

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 286/89 & 695/89
~~XXXXXXXXXX~~

DATE OF DECISION 18.7.1990

1. S.Shabir - applicant in OA 286/89
 2. T.Muralidharan - applicant in OA 695/89
- Applicant (s)

1. Mr.KP Dandapani - counsel for the applicant in OA 286/89
 2. Mr.OV Radhakrishnan-counsel for the applicant in OA 695/89
- Advocate for the Applicant (s)

- Versus
1. Asstt. Director (Staff), Office of the Director of Postal Services, Calicut & 2 Ores. Respondent (s)
(respondents in OA 286/89)
 2. Director of Postal Services, N.Region, Calicut & 4 others
(respondents in OA 695/89)
- Advocate for the Respondent (s)

CORAM:

1. Mr.P.Santhosh Kumar, ACGSC (for res. 1&2 in OA 286/89)
2. Mr.OV Radhakrishnan (for R.3 in OA 286/89)
3. Mr.TPM Ibrahim Khan (for R.1-4 in OA 695/89)
4. Mr.KP Dandapani (for R.5 in OA 695/89)

The Hon'ble Mr. S.P.Mukerji - Vice Chairman
and

The Hon'ble Mr. A.V.Haridasan - Judicial Member

JUDGEMENT

(Mr.A.V.Haridasan, Judicial Member)

Since question of law and facts of both these cases are very closely related, these two cases are being heard and disposed of jointly.

OA 286/89

The applicant, Shri S.Shabir has in this application filed under Section 19 of the Administrative Tribunals Act prayed that the order dated 12.5.1989 of the Director of Postal Services, Northern Region, Calicut (Ext.P-1) cancelling the transfer under Rule 38 of the applicant from the office of the SRM, Calicut to the Regional office Calicut made by Memo dated 19.8.1988, and directing that he should be relieved from the office of the Regional office, Calicut may be quashed, and that the respondents may be directed to permit him to continue as Group D official at the office

the Director of Postal Services, Northern Region, Calicut.

The facts of the case as set out in the application can be briefly stated as follows:

2. The applicant while working as Group D official in the office of the SRM, Calicut made an application for transfer to the office of the Director of Postal Services, Northern Region, Calicut under rule 38. This application was allowed and the Director by order dated 19.8.1988 transferred the applicant to the office of the Director of Postal Services, Northern Region where he joined on 16.9.1988 on relief from the office of the SRM. As the transfer was under Rule 38, he had to forego his seniority and claim for confirmation in the parent unit etc.. Now by the impugned order Ext.P-1, the Director arbitrarily without following the principle of natural justice cancelled the transfer of the applicant under rule 38 and transferred him back to the SRM office. It is reliably understood that the impugned order was issued with a view to appoint one Shri Muraleedharan ~~xxxx~~ now working as a part-time mazdoor in the Post held by the applicant. As Shri Muraleedharan ~~xxxx~~ not being a candidate sponsored by the Employment Exchange is not eligible to be appointed as Group D official, the action of the Director is illegal and unsustainable. Hence the applicant prays that the order may be quashed.

3. Shri Muraleedharan has been impleaded as additional third respondent. The respondents 1 and 2 have in the counter affidavit justified the cancellation of the rule 38 transfer of the applicant and consequent order Ext.P-1 on the ground that the rule 38 transfer was granted to the applicant on a misconception of the rules, that the casual mazdoors were ineligible for absorption in regular vacancy if not sponsored by the Employment Exchange, and that as this position has been made clear by this Tribunal in OA K-522/88 and OA K-449/88 and as the third respondent and one Mr. Babu Kayamkulangara were working in the office of the Director of Postal Services, since 1983 and 84 respectively as Casual Mazdoors they were eligible for appointment to the

Group D posts, the rule 38 transfer allowed in the case of the applicant having affected the chances of absorption of these persons, the Director on review of the matter had decided to cancel the rule 38 transfer. It has also been contended that, since by the recalling of the impugned order, the applicant would revert back to his original post with all his seniority, no adverse civil consequences has been caused to the applicant, and that, therefore, he has no legitimate grievance. The third respondent also has filed a reply statement justifying the impugned order and claiming that rule 38 transfer allowed to the applicant

earlier has affected his chances and the chances of Shri Babu Kayamkulangara to be appointed in Group D post.

