

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 497 of 2000

Monday, this the 24th day of June, 2002

CORAM

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

1. R. Sunil Kumar,
S/o Ravindranathan Nair,
Asst. Station Master/Southern Railway,
Edappally, R.S. & P.O.
Permanent Address: 'Chennattu',
Muthupozhumkal PO, (Via) Vakayar, Konni,
Pathanamthitta District.Applicant

[By Advocate Mr. T.C. Govindaswamy]

Versus

1. The Union of India, represented by the
General Manager, Southern Railway,
Head Quarters Office, Park Town PO,
Madras-3

2. The Chief Personnel Officer,
Southern Railway, Head Quarters Office,
Park Town PO, Madras-3

3. The Divisional Railway Manager,
Southern Railway,
Palghat Division, Palghat.

4. The Divisional Railway Manager,
Southern Railway,
Trivandrum Division, Trivandrum.

5. The Divisional Personnel Officer,
Southern Railway,
Trivandrum Division, Trivandrum-14

6. P.V. Parameswaran Nair,
Station Master,
Vallathol Nagar, R.S. & P.O.,
(Near Shornur).Respondents

[By Advocate Mrs Sumathi Dandapani (R1 to R5)]

The application having been heard on 24-6-2002, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant was initially appointed as an Assistant Station Master in the scale of Rs.1200-2040 in Palghat Division of Southern Railway on 6-10-1987. In 1988, he applied for an inter-divisional transfer and appointment as Assistant Station in Trivandrum Division. As the official respondents did not consider the applicant for transfer, the applicant along with one P.V. Parameswaran Nair, the 6th respondent herein, who had been working in Trivandrum Division, submitted A-1 mutual transfer application dated 23-6-1997. As he did not hear anything, he filed A-2 reminder dated 23-2-1998. He received A-3 reply dated 7-5-1998 in which it was stated that after going through the service record of the 6th respondent, the mutual transfer could not be agreed to and the applicant was directed to find another willing person with good service record. The applicant filed A-4 representation dated 25-5-1998, to which he did not receive any response. In the meanwhile, A-5 order dated 29-7-1998 of the Divisional Personnel Officer, Southern Railway, Palghat was issued making inter-divisional one way transfer of the applicant. There was also a rider in the said A-5 order that "the seniority may be regulated in accordance with the common order of CAT/ERS in O.A.No.956/90 and O.A.No.160/91". The applicant filed A-6 representation dated 2-8-1998 to the Additional Divisional Railway Manager, Southern Railway, Palghat. The applicant submitted that inspite of A-6, he was relieved on the same date and he joined Trivandrum Division on 3-8-1998 and was posted to Alwaye. He claimed that he did not have the possession of the posting order. He submitted A-7 representation dated



16-12-1998 addressed to the 2nd respondent praying that either it may be held that the denial of mutual transfer to the applicant with the 6th respondent was arbitrary and unconstitutional, or in the alternative to determine his seniority in accordance with the decision in OA No.956/90 and OA No.160/91 as promised in A-5. The applicant claimed that most of the applicants in the decision in OA No.956/90 and OA No.160/91 were persons who had registered later than him and hence, junior to him in the common seniority list maintained at Trivandrum. According to the applicant, as in A-5 it had been stated that his seniority would be determined in the light of the decision in OA No.950/90 and OA No.160/91, the non-feasance on the part of the respondents to determine the applicant's seniority in accordance with A-5 was arbitrary, discriminatory, contrary to law and unconstitutional. According to him, the denial of mutual transfer to him for the reasons stated in A-3 was not justified. According to him, the reasons for denial of mutual transfer were not attributable to him. He also submitted that non-feasance on the part of the respondents in not replying A-7 was arbitrary, discriminatory and unconstitutional. The applicant sought the following reliefs through this Original Application:-

- "(a) Direct the respondents to determine the applicant's seniority in the cadre of Station Master of Trivandrum Division, as promised in Annexure A5 and to communicate the same to the applicant forthwith or in the alternative,
- (b) Direct the second respondent to consider Annexure A7 representation and to pass appropriate orders thereon, duly communicating the same to the applicant, within a time limit as may be found, just and appropriate by this Hon'ble Tribunal.
- (c) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."



