

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 119/92
XXX XXX

199

DATE OF DECISION

14.10.1992

Shri R. Sasi _____ Applicant (s)

Shri Thomas Mathew _____ Advocate for the Applicant (s)

Versus

Head Record Officer, RM9, _____ Respondent (s)
Trivandrum & 4 others

CORAM : Shri V Krishna Kumar, ACGSC Advocate for the Respondent (s) 1-4
Shri PV Mohanan " " 5

The Hon'ble Mr. SP Mukerji - Vice Chairman
&

The Hon'ble Mr. AV Haridasan - Judicial Member

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

JUDGEMENT

(Hon'ble Shri AV Haridasan, JM)

In this application filed under Section 19 of the Administrative Tribunals Act, the applicant has prayed that the order of the 2nd respondent dated 18.7.91 (Annexure A6) informing that he was not eligible to be posted as Mailman (Army Postal Service) in civil as per the APS Recruitment Rules and as per his own undertaking before his deputation to APS and that he was not eligible for any post in civil in case of his premature discharge from APS may be set aside and that the respondents may

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be directed
to permit the applicant to join duty as Mail Man or at least
to permit him to rejoin duty as Extra Departmental Stamp
Vendor with consequential benefits including back wages from
12.7.90. The facts are like these:-

2. The applicant was first appointed as a casual
labour in the Trivandrum RMS on 25.11.83. While he was
working continuously as a casual labour, he was appointed
as an ED Mail Man in Trivandrum RMS with effect from 16.9.87.
While he was working as ED Mail Man, he was posted as ED
Stamp Vendor, RMS, Trivandrum with effect from 1.2.90 at
his request. While he was working as ED Stamp Vendor, he
Group-D
was selected for appointment as ~~88~~ Mail Man and for deputation
to Army Postal Service. On being finally selected for
deputation to APS, he was by order dated 26.3.91 (Annexure A4)
appointed as a Departmental Mail Man with effect from that
date and was directed to join Kamptee Army Post Office. The
applicant joined the Army Postal Service as Sepoy at ~~Kamptee~~
APO on 27.3.91. While so, he was discharged by the military
authorities by order dated 9th July, 91 at Annexure A5 with
effect from 10.7.91 on the ground that he was "unlikely to
become an efficient soldier". He was directed to report to
RMS, Trivandrum. Therefore, the applicant on 12.7.91 reported
before the 1st respondent as directed in the discharge order
at Annexure A5. But the 1st respondent did not allow him
to join duty either as a Departmental Mail Man or even as
an ED ~~Stamp~~ Vendor which post he was holding prior to his

appointment as Departmental Mail Man. His representation for permission to join duty as Departmental Mail Man to the 2nd respondent made on 13.7.91 was rejected by the 2nd respondent by his order dated 18.7.91 at Annexure A6 on the ground that he was not eligible to be posted as Mail Man in civil as per the APS Recruitment Rules and as per his own undertaking prior to his deputation that he would not be eligible for any post (MM/ED) in civil, in case of his premature discharge from APS. The applicant not being re-admitted to duty after his premature discharge from APS, went on making representations to the respondents for being re-admitted to duty as a Departmental Mail Man or at least as an ED Stamp Vendor as he was unemployed and to enable him to maintain himself and his family. He had even requested that till such time he could be accommodated in the post of Mail Man, he may be engaged at least as a casual mazdoor so that he could earn his bread. Though he was given work of casual mazdoor for 3 days, on account of his illness, he could not perform the arduous duties of a casual labour. It is in these circumstances that the applicant has filed this application praying that the respondents may be directed to re-admit him to duty as a Departmental Mail Man to which post he was posted before his deputation to APS. It has been alleged in the application that as the discharge from APS was not for any misconduct on his part, the refusal on the part of the respondents to allow him to re-join the post to which he was regularly appointed prior to his deputation was wholly unjustified, arbitrary and illegal.

