

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00106/2021

Friday, this the 9th day of April, 2021

C O R A M :

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

Aswathy Mohan A., aged 34 years,
W/o. Hariprasad, Residing at Karthika Bhavan,
Vanda, Panachamoodu, Nedumangad, Pin – 695 541,
Thiruvananthapuram District,
Mobile No. 9447327740, Station Master,
Pattambi Railway Station,
Southern Railway, Palakkad Division.

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Applicant

(By Advocate Mr. T.C.G. Swamy)

v e r s u s

1. Union of India,
represented by the General Manager,
Southern Railway, Head Quarters Office,
Park Town PO,
Chennai – 600 003.
2. The Senior Divisional Operations Manager,
Southern Railway, Palakkad Division,
Palakkad – 678 002.
3. The Senior Divisional Personnel Officer,
Southern Railway,
Thiruvananthapuram Division,
Thiruvananthapuram – 695 014.
4. The Senior Divisional Operations Manager,
Southern Railway,
Thiruvananthapuram Division,
Thiruvananthapuram – 695 014.

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Respondents

(By Advocate Mr. Sunil Jacob Jose)

This application having been heard on 5th April, 2021, the Tribunal on
09.04.2021 delivered the following :

ORDER

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

The applicant who is presently working as a Station Master in level-6 of pay matrix at Pattambi Railway Station of Southern Railway in Palakkad Division is aggrieved by the alleged nonfeasance on the part of the respondents to relieve her to Trivandrum Division notwithstanding the fact that the orders of transfers were issued duly approved by the competent authority in January, 2020.

2. The applicant joined service of the respondents as Station Master on 25.12.2014 and had registered her request for inter-divisional transfer to Trivandrum as early as on 29.12.2015. It is submitted that such transfer is against direct recruitment quota vacancies and on loss of seniority. She made number of applications for transfer to the Trivandrum Division from the Palakkad Division and after representations in person and otherwise, the 3rd respondent Divisional Personnel Officer, Trivandrum Division communicated the approval of the competent authority for inter-divisional one way transfer of the applicant from Palakkad Division to Trivandrum Division vide order dated 3.1.2020 produced at Annexure A5. As per this order the applicant was transferred with the approval of the competent authority on an inter-divisional one way transfer on bottom seniority of Station Master in pay level 6 of the Pay Matrix to the Trivandrum Division at her request with certain conditions. Further, in the transfer approval order/letter produced at Annexure A5 written by the Divisional Personnel Officer, Trivandrum and addressed to the Senior Divisional Personnel Officer, Palakkad it has also been indicated as follows:

“If the same is agreeable by your Division and all the conditions applicable to IRT are fulfilled, necessary Office Order may be issued from your Division and the employees may be relieved immediately.”

Thus, it appears that the relieving order was conditional on the Palakkad Division agreeing to the same along with the fulfilling of all conditions applicable in the case of such transfers. However, it appears that after this letter was issued, no further action has been taken by the respondents for relieving the applicant to join at the Trivandrum Division now for the past over one year.

3. In the circumstances the applicant submitted representations on 3.11.2020 and 25.1.2021 produced at Annexures A6 and A7 addressed to the 2nd respondent Senior Divisional Operations Manager, Southern Railway, Palakkad Division requesting that she be relieved on transfer to Trivandrum Division. However, no steps were taken to relieve her and to appoint her to the vacancy of Station Master in the Trivandrum Division. It is submitted by the applicant that the nonfeasance on the part of the 2nd respondent Senior Divisional Operations Manager, Palakkad to relieve her is arbitrary, discriminatory, contrary to law and violates the constitutional guarantees enshrined in Articles 14 and 16 of the Constitution. Since more than a year has since passed, it is submitted that the 2nd respondent is required to relieve her, pursuant to Annexure A5. It is submitted that it is a failure on his part without assigning any reason and the said failure is wholly arbitrary and discriminatory. The applicant submits that she is a native of Nedumangad in Trivandrum, where her husband is a private contractor. Her widowed mother and child aged 5 years are at Nedumangad and in these circumstances despite having highlighted her grievances repeatedly, she is not being

relieved for transfer by the 2nd respondent.

4. A statement has been filed by Shri Sunil Jacob Jose, learned Counsel for the Railways on behalf of the Senior Divisional Personnel Officer, Palakkad Division in this regard. This was done after a preliminary hearing of the matter on 10.3.2021, when this Tribunal directed the respondents to file a brief statement detailing the factual situation including reasons for delay in implementing Annexure A5 order. The respondents submit in their statement that the applicant does not have a vested right for a transfer to Trivandrum Division since she was first appointed as Station Master on 25.12.2014 and is thus under obligation to serve in the stations where she is nominated as per requirement of the administration. Even the application that she had submitted on 29.12.2015, as evidenced through Annexure A1, contains a specific undertaking by the applicant as follows:

“.....I also understand that mere acceptance of the Division/Railway is not final in the process of transfer and my relieving to Division/Railway is subject to the availability of reliever on replacement in my place. In the event of consideration of my request, I will not claim any undue benefits, which are against the Indian Railway Establishment Code/Indian Railway Establishment Manual/Railway Board’s provisions/Instructions.”