2. The official respondents filed reply statement resisting the claim of the applicant. It was submitted that immediate to the issue of A-5 transfer order dated 29-7-1998, the Senior Divisional Personnel Officer, Southern Railway, Palghat had issued a Corrigendum dated 16-9-1998 (R-1), deleting the condition of regulating the seniority of the applicant in accordance with the orders in OA No.956/90 and OA No.160/91 mentioned in A-5. It was submitted that with the issuance of R-1, the regulation of seniority in accordance with the judgement in the OAs mentioned therein did not exist and the claim of the applicant for seniority on that basis was not admissible. They also submitted that the applicant had not quoted the above development before this Tribunal. According to them, if the letter incorporating the Corrigendum had been brought to the light, the applicant could not have sought the first relief through this Original Application. They alleged that it was a case of furnishing incorrect details. It was submitted that the applicant had registered for inter-divisional transfer to Trivandrum Division on 8-7-1988 and when such a registration was in existence, the applicant had applied for inter-divisional mutual transfer to Trivandrum Division with the 6th respondent herein by his application dated 23-6-1997, but the application was not agreed to. However, the applicant was transferred to Trivandrum Division on one way transfer in his turn as per order dated 20-7-1998 and he was relieved on 2-8-1998. On his joining Trivandrum Division, an order had been issued (R-2) in which it had been clearly stated that he had been transferred to Trivandrum on reversion as Assistant Station Master and that he would rank juniormost to all permanent and temporary Assistant Station Masters in scale Rs.4500-7000 on the date of his joining in



Trivandrum Division. The applicant had not challenged R-2 order. The applicant was claiming the reliefs on the basis of A-5 order issued by the Divisional Personnel Officer, Palghat, but the said authority was not impleaded in the party array of respondents. A-4 representation of the applicant was dated 25-5-1998 and without conceding the receipt of the same, it was submitted that when the said representation was with reference to A-3, the Original Application should have been filed on or before 25-11-1999, whereas the Original Application had been filed on 13-4-2000. On this ground also, the Original Application was not maintainable. When the powers as regards the acceptance or otherwise of a request for an inter-divisional mutual transfer lay with the Divisional Railway Manager, there was no need for making a representation by A-4 addressed to the 2nd respondent, the Chief Personnel Officer. The applicant could not claim fixation of seniority as per the direction in OA No.956/90 and OA No.160/91, as the applicant was not a party in the said Original Applications. When the applicant joined Trivandrum Division, he did not protest regarding his one way transfer. If he had any grouse regarding the claim for the mutual transfer, he would have made such a protest at the relevant time. They prayed that the Original Application may be dismissed as devoid of merits.

3. Heard the learned counsel for the parties.

4. Learned counsel for the applicant took us through the pleadings in the Original Application and submitted that the applicant being entitled for the reliefs sought for may be

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granted the reliefs. As regards the applicant not mentioning anything about R-1 in the Original Application, it was submitted the same had not been received by the applicant.

5. Learned counsel for the official respondents took us through the reply statement and reiterated the points made therein. She also relied on the order of this Tribunal in OA No.691/99 dated 12-9-2001 and submitted that this Tribunal in that Original Application had held that the order of this Tribunal in OA No.956/90 and OA No.160/91 dated 21-4-1992 was per incurium.

6. We have given careful consideration to the submissions made by the parties and the rival pleadings and have also perused the documents brought on record.

