

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.NO.221/2003

Friday, this the 2nd day of April, 2004.

CORAM;

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

A.Abdul Rahiman,  
Office(BCR),  
Sub Record Office,  
Kollam.

- Applicant

By Advocate Mr Shafik.M.A.

Vs

1. Union of India  
represented by the  
Director General,  
Department of Posts,  
New Delhi.
2. The Chief Postmaster General,  
Kerala Circle,  
Trivandrum.
3. The Senior Superintendent of  
Railway Mail Service,  
TV Division,  
Trivandrum.
4. Smt.Sobha Madhale,  
Senior Superintendent of  
Railway Mail Services,  
TV Division,  
Trivandrum.
5. M.Vasudevan Nair,  
Dy. Superintendent of  
Railway Mail Service,  
TV Division,  
Trivandrum-33.

- Respondents

By Advocate Mrs P Vani, ACGSC

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicant, an Office Assistant(BCR), Sub Record Office, Kollam is, aggrieved by A-1 memo dated 17.3.2003 whereby he is transferred and posted as Sorting Assistant, RMS, TV Division, Kollam with immediate effect.

2. While working as Sorting Assistant(S.A.) under SRO, RMS-2, Kollam, the applicant had, on health grounds wanted to be free from night duty work and, accordingly, made some representations for a change from the post of Sorting Assistant(RMS), Kollam. His request was considered and he was assigned day duty under RMS-I, Kollam. Later when volunteers from eligible Sorting Assistants to be posted as Office Assistants for a tenure in SRO, Kollam were called for as per A-4 notice dated 8.2.2002 by the third respondent, the applicant applied as per A-5 dated 20.2.2002 followed by A-6 representation dated 28.3.2002. By A-7 order dated 1.4.2002 the applicant was posted as Office Assistant (BCR), RMS TV Division, Kollam for a tenure or until further orders subject to satisfactory work. The applicant holds the view that his appointment as Office Assistant was for a tenure of 4 years as per the P&T Manual and that he had been doing his work to the satisfaction of his superiors. He alleges that the 5th respondent had been harassing him with the support of the 3rd respondent who in her personal capacity is impleaded as 4th respondent in the O.A. He had reported to the higher authorities about the illegalities committed by the 5th respondent with the connivance of the 3rd/4th respondent. The

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transfer is punitive in nature in order to take him away from the scene, it alleged. The impugned order is illegal and arbitrary and is an act of vengeance against him for filing O.A.109/2003 challenging the punishment of dies non imposed on him earlier, it is alleged. The applicant being a sick person with lot of family problems would have to undergo great hardship in the post that involved night duty. He would therefore plead that the premature termination of his tenure post without assigning any good reason therefor amounted to denial of natural justice and violated the norms concerning tenure post. The applicant therefore seeks this Tribunal's order quashing the impugned A-1 order and declaring that the applicant was entitled to continue as Office Assistant at SRO, Kollam till his tenure is completed as per A-7 appointment order and that the impugned A-1 order was malafide and punitive in nature.

2. The respondents have filed a reply statement rebutting the applicant's averments. According to the respondents, transfer being an incident of service, the applicant's transfer from the tenure post at Kollam to another post at the same station could not be faulted. A tenure post was given to him as per A-7 order subject to satisfactory work. There were reports from his controlling officer which would show that the applicant's work was unsatisfactory. The respondents would invite our attention to R-1(i), R-1(ii) and R-1(iii) and R-2 to support this contention. It is maintained that the applicant did not show any improvement and that he started making complaints against SRO, Kollam. Enquiries were made by

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the 5th respondent which revealed that the applicant's allegations against the SRO, Kollam were baseless. R-3 and R-4 reports would throw light on this aspect according to the respondents. It is also pointed out that the applicant had a tendency to leak out confidential information from the Administrative Office. The applicant who had been requesting the authorities not to give him night duty on account of his health condition, was ready to do night duty within 4 months of getting his tenure posting on the ground that he had fully recovered from his illness vide R-5 communication. In any case, the present posting on transfer from the tenure post did not involve night duty. There is not even a change in the station, as the office to which he is transferred is only 200 meters away from SRO Kollam. Therefore there was absolutely no disturbance to the applicant. The shift from the tenure post was, in any case, on administrative grounds. The applicant was accommodated in the tenure post more on humanitarian ground than on grounds of his efficiency or good service record. Service record was rather unsatisfactory. Still the administration wanted to accommodate him on account of his poor health. However, instead of mending his ways the applicant was indulging in questionable activities like raising baseless allegations against colleagues and senior officers, letting confidential information out, tampering with records etc. With regard to the allegation that the respondents were angry with him for filing O.A.109/2003, the respondents have stoutly denied any such motive. His filing of the O.A. has nothing to do with the case. The applicant's A-8 representation dated 5.3.2003 was received in the SROs

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office only after filing the present O.A. Therefore, the allegation that the earlier O.A. and the applicant's A-8 representation having any bearing on the decision to send him back has no basis. The allegation against the 4th respondent also had no nexus to the action against the applicant. The allegation against the 5th respondent is also equally unsupported by any evidence and it has also no bearing on the decision to transfer him out of the tenure posting. It is pointed out by the respondents that the applicant is still continuing in the tenure post only on the strength of the interim order though steps have been taken to fill the vacancy.

