

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATED FRIDAY, THE FIRST DAY OF SEPTEMBER ONE
THOUSAND NINE HUNDRED AND EIGHTY NINE

PRESENT

HON'BLE SHRI N.V.KRISHNAN, ADMINISTRATIVE MEMBER
&
HON'BLE SHRI A.V.HARIDASAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.193/89

Ravisankar.P.K. - Applicant

V.

1. Union of India, represented by
Secretary to Government,
Ministry of Communications,
New Delhi.
2. The Post Master General,
Kerala Circle,
Trivandrum.
3. The Senior Superintendent of
Post Offices, Ernakulam.
4. Senior Superintendent of
Post Offices, Calicut.
5. Mohemmed Jalaludeen Hamza Koya - Respondents
- Mr MR Rajendran Nair - Counsel for
applicant
- Mr K Karthikeya Panicker, ACGSC - Counsel for
respondents 1 to 4
- Mrs Daya K Panicker - Counsel for
respondent-5

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(SHRI A.V.HARIDASAN, JUDICIAL MEMBER)

The applicant is aggrieved by the denial of
regular appointment as Postal Assistant notwithstanding
his eligibility as the seniormost Reserve Training Pool
candidate, in the regular vacancy in the category of

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Postal Assistant w.e.f. 1.4.1989 on account of the retirement of the incumbent Mr Kumaran, as the post is now proposed to be filled up by transferring the respondent No.5 under Rule 38 of P&T Manual IV. The averments in the petition can be briefly stated as follows.

2. The applicant was recruited for appointment to the post of Postal Assistant in the Ernakulam Postal Division during 1983. He was deputed for practical training for a period of 15 days and to undergo theoretical training for 10 days before the Principal, P.T.C., Mysore commencing on 8.3.1985. On completion of the training, he was directed to report to the office of the concerned Divisional Superintendent by memo dated 20.5.1985. Thereafter, he was attached to various offices under the third respondent by memo dated 9.19.1985. He was thereafter being engaged on daily wage basis and was continuously working as Postal Assistant. Out of 36 persons selected and allotted to the Ernakulam Postal Division, 35 had been absorbed in regular vacancies and the next person to be absorbed is the applicant. The Director General of Post has taken a general decision to appoint reserved trained pool hands in preference to Rule 38 transferees as per letter dated 12.5.1988, copy of which is at Annexure-V. While so, Post Master General, Kerala has issued a memo dated 1.8.1988 granting transfer to the 5th respondent to Ernakulam Division and pursuant to that the 3rd respondent has issued Annexure-VI memo, transferring the 5th respondent to Ernakulam Division. The posting of the

5th respondent to Ernakulam Division on transfer under Rule 38 in the existing vacancy, would defeat the chance of the applicant to be absorbed in that post. The applicant contends that the order of the P.M.G. dated 1.8.1988 and the Annexure-VI are illegal and liable to be set aside.

3. The respondents 1 to 4 have filed a counter affidavit opposing the grant of relief, their averments can be briefly stated as follows:

4. The impugned orders are legal and valid and are in accordance with provisions of law. The applicant is only a reserve trained pool hand, and not a regular employee of the department and therefore being enrolled only on ad hoc basis, he has no locus standi to challenge the transfer of the 5th respondent. The question regarding the right of R.T.P. candidate to be regularised in the Central Govt. department has been considered by the Hon'ble Tribunal in OAK-105/87 and this Tribunal has in that case rejected the claim of the R.T.P. candidates. Therefore, the relief sought for in this petition for direction to these respondents to regularise the services of the applicant, cannot be granted. The order of transfer challenged is not really one made under Rule 38. The 4th respondent has been directed by the 2nd respondent to transfer the 5th respondent on repatriation and by an inadvertant error in the impugned order, it happened to be

stated that the transfer was under Rule 38. When the post offices in Lakshadweep islands were transferred from the Administrative jurisdiction of Calicut Division to Ernakulam Division on 1.1.1982, 8 posts of Postal Assistants in the islands originally under the Calicut Division were transferred to Ernakulam Division. Eight Postal Assistants were also repatriated from Calicut to Ernakulam on account of this in 1982. The 5th respondent, a native of Lakshadweep islands was a Clerk in Calicut Postal Division w.e.f. 7.7.1979. At the time when 8 P.As were repatriated, he was out of service as his services were terminated w.e.f. 19.6.1980. He was reinstated in service w.e.f. 1.2.1983 as per the orders of the Hon'ble High Court in OP No.2865/80. After reinstatement the 5th respondent was making representations to the Post Master General for transfer to his native place. The P.M.G. examined the case and found that he could not be repatriated to Ernakulam Division in 1982 only because he was out of ^{Service} ~~same~~. Consequently, the P.M.G. ordered the repatriation of the 5th respondent. As it is difficult to get persons interested in working in Lakshadweep and since the 5th respondent is a person from the island, it is in the administrative convenience also that the transfer is made. Therefore, there is absolutely no merit in the claim made by the applicant and the application has only to be dismissed. The 5th respondent has also filed a reply opposing the prayer by the applicant raising similar contentions.