3. The respondents have in their reply statement contended that as the applicant was appointed by order dated 25.3.91 (Annexure R1A) as temporary Mail Man Group D with effect from the afternoon of 26.3.91 solely to ~~make~~ the applicant ~~eligible~~ for enrolment in APS with effect from 27.3.91 making it clear that he would not have any claim for transfer to the parent department till such time he would be absorbed in a Group D post in civil and that he would also lose the post of EDA to which regular appointment would have otherwise been made in the normal course in the event of his premature discharge from APS, the applicant is not entitled to claim a posting as either Group D Mail Man or as ED Stamp Vendor. In regard to his claim for appointment at least as an ED Stamp Vendor, the post which he was holding prior to his appointment as Group D Mail Man, the respondents have contended that the 5th respondent who is senior to him as EDA has been appointed in that post and that his request for re-employment as ED Stamp Vendor cannot be acceded to. The respondents have also averred that as there is no vacancy either in the post of Group D Mail Man or as ED Mail Man, directed he could not be provisionally appointed as in the order dated 10.8.1992 and that the applicant has in his representation dated 26.4.92 declined the offer for posting as ED Stamp Vendor at Trivandrum Post Office. They contend that since the applicant has at the time of his appointment as Group D Mail Man on 26.3.91 given a declaration (Annexure R(B)) that he would not have any claim for re-transfer to the parent ^{Group D} department till such time he is absorbed in ~~a~~ ^{Group D} post in the

P&T Department on regular basis and that in case of his premature discharge from the APS he would not claim a Group D post in civil and would lose his claim for the post of EDA, the applicant has no legitimate grievance to be redressed.

4. The applicant has in a rejoinder filed by him contended that in accordance with the provisions of Rule 23 of Appendix 23 of P&T Manual Vol.IV personnel unlikely to become efficient soldiers are liable to be retransferred to their parent civil units any time during the training and those who outlive their usefulness to the service are liable to be retransferred to their parent unit any time during their tenure of service with the Army. On his discharge from APS on the ground that he was unlikely to become an efficient soldier, he was entitled to be retransferred and re-appointed to a Group D post to which he was appointed immediately prior to his deputation. He has also stated that the reason why he did not accept the post of ED Stamp Vendor, Trivandrum Museum Post Office was that the post carried only an allowance of Rs.596/- while the post of ED Stamp Vendor in the RMs prior to his appointment to a Group D post carried a monthly allowance of Rs.720/- and that if he had accepted the post of ED SV, Trivandrum Post Office there would be a reduction in status and emoluments.

5. We have heard the arguments of the learned counsel on either side and have also carefully perused the pleadings and documents on record. Admittedly, the applicant was appointed

as a temporary Mail Man in the scale of Rs.750-12-870-EB-14-940/- with effect from the afternoon of 26.3.91 by order dated 25.3.91. Annexure R(a) is a copy of the order of appointment of the applicant and another person. The order at Annexure R(a) reads as follows:-

"In accordance with the directions contained in SSRM Memo No.BII/II-10/2 dt 20.3.91 and 22.3.91 the following ED Agents of HRO TVM are hereby appointed as temporary MM w.e.f. A/N of 26.3.91 in the scale of pay Rs.750-12-870 EB-14-940.

- 1) N. Rajendran ED MM HRO TVM
- 2) R. Sasi ED MM HRO TVM

The officials are informed that

- 1) The appointment is purely temporary basis.
- 2) The appointment will be terminated at any time under the provisions of Rule 5 of CCS(Temporary Service) Rules 1965 as amended from time to time.
- 3) The other conditions of service will be governed by relevant rules and orders from time to time.

They are also informed that

- 1) The postings are for the purpose of the deputation to APS.
- 2) They will not have any claim for transfer to the parent department till such time they are absorbed in Group D posts in the civil on regular basis and in case of their premature discharge from APS they will not have any claim in Group D posts in civil but also lose the posts of EDAs to which regular appointments would have otherwise been made in the normal course.

It is also certified that they will not be reverted to the lower cadre during their service in APS."

