

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A. No. 336/97.

Tuesday this the 19th day of December, 1997.

CORAM:

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

P. Kesavan Nair,  
Stenographer to Executive Engineer  
(Civil), Postal Civil Division,  
Trivandrum (Relieved without posting  
order)

.. Applicant

(By Advocate Shri Thomas Mathew)

Vs.

1. Union of India, represented by  
Director General, Department of  
Post, New Delhi.
2. Chief Postmaster General,  
Kerala Circle, Trivandrum.
3. G. Anthony,  
Superintending Engineer (Civil),  
Head Quarters, Department of  
Posts, New Delhi.
4. Superintending Engineer (Civil),  
Postal Civil Circle, Gandhinagar,  
Bangalore-560 001.
5. E.C. John, Executive Engineer (Civil)  
Postal Civil Division, Trivandrum.
6. Senior Accounts Officer, Postal  
Civil Division, Trivandrum.
7. Kumari Lekha K., Stenographer,  
Department of Supplies & Disposals,  
New Delhi - Working as Stenographer  
Office of the Executive Engineer  
(Civil), Postal Civil Division,  
Trivandrum.

.. Respondents

(By Advocate Shri S. Radhakrishnan, ACGSE(R.1-4 & 6)

(By Advocate Shri T.K. Ananda Padmanabhan (for R-7)

The application having been heard on 19th December, 1997,  
the Tribunal on the same day delivered the following:

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O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

Applicant who commenced his career as Stenographer in Postal Department in the year 1973, while working as Stenographer to the Superintendent of Post Offices, Alleppey Division, was, on his request transferred and posted as Stenographer to the Executive Engineer, Postal Civil Division, Trivandrum under the 2nd respondent order dated 14.8.95. While he was working in the office of 5th respondent, by order dated 17.2.97 (A-2) he was relieved to report before the Chief Postmaster General for obtaining further instructions regarding the posting as the 7th respondent, Kum. Lekha K., who had been transferred to Postal Civil Division, had joined on 17.2.97. The transfer of Kum. Lekha was by order dated 31.1.97 (A-3). Pursuant to this order, applicant had reported before R-2 for getting a posting, but he was told that as there was no vacancy of Stenographer, he could not be accommodated. He reported back for duty in the office of R-5 but was not permitted to rejoin. Under these circumstances, he filed this application initially for the following reliefs:-

- "i) to call for the records leading to Annexure A-2 order and quash Annexure A-2 and Annexure A-3, and Annexure A-6.
- ii) to direct the respondents to permit the applicant to rejoin duty as Stenographer in the office of the 5th respondent with immediate effect treating the applicant to have continued in that office without break from 17.2.97;
- iii) to pass any other order as this Hon'ble Tribunal deems fit in the circumstances of the case; and
- iv) to award cost of the Original Application."

2. In the application, it was alleged that the applicant who has 24 years of service in the Postal Department, who had been permanently transferred to the post of Stenographer to the Civil Wing has been relieved without giving him a posting, just to accommodate R-7 who had been transferred to

....3/-




Postal Civil Wing without ascertaining whether there was a vacancy or not is arbitrary, and this action is illegal, and unjust and liable to be struck down.

3. The respondents 1 to 4 and R-6 have filed reply statement and R-5 has filed another reply statement. R7 also filed a reply statement. The official respondents have in their reply statement stated that the transfer of the applicant to the Postal Civil Wing was only on a temporary measure but inadvertently the post vacated by him under the 2nd respondent happened to be filled by Rule 38 of transfer. They also conceded that before issuing the order of transfer of R-7 it was not ascertained whether there was a clear vacancy to accommodate R-7 in the Postal Civil Wing. The official respondents however, contended that as the applicant has no indefeasible right to be retained in a particular station he cannot lay claim for continuance in the office of R-6 itself.

4. Finding that a situation was created whereby the applicant, a regular official holding a post was left high and dry without a posting we directed the respondents to sort out the issue and to give the applicant a posting. Pursuant to this order the applicant was taken back in the office of R-5. Subsequently, R-2 issued A-6 order posting the applicant as Stenographer Grade-III in the office of the Senior Superintendent of Post Offices, Trivandrum North Division against the existing vacancy on 9.6.97 (A-6). The applicant has thereafter amended the prayer in the O.A. incorporating an additional prayer to quash A-6 also. R-7 (Kum. Lekha) has filed a reply statement seeking to justify the order of her transfer on compassionate grounds as her old parents were ill.

