

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE THIRTEENTH DAY OF JANUARY, 1987

Present: Hon'ble Shri Ch.Ramakrishna Rao Member(J)

Hon'ble Shri P.Srinivasan Member(A)

Application No. 1260/86

Narasimha Murthy,
Major, Office Assistant,
Office of the S.T.O.(Telegraphs),
Mandya.

... Applicant

(Shri Ranganatha Jois ...

Advocate)

Vs.

1. The Divisional Engineer,
(Telegraphs) Mysore.

2. The General Manager(Telcom)
Karnataka Circle, B'lore.

3. The Sub-Divisional Officer,
Telegraphs, Mandya.

... Respondents

(Shri M.S.Padmarajaiah ...

Advocate)

This application has come up before the court today.

Hon'ble Shri P.Srinivasan, Member(A) made the following:

ORDER

The applicant was working as Office Assistant in the Mysore Division of the Telecommunications Department in the office of the Divisional Engineer(Telegraphs) Mysore. The Mysore Division was bifurcated in 1980 into two divisions viz. The Mysore (TE) Division and Hassan (TE) Division. At the time, employees working in the Mysore Division before bifurcation were given a choice to continue to work in the truncated Mysore Division or to go over to the Hassan Division. Many employees gave their option for staying on in the residual Mysore Division, including the applicant. It appears that the senior most among those who had so opted were retained in Mysore Division while the juniors who could not be accommodated for want of vacancies were posted to Hassan Division ignoring the options exercised by them to remain in the Mysore Division.

The Applicant was one of the junior officials who had to be

P. Srinivasan

posted to Hassan Division in this manner. However, the Administration did not treat the matter of the options as totally closed. As and when vacancies arose later in the residual Mysore Division, employees whose options to remain in Mysore Division had not been earlier acted upon were given one more chance to come back to Mysore Division but under one condition viz. that each of them individually gave a declaration under Rule 38 of the P&T Manual Vol. IV, that he would take the lowest seniority in the Mysore Division on his return. In anticipation of such declaration, transfer orders were issued by which the applicant and some others were retransferred from Hassan to Mysore Division. Thereafter the Administration directed all the officials so transferred to give the requisite declaration under the said Rule 38. The applicant refused to do so stating that he should have been repatriated without loss of seniority and should not have been transferred in pursuance of the said Rule 38. The administration clarified that by giving the declaration he would not lose any seniority because those retained in Mysore Division were already senior to him and persons were being taken back to the Mysore Division only in the strict order of their seniority so that the applicant would occupy the same position of seniority even though he gave a declaration under the said Rule 38. The applicant continued to make representations insisting that his retransfer from the Hassan Division to the Mysore Division should not be treated as transfer in pursuance of Rule 38 and that he be properly repatriated to the Mysore Division without loss of seniority. Apparently disgusted by his intransigence, the Administration finally retransferred him back to Hassan Division by order dated 20.11.1982 (Annexure S).

P. S. [Signature]

2. In this application which originated as a writ petition before the High Court of Karnataka the applicant prayed that various letters issued by the authorities justifying his retransfer back to Mysore Division in pursuance of Rule 38 of P&T Manual Vol. IV be quashed.

3. Shri Ranganath Jois learned counsel for the applicant contends that the applicant had at no time sought a transfer in pursuance of Rule 38 of P&T Manual Vol. IV. Therefore, his transfer from Hassan Division to Mysore Division effected by order dated 30.5.1981 should have been treated as repatriation and he should have been given back his old seniority.

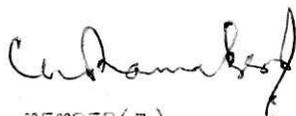
4. Shri M.S.Padmarajaiah, learned counsel for respondents points out that the applicant would not have lost any seniority by giving a declaration under Rule 38 of P&T Manual and he had been unnecessarily insisting that his retransfer to Mysore Division be treated as on repatriation. The Director General, P&T, had issued clear instructions on 30.5.1979 that where, after bifurcation, junior persons whose options to continue in the old Division could not be entertained in the first instance, were later taken back into the old division, that could be done only under Rule 38 of the P&T Manual but in order to safeguard their interest no direct recruitment would be made in the old Division till all the junior persons ^H were taken back in pursuance of their earlier option. It was also clarified that transfer of persons from other Divisions to the old Division would also not take place till the erstwhile junior employees of that Division had been taken back in terms of their original option. Further, the junior employees would themselves be taken back only in the order of their seniority. Thus by giving the declaration under Rule 38 of the P&T Manual, the applicant would have got back the

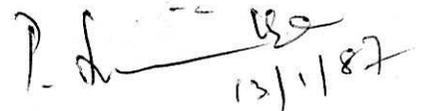


same seniority on his retransfer to the Mysore Division. The applicant had only been imagining that he would lose seniority which was not correct. Shri Padmarajaiah also pointed out that the applicant had since been re-transferred to Hassan Division. As a result he cannot claim to stay on in Mysore Division with his earlier seniority restored.

5. We have considered the matter carefully. We are convinced that the applicant was ill advised in his protestations and really acted against his own interests in persisting with them. He should have given a declaration under Rule 38 of the P&T Manual. The letter dated 30.5.1979 issued by the Director General, P&T constitutes full protection for all junior persons taken back to the old Division in pursuance of the option exercised by them at the time of bifurcation and the applicant would also have been covered by that protection. When we pointed this out to Shri Jois he agreed that his client would now give a declaration under Rule 38 of the P&T Manual for transfer to Mysore Division. It appears to us that the applicant genuinely apprehended that he would lose by giving a declaration under Rule 38 and that therefore his refusal to give such a declaration should not be held against him. If the applicant now gives such a declaration within one month of receipt of this order and only then, we would direct the Respondents to take him back in Mysore Division and to regulate his seniority in conformity with the letter of DG P&T No.257-2/78-STN dated 30.5.1979.

6. In the result the application is partly allowed to the extent indicated above. There will be no order as to costs.


MEMBER(J)


MEMBER(A)

AN.