4. The third respondent was by memo dated 12.5.89 provisionally posted as Group D in the office of the second respondent in the vacancy caused by implementation of the impugned order. But subsequently this order was cancelled by another memo dated 29.5.1989. Since the post became vacant in compliance with the interim order ^{passed in} ~~this~~ application on 1.6.89, the applicant was reinstated in the post. The third respondent has prayed that the interim order may be vacated.

O.A. 695/89

5. The third respondent in OA 286/89 is the applicant herein. He has prayed that the order dated 29.5.89 of the Director of Postal Services(Ext.A-8) cancelling his appointment in Group D service by order dated 12.5.89 on provisional basis and the appointment of Shri Babu Kayamkulangara by memo dated 8.5.89 ^{be} ~~was~~ cancelled, that the order dated 5.6.89 of the Director of Postal Services re-inducting the 5th respondent the applicant in OA 286/89(Ext.A.9) may be set aside, and that the order of the Director of Postal Services dated 12.5.89 (Ext.A-5) may be implemented as ordered in OA K-449/88.

The facts in brief ^{as} averred in the application are as follows:

...5/-

6. The applicant having been engaged as part-time Chowkidar on 24.7.84 had put-in a service of more than 240 days for four years as on 25.10.88, He had become fully eligible to be absorbed in Group D service. On account of rule 38 transfer of Shri S.Gopalakrishnan Nair, a Group D employee in the office of the first respondent as ordered by the Assistant Postmaster General(Staff) dated 13.10.1988 there arose a clear vacancy of Group D in the office of the first respondent. The applicant was entitled to be absorbed in that vacancy in implementation of rationalisation scheme of Group D officials. But when the first respondent issued a letter No.Staff/101-1429/87 dated 24.10.88 calling for volunteers to work in the post of Group D in the office of the first respondent by transfer under Rule 38 of the P&T Manual, the applicant filed OA K-522/88 seeking to set aside the letter dated 24.10.1988 and to direct the first respondent to absorb the applicant as regular Group D official in the post. Allowing the application this Tribunal quashed the order dated 24.10.88 and directed the first respondent to fill up the vacancy by considering the claims of Casual Labourers who were qualified for absorption including the applicant. In the office of the first respondent, there was an earlier vacancy in Group D which could not be filled on

account of the ban imposed in 1982. That vacancy was permitted to be filled up by the third respondent as per letter No.ST/200/85 dated 9.8.1988 of the second respondent(Ext.A-2).

Since the first respondent wanted to favour the 5th respondent who was working as Group D in the office of the SRM, RMS 'CT' Division ^{he} got an application from him on 16.8.1988 for transfer on request under rule 38 of the P&T Manual to the Group D post lying vacant in the office of the first respondent.

On the very same date the first respondent gave the approval for transfer and by order dated 19.8.1988(Ext.A-3) transferred the 5th respondent to that post. Subsequently, in terms of the tenor and spirit of the order in OA K-522/88(Ext.A-1) the first respondent cancelled the transfer of the 5th respondent and passed an order on 12.5.1989(Ext.A-4), directing relief of the 5th respondent from the ~~xxx~~ post in the office of the first respondent. The applicant was appointed in that post w.e.f. 12.5.1989 on a provisional basis by Ext.A-5 order dated 12.5.89. Shri Babu Kayamkulangara, who was a full time casual labourer since 7.4.1983 had become eligible for absorption in Group D service in terms of DGP&T's letter dated 20.10.1984(Ext.A-6) in 1987. So he was eligible to be appointed in the post which remained

unfilled on account of the ban and allowed to be filled up by the order at Ext.A-2 dated 9.8.88. Shri Babu Kayamkulangara filed OA K-449/88 for setting aside the notice dated 8.8.1988 informing him that his engagement as Mazdoor would stand terminated on expiry of one month from the date of receipt of the said notice and the order transferring the 5th respondent as Group 'D' in the first respondents office on 19.8.1988 and for a direction to the first respondent to absorb him as regular Group D official in the first respondents' office. During the pendency of that application Shri Babu Kayamkulangara was appointed on a provisional basis w.e.f. 8.5.89 in the office of the Director of Postal Services in the vacancy caused by the transfer of Shri S.Gopalakrishnan Nair, Group D to the office of the D.D.P.A, Trivandrum. In the normal course of events Shri Babu Kayamkulangara should have been appointed against the vacancy which remained unfilled on account of the ban and it was permitted to be filled up by Ext.A-2 letter dt. 9.8.1988 as he had become eligible to be appointed as Group D long prior to that date. But the first respondent with ulterior motive xxx appointed Shri Babu Kayamkulangara in the vacancy which occurred subsequently by transfer of