Thus the respondents submit that the applicant cannot contend that she is bound to be relieved to Trivandrum Division in a time bound manner.

5. The respondents further accept that normally there would have been no possibility of forwarding her inter-divisional transfer application in view of the vacancy position in Palakkad Division for Station Masters. However, considering various representations and personal requests, the application was forwarded on 8.8.2019 with a remark that “*can be relieved only if*

vacancy position improves”. The respondents submit that they are not in a position to relieve the applicant in view of shortage of hands in the Station Master cadre which is a safety category post. As against the actual strength of 358 Station Masers in Palakkad Division, there are 64 vacancies at present and therefore, the Division is not at present in a position to relieve the applicant. It is submitted that the service of the applicant in Palakkad Division at the moment is inevitable and the only reason for withholding the applicant’s transfer is the acute vacancy position faced by the Division. It is also submitted that the applicant will be relieved immediately once the vacancy position improves.

6. It is also further submitted in the counsel statement that 75% of the vacancies in Station Master category are filled up by direct selection known as Direct Quota Selection through Railway Recruitment Boards and the remaining 25% through selection from among eligible serving Railway employees, known as Promotional Quota Selection. Indents were placed on 2.12.2019 to Railway Recruitment Board, Trivandrum to conduct selections to the Direct Recruitment Quota which however, has not been completed due to the Covid-19 pandemic situation. As regards the promotional quota selection, it is submitted that a process of selection was conducted which, however, could not be completed due to a stay ordered by this Tribunal in OA No. 620 of 2020. It is submitted that once the recruitments are conducted/completed through the direct selection and promotions, the vacancy position in Palakkad Division would possibly improve, which would enable the respondents to consider the case of the applicant favourably. Hence, the respondents submit that the applicant is not eligible

for reliefs prayed for in the OA as a matter of right and ask that the OA be dismissed.

7. We have heard Shri T.C. Govindaswamy, learned counsel for the applicant and Shri Sunil Jacob Jose, learned counsel for the respondents. Counsel for the applicant has brought to our notice a series of cases in which similar issues have been heard and decided by this Tribunal and also upheld by the Hon'ble High Court of Kerala in regard to the relieving of employees after issue of inter-divisional/inter-Railway transfers. This includes OA No. 164 of 2016 decided on 17.11.2016, OAs Nos. 291/2017, 576/2017, 332/2017, 264/2017, 277/2017, 356/2017 and 274/2017 decided by a common order on 21.12.2017, judgment of Hon'ble High Court of Kerala in OP (CAT) No. 3124/2013 passed on 9th September, 2013. Further, a judgment in OP (CAT) No. 162/2014 passed on 23rd October, 2014 has also been produced. Counsel for the applicant has also drawn our attention to a judgment of this Tribunal in OAs Nos. 444/2014, 321/2014 and 264/2014 decided through a common judgment dated 22.7.2014, in which the Tribunal elaborately considered the matter of inter-Railway transfer. In this matter, the requests of employees for inter-Railway transfer were forwarded by the Southern Railway to the respective Railway authorities. Thereafter the cases were considered by recipient Railways and orders were passed transferring them to the respective Zones based on their requests. However, the applicants were not being relieved by the Southern Railway citing paucity of staff due to large number of vacancies. After examining all the issues, this Tribunal in these OAs as per order dated 22.07.2014 observed as follows:

“7. We have carefully considered the facts of the case and submissions made by the parties. Our attention was drawn to RBE No.170/2005 relating to Inter-zonal request transfers on bottom seniority which is produced as follows:-

“It has been brought to the notice of this Ministry that inter-zonal request transfers are being withheld on account of existence of vacancies. Since request by Railway servants for transfer on bottom seniority are made on the ground of special cases of hardship, it has been decided that requests for inter-zonal transfers may not be withheld on account of existence of vacancies. If, however, request for transfer may not be withheld in the exigency of service on account of existence of vacancies, a time bound programme should be chalked out to fill up the vacancies by direct recruitment or promotion, as the case may be.”

