

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 418/2006

Friday, this the 23rd day of February, 2007.

CORAM:

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

M.Ramakrishnan,
S/o late S Murugan,
AC Coach Attendant-I,
Southern Railway,
Trivandrum.

- Applicant

By Advocate Mr PK Madhusoodhanan

1. Senior Divisional Peronnel Officer,
Southern Railway,
Trivandrum-14.
2. Shri G Ravindranatha Kurup,
Technician III/AC/Alleppey.
3. Union of India represented
through the General Manager,
Southern Railway,
Park Town, Chennai-3.

- Respondents

By Advocate Mr KM Anthru (for R.1&3)

ORDER


HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. The applicant is aggrieved by orders of his transfer to Alleppey followed by those of refusal to reconsider such transfer.
2. The applicant is a Scheduled Caste employee. Having joined as AC Khalasi at Trivandrum Central on 10.1.97, he got grade promotions and presently is AC Coach Attendant-I. On his successful completion of a trade

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test for promotion to the post of Technician Grade-III (AC), he was posted vide A-1 order (impugned) dated 26.4.2006. The said promotion order containing eleven names has provided therein that the date of effect of such promotion will be on the date of assumption of higher responsibilities, exception being made only in the case of one Shri Binu posted to Trivandrum Central, who would become eligible for higher grade on the expiry of punishment of withholding of annual increment vide an earlier penalty advice. According to the applicant, all the other 10 candidates had been posted in the same station as they were working, whereas he alone was posted out of his previous station. Such dislocation of SC candidate like him was contrary to the Railway Board letter No.78.E/SCT/15/25 dated 6.7.78 which says that earlier instructions (of non-disturbance of SC/ST employees) are equally applicable in cases of transfer on promotion provided the post is available. On account of these and other reasons, he made A-2 representation on 6.5.2006 pointing out that

- i) His presence at Trivandrum was very necessary in view of the medical treatment being given to his mother and of educational needs of his children;
- ii) If transfer was at all unavoidable, the same could have been to Nagercoil.
- iii) As evident from the transfer order itself, one more vacancy is yet to be filled up at Trivandrum (that of Shri K Binu who would be eligible to join only after the expiry of punishment period some time towards the end of December, 2006)
- iv) And hence his request was to retain him at Trivandrum.



3. He filed an O.A before this Tribunal (418/2006), which was disposed of with a direction to the respondents to dispose of his representation dated 6.5.2006 (A-2 in this O.A). Accordingly, A-4 impugned order dated 22.6.2006 was passed observing :

i) His representation was examined in detail.

ii) He was the juniormost of the promotees and he was promoted to the post of Shri G Ravindranatha Kurup, who was earlier promoted and posted to Alleppey and was presently given a posting back in Trivandrum on his request.

iii) His family presently being at Kanchipuram, would be nearer Alleppey than Trivandrum.

iv) Based on these reasons, his retention request was not agreed to.

4. He has sought the relief of setting aside of A-1 and A-4 and of retaining him at Trivandrum. He relies upon the following grounds:

A) According to the Railway Board, the SC/ST employees should be transferred very rarely and these instructions are equally applicable in cases of transfer for promotion provided posts are available.

B) Presently, there is a vacancy at Trivandrum awaiting joining of Shri K Binu.

C) The transfer given to the 2nd respondent is neither on medical grounds, family problems nor is it on exigencies of service.

5. Respondents resist the application for the following reasons:

i) As per the prevailing rules, request for transfer is to be

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considered first (as in the case of 2nd respondent) and the resultant vacancies should be filled in by staff on promotion.

ii) The applicant ought to join Alleppey first and register his request for re-transfer.

6. Heard the parties and perused the documents.

7. The significant ground relied upon by him is that his position as an employee belonging to Scheduled Caste would ensure non disturbance on account of Railway Board orders referred to above. The applicant has produced in this regard an order passed by this Tribunal in O.A.900/1990 on 13.9.91. Opposing this, learned counsel for the respondents have referred to a decision by the Full Bench of the Tribunal in O.A.848/1995 in the Hyderabad Bench delivered on 20.11.96. The relevant portions of the said judgment (Ch. Roosevelt v. General Manager, SC Railway and others [(1997) 35 ATC 19] (FB) are reproduced here below:

"The question referred to us is whether the decision of the Jodhpur bench of the Tribunal in B.S.Verma v. Union of India [(1994) 26 TC 313] that Railway Board's letter No.78-E(SCT)/15/25 dated 16.7.1978 is enforceable is correct. The Jodhpur Bench held:

"It is not only prohibitory in nature but it also issues a mandate to subordinate officers not to transfer any Scheduled Caste/Scheduled Tribe employees."

"2. The applicant is a member of Scheduled Caste and he has been transferred from Gudur to Kishna Canal. Taking shelter under the circular aforementioned, as understood by Jodhpur Bench, he claims relief, and then correctness of the decision was doubted."

"3. Even assuming that the circular prohibits transfer, the relevant questions are whether the circular is enforceable through

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process of court, and whether it confers an enforceable legal right on the applicant. Answers obviously are in the negative. In *G.J. Fernandez v. State of Mysore*, Supreme Court held that administrative instructions cannot be enforced in a court and that no writ lies for disobedience of these administrations. For this short reason, the circular is not enforceable and if it is not enforceable, applicant has no remedy before us. It is also settled law that in matters of transfer, an employee whether he belongs to the general category or to the reserved category, enjoys no rights. In *Union of India v. S.L. Abhas*, [(1993) 4 SCC 357] Supreme Court held:

"The guidelines, however, do not confer upon government employee a legally enforceable right."

In these areas, to afford a protection to a member of a particular community not in the nature of the protection envisioned by Article 16 of the Constitution, will be against the guarantee of equality in matters of employment under the State. We hold that a member of a Schedule Caste/Tribe enjoys no special privilege in the matter of transfer and, that the circular/letter mentioned hereinbefore is not enforceable in law and that the decision of the Jodhpur Bench in *B.S. Verma v. Union of India* as also decision of the Ernakulam Bench of the Tribunal in *K Ramachadran v. Director General, All India Radio*, do not lay down the correct law. In view of our answer to the question referred, we dismissed the application. Parties will suffer their costs."

We are in respectful agreement with the orders passed by the Full Bench of this Tribunal. It is significant to note that the applicability of the very same circular depended upon by the applicant has been examined and orders passed.

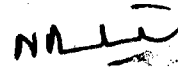
8. The law on the question of scope of judicial intervention has been well laid down by the Hon. Apex Court. Accordingly, no judicial

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intervention is sustainable unless there is proven malafides, the orders have been passed by incompetent authorities or the transfers are against any law/rules. None of these ingredients were proved to exist in this application. Transfer is a matter of administrative exigency.

9. Under these circumstances, the OA is dismissed with no costs.

Dated, the 23rd February, 2007.



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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