

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Applications No. 180/00198/2020

Thursday, this the 13th day of August, 2020

CORAM:

**Hon'ble Mr. P.Madhavan, Judicial Member
Hon'ble Mr.K.V.Eapen, Administrative Member**

P.T.Benny, aged 50 years,
S/o P.A.Thomas
Chief Engineer/North, Office of the
Chief Administrative Officer (Construction),
First Floor, GCDA Eastern Entry Tower,
Southern Railway, Ernakulam Junction, Kochi-682 016.
Residing at House no.3 A (2), KENT Hail Garden,
Kaloor, Kochi-682 017.

Applicant

(Advocate: Mr.P.Ramakrishnan)

Versus

1. Union of India, represented by
Secretary, Railway Board, Rail Mantralaya,
Raisina Road, New Delhi-110 001.
2. Member (Engineering)
Railway Bard, Rail Mantralaya,
Raisina Road, New Delhi-110 001.
3. The Deputy Secretary/Estt. Special, Railway Board,
Rail Mantralaya, Raisina Road, New Delhi-110 001.
4. The General Manager, Southern Railway,
Headquarters Officer, Chennai-600 003.
5. The Principal Chief Personnel Officer,
Southern Railway, Headquarters,
Chennai-600 003.

Respondents

(Advocate: Smt.Girija K.Gopal)

This OA having been heard on 7th August, 2020, the Tribunal delivered the following order on 13.08.2020:

ORDER

P.Madhavan, Judicial Member

The applicant in this case belongs to Indian Railway Service of Engineers (IRSE) and at present he is working as Chief Engineer/ Construction/ North/ Ernakulam in the Southern Railway. According to the applicant, he was deputed for a period of 3 years to the Kerala Rail Development Corporation Ltd., in 2017. Thereafter he was recalled to the Railways and he joined as Deputy Chief Engineer, Railway Headquarters, Chennai on 9.5.2019 as per order marked as Annexure A3. Thereafter he was promoted and posted at Mangalore as Chief Engineer as per Annexure A4 order dated 19.8.2019. According to him, he was then transferred to Ernakulam along with the post as per Annexure A5 dated 4.11.2019. So, according to the applicant, he had undergone 3 transfers within a period of one year, which is against the transfer norms of the Railways. After joining at Ernakulam, the 3rd respondent issued Annexure A1 order transferring and posting him as Additional Divisional Railway Manager (ADRM), Trivandrum. Immediately he filed a representation before R2, but before passing an order on Annexure A9 representation, he was issued with a transfer and posting order as ADRM, Trivandrum as per Annexure A2. So according to him, the frequent transfers effected are arbitrary and against the transfer guidelines issued by the Railways. So the applicant prays for the following reliefs:

- (i) *Issue an order quashing and setting aside Annexure A1 and A2 to the extent it orders the transfer and posting of the applicant as Additional Divisional Railway Manager, Southern Railway, Trivandrum;*
- (ii) *Issue an order directing respondents to retain the applicant as Chief Engineer/North/Construction at Ernakulam;*
- (iii) *Issue an order directing the 2nd respondent to consider and pass orders on Annexure A8 (A9) representation forthwith.*

2. According to him, his transfer to Trivandrum is actually a mutual transfer because the ADRM working at Trivandrum, Sri P.Jayakumar was transferred to his post at Ernakulam and he was posted at Trivandrum. According to him, a minimum tenure of 2 years and a maximum tenure of 5 years is the usual practice in the Railways. His juniors of the same grade are permitted to work for more than 2 years and they are continuing in their posts without any change; at the same time he is being transferred from one place to another.

3. Respondents appeared through advocate Smt. Girija K.Gopal and filed a detailed reply statement. According to her, the applicant is holding a transferable post and he has no vested right to remain at a particular place. He is an officer with an obligation of transfer to any place in India. There is no violation of any statute or rule in the transfer order. The applicant had no grievance when he was posted at Chennai as Deputy Chief Engineer and thereafter posted at Mangalore as Chief Engineer. He was transferred to Ernakulam as Chief Engineer and he didn't make any complaint of his transfer. When Annexure A2 order was passed, the applicant has filed this OA. According to the counsel for respondents, transfer and posting at Chennai was due to the untimely repatriation of the applicant from the Kerala Rail Development Corporation on 13.3.2019. So, he was accommodated at the main office at Chennai as Deputy Chief Engineer. The next posting to Mangalore was owing to his promotion as Chief Engineer. The post of Chief Engineer (Construction) was earlier shifted to Mangalore to monitor and expedite the work at Mangalore area. Subsequently another Chief Engineer Sri R.P.Nirala joined in the said post of Chief Engineer, Mangalore and the office of the applicant was again shifted to Ernakulam for proper monitoring of the works being carried out between Shornur and Trivandrum. In the meanwhile the tenure of ADRM, Trivandrum was over and the applicant who is a Chief Engineer, was ordered to be

transferred to the post of ADRM, Trivandrum,. There is no malafide and the transfer order was on administrative exigencies. There is no arbitrariness or illegality committed by the respondents in this case.

4. The applicant filed a detailed rejoinder in the same terms and the respondents filed an additional reply stating that the ADRM at Trivandrum had actually requested to retain him at Trivandrum but the Railway Board had rejected the said request and he was posted at Ernakulam. The post of ADRM is an ex cadre post and only a tenure of 2-3 years is normally given to a person posted as ADRM. Since the tenure is over, Sri P. Jayakumar was transferred and posted at Ernakulam.