8. In this context, a reference can be made to the earlier decision of this Tribunal in OA 1053/2012 with OA 155/2013 is as follows:-

“7. There is no dispute that the respective Railways i.e., South Western Railway and North Western Railway have agreed for the inward request transfer of the applicants a few years back. The respondents could not relieve them in view of vacancies in the cadre of Station Superintendents as well as Trackman. The respondents have stated that they have notified the RRB about their requirements for direct recruitment for Station Superintendents and Trackman. During hearing, the counsel for the applicants in O.A No. 155/13 strenuously argued to drive home his point that in view of 25% of staff strength maintained as leave reserve and reserve for granting weekly off in every grade of Station Masters, the operations will not be badly affected, even when there are vacancies. Moreover, he pointed out that Annexure A-17 order of the Railway Board enjoins upon the respondents to desist from refusing relief to the applicants on the plea of existence of vacancies.

8. It is seen that an identical issue was dealt with in O.A No. 728/11 and connected cases by Central Administrative Tribunal, Madras bench. A copy of the order is produced by the applicants at Annexure A-18. The relevant paras are extracted below:-

“8. We have given our careful consideration to the arguments of both sides. A request transfer is sought on bottom posting basis. The employee forgoes his seniority in the new station only to meet some pressing personal problems for which he seeks a request transfer. In the instant case all the applicants belong to far off Divisions in North India. They have been working in Southern Railways since the year 2000 onwards. Once the request transfer is accepted there is a legitimate expectation that the relief order will follow. However, in the instant case, more than two years have passed (in some cases) since the order of approval of transfer on request was approved and no relief orders have been issued.

9. Therefore, taking into account the Railway Board's order dated 06.10.2005 which has been relied on by the applicants, the respondents are directed to relieve such of

those applicants for whom transfer orders have already been issued within a period of two months from the date of receipt of a copy of this order.....”

9. *In view of the forgoing, the respondents are directed to relieve the applicants at the earliest at any rate, within three months from the date of receipt of a copy of this order. The Original Applications are allowed. No costs.”*

9. *When the matter was taken up before the Hon'ble High Court of Kerala in its judgment dated 09.09.2013 in OP(CAT) 3124 of 2013, observed as follows:*

“3. The situation stands governed by, among other things, R.B.E.No.170/2005 wherein, the Railway Board has stated in clear terms that it has been decided that requests for inter-zonal transfers may not be withheld on account of existence of vacancies. The use of the word 'may' in that order is clearly indicative that no authority subordinate to the Railway Board could treat it as if there is no command in that decision of the Railway Board to make such transfer ignoring the local condition as to exigencies of vacancies. The term 'may' in that RBE order is polite; but, a command. If it is not so understood, we can easily visualize possible abuse of that decision delivered from a high level of administrative power. The remedy in such situation has also been indicated by the Railway Board. In the event of it becoming necessary to withhold such request for transfer in exigencies of service on account of existence of vacancies, a time bound programme should be chalked out to fill up the vacancies by direct recruitment or promotion, as the case may be.

4. *Respondents had demonstrated before the Tribunal, on facts, that they are eminently justified in making the request for inter-zonal transfer sought for, by them. The recipient zone has expressed consent for such transfer. Therefore, the transfers cannot be withheld merely by saying that vacancies continue to exist, affecting the functioning of the Southern Railway.*

5. *It is for the Southern Railway to take appropriate action to fill up the vacancies. We are sure that in this Great Bharath, that is India, a land of educated and unemployed youth, there should be no dearth of persons, if proper and prompt selections are made for the purpose of Recruitment and appointments are made well in time. Lethargy on the part of superior authorities in an establishment to initiate necessary steps for timely recruitment is no answer to deprive the benefit of transfer to the incumbents who are eligible to such transfers in accordance with the settled norms. In effect, it only demonstrates coveted exclusion of opportunity of open market candidates in this land of the needy.*

6. *We do not find any ground to interfere with the impugned decision of the Tribunal calling for exercise under Article 227 of the Constitution of India.”*

10. *In view of the said position, the position is quite clear. The applicants' request to be relieved to enable them to join in the next place of posting cannot be denied on the ground of existing vacancy. The respondents have themselves indicated during the hearing that 20 candidates are already undergoing training which is for a period of 36 days. Hence, they would now be available for joining in the available vacancies. Therefore, it should not be difficult on the part of the*

respondent authorities to relieve the applicants to join the new places of posting immediately. It has already been highlighted in the previous judgments that respondents should take immediate steps for filling up the vacancies rather than citing it as a ground for stopping their release, more so, when they themselves forwarded their cases for consideration. This is quite logical and we would hold a similar view in these cases also. Therefore, we are of the view that the prayer of the applicants to direct the respondents to relieve them immediately merits consideration.”