Shri S. Gopalakrishnan Nair to which post the applicant sought appointment in OA K-522/88 and the applicant herein was appointed as Group D against the vacancy caused by the retransfer of the 5th respondent cancelling his rule 38 transfer. But subsequently the second respondent issued memo dated 29.5.89 (Ext.A-8) cancelling the appointment of the applicant and Babu Kayamkulangara on the ground that they had ^{not} undergone the selection process and their suitability was not examined by the DPC. The applicant was relieved from his post. Immediately on his relief, the 5th respondent was reinducted as Group D employee in the office of the first respondent by the impugned order dt. 5.6.89 (Ext.A-9). In OA K-449/88 this Tribunal set aside the order dated 29.5.89 and directed the respondents, to implement the order dated 8.5.89, absorbing the applicant in that case in Group D service on regular basis in accordance with law. Pursuant to this order, the applicant in OA K-449/88 had been given appointment as Group D and he is being continuing as Group D. The applicant herein is similarly placed as the applicant in OA K-449/88 and he is also entitled to similar treatment. If the termination of ^{services of the} the applicant in OA K-449/88 was unsustainable, the termination of the services

of the applicant herein also cannot be sustained, Not giving the applicant the same benefit and treatment as the applicant in OA K-449/88 is arbitrary and discriminatory. The applicant therefore prays that the impugned orders Ext.A-8 and A-9 may be quashed and that the respondents 1 and 2 may be directed to implement the Ext.A-5 order dated 12.5.89 by absorbing the applicant on regular basis in Group D post in terms of Ext.A-1 order of this Tribunal to grant him consequential benefits.

7. In the reply statement filed by the respondents 1 to 4, it has been contended that as between Shri Babu Kayamkulangara and the applicant in OA K-449/88 and the applicant herein who was the applicant in OA K-522/88, as Babu Kayamkulangara had to be absorbed in the Group D service, first he was appointed as Group D w.e.f. 8.5.89 against the existing vacancy which was caused by the transfer of S.Gopalakrishnan Nair and the applicant could ^{be} provisionally appointed only w.e.f. 12.5.89 because the 5th respondent who was working in the office of the first respondent was transferred back to his previous office cancelling his rule 38 transfer only then. It is contended that in the light of the interim order in OA 286/89 the 5th respondent who is the applicant

in that case had to be reinducted and therefore, it is not possible to accommodate the applicant. It is also contended that as Babu Kayamkulangara and the applicant are not similarly situated, there is no basis for the claim of the applicant that there is discrimination or arbitrariness in not appointing the applicant, while Babu Kayamkulangara had already been appointed.

8. The 5th respondent who is the applicant in OA 286/89 also has filed a reply statement contesting the claim of the applicant.

9. We have heard the arguments of the learned counsel on either side in both these cases and also perused carefully the documents produced.

10. In OA 286/89, the applicants' case is that the impugned order at Ext.P-1 dt.12.5.89 of the Director of Postal Services cancelling the order ^{dated 19.8.1988} granting rule 38 transfer to him ~~at 12.5.89~~ and directing that he should be relieved on the FN of 12.5.89 illegal, arbitrary and void since it has been made without a speaking order and without observing the principles of natural justice.

It is alleged in the application that the cancellation of rule 38 transfer had ^{with} visited the applicant/adverse civil consequences since on such transfer he had already foregone his seniority and other benefits. At the outset we would like to make it clear that this contention of the applicant that he was visited with adverse civil consequences inasmuch as having foregone his seniority while getting rule 38 transfer, on account of the cancellation of that order he would ^{lose} his seniority is absolutely baseless and illfounded. The impugned order Ext.P-1 reads like this.

"The Director of Postal Services, Northern Region has cancelled the transfer of Shri S.Shabir, Group D from the office of the SRM, Calicut to the Regional office Calicut ordered under the provisions of Rule 38 of P&T Manual Vol.IV in this office memo of even No. dated 19.8.88.

Shri S.Shabir, Group D will be relieved on the afternoon of 12 May 1989 and he will report to the Superintendent, RMS, CT Divn. Calicut forthwith."

