

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.418/08

Wednesday this the 25th day of February 2009

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

P.Sivasankar,
S/o.late P.Sankaran,
Loco Inspector/Southern Railway/
Shornur R.S and P.O.
Residing at Panniessery House,
Peruntilavu Post, Via Kunnamkulam,
Trichur District – 678 592.

...Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by the General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3.
2. The Chief Personnel Officer,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3.
3. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division, Palghat.
4. The Senior Divisional Mechanical Engineer,
Southern Railway, Palghat Division, Palghat.

...Respondents

(By Advocate Mr.P.Haridas)

This application having been heard on 25th February 2009 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is aggrieved by Annexure A-2 Office Order dated 12.2.2008 issued by the Senior Divisional Personnel Officer, Palghat promoting him as Senior Loco Inspector in the scale of pay of Rs.7450-11500 and posting him at Salem Division.

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2. The brief facts of the case are that the applicant was initially appointed as Diesel Assistant on 31.7.1984. He got his promotion from time to time and became a Loco Inspector in the scale of pay of Rs.6500-10500 in Loco Running Supervisory Cadre during 1995. He belongs to Scheduled Caste community. After the formation of the Salem Division with effect from 1.11.2007 some of the Loco Inspectors including him were promoted as Senior Loco Inspector in the scale of pay of Rs.7450-11500 against the existing vacancies by the Chief Personnel Officer, Southern Railway, Chennai (R-2). The applicant at that time was working as Loco Inspector at Shornur in Palghat Division and he was also posted as Senior Loco Inspector in the same Division. On receipt of the aforesaid promotion order he made Annexure A-3 request to the Senior Divisional Mechanical Engineer, Palghat (R-4) to post him at Shornur itself against the existing vacancies in view of his family circumstances. The applicant has not received any response to the same. However, the 3rd respondent passed the Annexure A-2 order posting him at Salem Division on his promotion as Senior Loco Inspector. The applicant has made several representations against the aforesaid posting to the another Division altogether. He has also represented his case before the Grievance Adalat. In reply to his representation in the Grievance Adalat vide Annexure A-6 letter dated 24.4.2008, the Senior Divisional Personnel Officer, Palghat informed the applicant that as per the records he was promoted as Senior Loco Inspector and retained in Palghat Division vide CPO/MAS O.O.No.20/M/LRS/2008 dated 22.1.2008 and as per orders of Senior DME/PGT he has been posted to SA Division. It was also stated therein that according to the book of sanction published recently, there is no vacancy in Palghat Division in the category of Senior Loco Inspector to accommodate him. As the said post is controlled by Headquarters his

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representation was forwarded to CPO/MAS for consideration. This position has been reiterated in Annexure A-8 reply to his representation dated 21.5.2008. According to them, there are 10 vacancies of Senior Loco Inspectors and Loco Inspector taken together. The applicant has, therefore, refuted the contention of the respondents that there were no vacancies of Senior Loco Inspector in Palghat Division. He has also produced Annexure A-11 letter dated 22.4.2008/13.5.2008 showing that Shri.P.Gangadharan, Loco Pilot (Mail) in scale of pay of Rs.6000-9800 was promoted as Loco Inspector in the scale of pay of Rs.6500-10500 and he has been retained in Palghat Division as per his request and posted to CLT. Applicant has also relied upon the Annexure A-12, Annexure A-13, Annexure A-14, Annexure A-15 and Annexure A-16 orders issued by the Railway Board regarding hardships caused to Scheduled Castes who are transferred to places far away from their home town. The gist of the said orders are that the scheduled caste employees on their transfers should be confined to their native districts or adjoining districts or places where the administrations can provide quarters.

