

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.339/98

Tuesday, this the 23rd day of March, 1999.

CORAM:

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

1. E.Hareendran,  
S/o Chanthu,  
Phone Mechanic,  
Kasargode.
  2. P.Manoharan III,  
S/o Chandukutty,  
Phone Mechanic,  
Telephone Exchange,  
Delampadi.
  3. K.Pavithran,  
S/o Raman.K.  
Phone Mechanic,  
Telephone Exchange,  
Uduma.
- Applicants

By Advocate Mr M.R.Rajendran Nair

Vs

The General Manager,  
Telecom District,  
Kannur.

- Respondent

By Advocate Mr James Kurian, ACGSC

The application having been heard on 23.3.99, the  
Tribunal on the same day delivered the following:

O R D E R

Applicants seek to quash A-7, A-8 and A-9 orders of transfer, to declare that they are entitled to be considered for transfer/posting to their parent unit/choice station in accordance with their seniority in the category of Phone Mechanics/date of registration and in preference to their juniors and to direct the respondent to consider the applicants for transfer/posting to their parent unit/choice station in accordance with their seniority in the

category of Phone Mechanics/date of registration and to transfer/post them in their parent unit/choice station in preference to their juniors/fresh appointees without delay.

2. Applicants commenced service in the Telecom Department as Casual Labourers in 1982, 1983 and 1981 respectively and later they were absorbed as Group 'D' in 1992, 1993 and 1992 respectively. The applicants were later selected for appointment as Phone Mechanics. After reporting for duty as Phone Mechanics, they submitted representations for transfer to Thalacherry under Rule 38 of the Posts and Telegraphs Manual Vol.IV as per A-3, A-4 and A-5. As the request of the applicants for transfer under Rule 38 was not considered in preference to the claim for posting of their juniors applicants approached this Bench of the Tribunal by filing O.A.114/98. That O.A. was disposed of directing the respondent to consider the request of the applicants for transfer to their home stations under Rule 38 of the P&T Manual Vol.IV taking into account the existing vacancies and to give them a speaking order. As per the impugned orders A-7, A-8 and A-9 the request of the applicants, the respondent has turned down.

3. The respondent in the reply statement says that postings are made as per the sanctioned posts and to the extent of vacancies at each stations. The criteria for transfer is the length of service in the department. This is as per the mutual understanding arrived at between the administration and various recognised staff unions of the Secondary Switching Area of Kannur. As per decision taken in the meeting held on 5.12.97 it was decided that when there are vacancies at a particular station and when there are requests from other stations and options from redeployed staff to that particular station, the official with more length of service in the department will be considered for posting/transfer to that particular station.

The request of the applicants do not come within the purview of Rule 38 of P&T Manual Vol.IV.

4. In the impugned orders the respondent has stated that request of the applicants for transfer to Thalacherry/Mambaram could not be considered for want of sanctioned post of Phone Mechanics in the station and the request for transfer to the choice station has already been registered for consideration at the appropriate time with reference to the direction given by this Bench of the Tribunal in O.A.114/98. In A-9 it is specifically stated that as per decision arrived in the meeting held on 5.12.97 with all recognised Unions and the administration, the criteria for transfer/redeployment of excess staff in the cadre of Phone Mechanic is the length of service in the department.

5. Out of the two points raised by the respondent in the reply statement, one is that Rule 38 of the P&T Manual Vol.IV has no application to the request of the applicants. This stand cannot be accepted for two reasons: One is that in the order in O.A.114/98 there is a direction to the respondent to consider the request of the applicants for transfer to their home stations under Rule 38 of the P&T Manual Vol.IV taking into account the existing vacancies and to give them a speaking order. The sole respondent in O.A.114/98 is the sole respondent herein also. The stand taken by the respondent is against the direction contained in the order in O.A.114/98. O.A.114/98 has not been challenged. So it has become final.

6. From a reading of the provisions contained in Rule 38 of the P&T Manual Vol.IV and in the light of the facts in this O.A., it is very difficult to say that the request of the applicants do not come within the purview of Rule 38.

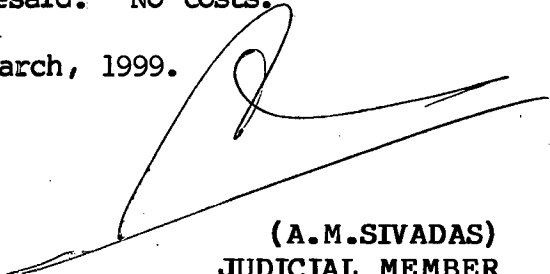
7. The other ground relied on by the respondent is the decision taken by the administration and the recognised staff unions as per R-1. R-1 is in respect of transfer of Phone Mechanics. When request for transfer is governed by the provisions contained in Rule 38 it is not known what prompted the department to take a decision as per R-1. Learned counsel appearing for the respondent submitted that R-1 is not in conflict with Rule 38 to the extent it relates to the transfer within the SSA. If that is so, excepting in the limited sense, R-1 is in conflict with Rule 38. If it is not in conflict with Rule 38, it is virtually an amendment to Rule 38. There cannot be any amendment to Rule 38 by virtue of R-1. R-1 cannot supersede Rule 38. Under what authority the decision contained in R-1 is taken is not known. What is the legal sanctity or validity of R-1 is also not explained by the respondent. The submission of the learned counsel for the respondent that R-1 is not in conflict with Rule 38 to the extent of transfers within the same SSA cannot be countenanced in the light of Rule 38 read with Note 3 thereunder.

8. The position is that both the grounds raised by the respondent cannot be accepted.

9. Accordingly A-7, A-8 and A-9 impugned orders are quashed. The respondent is directed to consider the request of the applicants for transfer in the light of Rule 38 of the P&T Manual Vol.IV untrammelled by R-1. The result of the consideration of the request of the applicants by the respondent shall be communicated to the applicants within two months from the date of receipt of a copy of this order.

10. Application is disposed of as aforesaid. No costs.

Dated, the 23rd of March, 1999.



(A.M.SIVADAS)  
JUDICIAL MEMBER

trs/24399

List of Annexures referred to in the order:

1. Annexure-A3, true copy of the representation dated 4.7.94 submitted by 1st applicant to the respondent.
2. Annexure-A4, true copy of the representation dated 9.11.94 submitted by 2nd applicant to the respondent.
3. Annexure-A5, true copy of the representation dated 14.10.97 submitted by 3rd applicant to the respondent.
4. Annexure-A7, true copy of the order No.ST/340/PM/tfr/pt/23 dated 4.2.98 issued by the respondent to the 1st applicant.
5. Annexure-A8, true copy of the order No.ST/340/PM/tfr/pt/24 dated 4.2.98 issued by the respondent to the 2nd applicant.
6. Annexure-A9, true copy of the order No.ST/340/PM/tfr/pt/24 dated 4.2.98 issued by the respondent to the 3rd applicant.
7. Annexure-R1, true copy of letter No.ST-337/UNION/96-98/68 dated 10.12.97 issued by Assistant General Manager(Admn) for General Manager, TD, Cannanore.