

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No.180/00303/2020**

**Wednesday, this the 23<sup>rd</sup> day of December 2020**

**C O R A M :**

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER  
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

D.Biju,  
S/o.Damodaran.N.S.,  
Office Superintendent,  
Southern Railway,  
Now working as Crew Controller,  
Ernakulam Junction.  
Residing at Kurumthodath House,  
KRRA – 26, Kairali Road,  
Thrippunithura – 682 306.

...Applicant

**(By Advocate Mr.T.C.Govindaswamy)**

**v e r s u s**

1. Union of India represented by the General Manager,  
Southern Railway, Head Quarters Office,  
Park Town P.O., Chennai – 600 003.
2. The Senior Divisional Personnel Officer,  
Southern Railway, Trivandrum Division,  
Trivandrum – 695 014.
3. The Senior Divisional Mechanical Engineer,  
Southern Railway, Trivandrum Division,  
Trivandrum – 695 014.
4. The Senior Divisional Electrical Engineer (Operation),  
Southern Railway, Trivandrum Division,  
Trivandrum – 695 014.
5. The Divisional Railway Manager,  
Southern Railway, Trivandrum Division,  
Trivandrum – 695 014.

...Respondents

**(By Advocate Mr.Thomas Mathew Nellimoottil)**

This application having been heard on 17<sup>th</sup> December 2020, the Tribunal on 23<sup>rd</sup> December 2020 delivered the following :

**ORDER**

**Per : Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

In this matter the applicant, who was initially appointed as an Assistant Loco Pilot in Chennai Division and later transferred to the Trivandrum Division, was working as Loco Pilot (Goods) in Level 6 of Pay Matrix when he was medically de-categorized with effect from 07.05.2018 and charged against a supernumerary post and utilized as a Crew Controller at Ernakulam Junction in the same Pay Matrix. Later he was found suitable for absorption as an Office Superintendent in the Mechanical Department and was absorbed as per order bearing No.V/P11/XII/Med-Decat dated 23.12.2019 at Annexure A-4. Annexure A-4 order which has been issued with the approval of the competent authority, shows that the applicant (at Sl.No.1) whose designation/station is Crew Controller (CRC) at Ernakulam Junction was absorbed as Office Superintendent in Mechanical Department. The same order says that the necessary office orders may be issued in this regard duly terminating the supernumerary posts (SNP) created earlier and that the office order to be issued should categorically mention that the employees are absorbed against the alternate post terminating the SNP post with immediate effect and hence they are not eligible for any privileges extended to the SNP post. Various other instructions relating to pay and grade pay are also part of the order. Consequent to their absorption the SNP posts created in their favour stands abolished.

2. Subsequent to the above order, the applicant submits that he was awaiting the office order appointing him as Office Superintendent, while being utilized as Crew Controller at Ernakulam Junction. At this stage, he came across Annexure A-1 order, which is a communication issued by the Assistant Personnel Officer (for Senior Divisional Personnel Officer) to the Senior Divisional Mechanical Mechanical Engineer (Sr.DME), Trivandrum stating that in partial modification it was advised that the employee (the applicant) may be utilized in his existing designation under supernumerary post in the absorbed new unit and that the utilization was provisional and that he cannot claim seniority till the outcome of O.A.No.180/00030/2020 before this Tribunal. The applicant submits that the said Annexure A-1 order is arbitrary and without jurisdiction and has been issued at the instance of the office staff of the Mechanical Department pressurized by the only recognized trade union of Southern Railway. He claims that this takes away his alternative appointment as an Office Superintendent and is opposed to the principle of natural justice. In addition, it is submitted that Annexure A-1 order has no approval from the competent authority being the Divisional Railway Manager, Trivandrum Division and that the Senior Divisional Personnel Officer has no authority to annul an order of absorption. There is no provision to annul an order of absorption under the Indian Railway Establishment Manual when it is issued by the competent authority. Further, the reference to O.A.No.180/00030/2020 is totally misplaced as it was filed against the absorption of one Shri.Binulal as a Junior Clerk in the Electrical Department and it has no

connection with the absorption of the applicant in the Mechanical Department. (Shri.Binulal is one of the officials to be absorbed as indicated in the aforesaid Annexure A-4 order, at Sl.No.5.) The applicant further alleges that by Annexure A-1 order his order of absorption is modified without a copy to him and by a communication addressed to the Mechanical Department. As such he submits that even though Annexure A-1 order has an adverse civil consequence upon him, it has not been preceded by an opportunity to show cause. He has thus filed this O.A seeking the following reliefs :

