reply in which they have contended as under:-

"2. It is submitted that the contention of the applicant in paragraph 2 of the Rejoinder is not sustainable. The applicant belongs to the cadre of Postal Assistants, for which the Superintendent/Senior Superintendent of the Postal division concerned is the appointing authority. The request of the applicant was for transfer under Rule 38 of Postal Manual Volume IV, from Ottapalam Postal division under the administrative control of respondent-5 to Thrissur Postal division under the administrative control of respondent-3. As this is an inter-regional Rule 38 transfer, the Postmasters General of both the regions should concur for such a transfer, and a specific memo of transfer, stipulating the conditions thereof, has to be issued as per the prescribed procedures on the subject. In the absence of such an order Annexure A-4 issued by respondent-6 was not in order and hence cancelled. The contention of the applicant that such transfers can be granted if rights of others are not affected, is also not true. Transfers can be granted only after assessing the staff strength of both units and considering the exigencies of service."

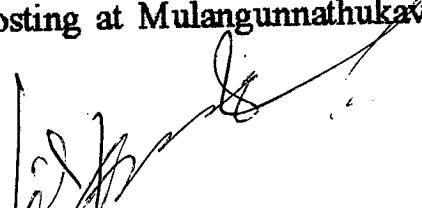
5. Counsel for the applicant submitted that the applicant has preferred her

request for transfer under Rule 38 with an undertaking to abide by all the conditions fastened to the said rule. It is after thorough consideration the Senior Superintendent, Ottappalam has forwarded her case to the Northern Region, Calicut with his recommendation. Annexure R-1 is the response to the said recommendation from the PMG, Northern Region, Calicut clearly expressing the concurrence of PMG, Kochi. As such, the two PMGs of the two regions having concurred. It was after consulting the Sr. Superintendent, Trichur that the Senior Superintendent, Ottappalam has relieved the applicant to join as Postal Assistant at Mulangunnathukavu. A copy of this communication has been duly marked to PMG, Northern Region, Calicut. Thus in his action the Superintendent of Post Offices, Ottappalam Division has acted rightly taking the communication from the Postmaster General, Northern Region, Calicut dated 20.11.2008 as a clear concurrence from the two PMGs. There does not appear to be any ambiguity in the concurrence so accorded by the two PMGs. The Senior Superintendent of Post Offices, Trichur also had understood the matter as above, as otherwise he would not have permitted the applicant to join the new post. May be, by practice yet another communication is required as follow up action to the aforesaid concurrence given by the two Postmaster General. If that has not been issued, the same would not mean that there has been no concurrence at all. Counsel for the applicant is right when he submitted that Rule 38 does not provide for any specific procedure. As, such action to issue yet another communication can at best be a procedural omission (not even irregularity) and the same could be easily ratified since there has been conscious concurrence by the two PMGs in respect of the transfer of the applicant.

6. In view of the above, contention of the respondents that what was communicated by order dated 20.11.2008 is only a concurrence, in principle is outrightly rejected, as the order was passed on the application of the applicant and it also refers the name of the applicant. It also states as to when the applicant should be relieved. The said order is sufficient to effect the transfer of the applicant which has rightly been done by the

Superintendent, Ottappalam.

7. The OA therefore, succeeds. The impugned order at Annexure A-1 is quashed and set aside. Respondents are directed not to disturb the applicant from the present place of posting at Mulangunnathukavu. No order as to costs.



(K.B.S. RAJAN)
JUDICIAL MEMBER

“SA”