It is evident from this order that the applicant has been appointed as a temporary Mail Man in the Group D service of the Department and that he would be governed by the relevant rules and orders, from time to time. This appointment of the applicant has not been terminated either under Rule 5 of the Temporary Service Rules or by any other order. It is true that immediately after his appointment as a Group D

Mail Man, he was deputed to APS. He was discharged from the APS with effect from 10th July, 1991 with the direction to report to RMS, Trivandrum Division granting him TA and joining time as admissible in civil service. A person can be deputed from one Department to another only if the person holds a lean on a substantive post in the lending Department. The applicant having been appointed as a Group D Mail Man with effect from 26.3.91 on his deputation to the APS, he had a lean on the post of Group D Mail Man. There is no case for the respondents that this lean has been terminated. It is also evident from the order of discharge that he was directed to report back to his parent Department availing joining time as admissible under the Rules. Since the applicant's lean on the post of Group D Mail Man has not been terminated and as he has not been removed from service, the respondents were legally bound to accommodate him in a Group D post. Rule 23 in Appendix 23 of the P&T Manual Vol.IV provides as follows:-

"23. Termination of Deputation--Termination of deputation will not be permissible during the period of initial engagement viz. 18 months except on extreme compassionate grounds. However, personnel unlikely to become efficient soldiers are liable to be transferred to their parent civil units any time during the training and those who outlive their usefulness to the service are liable to be retransferred to their parent unit any time during their tenure of service with the Army. Such personnel are not eligible for re-enrolment."

So, on his discharge from APS, the applicant stood transferred to his parent unit. On such transfer he was entitled to be reinducted to Group D post. The respondents have contended

that the applicant had given an undertaking at the time of his appointment and deputation that he would not have any claim for re-transfer to the parent Department till such time he is absorbed in a Group D post in the P&T Department on a regular basis and in case of his premature discharge from APS he would not have any claim to a Group D post in civil and would also lose the post of EDA to which regular appointment has otherwise been made in the normal course and that, therefore, the applicant is estopped from claiming either the post of Group D Mail Man or that of an EDA which he was holding prior to his appointment as a Group D Mail Man. ~~Annexure~~ R(b) is a photocopy of the undertaking alleged to have been given by the applicant. It reads as follows:-

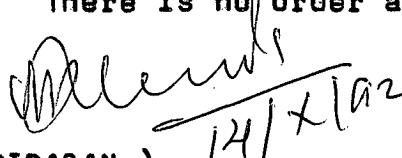
"DECLARATION: They would not have any claim for retransfer to the parent department till such time they are absorbed in Group D posts in the P&T Department on regular basis and that in case of their premature discharge from APS they will not have claim in Group D posts in civil but also lose the posts of EDA to which regular appointment would have otherwise been made in the normal course."

It is evident that this declaration relates to a third person. The applicant has not undertaken that he would not be eligible for retransfer. The word used is "they" which obviously would not bind him. Even otherwise, a condition that a person deputed to APS would not be in the event of his premature discharge for which he may not be ~~in~~ any way responsible should lose the post to which he was appointed, appears to our mind, to be highly unconscionable. We are, therefore, of the view that the action on the part of the respondents in refusing to re-admit the

applicant to a post of Group D Mail Man on his discharge from APS and on his reporting back to ~~his~~ parent unit is arbitrary, illegal and unjustified.

6. For the reasons mentioned above, we allow the application, quash the impugned order at Annexure A6 and direct the respondents to post the applicant as a Group D Mail Man with effect from 12.7.1991 forthwith and to give him full back wages within a period of one month from the date of communication of a copy of this order.

7. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER

14.10.92


(SP MUKERJI)
VICE CHAIRMAN
14.10.92

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ERNAKULAM BENCH
R.A.No.19/93 in
O. A. No. 119/92 x100x.

DATE OF DECISION 4.5.93

Shri N Babu & another, Review Applicant (s)

Shri OV Radhakrishnam Review Advocate for the /Applicant (s)

Versus
Head Record Officer, Trivandrum RMS, & others Respondent (s)

Shri V Krishnakumar Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. SP Mukerji - Vice Chairman

&

The Hon'ble Mr. AV Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? PO
3. Whether their Lordships wish to see the fair copy of the Judgement? NO
4. To be circulated to all Benches of the Tribunal? NO

JUDGEMENT

(Hon'ble Shri AV Haridasan, JM)

A third party has filed this Review Application challenging the merits of the decision in the Original Application on grounds which were raised by the contesting respondents and were rejected. There is no error apparent on the face of records. The facts mentioned in the Review Application do not justify a review and even if contentions were raised these by the contesting respondents in the OA it would not have persuaded us to take a different decision.

2. The Review Application is devoid of merit and, therefore, the same is rejected by circulation.

AV HARIDASAN
JUDICIAL MEMBER

4/1/93

SP MUKERJI
VICE CHAIRMAN

SP MUKERJI
4.5.93