5. We have heard the counsels appearing on both sides and have also carefully gone through the pleadings and documents filed. On a perusal of the pleadings, we find that the applicant was, at first, repatriated from Kerala Rail Development Corporation in the month of March, 2019 and the Railways had accommodated him as Deputy Chief Engineer at Chennai. Thereafter, the applicant was promoted as Chief Engineer and was posted as Chief Engineer at Mangalore for supervising the construction as per Annexure A4. Thereafter the post of the applicant was shifted to Ernakulam for supervising the work in between Shornur and Trivandrum and he was posted at Ernakulam.

6. On a perusal of the orders passed as Annexure A4, A5 and A7, it can be seen that all these posting orders were made due to administrative exigencies prevailing at that time. The main contention of the applicant's counsel was that the transfer of the applicant as per Annexure A1 & A2 to Trivandrum as ADRM is against the transfer norms and guidelines. According to the respondents, the post of ADRM had become vacant as it is an ex cadre post and the applicant was transferred to the said post at Trivandrum. According to the respondents, the applicant belongs to

Kerala and he was not transferred to a long distance and it is the nearest place available for him. According to the counsel for the applicant, the normal minimum tenure on a particular post is 2 years and the maximum tenure would be 5 years.

7. On going through the guidelines Annexure A6 Clause 7, it can be seen that though the minimum tenure is 2 years, it is specifically made clear in the guidelines that in the administrative exigencies, changes can be made by cadre controlling officers. In this case, according to the respondents, the post of ADRM became vacant as it is an ex-cadre post and it was only because of that the applicant was transferred as ADRM as per Annexure A2. It is also clarified by the respondents that the said transfer of Sri P.Jayakumar to the post of Chief Engineer was not a mutual transfer. Actually Sri Jayakumar had insisted on continuing at Trivandrum before his transfer to Ernakulam but the said request was rejected by the Railway Board and he was transferred to Ernakulam. So there is no question of a mutual transfer at the instance of Sri Jayakumar who was working as ADRM.

8. In **S.R.Venkataraman vs. Union of India (1979) 2 SCC 449**, the Hon'ble Supreme Court has clearly held that "*transfer being an incidence of service is not to be interfered with by courts, unless it is shown to be clearly arbitrary or initiated by malafides or in infraction of any professed norms of principles governing transfer. It is entirely for the employer to decide when and where and at what point of time a public servant is transferred from his present posting*". It is also a settled proposition that Courts can interfere in such transfers only if it is the outcome any malafide exercise of authority or violation of statutory or policy provisions or if it is done as a punitive measure or if it is done in violation of the principles of natural justice.

9. From the discussion above, we are of the opinion that there is absolutely nothing to show that the transfer of the applicant from Ernakulam to Trivandrum was due to any outcome of malafide exercise of authority or a violation of statutory provision or guidelines. There is no case that the applicant was transferred as a punitive measure. So there is absolutely no reason to interfere with the transfer order produced as Annexure A1 & A2 in this case. The applicant is not transferred out of State and he is given a convenient posting at Trivandrum. An employee has no vested right to hold on to a particular post when he is transferred to another post. We do not find any merit in the contentions raised by the applicant's counsel that the transfer is arbitrary and with malafide intention. So the OA is lacking in merit.

10. Learned counsel for the applicant submitted that the representation given by the applicant is still pending as Annexure A9. The respondents had not considered or passed any order on the representation. So he sought the indulgence of this Tribunal to direct the respondents to consider the said representation. The applicant is transferred and posted at Trivandrum as per Annexure A2 and he is still holding on to the post at Ernakulam owing to the interim order passed by this Tribunal on 18.6.2020. The applicant will immediately join the post of ADRM at Trivandrum. The applicant may file a fresh representation to the competent authority for transfer to a convenient place and the respondents will consider the same in the light of the relevant rules and regulations and guidelines.

11. The OA is disposed of accordingly,

(K.V. Eapen)
Administrative Member

aa.

(P. Madhavan)
Judicial Member

Annexures filed by the applicant:

Annexure A1: Copy of order dated 6.3.2020 issued by the 3rd respondent.

Annexure A2: Copy of order dated 20.3.2020 issued by the 4th respondent.

Annexure A3: Copy of order dated 9.5.2019 issued from the o/o the 1st respondent.

Annexure A4: Copy of order dated 19.8.2019 issued by the 4th respondent.

Annexure A5: Copy of order dated 4.11.2019 issued by the 4th respondent.

Annexure A6: Copy of transfer policy published by the 1st respondent as per letter dated 31.8.2015.

Annexure A7: Copy of letter dated 27.12.2019 as per which Mr.B.N.S.Chalam has been promoted to the Senior Administrative Grade and posted in Chennai Division.

Annexure A8: Copy of order dated 11.2.2020 as per which Sri Aqueel Ahammed and Alok Kumar stand transferred to Southern Railway.

Annexure A9: Copy of representation dated 12.3.2020 submitted by the applicant before the 2nd respondent.

Annexure filed by the respondents:

Annexure R1: Copy of order dated 13.3.2019 issued by Principal Secretary to State of Kerala.