

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00151/2019

DATED THIS THE 26TH DAY OF NOVEMBER 2019

HON'BLE SHRI DR. K.B. SURESH, MEMBER (J)

HON'BLE SHRI CV.SANKAR MEMBER (A)

Mohammed Jalal Pasha,
Aged 36 years,
S/o Abdul Gafoor,
Sub Postmaster,Yergera SO,
Under Raichur HO,
Residing at No.12-12-45,
Arab Mohalla,
Raichur 584101.

.....Applicant

(By Advocate Shri B. Venkateshan)

vs.

1.The Union of India,
Represented by the Secretary,
Department of Posts,
Dak Bhavan,
New Delhi – 110 001.

2.The Post Master General,
N.K. Region,
Dharwad-580 001.

3. The Superintendent of Post Offices,
Raichur Division,
Raichur 584101.

4. The Superintendent
Railway Mail Service, HB Division,
Hubballi 580 020Respondents

(By Shri Gajendra Vasu..... Sr. Panel Counsel)

ORDER (ORAL)DR. K.B. SURESH, MEMBER (J):

1. Heard. The matter in nut shell is that applicant had sought for a transfer from being Postal Assistant to that of Sorting Assistant. It is covered by Rule 38 of the General Rules which we quote:-

“38. Transfer at one’s own request

(1) Transfers of officials when desired for their own convenience, should not be discouraged if they can be made without injury to the rights of others. However, as a general rule, an official should not be transferred from one unit to another, either within the same Circle, or to another Circle unless he permanent. As it is not possible to accommodate an official borne on one gradation list into another gradation list without injury to the other members in that gradation list, such transfers should not ordinarily be allowed except by way of mutual exchange. Transfers by way of mutual exchange, if in themselves inherently unobjectionable, shall be allowed. But in order to safeguard the rights of employees borne in the gradation lists of both the offices, the official brought in should take the place, in the new gradation list; that would have been assigned to him had he been originally recruited in that unit or the place vacated by the official with whom he exchanges appointment, whichever is the lower.

Note:- Transfers of officials who are not permanent in the grade, may, in deserving cases, be permitted with the personal approval of the Head of Circle/ Administrative Office.

(2) When an official is transferred at his own request but without arranging for mutual exchange, he shall rank junior in the gradation list of the new unit to all officials of that unit on the date on which the transfer order is issued, including also all persons who have been approved for appointment to that grades as on that date.

(3) If the old and the new unit form parts of a wider unit for the purpose of promotion to a higher cadre, the transferee (whether by mutual exchange or otherwise) will retain his original seniority in the gradation list of the wider unit.

Example (i):—A post office assistant transferred from Mehsana Division to Kaira Division in the same Circle will not lose his seniority in the Circle gradation list for promotion to the lower selection grade.

Example (ii):—A telephone operator transferred as an ‘Engineering clerk, even under the same D.E.T. will have his seniority regulated both in the Divisional and the Circle Gradation List of Engineering clerks in accordance with sub-rule (2) as the Circle Gradation Lists of Telephone Operators and Engineering clerks is not common.

Example (iii):—An R.M.S. Sorting Assistant transferred from the A. Division to the P. Division will have his seniority in the gradation List of P. Division as well as Bihar Circle fixed in accordance with sub-rule (2).

Example (iv):—A post office assistant transferred from Poona Division to the Bombay G.P.O. will have his seniority fixed in gradation list of Bombay G.P.O. as also of Bombay City Units in accordance with 'sub-rule (2) as the Bombay City Units and the moffusil units have separate gradation lists for promotion to Lower Selection Grade.

Example (v):—An assistant transferred from one zone to another in the Stores Organisation will have his seniority fixed in the gradation list of the new zone in accordance with sub-rule (2).

(4) *A permanent official transferred from one unit to another will retain his lien in the old unit until he can be accommodated in the new unit according to his position in the new unit. He will not however have any claim to go back to his old unit even though he holds his lien there. A declaration to the effect that he accepts the seniority on transfer in accordance with this rule, and that, he will not have any claim to go back to the old unit, should be obtained before an official is transferred under this rule. Any special privilege to which an official may be entitled by virtue of his position in the gradation list of the unit from which he is transferred will, ordinarily, be forfeited on his transfer to a new gradation list.*

(5) *The transfer of an official from one arm of service to another within or outside the Circle can be allowed only with the personal approval of the Head of the Circle or Heads of Circles concerned and subject to the following conditions:—*

*(a) the mode of recruitment to the post to which the official seeks transfer is the same for the post he is holding; and
 (b) whenever additional qualifications are prescribed for appointment to a certain post, e.g., minimum height, freedom from colour blindness etc., for the post of Telephone Operators, the applicant should satisfy those conditions in all respects; whenever any training is required or Prescribed for the post, the applicant must undergo that training satisfactorily and the period of such training must be covered by the official by taking leave due and permissible for the period. “*

2. Shri Gajendra Vasu appears for the respondents and points out that as a General Rule officials should not be transferred from one unit to another if it will cause prejudice to others in the other

gradation list. But then, in the same Rule in sub-clause (2) it is mentioned that when an official is transferred at his own request but without arranging for mutual exchange, he shall rank junior in the gradation list of the new unit to all officials of that unit on the date on which the transfer order is issued, including also all persons who have been approved for appointment to that grade as on that date.

3. Therefore, without any doubt, the applicant will rank junior most in that list. Therefore, his coming in cannot have any prejudice to any other in that new gradation list. Besides Rule 38 stipulates in clause No.(1) that normally such transfer should be allowed unless specific prejudice brought on record. Here there is no such prejudice is brought on record other than a misinterpretation of clause No.(1) of Rule 38. The clause (1) in Rule 38 is circumscribed by sub-clause (2) . Therefore, no prejudice can be fallen on the shoulders of any other in the next gradation list.

4. Therefore, OA is allowed. Specific mandate is issued to consider the applicant for transfer as Sorting Assistant, if, he is otherwise eligible. OA is allowed to this extent. No order as to costs.

(CV.SANKAR)
MEMBER (A)
bk.

(DR. K.B. SURESH)
MEMBER (J)

Annexures referred to by the Applicant in OA.No.151/2019

Annexure A-1: Copy of memo dated 4.7.2008

Annexure A-2: Copy of memo dated 30.9.2008

Annexure A-3:Copy of memo dated 3.12.2002

Annexure A-4: Copy of memo dated 23.7.2015

Annexure A-5: Copy of applicant's application dated 9.10.2018

Annexure A-6: Copy of memo dated 29.11.2018

Annexure A-7: Copy of extract of Rule 38 P & T manual volume IV

Annexures referred to by the respondents in reply

Annexure R-1: Copy of letter dated 31.7.2018 guidelines for transfer.

Annexure R-2: Copy of letter dated 17.1.2019 guidelines for transfer.

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