5. We have heard the arguments on either side. The learned counsel for the respondents argued that the applicant, who is an RTP candidate has no locus standi to challenge the posting ^{of a} ~~for~~ regular hand since he has no right to be absorbed in the regular vacancy as has been held by this Tribunal in OAK-105/87. This argument of the learned counsel does not appear to be correct. In OAK-105/87, what was considered was only the claim of an ad hoc appointee for regularisation after his term was over when his services stood terminated. It was held that since the appointment itself was only for a term, after its expiry, he has no valid claim for regularisation in service. But in this case, the applicant was selected, trained and engaged casually to be absorbed in a regular vacancy as and when vacancy arises. If the vacancies which arise are filled up by transfers against rules then the chances of the applicant to get regular appointment would be defeated. So it cannot be said ~~as~~ ~~per rule~~ that the RTP candidate has no Locus standi to challenge such ^{an} ~~order~~ order. Their competence depends on the circumstances of each case. We are of the view that in this case, it cannot be seriously contended that the applicant has no cause of action or locus standi.

6. The transfer is sought to be justified on the ground of repatriation of respondent-5 to the Division of his choice. It is seen that the 5th respondent, who was

Division

working in Lakshadweep under the Calicut/ from 1979 could ^{not} exercise his option at that time since he was out of service as a result of a disciplinary action. Therefore, 8 persons of whom, 6 were junior\$ in service to the 5th respondent exercised option and they were allotted to the Ernakulam Division. But when the 5th respondent was reinstated in service w.e.f 1983 onwards, he made several representations for a posting in Ernakulam Division. Considering his request, the PMG in his letter dated 20.7.1988 extracted copy of which is Ext.R4-A ordered that the applicant had to be given a posting in Ernakulam Division. It is worthwhile to extract the relevant portion of that order of the PMG. It stands as follows:

"While Rule-38 transfer, out of turn, is the minimum that we should consider for him, I feel that a reallotment to Ernakulam Dn. as a part of the reallotments made at the time of reorganisation of the divisions is due to him, as he would have got it if he was in service and he should be deemed to have been in service as the termination of service was quashed. This will raise the reallotments by one, and will perhaps exceed the vacancies for reallotments thereby. The axe, in that case, should fall on the juniormost of those who were reallotment, but doing so, at this stage would be unfair to him. Therefore, necessarily, we let that part go by, and allow the applicant to benefit from the missed opportunity for option. Orders of reallotment will issue"

It is pursuant to this that the impugned order of transfer Annexure-4 was issued by the 3rd respondent. It is obvious that while ordering that the 5th respondent should be given an allotment to Ernakulam Division, the PMG considered the

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fact that the 5th respondent could not exercise his option in time owing to the fact that he was out of service during that time, that it would be unjust to deny him the benefit of reallotment on repatriation even though at a later stage and, that in doing justice to the 5th respondent normally the juniormost among the 8 persons already repatriated should be retransferred to Calicut Dn., that such a course would be unfair to that person: since he would have worked for a long time in Ernakulam Dn. and, that therefore the only possible way was to accommodate the 5th respondent in the retirement vacancy of Mr Kumaran. But it appears that the fact that the applicant, an RTP candidate was waiting to be absorbed in regular vacancy would not have been brought to the notice of the PMG while he passed the impugned orders. Had this fact, been brought to his notice, probably the PMG might have taken a different decision without causing any injury to the chance of the applicant for absorption and also to his seniority, after absorption.

7. Therefore we direct the applicant to make a representation to the PMG within a period of two weeks from the date of receipt of this order. The 2nd respondent is directed to consider this representation also and then come to a decision regarding the filling up of the vacancy consequent on the retirement of Mr Kumaran. We further direct that till then the impugned orders of transfer will be kept in abeyance. There will be no order as to costs.

(A.V.HARIDASAN)
JUDICIAL MEMBER

(N.V.KRISHNAN)
ADMVE. MEMBER

trs

1, 9, 1989