- 1. Call for the records leading to issuance of Annexure A-1 and quash the same.*
- 2. Direct the respondents to issue an order posting the applicant as an Office Superintendent as guaranteed in Annexure A-4 forthwith, with all consequential benefits arising therefrom.*
- 3. Award costs of and incidental to this application.*
- 4. Pass such other orders or directions as may be found just and fit in the facts and circumstances of the case.*

3. In their reply the respondents have stated that in O.A.No.180/00030/2020 filed by Shri.P.Kaladharan and two others challenging Annexure A-1 order dated 23.12.2019 (Annexure A-4 in this O.A) this Tribunal had passed an interim order on 10.01.2020, staying the

operation of the said order and the same was pending. The applicant in this O.A has not impleaded the applicants therein as proforma respondents. Further he had not annexed the interim order passed in O.A.No.180/00030/2020 along with the application filed before this Tribunal in order that a judicious decision could be taken in the matter; though the matter was within the knowledge of the applicant as is clear from his averment in paragraph 5(D) of the Grounds. If the applicant was aggrieved by the said interim order staying the operation of Annexure A-4 herein, he should have filed an M.A in O.A.No.180/00030/2020 with prayer to vacate the interim order relating to his portion and seeking permission to be impleaded as one of the respondents, since the prayer in the said O.A is only not to give effect to the promotion of Shri.Binulal, at Sl.No.5 at Annexure A-4. Since by way of the interim order dated 10.01.2020 Annexure A-4 order had been stayed in its entirety, his right to be absorbed as Office Superintendent in the Mechanical Department has been affected. The applicant has now filed this O.A praying to give effect to Annexure A-4 by quashing Annexure A-1 issued consequent to the interim order of this Tribunal in the other said O.A. The respondents submit that though the said interim order in O.A.No.180/00030/2020 was carried out with regard to Shri.Binulal, inadvertently it was not carried out in relation to the other employees at Sl.Nos.1 to 4 in Annexure A-4. Now the same has been carried out as per Annexure A-1 in the case of the applicant and hence it is submitted that issuance of Annexure A-1 is not to be found faulted with. The respondents also submit that the applicant should have availed of all the

remedies available to him under the relevant service rules for redressal of his grievances before the appropriate authorities before approaching this Tribunal. If the applicant was aggrieved with Annexure A-1 order, he should have filed an M.A in O.A.No.180/00030/2020 for vacation of the said order duly impleading himself as one of the proforma respondents, as the prayer in the said O.A was not to give effect to the posting of Shri.Binulal at Sl.No.5.

4. Subsequent to the above, the applicant has filed M.A.No.180/00616/2020 on 6<sup>th</sup> October 2020 praying for admission of a document and stating that he had filed M.As in O.A.No.180/00030/2020 for impleading himself as an additional respondent and for modification of the interim order to the extent it relates to the applicant. He submitted that these M.As stood adjourned to 23.10.2020 in O.A.No.180/00030/2020 without any order by this Tribunal. It should be noted on behalf of this Tribunal that this adjournment was for a very short period. He, however, approached the Hon'ble High Court of Kerala by filing O.P (CAT) No.163/2020 challenging the interim orders passed by this Tribunal and also adjournment of hearing on the M.As. The Hon'ble High Court heard the O.P(CAT) on 29.09.2020 and on the same day was pleased to modify the interim order by holding that the posting of Shri.Binulal in that O.A as Junior Clerk in the Electrical Department alone would stand stayed and it would be open for the department to take further proceedings pursuant to Annexure A-1 dated 23.12.2019 (Annexure A-4 in this O.A) with respect to

other employees. This Tribunal allowed the admission of the document which was the order of the Hon'ble High Court of Kerala to the effect as indicated above.

