

**Central Administrative Tribunal
Madras Bench**

OA/310/00132/2015

Dated Tuesday the 23rd day of February Two Thousand Sixteen

P R E S E N T

Hon'ble Mr.R.Ramanujam, Member(A)

R.Chandramohan
Technician Gr.II,
Vellore Contonement,
Tiruchchirappalli Division. .. Applicant

By Advocate **M/s.Ratio Legis**

Vs.

1. The Union of India, rep by
The General Manager,
Southern Railway,
Park Town, Chennai.
2. The Sr. Divisional Mechanical Engineer,
Tiruchchirappalli Division,
Southern Railway, Trichy.
3. The Senior Divisional Personnel Officer,
Tiruchchirappalli Division,
Southern Railway,
Trichy. .. Respondents

By Advocate **Mr.P.Srinivasan, Sr. Stndg, counsel for Rlwys.**

ORDER
(Pronounced by Hon'ble Mr.R.Ramanujam, Member(A))

The case of the applicant is that he is a beneficiary of cadre restructuring and consequent promotion to a higher post in his cadre. While working as Technician Gr.I at Vellore Cantonment following such restructuring and promotion, he was transferred to Tiruchchirappalli by order dated 24.10.2014. He made a representation to the 3rd respondent requesting to retain him at Vellore itself as he could not move out of station due to family circumstances and since he was also on the verge of retirement. However, the respondents failed to consider his request and are enforcing the order selectively against him in an arbitrary and discriminatory manner. Hence this OA seeking to set aside the transfer.

2. The applicant contends that he had a right to continue at Vellore Cantonment in terms of Railway Board Circular dated 23.5.1981 which specifies that the persons who are on the verge of retirement (with one or two years of service left) shall not be transferred even there are complaints against them. As the applicant was left with only 19 months of service for superannuation, transferring the applicant at this stage is not in accordance with the said Circular.

3. The respondents contest the claim stating that the transfer of the applicant was on account of cadre restructuring and subsequent redistribution of posts to various depots. 'Pin-pointing' of posts required at different places had been made with a view to achieving a smooth functioning of the administration. On the

request of the applicant, one post of Technician Grade II had earlier been transferred from Tiruchchirappalli to Vellore during the year 2010 as there was no sanctioned strength of C&W Technicians at Vellore. In the redistribution of posts consequent on 'pin-pointing', one post of Technician Gr.III and one post of Helper was earmarked for Vellore. As there is no earmarked Technician Grade I post at Vellore, the transfer of applicant was inevitable on account of exigency of service to a place where his services could be better utilised. The applicant enjoyed the benefit of Cadre restructuring and consequent promotion. He, therefore, had a responsibility to work at the place where he is actually required. The applicant was transferred purely on administrative grounds based on seniority and the transfer was not selective or punitive as alleged.

4. Heard the learned counsel for the applicant and the respondents and perused the pleadings and material produced by the rival parties.

5. Learned counsel for the applicant submits that the applicant had been promoted by Order dated 26.3.2014 to the post of Technician Grade-I (C&W Artizan staff) as a consequence of cadre restructuring (Sl.No.25 Annexure R3).

He also draws attention to Annexure R1 Circular of the Railway Board dated 8.10.2013 wherein it is stated that the Administration should take steps to pin-point the additional posts arising out of this restructuring as per administrative requirements. However, in those cases where due to pin-pointing of posts, staff is required to join duties in the upgraded posts at a different station, such staff may be allowed the benefit of upgradation/promotion on "as is where is basis" for the

time being and allowed to join the pin-pointed post at the new station within six months from the date of issue of promotion order. The pin-pointing of additional posts in terms of the aforesaid Circular had itself taken more than ten months and the relevant Annexure R2 Memorandum was issued after more than six months had passed since the date of promotion.

6. It is submitted that in terms of the transfer policy relating to periodical transfer of non-gazetted staff dated 23.5.1981, the General Managers could exercise their discretion to transfer out of station, non-gazetted staff against whom there were complaints-the man with longest stay being shifted first and those on the verge of their retirement (with 1 or 2 years service left) being exempted if complaints against them were not serious. On the strength of this Circular, learned counsel for the applicant argues that if an employee could be retained in the same station inspite of complaints on the ground that he is within 1 or 2 years of superannuation, there is no reason why a person who had been promoted earlier and performing his duties satisfactorily without any complaints against him should be transferred to another station when he had less than two years of service. Attention is also drawn to letter dated 14.1.2015 of Station Superintendent, Southern Railway, Vellore Cantonment regarding the inconvenience that would be caused at Vellore consequent on the applicant's transfer.

7. Learned counsel for the respondent however, submits that the applicant had not been transferred in the normal course and it had become inevitable on account of his promotion following cadre restructuring. He could not be transferred on the

date of promotion itself only for the reason that the posts had not been 'pinpointed' at that point of time. The additional posts arising out of cadre restructuring were distributed to different stations as per administrative requirements. Based on the revised posts distribution issued by Memorandum dated 25.8.2014, action was taken to transfer the junior most employees and the transfer order had been issued on 24.10.2014. As per policy, once the posts were identified, a promotee who is transferred as a consequence had to join at the new station within six months from the date of promotion. He also pointed out that there is no vacancy at the place where the applicant is presently serving and, therefore, he could not be continued there. Thus there was neither arbitrariness nor discrimination in the transfer of the applicant, he contends.

8. After carefully examining the facts of the case and considering the submissions made by the rival counsel, I am of the view that no strong case has been made out for quashing the order of transfer which is entirely in accordance with relevant circulars governing the cadre restructuring, promotion and 'pinpointing' of posts. No post of Technician Gr.I is available at Vellore and, therefore, the continuation of the applicant at Vellore may not be tenable unless the respondents agree to upgrade his post as personal to him for the period he is retained there. No directions could be given to the respondents to redistribute the posts to suit the convenience of individuals. The applicant cannot, therefore, claim the relief sought as a matter of right.

9. It cannot, however, be disputed that on the date of issue of order relating to

pin-pointing of posts i.e., 25.8.2014, the applicant had only about 25 months of service left and on 24.10.2014, the date of transfer, less than two years of service for superannuation. In his representation dated 29.10.2014, the applicant had submitted that he had one son and two daughters out of which only one daughter is alive now. One son while he was studying died in the school premises due to lightening on 27.5.2007 and one daughter died on 02.6.1998 due to a heart problem. His wife as well as the applicant himself were chronic sugar patients taking treatment in the CMC Hospital at Vellore and his wife had undergone two major surgeries. In view of these circumstances, he had requested that his case may be considered sympathetically so that he could look after his only surviving daughter.

10. This Tribunal had by interim order dated 3.2.2015 directed maintenance of status-quo with regard to the impugned transfer order dated 24.10.2014. Since the applicant is now due for superannuation in the month of September 2016 and has only about 7 months left, it would be appropriate for the respondents to consider the matter sympathetically and pass a reasoned and speaking order.

11. The OA is disposed of with the aforesaid observations. Interim Order shall continue to be in operation till the respondents dispose of the applicant's representation dated 29.10.2014. No order as to costs.