

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

DATE: 27.10.93

O.A. 348/93

Sri C. Jayakumar, Sorting Assistant  
S.R.O., Shornur

Applicant

vs.

1. The Chief Post Master General  
Kerala Circle, Trivandrum
2. The Post Master General, North  
Zone, Calicut
3. The Supdt., RMS, 'CT' Division  
Calicut

Respondents

MR. M. Girijavallabhan

Counsel for the  
applicant

MR. C. C. Thomas ACGSC

Counsel for the  
respondents

CORAM

MR. N. DHARMADAN JUDICIAL MEMBER

JUDGMENT

MR. N. DHARMADAN JUDICIAL MEMBER

Applicant is aggrieved by the denial of Rule 38 transfer strictly following the seniority of registration.

2. The applicant is at present working as Sorting Assistant in the RMS 'CT' Division in SRO, Shornur. He is continuing in that division for the last 10 years. He filed his application under Rule 38 of the P & T Manual for getting a compassionate transfer as Sorting Assistant at Trivandrum North or South. His request was registered and he is No. 2 in the Waiting list. In answer to his request Annexure A-2 was issued stating that " transfer can be given to the official only during the end of February, 1992." Thereafter, more than half a dozen officials have been transferred to Trivandrum Division considering their request. They are M/s. K. Harikumar, Smt. Mary Gorette Isbella, Shri T. Anil Kumar, N.K. Usha, M.M. Uma, Kum. G. Leena. The applicant further submitted that the No. 3 in the Waiting List, P. Umadevi has also been given transfer to Trivandrum South Postal Division. Under that circumstances, the applicant

filed this application under section 19 of the Administrative Tribunals Act, alleging discrimination and arbitrary action on the part of the respondent No. 1.

3. In the reply, the respondents have given their own reason and justification for transfer of the persons from other Divisions to Trivandrum and submitted that there is no discrimination. They further submitted that due to Biennial Cadre Review which came into effect w.e.f. October 1991 when it was implemented, a few posts of Postal Assistants were to be reduced as per agreement with staff Unions. As a result, a few posts were rendered surplus in Trivandrum South and North Division. Hence, there is no vacancy to give posting to person from other Divisions under Rule 38 transfer. They have further stated in para 11 of the reply that the transfer of Kum. G. Leena was a temporary transfer given by mistake contrary to DG's instruction and the official was asked to join HRO Calicut vide letter No. B1/35/SA dated 2.3.93.

4. Applicant filed rejoinder and submitted that in addition to the transfer already made from other Division to Trivandrum overlooking the seniority of registration of the applicant, two other persons namely Sri P.R. Balakrishnan, SA RMS Shornur and Sri Victor George, SA RMS Tellicherry were transferred to Trivandrum Division. He has also produced Annexure A-6 to show that there are existing vacancies at Trivandrum South so as to enable the first respondent to accommodate the applicant in the Trivandrum Division.

5. Having heard learned counsel on both sides, I am satisfied that the seniority of the applicant for getting transfer under Rule 38 was not given due weightage while making inter-divisional transfer on the basis of the request and in fact it is admitted that the person having third position in the list has already been given transfer

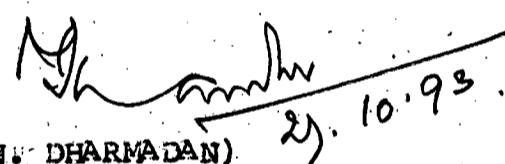
overlooking the request of the applicant. The learned counsel for the respondents brought to my notice Annexure R-2 and submitted that a decision has been taken that transfer from PA to SA and vice versa cannot be allowed on the basis of the letter issued by the DGP. I have perused that letter. It is seen that, the letter was issued only with regard to the transfer of Smt. Rosamma Issac working as SA, HRO RMS CT Division for a inter-divisional transfer. This letter has no general application so as to prevent the applicant to get his application considered in accordance with Rule 38 request. Applicant has also filed rejoinder denying the allegation and averments made by the respondents in this behalf. However, in the view that I am taking in this case it is not necessary for me to examine whether Annexure R-2 stands in the way of the applicant for getting transfer to Trivandrum Division on the basis of seniority of registration.

6. It is admitted in thereply that filling up of posts of SA in the Trivandrum Division by giving temporary transfer to Smt. Leena has been effected on the basis of a mistake. Learned counsel for respondents submitted that <sup>any</sup> notice has been issued to Leena to vacate the post by the end of December and the vacancy will be created on the basis of the notice. In that vacancy, the applicant's case deserves to be considered by the first respondent on the basis of the averments in the original application.

7. In this view of the matter, I am satisfied that the application can be disposed of with appropriate direction to first respondent to consider the request of the applicant on the basis of the seniority of registration

particularly when Sl. No. 1 & 3 have already been transferred apart from the transfer of eight other person as clearly stated in the original application and rejoinder. Under these circumstances, the first respondent shall take a final decision on the claim of the applicant for Rule 38 transfer to Trivandrum Division <sup>having</sup> in regard to the fact that applicant's claim for compassionate transfer is pending from 1991 and also the fact that applicant is continuing in Shornur for more than 10 years.

8. The decision shall be taken before filling up the vacancy that may arise pursuant to the letter issued to Leena. No appointment to that post shall be made till then.
9. The application is disposed of on the lines indicated above.
10. There shall be no orders as to costs.

  
27.10.93  
(N. DHARMADAN)  
JUDICIAL MEMBER  
27.10.93

kmn

List of Annexures

1. Annexure A-2 : Letter No. PF/CT/456 dated 2.1.92
2. Annexure A-6 : Notification-in the Mathrubhumi daily dated 26.7.93 regarding filling up post of PAs
3. Annexure R-2 : Letter No. 141-151/9 SPB-II dated 15.7.92