5. After this the respondents filed an additional reply statement on 11<sup>th</sup> November 2020 stating that the impugned Annexure A-1 order was issued on 01.07.2020 in view of the stay order issued by this Tribunal posting the applicant in his existing capacity, ie. in a supernumerary post for utilization to the office of the Senior Divisional Mechanical Engineer, Trivandrum. Challenging the same, the applicant filed the O.A on 13.07.2020, without availing the remedies as mandated by the Central Administrative Tribunal Act, 1985 and also without serving notice to the administration as mandated by Section 80 of the CPC. As such, the issue not being in the knowledge of the administration, he was relieved so as to join in the office of the Senior Divisional Mechanical Engineer, Trivandrum. However, the applicant refused to accept the relieving letter and therefore, the immediate superior of the applicant, namely, the Crew Controller, had pasted the relieving letter on the Notice Board in the presence of two witnesses. Copies of the relieving order addressed to Senior Divisional Mechanical Engineer, Trivandrum and Senior Divisional Electrical Engineer/Operation/Trivandrum by CCRC, Ernakulam intimating the applicant's refusal to accept the relieving letter are produced as Annexure R-1 and Annexure R-2. Subsequently, the applicant produced medical certificates obtained from a General Hospital, Ernakulam though he is

restricted from approaching a General/Private Hospital, where a Railway Hospital or Health Unit is available. Normally, the doctor-in-charge of the Health Unit will refer the employees to either Railway Hospital at Trivandrum or to the referral hospital at Ernakulam itself if there is no facility for treatment. The respondents submit that the applicant's office at Platform No.1 of Ernakulam South Railway Station is hardly 250 meters away from Railway Health Unit. Hence, the applicant has to indicate reasons why he had approached the General Hospital without attending Railway Hospital at the first instance. The respondents have also relied on various Hon'ble Supreme Court judgments. In **Mrs.Shilpi Bose & Ors. v. State of Bihar & Ors. (AIR 1991 SC 532)** decided on 19<sup>th</sup> November 1990 it is observed that the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of malafide. In other cases, such as **S.C.Saxena v. UOI & Ors., 2006 SCC (L&S) 1890**, the Apex Court has made it incumbent on the transferred employee to first report at place he is transferred and make a representation about personal problems. This Tribunal in a recent case of **P.T.Benny v. UOI & Ors. (O.A.No.180/00198/2020)**, has also pointed out the situations such as malafide exercise of authority etc. when a court can intervene. The applicant has not yet reported for duty in the office of Senior Divisional Mechanical Engineer, Trivandrum and as such, he is liable for DAR action and also not entitled for salary for the period of absence on the concept of 'No Work, No Pay'. It is submitted by the respondents that the

fact remains that the applicant had refused to accept the Crew Controller, Ernakulam relieving order dated 14.07.2020 so as to carry out the transfer order posting him in the Mechanical Department of Trivandrum Division. Thus the same was pasted in the Notice Board as per Annexure R-1 and Annexure R-2. The respondents state that the matter has now become infructuous in the light of the judgment of the Hon'ble High Court of Kerala in O.P (CAT) No.163/2020 by which only the posting of Shri.Binulal in terms of Annexure A-1 (Annexure A-4 in this O.A) as Junior Clerk in the Electrical Department stood stayed and it shall be open for the Department to take further proceedings pursuant to Annexure A-1 (Annexure A-4 in this O.A) with respect to other employees. As such Annexure A-1 order posting the applicant in an alternative post as Office Superintendent in the office of Senior Divisional Mechanical Engineer, Trivandrum is to be effected forthwith. However, since the applicant has been unauthorizedly absenting himself from duty with effect from 14.07.2020, disciplinary proceedings are liable against him and he is not entitled to any benefits including salary.