4. In his rejoinder, the applicant would strongly contend that he was given the tenure post which was for 4 years as per Rule 60(A) of Chapter II of the P&T Manual, Vol.IV. The adverse reports were sent to the higher authorities on account of the hostile attitude of one G.D.Panicker, SRO. However, there is no adverse remark with regard to the applicant's performance. It would therefore be unjust to act on the motivated allegations in R-3 and R-4 made by the SRO GD Panicker. The applicant had requested for considering him for night duty since the applicant needed some additional money to meet the increased expenses on account of education of his children, according to the applicant. However, he could not obtain a medical certificate to show that he was fit to carry out the night duty work. The work given to him was excessive and hence could not be managed after doing the routine work within the normal office hours. So he wanted further time

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beyond office hours to finish the work on payment of over time. This was denied to him while the same benefit was extended to others. Shri GD Panicker, SRO was hostile to him because he had reported to the higher authorities about SRO's irregularities. He did not leak out any official information. Circulars and instructions which were known to everybody might have been shown to some casual labourers which would have enabled them to get their grievances redressed. This did not amount leaking out of confidential information giving rise to doubts about his integrity. The SRO had a grudge against the applicant on account of trade union rivalry. No adverse observations about the quality of his work had ever been made. The one act of misconduct alleged against him was that he was not present during office hours on certain occasions. According to the applicant, he might have been away to see a Doctor or for offering prayers occasionally for short intervals. In any case, the respondents were free to take disciplinary action if the applicant failed in his duty or committed any misconduct. The applicant could not be sent out of a tenure posting as a punishment for the alleged misconduct. The 5th respondent was certainly annoyed with the applicant for filing O.A.109/2003. The 5th respondent's irregularities were brought to the notice of the higher authorities by him. Instead of taking action against the 5th respondent on the basis of the reported irregularities, the respondent-department has punished the applicant, it is alleged.

5. The 5th respondent in his reply statement has referred to the questionable antecedents of the applicant and has

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alleged that the applicant was in the habit of spreading baseless scandals when charges were levelled against him. According to the 5th respondent, Annexures R-5(a) and (b) would throw light on the poor service record of the applicant. A-8 representation was given wide circulation by the applicant in order to show the 5th respondent in poor light. According to the 5th respondent, he had no alternative but to issue a Lawyer's notice as per R5(c) to the applicant. However, that had nothing to do with the departmental decision to take him out of ~~the~~ <sup>the</sup> tenure posting which had been given to him subject to satisfactory work.

6. In their additional reply statement the official respondents have reiterated the fact that the applicant had a long record of dereliction of duty and misconduct. The applicant belied the expectation of the authorities that he would mend his ways after he was given the tenure posting on humanitarian grounds. R-10, R-11 and R-12 would throw light on the recent instances of the dereliction of duty on the part of the applicant and imposition of the penalty of censure.

7. The 4th respondent has also filed a reply statement strongly denying the personal allegations levelled against her. She would, however, maintain that the allegations raised against her had nothing to do with the applicant's transfer.

7. The applicant has filed an additional rejoinder opposing the averments in the additional reply statement. With regard to the instances of dereliction of duties narrated

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in R-3, the applicant's submission is that such errors were common in clerical work and occurred due to fatigue at the close of working hours. He would, however, maintain that the premature termination of his tenure post was on account of the malafide exercise of power by the 4th respondent.

8. I have heard Shri Shafik, learned counsel for the applicant and Smt.P.Vani, ACGSC for respondents.

9. According to Shri Shafik, as per Rule 60(5) of the P&T Manual, Vol.IV, a tenure is for a period of 4 years and therefore the tenure posting given to the applicant as per A-7 should have been for a period of 4 years. The order sending him out of tenure posting does not spell out any reasons. The applicant was a victim of the bias and punitive attitude of the 4th and 5th respondents. The 5th respondent's irregular activities were supported by the 4th respondent who is also third respondent in this O.A. in her official capacity. There is no allegation that the applicant did not carry out his work properly and efficiently. The personal animosity which the respondents nursed against the applicant and which is clear from the impugned transfer order is sought to be justified by referring to a number of events which took place long before the tenure posting itself was given to the applicant. If the antecedents of the applicant did not justify such a posting, the applicant would not have got it. What really happened in this case was that the applicant was vocal about the irregularities committed by the 5th respondent and certain other individuals whom the respondents were

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shielding. A-8 representation forwarded through proper channel would throw sufficient light on the irregularities committed by the 5th respondent in the matter of installing departmental residential phone claiming medical reimbursement and TA etc. The applicant's act of filing O.A.109/2003 against the decision to impose the punishment of dies non on him also had infuriated the respondents. The premature termination of a tenure posting which was given in accordance with rules and instructions could not therefore be justified by the unverifiable allegation that his work was not satisfactory. In any case, the impugned order does not give out any reason which is too cryptic and is hence a nonspeaking order, according to learned counsel for the applicant. It is therefore abundantly clear that the order was vitiated by personal bias and hostility and not dictated by administrative exigencies, learned counsel would urge.