Annexure-I is a copy of the order dated 19.8.88 of the Director of Postal Services granting Rule 38 transfer to the applicant. It was mentioned in this order that his seniority would be fixed in accordance with Rule 38 of P&T Manual, and that he would have no claim on his confirmation in his parent unit. If by cancellation of this

order the benefit of seniority and the claim for confirmation which he had in his parent unit is not given back to him, then it can be said that the applicant has been affected with adverse civil consequences. But here since by Ext.P-1 order(Annex.I), this order was cancelled in-toto to the position the applicant will revert back/which he occupied prior to to the Annexure-1 order with all his seniority and claim for confirmation in the parent unit. So the apprehension of the applicant that he would be visited with civil consequences is absolutely unfounded . The respondents 1 and 2 in their reply statement have contended that on receipt of the final order in OAK449/88 and DA K-522/88, the Post Master General, Kerala Circle reviewed all the aspects of the cases relating to the Rule 38 transfer granted to the applicant, the question of eligibility of Shri Babu Kayamkulangara and the third respondent and finding that both Babu Kayamkulangara and the third respondent were entitled to be absorbed in the Group D post, and that they were not considered earlier for absorption on an erroneous notion that they were not eligible as they were not sponsored by the Employment Exchange on first engagement, it was decided to appoint both of them in Group D

it was
post and ~~that~~ ^{for} that purpose that the Rule 38 transfer
granted to the applicant had to be cancelled. It has been
further contended that as the cancellation of the order of
transfer under Rule 38 ~~has~~ not caused any ^{adverse} ~~any~~ civil consequences
to the applicant and it had to be done to rectify a mistake
committed by the department, it was not necessary to give
notice to the applicant before such cancellation, and that
as the applicant has no legitimate grievance, the applica-
tion is to be dismissed. The case of the third respondent
is that by the Rule 38 transfer granted to the applicant,
the chances of casual labourers like him and Babu Kayamku-
langara ^{for absorption} ~~were~~ defeated, and that the respondents 1 and 2 were
right in cancelling the Rule 38 transfer order and absorbing
him and Babu Kayamkulangara. The argument of the learned
counsel for the applicant that even according to the case
of the third respondent he became eligible for absorption
in Group D post as per the order in OA K-522/88 only on
31.10.88 and since the Rule 38 transfer granted to the
applicant was on 19.8.88, the granting of the Rule 38
transfer has not affected the case of the casual labourers
who were entitled to be absorbed. Though apparently this
appear to be convincing, ^{it} ~~is~~ found to be fallacious on a
closer scrutiny. At the time when the Rule 38 transfer

dated 19.8.88 was made, Babu Kayamkulangara was undisputedly eligible to be absorbed in Group D post. At that time there was one vacancy which was left unfilled till then on account of the ban imposed in the year 1982. In this post without absorbing Babu Kayamkulangara, the applicant was posted allowing the transfer under Rule 38. While Babu Kayamkulangara challenged this transfer order in OA K-449/88, the application was allowed and the order of Rule 38 transfer was cancelled consequently. But in the meanwhile when another vacancy arose on account of the transfer of S. Gopalakrishnan Nair, the second respondent appointed Babu Kayamkulangara in that post and therefore, in review application filed by the applicant herein in OA K-449/88 it was held that it was not necessary to set aside the transfer of the applicant under Rule 38 since Babu Kayamkulangara already got absorbed. Then in pursuance to the order in OA K-522/88, the applicant was retransferred to his former office by the impugned order and the third respondent was appointed to that post. If Babu Kayamkulangara was entitled to be absorbed even on 19.8.88 then he should have been absorbed on that date and Rule 38 transfer could not have been granted to the applicant validly so as to defeat the legitimate claim of Babu Kayamkulangara for

absorption in Group D post on regular basis. If Babu
Kayamkulangara ^{was} ~~absorbed~~ in that post, then the next vacancy
which arose on account of the transfer of S. Gopalakrishnan
Nair should have been filled by absorbing the applicant who
became eligible by that time. Because of the representation
made by the learned counsel for the ^{review} ~~applicant~~ (applicant in
this case) in RA No. 50/89 in OA K-449/88, that as the
applicant Shri Babu Kayamkulangara had been absorbed by
order dated 8.5.89 in Group D post in the office of the
Director of Postal Services, Calicut, it was not necessary
to set aside the order dated 19.8.88 and hearing the submi-
ssion made by the Central Government Standing Counsel by
order in the R.A dated 13.12.89 we held that since in the
original order in OA K-449/88 dt. 1.9.89, the impugned order
in that case dt. 29.5.89 had already been set aside the order
dt. 8.5.89 by which the applicant in that case was appointed
had automatically revived the setting aside of the order
dt. 19.8.88 was redundant and ~~therefore~~ from the final order in
that case we deleted the words "the order dt. 19.8.88 at
Annexure-A6". This order in the review is relied on by the
learned counsel of the applicant to show that the Rule 38
transfer has not been touched by the order of the Tribunal

