

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH.

O. A. No. 113/93
T.A. No. 109

DATE OF DECISION 27.4.93

Mr. S. Balappa Applicant (s)

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

Versus

The Asstt. Engineer, Co-axial, Koshikode & 2 others. Respondent (s)

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

CORAM :

The Hon'ble Mr. A.V. Haridasan, Judicial Member

The Hon'ble Mr. R. Rangarajan, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

R. Rangarajan, AM

Shri Balappa, the applicant, a cable splicer, and member of scheduled caste community who was transferred to the Kannur Division from Karnataka Circle under Rule 38 of P&T Manual Vol. IV, presently working under Respondent-1 at Kasargod, having been aggrieved by the cancellation of his order posting him at Payyanur Exchange in Telecom Circle has approached this Tribunal under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- i) Quash Annexure-VI.
- ii) Declare that applicant is entitled to be absorbed in Kannur Secondary Switching Area in preference to 3rd respondent and to direct the respondents 1 & 2 to allow the applicant to join duty as Cable Splicer in Kannur SSA in Kerala Circle if necessary by posting the 3rd respondent to the office of the A.E. Co-axial, Kasaragod and fix the seniority of applicant above 3rd respondent.

- iii) Grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant; and
- iv) Grant the cost of this O.A.

2. The applicant was allowed to join at Kasargod under A.E. Co-axial as initially there was no vacancy at Kannur Telecom Wing. As per Annexure-III, the 2nd respondent has asked the 1st respondent to relieve the applicant from Co-axial station Kanchangad with instructions to report at Payyannur for further duties. However, he was not relieved. In the meantime, one Balakrishna Kurup, the 3rd respondent, who also came to Kerala under Rule 38 of the P&T Manual, was posted to Talliparamba Exchange as per orders dated 1.1.93 at Annexure-V. Though the applicant has represented his case to post him at Payyannur, this request was not heeded. The 2nd respondent thereafter issued a letter dated 4.1.93 vide Annexure-VI cancelling the applicant's posting at Payyanur Exchange as the 3rd respondent has reported under Kannur SSA and hence there is no vacancy of Cable Splicer in the Telecom Section in Kannur SSA. Against this order, as stated above, the applicant has approached this Tribunal for quashing the same.

3. The applicant has averred that the posting of the 3rd respondent at Kannur Telecom Wing, who was transferred to Kannur later than him, and cancelling of the Annexure-III order by Respondents 1 & 2 is highly arbitrary and discriminatory and is violative of Articles 14 and 16 of the Constitution. As he has come on transfer under Rule 38, his seniority will be affected if he is not posted to Kannur as Cable Splicer in preference to the 3rd respondent in Kannur SSA as the 3rd respondent had been transferred to Kerala Circle later than him. He has further sought relief to direct the respondents to permit him to join at Kannur SSA forthwith and to fix his seniority above the 3rd respondent.



4. The respondents have filed a statement wherein they have averred that the applicant was posted to Co-axial station, Kanchangad as there was no vacancy in Kannur SSA for the said post at that time. They further aver that both the Co-axial station, Kanchangad and Kasargod lies within the territorial area of Kannur SSA which recruits and deputes the Group C and D staff to Co-axial maintenance stations within the territorial area. The respondents further submit that the vacancy in Kannur SSA has arisen after the applicant joined the Co-axial maintenance station, Kanchangad due to the retirement of Shri M. Damodaran, Cable Splicer on 31.8.92 on superannuation and the second respondent has asked the Assistant Engineer, Kasargode to relieve the applicant to report at Payyanur under SDOT Payyanur vide letter dated 12.10.92. However, he could not be relieved from Co-axial organisation as the staff position in this category was critical in that organisation also. In the meantime, the third respondent has reported from Madras Telecom Circle under Rule 38 of the P&T Manual and he was posted to Talliparamba under SDOT, Talliparamba as per orders at Ann.V. Under this circumstance, the posting orders of the applicant were cancelled and the A.E, Co-axial, Kazargode was requested to retain the applicant at the unit itself in terms of the impugned order. The respondents further stated that the place in which the applicant is posted also falls in the territorial area of the Kannur SSA and as the Kannur SSA is bound to supply the staff required for Co-axial stations falling within the territorial area, there is no mistake in posting Shri Balappa at Kanchangad Co-axial station and that too after obtaining his willingness. As regards the seniority, the respondents have stated that the seniority of the applicant will not be affected adversely due to the joining of the third respondent at Talliparamba on 1.1.93. Since the



applicant had already joined in the territorial jurisdiction of Kannur SSA on 9.9.92 he will definitely be senior to the third respondent who joined in the SSA only on 1.1.93. The respondents further submit that the applicant has not represented his case for posting him at Talliparamba in place of the third respondent when the third respondent was posted at Talliparamba and hence the applicant has not exhausted the channels for redressal before approaching this Tribunal. Finally, the respondents pray for dismissal of this case in view of the facts stated above by them and in the interests of justice.

5. We have heard the learned counsel of both the parties and also perused the records.

6. The applicant joined the Kerala Circle as per his relief letter dated 30.11.92. As there was no vacancy in Kannur SSA, he was temporarily posted under A.E, Co-axial Kanchangad. As there was no vacancy in Kannur SSA, the applicant had given his willingness to work under A.E, Kanchangad temporarily which is nearer to his place of choice. This willingness should not be held against him when a future vacancy arises at Payyannur. Though instructions were issued as per Ann.III order to relieve the applicant to join at Payyanur, the first respondent did not carry out the order of the 2nd respondent. When the third respondent reported later on 1.1.93, later to the arrival of the applicant, he was posted to Kannur SSA inspite of the fact that the applicant who joined the Kerala Circle earlier is waiting to join at Payyanur in Kannur SSA as per Ann.III order. It is stated that the applicant could not be relieved due to the critical shortage of staff position in the Cable Splicer category under the A.E. Co-axial, Kasargode. If the



first respondent wanted to post the applicant in Payyannur, he could have easily effected this posting as the third respondent was readily available for posting under A.E. Co-axial thereby relieving the applicant to join at Payyanur in terms of the order at Ann.III. But this was not done. Instead, the third respondent, who came to Kerala Circle later than the applicant on transfer from Madras Circle, was posted to Talliparamba Exchange in Kannur SSA, resulting in the cancellation of the Ann.III order. The impugned order at Ann.VI not only cancels the order of transfer of the applicant to Payyanur Exchange, but also permits retention of the applicant under A.E. Co-axial, Kasargode. The above action of the respondents puts the applicant in a most disadvantageous position and is definitely an arbitrary one. There is every reason to believe that favouritism has been shown to the 3rd respondent by posting him at Talliparamba instead of the applicant. In the result, we have no hesitation in coming to the conclusion that the impugned order at Ann.VI has to be quashed. Accordingly, we do so. We also direct the respondents to immediately relieve the applicant to carry out his transfer as Cable Splicer, to Payyanur Exchange by replacing the third respondent, if required. There will be no order as to costs.

21/4
 (R.Rangarajan)
 Administrative Member

29/4 1983
 (A.V.Haridasan)
 Judicial Member