

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 24 1993

DATE OF DECISION 16.6.93

K. P. Radhakrishnan Applicant (s)

Mr. M.V. Somarajan Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)
its Secretary, Ministry of Communications, New Delhi & others

Mr. P.A. Mohamed, ACGSC Advocate for the Respondent (s) 1-4
Mr. K.R.B. Kaimal for R 5-7

CORAM :

The Hon'ble Mr. N. DHARMADAN JUDICIAL MEMBER

The Hon'ble Mr.

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

MR. N. DHARMADAN JUDICIAL MEMBER

Applicant is aggrieved by Annexure A-4 order of dated 1.10.92 of the Telecom District Engineer, Tiruvalla by which mutual transfer has been ordered under Rule 38 transferring the applicant to Tiruvalla SSA and posting Smt. Rema Devi to Alappuzha SSA.

2. According to the applicant, he joined the Telecommunication Department after his discharge from the Indian Army on 16.5.70 on medical ground. The applicant was shifted from Calicut to Alappuzha and from there to Kayamkulam. On the basis of his request, he was temporarily transferred to Adoor on compassionate grounds taking into consideration the medical certificate. He took charge

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at Adeer on 11.10.90, initially for one year. Later, it was extended to a further period of one more year. Before the expiry of the posting at Adeer, on the basis of the temporary transfer, he filed application before the Chief General Manager under Rule 38 of the P & T Manual Vol. IV for a posting under Pathanamthitta SSA making it clear that his family is permanently settled at Pallickal near Adeer. Later he was also given Annexure R-1(c) censem letter to Smt. Rema Devi expressing willingness for permanent transfer to Adeer on mutual basis. According to applicant, without considering Annexure R-1(c) censem letter, the applicant has been posted to Tiruvalla for which he did not give request nor was there any censem for such posting. The applicant also produced Annexure A-5 communication received by the union in which the applicant is the Secretary to the effect that one post at Adeer is available and the applicant can be allowed to be retained as a compromise proposal. Hence, according to applicant, he can be allowed to continue at Adeer on compassionate grounds. With these allegations, applicant has filed this application under section 19 of the Administrative Tribunals Act for quashing Annexure A-4 and for a direction to respondents to retain him at Adeer.

3. Respondents 1 to 4 and additional respondents 5 to 7 have filed separate reply statements. They have opposed the prayer of the applicant for continuing at Adeer. According to respondents, applicant was given only a temporary transfer to Adeer in Tiruvalla Division and he has already completed full term of two years and in terms of Annexure R-5(a) produced along with reply filed by the respondents 5 to 7 the applicant has been transferred to Tiruvalla division w.e.f. 3.9.92 and the said order has not been challenged. The impugned order is a consequential

order of relieving the applicant pursuant to Annexure R-5(a) by which the applicant has been permanently transferred from Aleppey Division to Tiruvalla Division and consequential order has been passed posting applicant at Tiruvalla. Now the fact remains that one vacancy of Office Assistant is existing at Adeer and there are more than one claimant. The applicant's claim for compassionate posting considering the medical certificate requires consideration; at the same time the claim of additional respondents for posting at Adeer as stated in the reply is also to be considered by the competent authority.

4. The dispute in this application is mainly regarding posting at Adeer where a vacancy is existing. Applicant in the rejoinder stated that there are additional vacancies in Adeer and considering the present vacancy position, the applicant can be allowed to continue at Adeer. However, at this stage it is not proper for me to go into the question about rival claims of the applicant and additional respondents and others. This is a matter to be considered and decided by the second respondent taking into consideration the rival contentions and relevant facts and circumstances of the case.

5. Accordingly, having regard to the facts and circumstances of the case I am of the view that the interest of justice will be met in this case if I dispose of the application with appropriate direction to the applicant as also to the respondents. Hence, I direct the applicant and the additional respondents to file representation, for getting a posting at Adeer, before the second respondent within a week from the date of receipt of a copy of this judgment. I further direct the second respondent to consider and pass orders on the representations filed by the applicant and ~~other~~⁴ respondents as directed above.

The decision in the matter may be taken as expeditiously as possible at any rate within a period of a month from the date of receipt of the representations. It goes without saying that till the disposal of the representations and ^{order 4} communication thereof, the interim order passed in this case on 8.1.93 will continue.

6. The application is disposed of on the above lines.
7. There shall be no order as to costs.

N. Dharmadan
(N. DHARMADAN)
JUDICIAL MEMBER
16.6.93

Kmn