in OA K-449/88. and that, therefore, it cannot be said that this Rule 38 transfer has in any way affected the claim of the third respondent. We are unable to accept this argument. Normally Shri Babu Kayamkulangara should have been appointed in the post filled by the applicant under Rule 38 transfer. If that was done in the vacancy which arose on transfer of S.Gopalakrishnan Nair, the third respondent would have been appointed. By reversing the order and appointing Babu Kayamkulangara in the vacancy which arose on account of transfer of S.Gopalakrishnan Nair and appointing the third respondent provisionally to the post held by the applicant after retransferring him on a later date, great prejudice has caused to the applicant. This situation was reviewed by the Post Master General and in order to set right the injustice caused to the third respondent, [✓] he [✓] decided to cancel the Rule 38 transfer of the applicant and to relieve him so that the third respondent could be absorbed in the vacancy as a Group D employee. This decision cannot be considered as arbitrary or illegal. No question of denial of natural justice also arise in this case. In Chairman, Board of Mining Examination and Chief Inspector of Mines & another Vs. Ramjee- AIR 1977-SC-965, their Lordships have observed:

"Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating." We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction.

The impugned order in this case happened to be necessary to do justice to the casual labourers who were entitled to be absorbed in regular Group D post whose claims were overlooked while granting the Rule 38 transfer to the applicant. The respondents 1 and 2 were well within their powers in cancelling the transfer erroneously made, ^{especially when the applicant is not visited with any adverse civil consequence.} It is not necessary in that process to give notice to the applicant and to hear him before passing order of retransfer. It cannot be said that there has been violation of principles of natural justice in not doing so because by cancellation of the Rule 38 transfer, the applicant has not been put to any adverse civil consequences. It may be that some additional advantage enjoyed by him by reason of the transfer made earlier had been taken away by the impugned order. But that is permissible

in the interest of service, and that cannot be complained of because these are injuries for which there cannot be a legal remedy. Hence on a careful and detailed examination of the facts and circumstances of the case we are of the view that the applicant in this application, DA 286/89 has no legitimate grievance. The interim order dated 1.6.89 directing that the applicant should be retained on Group-D official in the post which he was holding is liable to be cancelled.

11. This Bench has in the final order in DA K-449/88 quashed the order dated 29.5.88 which ^{is} one of the impugned orders, Ext.A-8 in this case. It was also directed in that judgement that order dt.8.5.89 should be implemented in spirit by absorbing the applicant in that case in Group D service. The applicant in this case and the applicant in DA K-449/88 were similarly situated because they were persons eligible to be absorbed in Group D service on account of their continued provisional service. By judgement dt.14.2.89 this Tribunal had held that the applicant herein was eligible to be appointed in a Group D post and for facilitating such appointment, the letter dated 24.10.1989 calling for volunteers to fill up the post vacated by S.Gopalakrishnan Nair was also cancelled. Therefore, the applicant is entitled to be absorbed in a Group D post in implementation of the order dt. 12.5.89 because by setting

aside the order dt.29.5.89 in OA K-449/88, the order dt.

12.5.89, appointing the applicant has also automatically

revived because it was not part of the order dt.29.5.89 —

that was set aside but the whole order was set aside.

12. For the reasons mentioned in the foregoing para- —

graphs OA 286/89 is dismissed. Annexure-A 8 order is

quashed. OA 695/89 is allowed in part and the respondents

1 to 4 are directed to reinstate the applicant in service

in implementation of the order dt.12.5.89 by transferring

the 5th respondent to his original post ^{which he was holding} prior to Rule 38

transfer and to consider the case of the applicant for

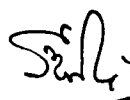
regularisation in service in the light of the directions

contained in OA K-522/88 and the rules, orders and instru-

ctions on the subject. There is no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER

18/7/90


(S.P. MUKERJI)
VICE CHAIRMAN

18.7.90

18.7.1990