

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NOs. 254/08

Wednesday this the 29th day of January, 2009

C O R A M

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

A.A. Parameswaran S/o Aeran
Postal Assistant
Chendamangalam PO
residing at Eraviparambil House,
Puthuvype-685 205

Applicant

By Advocate Mr.P. C. Sebastian

Vs.

- 1 The Senior Supdt. Of Post Offices
 Aluva Division,
 Aluva-683 101
- 2 The Postmaster General
 Central Region,
 Kochi-682 018
- 3 The Union of India represented by
 the Secretary to Government of India
 Ministry of Communications
 Department of Posts,
 New Delhi.

Respondents.

By Advocate Mr. TPM Ibrahim Khan, SCGSC.

The Application having been heard on 12.1.2009 the Tribunal delivered the following

O R D E R

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant is aggrieved by the inaction on the part of respondents in considering his request for Rule 38 transfer for the last more than four years.

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2 The applicant entered service as Extra Departmental Delivery Agent at Puthuvype Post Office in Ernakulam Postal Division in 1983. He was promoted to the cadre of Postman in 1991. He appeared for the departmental examination for promotion to the cadre of Postal Assistant held in the year 1995 and passed the examination and empanelled in the list of surplus candidates for want of vacancies in the Ernakulam Division. He was later appointed as Postal Assistant in the Aluva Division w.e.f. 1.1.1996 as a surplus qualified candidate and is continuing as such. According to the applicant, surplus candidates posted outside their home division can seek re-transfer to their home division after a period of 5 years under Rule 38 of the P & T Manual. Accordingly, he submitted a request for transfer to Ernakulam Division under Rule 38 in 2003 and the same was approved by the 2nd respondent. But the transfer could not be given effect due to shortage of staff in the Aluva Division. The first respondent by order dated 3.3.2004 informed the applicant that his request was treated as cancelled with a direction to make a fresh request. Pursuant to Annexure A-1 the applicant submitted a fresh request for Rule 38 transfer to Ernakulam Division to the first respondent. As no positive action was forthcoming he submitted a representation in December, 2007 to the first respondent to which he received Annexure A-4 reply stating that applicant's case for Rule 38 transfer was not re-opened due to shortage of staff in Aluva Division. The applicant submits that 3 Postal Assistants have been granted Rule 38 transfer during March 2004 to January, 2008 to other divisions. Therefore, unjust and discriminatory treatment was meted out to him by the respondents. Hence he has filed this O.A. to issue appropriate direction to the respondents to consider his request for Rule 38 transfer to Ernakulam




Division positively within a time frame.

3 The respondents resisted the O.A. by filing a reply statement. They submitted that the request of the applicant for a Rule 38 transfer to Ernakulam division has been cancelled due to acute shortage of staff in the Aluva Division. There was a shortage of 52 Postal Assistants at that time and the day to day functioning of the post offices was conducted with great difficulty and arrangement of a substitute during leave etc. is done with much difficulty. The second request of transfer of the applicant was forwarded to the 2nd respondent by the first respondent on 22.3.2004. The 2nd respondent directed the 1st applicant to take up the case of the applicant with him when the 1st respondent is in a position to relive the official on transfer. Till now the staff position has not improved. They have submitted that the applicant has no absolute right for getting transfer to a place of his choice. They also submitted that if the applicant submits willingness of any eligible Postal Assistant from Ernakulam Division for transfer to Aluva Division it can be considered for mutual transfer subject to the existing rules on the subject. They have also relied on the common judgement of this Tribunal in O.A. 263/2003 and connected cases in support of their argument.

4 We have heard Shri P.C. Sebastian, the learned counsel for the applicant and Advocate Shri George appearing on behalf of the SCGSC for the respondents.

5 The learned counsel for the applicant argued that the action of the respondents in not considering the request of the applicant for a Rule 38 transfer is highly unjust, arbitrary and discriminatory and hence

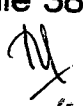


violative of his fundamental right under Articles 14, 16 and 21 of the Constitution of India. The learned counsel for the respondents has argued that the applicant has no absolute right for getting transfer to a place of his choice. His transfer could not be considered due to shortage of staff in the Aluva division. They are ready to consider him for a mutual transfer under the extant rules.

6 The respondents have admitted in the reply statement that there was a shortage of 52 Postal Assistants in the Aluva division. There is no explanation of the efforts made by the Department for filling up these vacancies for the last four or more years. Whatever may be the reason for not filling up the posts, it is a fact that the applicant may not get Rule 38 transfer in the near future.

7 Though transfer is not a fundamental right of an employee, transfer under Rule 38 of the P & T Manual from one division to another is one of the accepted methods to seek transfer in the Postal Department. Therefore, the applicant is entitled to be granted Rule 38 transfer in his turn especially when it is a case of repatriation to his home division. The only hurdle that stands in his way is the shortage of Postal Assistants in the Aluva Division which can be solved by the Department only. Identical issue was elaborately considered by this Tribunal in O.A. 263/2003 and connected cases. The Tribunal in the common judgment held as follows:

"In the light of the above submissions made by the learned counsel on either side and in the interests of justice and in public interest, all these Original Applications are disposed of directing the respondents that the orders of transfer under Rule 38 of the P & T Manual Vol. IV in the cases of



the applicants in these cases shall be given effect to in a phased manner, securing optimum efficiency of functioning in Tirur Division as also the respective Divisions to which the individual applicants have been ordered to be transferred protecting the seniority of the applicants as against recruitees appointed in the respective Divisions after 27.8.2001 as Rule 38 transfers have been ordered against identified vacancies which the respondents have agreed would not be filled by direct recruitment, without undue delay. To avoid unnecessary litigations, direct recruitment if any made after 27.8.2001, the applicants should be informed accordingly by the official respondents. The above direction shall not stand in the way of giving effect to orders of mutual transfer. No order as to costs."

8 In the judgment relied on by the respondents, there were a number of applicants. Therefore, it was appropriate for the Tribunal to direct the respondents to give effect to the orders of transfer under Rule 38 in a phased manner looking in to the functional efficiency of the two divisions. In the present case there is only one applicant. Therefore, a direction to the respondents to give effect to the transfer in a phased manner is not a feasible one. Hence the second respondent is directed to instruct the Senior Superintendent of Post Offices, Ernakulam Division to earmark one vacancy under the departmental quota in Ernakulam Division to enable respondent No. 1 to order Rule 38 transfer for the applicant as the applicant has a legitimate claim for repatriation to his home division after 5 years. The respondent No. 1 is at liberty to fill up the vacancies through promotion or failing which through open recruitment as, such left over vacancies in departmental quota ~~does~~ not fall under the purview of screening committee for filling up from the open market. The transfer shall be effected within six



months from the date of receipt of this order. The O.A. is allowed as above. No costs.

Dated the 29th January, 2009


K.NOORJEHAN
ADMINISTRATIVE MEMBER

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