

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO.436/2009

Dated this the 5th day of April 2010

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HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

C.Mohankumar
Head Clerk S.No. J/M/376
CCRC's Office, Shoranur
Southern Railway, Palakkad

Applicant

By Advocate Mrs. K Giriya

Vs

- 1 Union of India represented by
Chief Personnel Officer
Southern Railway
Head Quarters Office Park Town PO
Chennai-3
- 2 Senior Divisional Personnel Officer
Palakkad Division
Southern Railway
- 3 Senior Divisional Mechanical Engineer
Southern Railway
Palakkad
- 4 Smt. T.M.Mallika
Staff No. J/M 3791
Head Clerk, SSE/C&W/O/SRR
Southern Railway, Palakkad

Respondents.

By Advocate Mr Thomas Mathew Nellimootttil for R 1-3

The Application having been heard on 19.3.2010 the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant is aggrieved by the inaction of the respondents in considering his request for transfer to SSE/ C&W/O/SRR despite the fact that he stands first in priority list.

2 The applicant joined the service of the Railways as a Junior Clerk on 4.3.1983 and was later promoted as Senior Clerk in 1986.. He was further promoted as Head Clerk by order dated 28.7.99 (A 1) and posted at SE/C&W/SRR. Shri PM Gopalan who was then working as Head Clerk in the office of SSE/DSL/O/ED was also transferred to SSE/C&W/SRR. However, the applicant was ordered to work as Crew Booking Clerk/Phone Clerk, the 4th respondent was then working as Senior Clerk. He has registered his request for transfer and stood as No. 1. The grievance of the applicant is that despite his repeated request and being the No. 1 in the register seeking transfer, the respondents are not considering his request. Instead. the 4th respondent who was posted on a temporary basis is continuing to officiate in that post. Hence he filed this O.A for a declaration that he is entitled to be transferred to SSE/C&W/O/SRR based on his priority of registration. He has filed this O.A on the grounds that the inaction of respondents in granting him transfer is arbitrary and illegal, despite he being the No.1 in the register, the process of restructuring is complete as early as in the year 2003, Shri P.M. Gopalan who was posted along with the applicant in the same office as Head Clerk is still

7/

working there and the 4th respondent who was posted temporarily is being retained for such a long period.

3 The respondents in their reply statement submitted that transfer cannot be claimed as a matter of right, he has no indefeasible right to claim transfer to a particular station/office, it is the prerogative of the Administration to decide on grant of transfer after considering various aspects in the exigency of service. They submitted that the applicant had earlier worked in the office of the Carriage & Wagon Supdt. to which he is presently seeking transfer. Shri P.M. Gopalan is working from 11.9.99. There is only one post of Head Clerk. The 4th respondent was transferred temporarily to the office on 5.8.2002 till such time pinpointing is made and that the pinpointing is not yet finalised. It is true that the applicant stands at priority No. 1 in registration for transfer to the said office. The cadre restructuring of the ministerial cadre of Mechanical department had been implemented and pinpointing on the restructured post was proposed during 2008 based on sanctioned strength on 1.9.2008.

4 The applicant filed rejoinder stating that instructions on the subject clearly stipulate that unit/depot transfers are permissible and that for the purpose of maintaining transparency priority register has to be maintained which again has to be updated every quarter and published like seniority list for each unit of transfer. Therefore, the respondents cannot refuse his long pending request. He also contended that the 4th respondent who is junior to him has been accommodated as Head Clerk in the office for a long duration. The respondents are bound to assess the vacancies which occurred on account of restructuring

71

w.e.f. 1.11.2003. He further submitted that the process of pinpointing is done on an annual basis so as to identify and allocate the vacancies in all posts in each and every office, which is a basic requirement for the smooth running of the Railways. He contended that the administration is unduly prolonging the process of pinpointing.

5 We have heard learned counsel for the parties and have gone through the pleadings carefully.

6 There is no dispute that transfer cannot be claimed as a matter of right and it is the prerogative of the Administration to decide transfer of an employee considering various aspects in the exigency of service. However, it is a well established practice followed in the Railways to grant inter divisional and intra divisional transfer on request. They are maintaining a register to enter the request for transfer and grant transfer on the basis of the seniority in the registration of the request. In the case on hand, the Railways have admittedly registered the name of the applicant for transfer to SSE/C&W/O/SRR. The contention of the respondents is that there is only one post of Head Clerk available and at present there are two incumbents. As regards Smt. Mallika she was promoted consequent on restructuring and upgradation of posts as Head Clerk and retained in the same unit temporarily till pinpointing is over. It was further stated that the joint meeting with the service unions held on 23.10.2008, to finalise the issue of pinpointing was inconclusive due to objections raised by the service union, of which the applicant is a member. The policy guidelines on rotational transfers in the same station if any circulated are not produced by either the applicant or the

71

respondents. It is not understood as to how the prolonged retention of two Head Clerks in SSE/C&W/O/SRR, against one sanctioned post is justified, by the respondents on the plea of non cooperation by service unions, in the matter of pinpointing. The applicant apparently does not get benefited even if Smt. T.M. Mallika is fitted against another post, as with her shifting, the post will cease to exist. The creation of Salem Division on 1.11.2007 is bound to have an impact on the requirement of post in Palghat Division.

7 In the facts and circumstances of the case, we are of the considered opinion that the OA can be disposed of with a direction to the respondents. Accordingly, we direct the respondents to complete the process of pinpointing and effect rotational transfers thereafter, as per the policy guidelines. The applicant's case will be considered on the basis of registration of his name and transfer policy guidelines for effecting transfers between units in the same station. The O.A. is disposed of as above. Action on the above lines shall be taken within four months from the date of receipt of a copy of this order. No costs.

Dated 5th April, 2010


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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GEORGE PARACKEN
JUDICIAL MEMBER