3. The applicant has challenged the Annexure A-2 order issued by the Senior Divisional Personnel Officer, Palghat mainly on the ground that he has no competence to issue such an order. Being inter divisional transfer, according to him, it has to be issued by an authority at a higher level than the Senior Divisional Personnel Officer. In this regard he has relied upon the order of this Tribunal in O.A.341/08 – R.K.Gangadharan Vs. Union of India & Ors decided on 12.12.2008. In the said OA the applicant therein was aggrieved by the transfer order by which he had been transferred from Mangalore under the Palghat Division to Erode under Salem Division. This Tribunal has held that being inter divisional transfer, an authority which has



power to control the two divisions alone can issue transfer orders from one Division to another. The relevant part of the said order is reproduced as under :-

"8. Arguments were heard and documents perused. While it is true that transfer on administrative ground is permissible, such a transfer within the Division could be made by the Sr. Divisional Mechanical Engineer whereas for inter-Divisional transfer, the authority competent to pass such a transfer order cannot be any one whose powers are confined to the Division only. Authority, which has power to control the two divisions alone can issue transfer orders from one Division to another. Thus, it has to be either by the General Manager or any one authorized by him in accordance with the rules, who can pass such an inter-Divisional transfer order on administrative grounds. This specific requirement makes the transfer order at Annexure A-1 illegal and non-est.

9. Respondents have taken the plea to justify the transfer by the Sr.D.M.E. stating that though SA division has been formed from 01-11-2007, the cadre has not been closed till 31st May 2008 and thus, transfer/promotional orders issued till 31st May 2008 within the territorial jurisdiction of erstwhile PGT Division inclusive of the present SA Division/jurisdiction is in order till 31-05-2008. Annexure A6 order refers. This plea has to be rejected. For, para 1.6.0 of Annexure A-5 is specific that no staff will be transferred against his/her willingness on a permanent basis. Had this stipulation been not there, perhaps, the respondents would be justified in their contention. In so far as the cadre not having been closed till 31st May 2008, it is to be with reference to certain limited purpose such as payment of settlement dues etc., as contained in para 1.10.0 of Annexure A-5. Perhaps, the same could be extended to keeping open the seniority list, so that the same could crystallize after all the inter-divisional transfers ordered by the competent authority are over. That far and no further. Thus, order of transfer of the applicant by the Sr. D.M.E. cannot stand judicial scrutiny.

10. The above, however, does not in any way curtail the powers of the Sr. D.M.E. in effecting the transfer of the applicant within the present Palghat Division. As a matter of fact, the applicant is not averse to transfer from Mangalore; what he agitates is transfer to Salem Division. As such, the respondents are at liberty to effect the transfer of the applicant from Mangalore to any other place within the present Palghat Division. Till such time such a transfer is effected, the applicant shall not be disturbed from the existing place of his posting i.e. Mangalore.

11. In view of the above discussion, the OA is allowed. Annexure A-1 and A-6 orders are quashed and set aside.

12. Under the above circumstances, there shall be no orders as to costs."



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4. In my considered opinion the aforesaid order of this Tribunal dated 12.12.2008 in O.A.341/08 will apply in this case also. It is seen that vide Annexure A-1 promotion and transfer order dated 22.1.2008 has been rightly passed by Senior Personnel Officer/M&E for Chief Personnel Officer, Southern Railway, Chennai (R-2). The impugned Annexure A-2 order dated 12.2.2008 was issued by the Senior Divisional Personnel Officer, Palghat who is only a divisional level officer. Counsel for the applicant has fairly conceded that he is not pressing for his request for retaining him at Shornur where he is presently posted as Loco Inspector but he may be posted as Senior Loco Inspector anywhere in Palghat Division where vacancies are available.

5. In view of the above position already settled by this Tribunal, the Annexure A-2 order dated 12.2.2008 is quashed and set aside. It is also seen that Annexure A-1 order has not been superseded by the 2nd respondent so far. I, therefore, direct the 2nd respondent to consider the Annexure A-3 representation of the applicant for his retention in Palghat Division itself on his promotion and to take an appropriate decision in the matter and communicate the same to him at the earliest but in any case within two months from the date of receipt of a copy of this order. However, it is made clear that his promotion will take effect only from the date of his joining as Senior Loco Inspector. With the aforesaid directions, the OA is disposed of. There shall be no order as to costs.

(Dated this the 25th day of February 2009)


GEORGE PARACKEN
JUDICIAL MEMBER