8. We are of the view that the order dated 22.7.2014 in the above OAs Nos. 444/2014, 321/2014 and 264/2014 (supra) is relevant for the situation in this OA as regards the applicant. It is quite clear that existence of vacancies in the Palakkad Division that she is currently working in is not a sufficient reason for not relieving her for joining in the Trivandrum Division, especially after orders relating to the transfer have been issued more than a year and three months back. If there were such strong considerations, it was not necessary for the Palakkad Division to have forwarded her request for further processing to Trivandrum Division on 8.8.2019. Once, however, the request was forwarded and it was approved by the Trivandrum Division, it would hardly be fair to keep the applicant in a state of suspended animation without any indication on when she is being relieved. We also note that the Railway Board circular No. 153/2019 dated 20.9.2019 issued just after the request for inter-divisional transfer in this case of the applicant was forwarded on 8.8.2019 states as follows:

“It has come to the notice of Board that a large number of inter-Railway/inter-Division one-way transfer requests are being forwarded by some of the Zonal Railways for NOCs without assessing the feasibility of relieving such staff on receipt of NOC. This cases unnecessary building up of expectations regarding their imminent sparing among such employees and puts avoidable pressure on the Railway administration.

2. Considering the above, Railways may ensure that henceforth only such Inter-Railway transfers requests be forwarded where there is reasonable possibility of relief in case of acceptance by the railway to which transfer is sought. While doing so, various factors like number of staff likely to be inducted in the cadre by way of departmental promotions/inter-divisional/inter-Railway transfer from other Railways/Divisions and through RRB indents should be kept in view so

that once NOC is received, the concerned employee can be relieved early.”

However, since this circular has been issued after her transfer request had been forwarded, an argument can be adduced that it is not applicable to her case and the points mentioned in the circular are not applicable in this case. However, it is important to note that the Railway Board has reiterated that once an NOC is received, the concerned employee can be relieved early.

9. It is not contested that the applicant is a mother with a young child who also has to look after her aged mother. Her husband is engaged in private service and therefore, her claim to be in her home Division is genuine. We have been informed that the Railways have been adopting a sympathetic attitude to such requests especially for their female employees. On that ground too we feel that her relief should not be delayed further. As regards the vacancies of Station Master in Palakkad Division, we hope that the Railway Recruitment Board should be in a position to finalize the direct recruitment selections early, without it being delayed indefinitely, as examinations for recruitment to the civil service, etc. are being continued even during the course of pandemic. Such delays in direct recruitment also have an impact on the number of vacancies in the cadre. Regarding the promotional vacancies we note that the OA No. 620 of 2020 was filed by 17 Pointsman of the Palakkad Division who were eligible to be promoted to the post of Station Master. They were aggrieved by the abrupt halt to the promotion process to Station Master, almost at the final stage due to what was termed as “procedural irregularities as per vigilance instructions” pointed out by the vigilance division. The matter is under consideration in this Tribunal and an interim order staying the Annexure A12 order in that

OA, which was a letter cancelling the promotional process issued in December, 2020 after the written examination was conducted has been issued. However, this order issued recently should not be cited for implying that the promotional process to Station Master in Palakkad Division has been long delayed due to interference by the Tribunal. We note that the vacancies in the promotional quota for Station Masters were existing from a long time and the written examination was held only in mid 2019, following which there was an aptitude test in December, 2019 which was then cancelled by the impugned Annexure A12 order in that OA as late as in December, 2020, after a full year. It is thus important for the Railways to look at their procedures in such cases and streamline them so that the required promotions are done with minimum loss of time and delays after following proper procedures.

10. In view of the above aspects and in the light of the various decisions by this Tribunal as well as the directions of the Hon'ble High Court and issues that have been brought out in the present case, including the difficulties faced by the applicant, we allow the OA on merit. Respondent No. 2 is directed to relieve the applicant within a period of one month from the date of receipt of a copy of this order to enable her to join Trivandrum Division. No order as to costs.

(Dated this the 9th day of April, 2021)

K.V.EAPEN
ADMINISTRATIVE MEMBER
“SA”

P.MADHAVAN
JUDICIAL MEMBER

List of Annexures in Original Application No.180/00106/2021

1. **Annexure A1** – True copy of the application for inter-division one way transfer in the prescribed proforma dated 29.12.2015 submitted by the applicant.
2. **Annexure A2** – True copy of the representation dated 24.10.2017 submitted by the applicant.
3. **Annexure A3** – True copy of the representation submitted by the applicant on 10.4.2018.
4. **Annexure A4** – True copy of the representation submitted by the applicant on 20.6.2018.
5. **Annexure A5** – True copy of the order bearing No. V/P.676/II/IDT/IRT/SMs/Vol.16 dated 3.1.2020 issued by the 3rd respondent.
6. **Annexure A6** – True copy of the representation dated 3.11.2020 submitted by the applicant addressed to the 2nd respondent praying inter-alia that the applicant be relieved on transfer to the Thiruvananthapuram Division of Southern Railway.
7. **Annexure A7** – True copy of the representation dated 25.1.2021, addressed to the 2nd respondent praying inter-alia that the applicant be relieved on transfer to the Thiruvananthapuram Division of Southern Railway.