5. We have carefully gone through the entire pleadings as also the materials placed on record and have understood the situation from the submissions made by the learned counsel appearing for the parties. The argument of Shri Thomas Mathew that the action on the part of the respondents in transferring R-7 to Postal Civil Wing, Trivandrum without ascertaining whether there was a clear vacancy of Stenographer in the Postal Civil Wing to accommodate her there, was undoubtedly thoughtless and that the applicant could not be made to suffer on account of that, is well founded. It was on the force of this argument that we gave a direction to accommodate the applicant in the same post from which he was relieved. However, the present argument of the learned counsel that the applicant has a right to be retained in the office of R-5 and cannot be transferred out to Postal Department under R-2 to our mind does not appear to be well-founded either on facts or in the face of the statement made by the applicant himself in his application. It was by A-1 order dated 14.8.95 that the applicant who was a Stenographer in the office of the Superintendent of Post Offices, Alleppey Division was transferred as Stenographer to the Executive Engineer, Postal Civil Division (R-5) with immediate effect. This transfer was at the request of the applicant. A separate cadre for Group 'C' and 'D' in the Postal Civil Wing was created with effect from 11.4.93. As the recruitment rules for making appointments to the cadre has not been finalised, the Ministry of Communications addressed the Chief Postmaster Generals by a letter dated 29.2.94 detailing the manner in which the arrangement can be made for manning the posts. In accordance with the scheme made for implementing the order at R-1, instructions were issued to concerned Chief Postmaster

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Generals and Post Master Generals for lending clerical staff in group 'C' and 'D' to the posts of Civil Wing till recruitment rules are finalised and appointments made accordingly. It was under these circumstances, and arrangements that the applicant was transferred to the office of R-5. In the order A-1 it was not stated that the transfer was on permanent basis. Under the circumstances the transfer of the applicant to Postal Civil Wing can be held to be a temporary transfer to meet the exigency, until appointment to the cadre is made on promulgation of Recruitment Rules. The mistake was first committed when the post vacated by the applicant in the Postal Department was filled by a transfer under Rule 38 wrongly taking the transfer of the applicant as a permanent transfer. The next mistake was committed by ordering the transfer of R-7 without ascertaining whether there was a vacancy in the Postal Civil Wing to accommodate her. However, the applicant has no vested right to claim retention in the office of R-5 for ever. The applicant himself was aware of the situation. In ground 'C' of the application it is stated that the applicant was entitled to continue in the office of R-5 till he was posted to any other office under R-2. Now, that by impugned order A-6, the applicant has been posted to an office under R-2 in an existing vacancy, we are of the considered view that the applicant do not have any further legitimate grievance.


6. We cannot resist ourselves from making an observation that the filling up of the post vacated by the applicant to join the office of R-5 on temporary basis by resorting to Rule 38 transfer as also transferring the 7th respondent to Postal Civil Wing without ascertaining whether there was a vacancy readily available to accommodate her was totally callous and thoughtless. It was on account of that the applicant was constrained to file this application.

7. Now that the applicant has been given a posting in the office of the Senior Superintendent of Post Offices Trivandrum, the situation created has been sorted out. The applicant is not entitled to have annexure A-6 order set aside. He has to give effect to that order by joining the office of the Superintendent of Post Offices, Trivandrum.

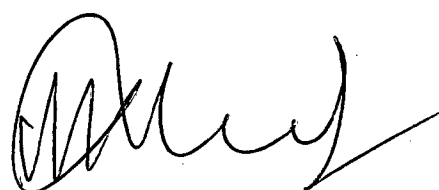
8. In the result, in the conspectus of facts and circumstances, the application is disposed of with the following directions:

- i) The 5th respondent shall relieve the applicant within a week and the applicant shall give effect to the Annexure A-6 order by joining the office of the Senior Superintendent of Post Offices, Trivandrum immediately on relief.
- ii) The respondent 5 shall issue necessary orders regularising the periods of absence of the applicant from his office w.e.f. 17.2.97 as duty for all purposes including Pay and allowances.
- iii) The respondents 1-6 shall pay to the applicant a sum of Rs.500/-(Rupees Five Hundred) as costs.

Dated the 19th December, 1997.



S.K. GHOSAL  
ADMINISTRATIVE MEMBER



A.V. HARIDASAN  
VICE CHAIRMAN