

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 47 of 2013

Wednesday, this the 11th day of September, 2013

CORAM:

Hon'ble Mr. K. George Joseph, Administrative Member

V. Anil, aged 41 years, S/o. G. Viswanathan,
 Senior Clerk, O/o. Chief Crew Controller,
 Quilon, Trivandrum Division, Southern Railway,
 Residing at Kallaraputhen Veedu, Plachery P.O.,
 Punalur, Kollam District.

..... **Applicant**

(By Advocate – Mr. Martin G. Thottan)

V e r s u s

1. Chief Personnel Officer, Southern Railway,
 Headquarters Office, Park Town, Chennai-3.
2. The Divisional Electrical Engineer,
 Southern Railway, Trivandrum Division,
 Trivandrum-14.
3. The Divisional Mechanical Engineer,
 Southern Railway, Trivandrum Division,
 Trivandrum-14.
4. The Senior Divisional Personnel Officer,
 Southern Railway, Trivandrum Division,
 Trivandrum-14.

..... **Respondents**

(By Advocate – Mr. Thomas Mathew Nellimoottil)

This application having been heard on 11.09.2013, the Tribunal on the same day delivered the following:

ORDER

The applicant is working as a Senior Clerk in Chief Crew Controller's Office, Quilon under the Divisional Electrical Engineer, Southern Railway, of Trivandrum Division. He stands transferred to the 3rd respondent's office

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at Trivandrum. This transfer is done to accommodate Shri Aravindhakshan Pillai working as Office Superintendent at Trivandrum. The applicant has been working at Quilon only for the last two years. Aggrieved by the impugned transfer order dated 5.10.2012 at Annexure A2 the applicant has filed this OA for the following reliefs:-

- "i) Call for the records leading to the issue of Annexure A2 and quash the same to the extent it relates to the applicant.
- ii) Award costs of and incidental to this application.
- iii) Grant such other relief, which this Honourable Tribunal may deem fit and proper in the circumstances of the case."

2. The applicant contended that the impugned order is issued not in any administrative exigency. In order to accommodate Shri Aravindhakshan Pillai at Quilon where the sanctioned strength of OS is only 3 one among them should have been shifted. The impugned order of transfer issued at the instance and approval of the 3rd respondent is without jurisdiction. The applicant was transferred to Quilon on the basis of his request hardly two years back. All the three OSs who are working at Quilon are having more than 25 years of service there.

3. The respondents submitted in the reply statement that the request for posting at Quilon of Shri Aravindhakshan Pillai was pending for long even at the time when the applicant was posted at Quilon in 2010. Shri Aravindhakshan Pillai is a physically handicapped person and is due to retire in May, 2016. Being the junior most and younger compared to other 3 OSs who are ladies and aged it was thought prudent to transfer the applicant from Quilon to Trivandrum. The decision to transfer the applicant




was taken in the interest of administration. The applicant has not cited any malafide as regards the transfer order.

4. In the rejoinder statement filed by the applicant it was submitted that Shri Aravindhakshan Pillai is having a slight deformity in one leg which can hardly be termed as a physical handicap.

5. I have heard the learned counsel for the parties and perused the records.

6. The applicant was transferred, even before completing two years after his request transfer to Quilon, to Trivandrum to accommodate Shri Aravindhakshan Pillai who according to the respondents is a physically handicapped person and is to retire in May, 2016. The extent of physical disability of Shri Aravindhakshan Pillai is not stated by the respondents. According to the applicant Shri Aravindhakshan Pillai has a slight deformity in one leg which could hardly be termed as a physical handicap. The respondents have no case that Shri Aravindhakshan Pillai is eligible to be covered by the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The request of Shri Aravindhakshan Pillai for a posting at Quilon was pending for long even when the applicant was posted at Quilon in the year 2010. Nothing prevented the respondents to give preference to Shri Aravindhakshan Pillai over the applicant in the matter of posting at Quilon in the year 2010. The failure of the respondents to consider the request of Shri Aravindhakshan Pillai at the relevant time has put the applicant in jeopardy with the issuance




of the impugned order. That the applicant cannot be penalized for their own fault is not considered by the respondents in the instant case. There is no justification to treat the interest of administration as a cover to hide their failure although there may not be any malafide intention on the part of the respondents in the impugned transfer. The best possible option for the respondents to accommodate Shri Aravindhakshan Pillai need not be at the cost of the applicant. If the respondents are under compulsion to post Shri Aravindhakshan Pillai at Quilon they can think of other ways of doing it without affecting the applicant. They may even create a supernumerary post for him.

7. In the facts and circumstances of the case whether the transfer of the applicant is justified or not calls for reconsideration by the respondents. Impleadment of Shri Aravindhakshan Pillai in this OA as a party is not necessary as the applicant is not seeking any relief against him. Although the transfer order was issued on 5.10.2012, it was not implemented till the OA was filed on 21.1.2013. It is evident that the best possible option in the hands of the respondents of transferring the applicant and the interest of the administration were not very urgent. The stay of the impugned order granted on 21.1.2013 continues. The respondents have not moved this Tribunal for early hearing of the OA.

8. In the light of the above, in the interest of justice the respondents should take a second look at the transfer of the applicant. Hence, the OA is disposed of as under:-

The impugned order dated 5.10.2012 at Annexure A2 is quashed to the



extent it relates to the applicant. The interim order dated 21.1.2013 in this OA is extended till such time as the respondents reconsider the transfer of the applicant with due regard to the relevant facts and inform him of the decision by a reasoned order. The applicant is free to submit further representation if he desires, within one month of receipt of a copy of this order.

9. No order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

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