

SB (1)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No. 349/93

DATE OF DECISION : 16.07.1993

K. Jayaprasad, Projectionist,
Field Exhibition Office,
Directorate of Advertising &
Visual Publicity,
Ismail Cottage, TC 24/695,
Thycaud, Trivandrum-14. .. Applicant

Mr.P.S.Biju .. Advocate for applicant

V/s

1. The Director General,
Directorate of Advertising &
Visual Publicity, Ministry
of Information & Broadcasting,
3rd Floor, PTI Building,
Parliament Street,
New Delhi.

2. The Field Exhibition Officer,
Dte. of Advertising & Visual
Publicity, Thycaud,
Trivandrum-14.

3. Shri K.R.S.Nair, C/o. Field Exhibition
Office, Dte. of Advertising
and Visual Publicity, Thycaud,
Trivandrum-14. .. Respondents

Mr. M.A.Manhu, ACGSC .. Advocate for respondents 1&2

Mr. M.R.Rajendran Nair .. Advocate for respondent 3.

CORAM :

The Hon'ble Shri N.Dharmadan, Judicial Member.

JUDGEMENT

MR. N.DHARMADAN, JUDICIAL MEMBER

Applicant, a Projectionist, working in the Directorate of Advertising and Visual Publicity, Thycaud, Trivandrum, is aggrieved by Annexure-A3 transfer order dated 17.2.1993 by which he has been shifted to Ahmedabad from Trivandrum.

2. According to the applicant, after his tenure at Port Blair from February 1982, even though he submitted a request for posting at Trivandrum, the authorities have posted him to Madras. From October 1986 he worked in Madras. While so, he filed Annexure-A1 representation for an immediate transfer to Trivandrum on compassionate ground due to the death of his mother and the illness of his father. Considering the representation, the first respondent transferred the applicant to Trivandrum as per Annexure-A2 order dated 14.6.91. The 3rd respondent who was transferred from Trivandrum to Bangalore did not report for duty pursuant to the order Annexure-A2. Later he was transferred to Ahmedabad. But he went on leave without joining at Ahmedabad pursuant to the transfer order. Now the 1st respondent all on a sudden issued Annexure-A3 impugned order in partial modification of earlier order Annexure-A2. Applicant has stated that out of total 11 years service as Projectionist, five years he had served at Port Blair and another four years at Madras. As per the norms of transfer he is entitled to continue in a choice station and Trivandrum being his choice station, he is entitled to continue in the present/^{post} at least for a full term. According to him the impugned order Annexure-A3 is arbitrary and illegal. It has not been passed in the exigency of service. No administrative reasons are mentioned in the said order.

3. At the time when the case was taken up for final hearing the learned counsel for the applicant submitted that the impugned order was passed to enable the 3rd respondent to continue at Trivandrum. Hence it is malafide. The 3rd respondent has suppressed facts and obtained a judgment in OA 1781/92 on 11.12.92. Hence the O.A. is to be allowed.

4. I have heard the learned counsel for the respondents including the learned counsel for the 3rd respondent. I have also called for the O.A.1781/92 and examined the same to find out whether there is any actual suppression of facts.

5. The applicant in OA 1781/92, the seniormost Projectionist having rank No.4 in the All India seniority list of Projectionists, was transferred to Bangalore as per the order issued on 14.6.91 which is produced as Annexure-A2 in OA 349/93. Since he was suffering from acute diabetes and blood pressure and undergoing constant treatment, he was unable to go and join at Bangalore. He filed two representations on 5.7.91 and 16.7.91, referred to as Annexures-VI & VII in that case. Since no orders were passed on the same, his wife also submitted Annexure-VIII representation. In the mean time an order dated 26.3.92 was passed in partial modification of the earlier order dated 14.6.91 by which he was transferred to Ahmedabad. He challenged that order in OA 1781/92 after filing a representation against the said transfer. At the admission stage itself, 11.12.92, the O.A. was disposed of directing the 2nd respondent therein to dispose of the representations on merit with further directions to keep in abeyance the orders of transfer. From a perusal of the files, I could not find any wilful suppression of facts as alleged by the applicant. But it is clear from the arguments and the pleadings that the 3rd respondent was continuing in Trivandrum for more than 20 years, ever since his appointment. In spite of two orders of transfers he was continuing in Trivandrum. In the original application filed by the 3rd respondent, he did not implead the applicant in this case. Since the applicant also raised grounds similar

to the grounds raised by the 3rd respondent in OA 1781/92, which was disposed of with direction, I am inclined to take same view in this case also particularly because the applicant worked outside the home state for about nine years out of the total service of eleven years. He submitted that it would cause injustice to him if he is again transferred to Ahmedabad retaining the 3rd respondent at Trivandrum who did not work outside Kerala at any time. This is a matter which requires further examination and decision by the competent authority.

6. Hence, under the above facts and circumstances, I am satisfied that this application can be disposed of in the interest of justice with appropriate direction to the 1st respondent. Accordingly, I direct the applicant to file a representation before the 1st respondent within a week from the date of receipt of a copy of this judgment stating all his grievances. If such a representation is received by the 1st respondent, he shall consider the same and pass appropriate order in accordance with law as expeditiously as possible, till which date the interim order passed on 25.2.93 would be in force.

7. The application is accordingly disposed of. There will be no order as to costs.

N. Dharmadan
16.7.93

(N.DHARMADAN)
JUDICIAL MEMBER

LIST OF ANNEXURES:

1. Annexure-A3 .. Copy of Transfer order dated 17.2.93.
2. Annexure-A1 .. Copy of the representation dated 12.6.89 filed by the applicant before Joint Director, DAVP, Bangalore.
3. Annexure-A2 .. Copy of transfer order dt.14.6.91 transferring the applicant from Madras to Trivandrum.