11. Smt.P.Vani, ACGSC representing the official respondents and also the the 4th and 5th respondents in this case would state that the applicant was transferred out of the tenure post solely on administrative grounds. There was no personal animus, prejudice or hostility as alleged by the applicant. It would be clear from A-7 itself that the applicant's tenure posting was conditional inasmuch as it was for a tenure or until further orders subject to satisfactory work. As clearly stated in the reply statement, the applicant who did not have any good service record was accommodated in the tenure posting in response to his request more out of humanitarian grounds than on anything else. It was after due

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consideration of his antecedents that the applicant was posted there until further orders subject to satisfactory work. The applicant did not have any indefeasible right to hold a tenure post. Administration should have the freedom to terminate a tenure on the basis of a dispassionate assessment of the work carried out by the person holding the tenure post. In this case, as is clear from the applicant's own submissions, it would appear that the applicant has been in the habit of making wild allegations against senior colleagues with the intention of discrediting them. It cannot be alleged that the entire department was in conspiracy against him. He himself had been absconding from duty off and on. Errors of omissions and commissions were also pointed out. These could not be explained as normal occurrence. Neither filing of O.A.109/2003 nor A-8 representation had any bearing on the decision of the respondents to transfer him out of the tenure post, as explained in the reply statement, the learned counsel would maintain. She would therefore urge that the administrative authorities could not be faulted for taking appropriate decision after duly appreciating the performance of the applicant and his suitability to continue to hold the tenure post. This was the circumstance under which he was transferred out to another post in the very same station with no night duty responsibility. Thus the station and the status being the same and the duties being not particularly arduous, the applicant have no legitimate grievance against the impugned order, learned counsel would maintain.

12. I have considered the facts of the case and contentions put forward by the learned counsel on either side.

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I find that the applicant on account of domestic and health reasons wanted a change from the post of Sorting Assistant involving night duties. The administration after duly considering his request took a favourable decision and passed a specific order giving him duties which did not involve night duty work. A-3 order dated 18.1.2002 bears this out. I find that the special order was passed by the 5th respondent against whom the allegation of hostility and personal prejudice are raised in the present O.A. Thus A-3 reveals a different picture: The 5th respondent is seen to have ordered that the official (the applicant) should not be given night duty work, considering his health. It was while continuing so that the applicant responded to the notice calling for volunteers eligible to be posted as Sorting Assistant on tenure basis. Here also, I find, the respondents have apparently considered his case with necessary sympathy. However, having regard to the requirements of work in the tenure post and probably on due appreciation of the applicant's own service record, the respondents posted the applicant as Office Assistant, SRD, RMS TV Division, Kollam for a tenure or until further orders subject to satisfactory work. (emphasis supplied) 'Satisfactory work' does not mean merely carrying out one's technical work. It should mean the discharge of duties entrusted to a person in such a manner as to ensure proper discipline, conduct as well as efficiency. In this matter, the administration should have sufficient freedom to periodically assess as to how a person performs. If his performance is not satisfactory and if his character and conduct are such that it is likely to interfere with

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harmonious work in the organisation, the administration should also have the freedom to issue necessary orders transferring such person back or posting to any other suitable place to ensure smooth conduct of work. It is against this context that the applicant's termination of tenure has to be viewed. Tenure of 4 years is not an inviolable guarantee. If the holder of the tenure post does work satisfactorily, he would perhaps be able to continue till the expiry of the tenure. In exceptional cases tenure or deputation period is extended also. If, however, the incumbent is not found to be suitable to the post for any reason, the tenure can be curtailed. That is why the phrase "until further orders" is given in the order. Applicant who accepted the A-7 order should have been aware of the implications of the said order. I do not find any justification to interfere with the present order transferring him from the post of Office Assistant(BCA) SR0, Kollam as Sorting Assistant, RMS TV Division, Kollam. It is noted that such transfer does not involve any change of station nor lowering of status or grade. I also understand that the post which the applicant stands transferred to as per the impugned order does not involve any liability to do night duty either. Even if he is to carry out night duty, that may be attached with the benefit of OTA subject to rules; and the applicant himself has had at some point of time expressed his desire to do such duties since he wanted the benefit of additional remuneration. But that is beside the point.

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13. For the reasons stated above, I decline to interfere with the impugned A-1 order, which, according to me, is not vitiated by any personal or legal bias. The O.A. having no merit, is liable to be dismissed and I do so. There is no order as to costs.

**Dated, the 2nd April, 2004.**



T.N.T.NAYAR  
ADMINISTRATIVE MEMBER

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