6. In the detailed rejoinder dated 20<sup>th</sup> November 2020 filed by the applicant, he has submitted that only by Annexure A-1, which is only a letter from the Senior Divisional Personnel Officer to the Senior Divisional Mechanical Engineer that his utilization is provisional that he came to know that there is an O.A filed as O.A.No.180/00030/2020 before the Ernakulam Bench of this Tribunal. He was not a party to the said O.A nor did he know that there was an interim stay granted by this Tribunal. The Senior

Divisional Personnel Officer had a duty to bring to the notice of this Tribunal that persons like the applicant except Shri.Binulal were not parties in the said O.A.No.180/00030/2020 and therefore there was no justification in staying the entire Annexure A-1 (Annexure A-4 in this O.A). If the Senior Divisional Personnel Officer had issued Annexure A-1 letter stating that it was being done on account of the stay order granted in O.A.No.180/00030/2020 then the applicant would not have come before this Tribunal by filing this O.A. It is only when the respondents filed their reply statement on 07.09.2020 in this O.A that the applicant also came to know that there is an interim order staying Annexure A-4. On coming to know of it he immediately approached this Tribunal by filing M.A for impleading and M.A for vacating the interim order granted vide O.A.No.180/00030/2020. Later when this Tribunal was not pleased to grant the relief in the M.As in view of the stand taken by the respondents he went to the Hon'ble High Court by filing O.P.(CAT) No.163/2020 which vacated the stay, vide judgment dated 29.09.2020. Further, it is submitted that the arguments of the respondents are hollow as there is no specific order posting the applicant to the office of the Senior Divisional Mechanical Engineer, Trivandrum. Annexure A-1 is only a letter from the Senior Divisional Personnel Officer to the Senior Divisional Mechanical Engineer and nothing more. In addition, the applicant has alleged that the averment that the stay order had left the respondents paralysed is wrong as the Senior Divisional Personnel Officer passed an Office Order dated 20.03.2020 posting one Smt.V.P.Ushas, who was also medically decategorized, as an

Office Superintendent in the office of the Divisional Mechanical Engineer (Diesel) at Ernakulam Junction, which he has now produced as Annexure A-5. It proves that notwithstanding the alleged stay order the Senior Divisional Personnel Officer passed such order. The applicant has also contested various other averments made by the respondents in their reply statement including the issue of medical certificates by a doctor of the Kerala Health Services etc. His main contention is that Annexure A-1 is only a letter on behalf of Senior Divisional Personnel Officer to Senior Divisional Mechanical Engineer. It is neither an order of transfer nor an order of posting which was to be in the form of an office order or memorandum as in the case of Annexure A-5 issued for Smt.V.P.Ushas, with a copy to her.

7. The applicant has also submitted that there is no provision to relieve any employee on transfer by pasting an order in the Notice Board. If the employee refuses relief, the appropriate course is to relieve the employee in absentia and to send the relieving order by registered post. He has also submitted that the contention of the respondents that pass has been issued for travel is false and is only an afterthought because of the interim order to maintain status quo rendered by this Tribunal on 16.07.2020. The applicant had sent medical certificate issued by Dr.Anil Kumar of the Kerala Health Services to the Chief Crew Controller immediately after the same was received on 14.07.2020. He had submitted further medical certificates dated 21.07.2020 and 31.07.2020 and fitness certificate dated 04.08.2020 to the

respondents. Further, the Office Order No.12/2020/C&W(M) referred to in Annexure R-1 & R-2 dated 20.03.2020 is only a posting order of Smt.V.P.Ushas, Office Superintendent in the office of the Divisional Mechanical Engineer (Diesel Loco Shed), Ernakulam Junction and Annexure R-1 and Annexure R-2 are only intended to frustrate the interim orders passed by this Tribunal and are not transfer orders passed by the respondents.

8. We have heard Shri.T.C.Govindaswamy, learned counsel for the applicant and Shri.Thomas Mathew Nellimoottil, learned counsel for the respondents. In this matter, we agree that some element of confusion has been created by the apparent lack of knowledge on the part of the applicant about the filing of O.A.No.180/00030/2020 by Shri.P.Kaladharan and two others against the appointment of Shri.Binulal as Junior Clerk and the subsequent blanket stay order. Be that as it may, the subsequent modification of the stay order by the Hon'ble High Court of Kerala should have made the way forward clear as it only stayed the order in respect of Shri.Binulal and no one else. We also agree that there is no clear order of transfer by way of an office order or memorandum posting the applicant as an Office Superintendent under Senior Divisional Mechanical Engineer, Trivandrum which has been submitted. The letters at Annexure R-1 and Annexure R-2 relates to movement of the applicant after relief and are not backed by any specific orders which normally should precede the issue of such orders.

