

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O. A. No. 451/10

Tuesday this the 20th day of July, 2010

CORAM:

**HON'BLE MR. JUSTICE K. THANKAPPAN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

Rajaraman.E, aged 51 years,
S/o Ethiarajulu,
Member/Judicial/Railway Claims Tribunal,
Residing at: No.5-A, Santhi Savera Apartments,
Wariam Road, Cochin-682 016.

.. Applicant

By Advocate: Sri T.C.G. Swamy

vs.

1. Union of India, represented by the Secretary,
to the Government of India,
Ministry of Railways, New Delhi.
2. The Chairman,
Railway Claims Tribunal,
No.13/15 Mall Road, Delhi-110 054.
3. The Additional Registrar,
Railway Claims Tribunal,
No.13/15, Mall Road, Delhi-110 054.
4. The Additional Registrar,
Railway Claims Tribunal,
Ernakulam.
5. The Hon'ble Vice-Chairman,
The Railway Claims Tribunal,



Chennai.

.. Respondents

By Advocate: Mr.P.Santhalingam,Sr.alongwith Ms.K.Usha
Mr.Thomas Mathew Nellimoottil

The Application having been heard on 13.07.2010, the Tribunal on 20.07.10
delivered the following:-

ORDER

HON'BLE MR.JUSTICE K.THANKAPPAN,JUDICIAL MEMBER:

The applicant, a Judicial Member of the Railway Claims Tribunal,Ernakulam has filed this Original Application challenging his transfer order dated 25.5.2010.

2. The applicant is presently working as a Judicial Member of the Railway Claims Tribunal(RCT),Ernakulam, on having been appointed so while he was practicing as an Advocate at Chennai. The applicant joined in the post of Judicial Member,RCT on 29.11.2006 at Bangalore. The term of his appointment is for 5 years. Though the applicant joined at Bangalore on 29.11.2006 he was transferred to Guwahati during 2007 and subsequently he joined in Kerala and is continuing as such. However by the transfer order dated 25.5.10 he is transferred to Bhubaneshwar as Judicial Member, RCT. It is stated in the order that the transfer is in administrative interest. The



applicant challenges the said order that the transfer is not in administrative interest, whereas it is for favouring two Judicial Members of Secunderabad and Ranchi Benches both belong to the Kerala State. The further case of the applicant is that as per Section 4(3)(b) of the Railway Claims Tribunal Act, the Chairman may transfer a Vice-Chairman or other Member from one Bench to another Bench, but the power of transfer conferred on the Chairman is not unfettered. The power should be used sparingly and without violation of the constitutional provisions. The further case of the applicant is that his term of appointment will expire on 28.11.2011. Hence on the eve of the closing of the tenure period, such a transfer will affect his family life and disturb his all functions as a Judicial Member of the RCT. The Ernakulam Bench of the RCT is also falling under the Chennai zone and even if the applicant is to be transferred to any other station, the Chairman would have called his willingness as it is held in the judgment of the Hon'ble Supreme Court reported in AIR 2004 SC 1391, in Ajay Gandhi and another vs. B. Singh and others. Hence the applicant contends that AI transfer of the applicant is arbitrary, discriminatory, malafide and colourable exercise of power.



Hence this Tribunal may interfere with the order of transfer and quash the same.

3. This Tribunal has admitted the Original Application and at the time of admission, this Tribunal issued an interim order for keeping the order of transfer in abeyance. In pursuance to the notice received, the Sr.Counsel Sri P.Santhalingam appears for the respondents 2 to 5 and filed a reply statement. In the reply statement it is stated that the applicant was transferred to Guwahati from Bangalore and therefrom to Kerala on his request made to the then Chairman on personal and family considerations. It is further stated that the present transfer is in administrative interest as at the Bhubaneswar Bench of the Railway Claims Tribunal there is no Judicial Member or Member(Technical) from 2009 onwards. In view of the vacancies existing at Bhubaneswar Bench the Administration could not keep quiet especially in view of the pendency of cases at Bhubaneswar. At present as on April 2010 there are more than 1000 cases at Bhubaneswar Bench and the applicant himself was posted for 10 days visit from his present posting at Ernakulam in almost all months. As far as the Ernakulam



Bench is concerned there are only 73 cases pending. Hence it is for administration sake the present transfer is made. Further it is stated that there are other Benches in which no Judicial Members available for posting at Bhubaneswar, though steps are being taken for appointment of such Judicial Members and also some Technical Members. Further it is stated in the reply statement that as per the judgments of the Apex Court it is the duty of the Chairman to see that the functioning of every Railway Claims Tribunal be regularized by providing sufficient Members Judicial as well as Technical. Hence the present transfer is necessitated on the reason of administration or rather in administrative interest. Section 4(3) (b) of the Railway Claims Tribunal Act provides ample power to the Chairman for transfer of any Judicial Member or Technical Member from one station to another as such appointments are all India basis transferable.