9. We feel that other issues may need not be gone into as this is a matter between the applicant and his employer, the Railways for the future. In case it is decided by his employer to conduct further inquiries, we have no views at this stage. The respondents have submitted that Annexure R-1 and Annexure R-2 are documents which indicate that the applicant was relieved for joining in the new post with instructions to report to Senior Divisional Mechanical Engineer, Trivandrum and he has not done so. Whatever it may be, we feel that the O.A can be disposed of by directing the respondents to issue a specific order, if not already done, posting the applicant as an Office Superintendent (with a copy to him) as indicated in Annexure A-4 with all due consequential benefits arising therefrom within a period of one month from the date of receipt of a copy of this order. We also find that the letter at Annexure A-1 is no longer relevant with the decision of the Hon'ble High Court of Kerala in O.P (CAT) No.163/2020. We, therefore, direct the respondents to take action as per the above. The O.A is disposed of accordingly. No order as to costs.

(Dated this the 23<sup>rd</sup> day of December 2020)

**K.V.EAPEN**  
**ADMINISTRATIVE MEMBER**

**P.MADHAVAN**  
**JUDICIAL MEMBER**

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**List of Annexures in O.A.No.180/00303/2020**

- 1. Annexure A-1** – A copy of the Order bearing No.VP.535/IV/C&W/Mini/Med.dec/Vol.I dated 01.07.2020 issued by the second respondent.
- 2. Annexure A-2** – A copy of the Memorandum No.V/P439/VI/11 dated 16.07.2018 issued by the 2<sup>nd</sup> respondent.
- 3. Annexure A-3** – A copy of the Order bearing No.ERS 50 dated 20.11.2018 issued by the Crew Controller Southern Railway Ernakulam Junction.
- 4. Annexure A-4** – A copy of the Order bearing No.V/P11/XII/Med-Decat dated 23.12.2019 issued by the 2<sup>nd</sup> respondent.
- 5. Annexure A-5** – A mobile copy of the Office Order bearing No.12/2020/C&W(M) dated 20.03.2020 issued from the office of the Divisional Personnel Officer/TVM received by the applicant.
- 6. Annexure A-6** – A copy of the letter bearing No.ERS/50/Misc dated 14.07.2020 produced as Annexure R-1.
- 7. Annexure A-7** – A copy of the medical certificate dated 14.07.2020 issued by Dr.Anil Kumar.
- 8. Annexure A-8** – A copy of the letter dated 14.07.2020 addressed to the Chief Crew Controller Ernakulam Junction.
- 9. Annexure A8(a)** – A copy of the screen shot of the applicant's mobile phone No.08848057971 indicating that the same was sent to the in charge Crew Controller Sri.P.C.Antony in his Mob.No.9746769442 by Telegram (a mobile app like whatsapp).
- 10. Annexure A-9** – A copy of the letter dated 20.07.2020 addressed to the Crew Controller.
- 11. Annexure A-10** – A copy of the registered letter dated 01.08.2020 addressed to the Senior Divisional Mechanical Engineer also to the Senior Divisional Electrical Engineer.
- 12. Annexure A-11** – A copy of the Postal Receipts issued by the Ernakulam Head Post Office in support of Annexure A-10.
- 13. Annexure R-1** – A copy of the Letter No.ERS-50/misc. dated 14.07.2020 addressed to Sr. DME/TVC, communicating the relieving of the applicant by CCRC/ERS.

**14. Annexure R-2** – A copy of the Letter No.ERS-50/misc. dated 22.07.2020 addressed to Sr.DEE/OP/TVC, intimating the applicant's refusal to accept the relieving letter.

**15. Annexure MA-5** – A copy of the judgment of Hon'ble High Court of Kerala dated 29.09.2020 passed in O.P (CAT) No.163/2020.

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