4. In the reply statement a preliminary objection was also raised regarding the jurisdiction of this Tribunal to interfere with the transfer order in question. The learned Sr.Counsel Mr.P.Santhalingam relies on two judgments of the Delhi High Court namely Union of

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India and Another vs. Shanker Raju dated 13.12.2997 and Union of India vs. Shiv Charan Sharma dated 26.4.2007 to support his claim for the lack of jurisdiction of this Tribunal for interference of the order impugned.

5. On receipt of the reply statement, the applicant filed a rejoinder in which it is further averred that respondents 2 to 6 are interested in transferring the applicant and the transfer order is not in administrative interest. The applicant is appointed for a term of 5 years from the date of his appointment and merely because the applicant was a lone Member who is amenable to transfer there is no justification in picking and choosing the applicant for transfer again and again especially when there is no guidelines for such transfer being issued by the Chairman of the Railway Claims Tribunal. Further it is stated that the applicant has not given his consent to any of the officials of the Railways Claims Tribunal for being posted to Bhubaneshwar and the stand taken in the reply statement is incorrect that the applicant had consented for the transfer. It is further stated in the rejoinder that the frequent transfer of a Judicial Member will be affecting the



independence of the judiciary which is respected by the public and by the Members of the Railway Claims Tribunal.

6. We have considered the contentions raised by the counsel appearing for the parties and also perused the documents produced before this Tribunal. As per Annexure A1 it is clearly stated that the transfer is in administrative interest and that interest has been explained in the reply statement by stating that in the Railway Claims Tribunal, Ernakulam Bench there are only 73 cases pending, whereas in Bhubaneswar there are more than 1000 cases pending and there was no Member either Judicial or Technical. It is also an admitted fact that the applicant was posted at Bhubaneswar for 10 days on camp sitting which would reveal that the pendency of the cases at Bhubaneswar. We have also considered the personal reasons stated by the applicant in resisting the transfer order. The applicant's case is that his term of appointment is to expire on 28.11.2011 and if he is transferred from Kerala to Bhubaneswar, it may affect his personal life as well as the family life. But one thing is clear that the applicant belongs to Chennai, Madras State and he is working in Kerala though both the Chennai and Kerala are in the same zone of



the RCT. The family life of the applicant would not have been given much weight than the administrative interest involved in transferring the applicant to Bhubaneswar. Further we have noted that though the applicant was posted at Bangalore on his appointment as Judicial Member he was transferred to Guwahati and therefrom to Kerala and further more we have noted that the applicant used to go to Bhubaneswar for 10 days on camp sitting. If so, the personal reasons stated are not convincing for not obeying the transfer evidenced from Annexure A1, the transfer order made by the Chairman of the RCT. Hence we feel that the O.A. is meritless on this aspect. The next question to be considered is that whether this Tribunal has got jurisdiction to entertain the application or not. In this context, the learned counsel for the respondents relies on two judgments of the Delhi High Court(as cited supra) and at the same time the counsel for the applicant relies on a Full Bench judgment of the C.A.T., Madras Bench in V.Ganesh vs. Union of India and ors., 2003 (1)ATJ 292. In the above judgment the question of jurisdiction of the Central Administrative Tribunal has been considered elaborately. In that judgment while discussing the judgments of the Apex Court reported in 1994 Supp (3) SCC 502 in Union of India v s. K.B.Khare



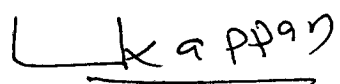
and others and 1987(1)SCC 124 in S.P.Sampath Kumar vs. Union of India, the C.A.T., Madras Bench held as follows:-

"We hold that Members of the Railway Claims Tribunal i.e. their service conditions will come within the jurisdiction of this Tribunal since they are appointed to services in connection with the affairs of the Union."

Hence we are also of the view that the same reasoning can be adopted in the question of jurisdiction and we hold that this Tribunal has got jurisdiction to consider the case of the applicant since his service conditions are as that of a civil servant coming under Section 14(3) of the Administrative Tribunals Act, 1985.

Accordingly the O.A. stands dismissed. No order as to costs.


(K. NOORJEHAN)
MEMBER(A)


(JUSTICE K. THANKAPPAN)
MEMBER(J)

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