7. On a careful consideration of the submissions and the rival pleadings, we are of the considered view that the applicant in this Original Application is not entitled for the reliefs sought for through this Original Application. The applicant is claiming the reliefs sought for on the basis of the condition stipulated in A-5 order dated 29-7-98 regarding the regulation of seniority. He is also basing his claim on the ground that he had applied for mutual transfer with the 6th respondent herein. First let us take up the applicant's claim for seniority with reference to the 6th respondent. It was admitted by the applicant that his request for mutual transfer with the 6th respondent had not been accepted by the 3rd respondent by A-3 order dated 7-5-1998. We find that the applicant had represented against the said rejection of mutual transfer request to the 2nd respondent, but the fact remained

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that subsequent to the issue of A-3 letter dated 7-5-1998 the applicant accepted the one way transfer issued by A-5 letter dated 29-7-1998, in which, a condition different from the one for seniority had been specified. The action taken by the applicant would indicate that he had accepted the further condition regarding the seniority. In fact, what we notice is perhaps the applicant was very keen for a transfer to Trivandrum Division from the actions of the applicant that when he received the transfer order on 2-8-1998 he made A-6 application, but he also got relieved on the same date without waiting for the result of his application and joined the Trivandrum Division on the next day, i.e. 3-8-1998. On his joining at Trivandrum Division, he had been posted on reversion as Assistant Station Master in scale Rs.4500-7000 with the specific condition that he would rank juniormost to all permanent and temporary Assistant Station Masters in scale Rs.4500-7000 in Trivandrum Division on the date of their respective joining in Trivandrum Division. The said letter (R-2) reads as under:-

"SOUTHERN RAILWAY
O.O.No. T.17/98/ASM

The following SM.III in scale Rs.5000-8000 of PGT Division on inter-divisional request transfer on bottom seniority in the initial recruitment grade of Rs.4500-7000 duly reverted as ASMs are transferred to TVC Division. They are posted as ASMs in scale Rs.4500-7000 as noted against them.

S1. No.	Name, Designation S/Shri	Posted to as
1.	P. Padmakumar J/T.2492, SM.III/SNO	ASM/NCJ
2.	S. Rajagopal J/T.2503, SM.III/PGT	ASM/PVU
3.	R. Sunilkumar J/T.2608, SM.III/PTB	ASM/AWY

Item Nos. 2 & 3 are posted against higher grade vacancies but not eligible for any officiating allowance, in the higher grade. They have joined in TVC Division on 27.7.98, 1.8.98 and 3.8.98 respectively.

The above inter-divisional transfer is ordered subject to the following conditions:

1. They are reverted as ASMs in scale Rs.4500-7000 with effect from 27.7.98, 1.8.98 and 3.8.98 respectively.
2. They will rank juniormost to all permanent and temporary ASMs in scale Rs.4500-7000 on the date of their joining in TVC Division.
3. They should not seek re-transfer to their parent unit (PGT Division) at a later date.
4. They should be prepared to work anywhere in TVC Division.
5. They are not eligible for any privileges on transfer account. Their pay in scale Rs.4500-7000 will be fixed as per extant orders and the same will be done in receipt of Service Registers from PGT Division.

This has the approval of the competent authority.

Divisional Office,
Personnel Branch,
Trivandrum-14

Sd/-
for Sr. Divl. Personnel Officer,
Trivandrum.

No.V/P.676/II/IDT/ASM/Vol.9 dt. 5.8.1998.

Copy to: CPO/MAS.

DRM/P/PGT to please send SR, L.C., LPC etc.
Sr.DOM, Sr.DAO, DSO, AOM, CHC/TVC; SS/SM/NCJ,
PVU, AWY.
O.O. File, OS/T/Bills, Pass, Qrs, PI/reservn.
OTC/TVC, Employees, Divl.Secretary SRES &
SRMU/TVC Divn."

8. R-2 letter is not under challenge as has been pointed out by the respondents. When R-2 letter is not under challenge, the applicant cannot seek the first relief sought for by him. Even if it is accepted that R-1 letter had not been received by the applicant, the applicant could not say that he had not received R-2 because it was on the basis of R-2



that his posting at Alwaye had been done, which he had accepted. The applicant averred in the Original Application that he had done so. Further, in OA No.691/99, this Tribunal in para 9 held as follows:-

"9. Applicants and private respondents in A-7 came on inter-divisional transfer to Trivandrum Division. Seniority of Railway servants transferred on their request from one cadre/Division to another cadre/Division on the same railway is governed para 312 of IREM (Vol.I). Applicants as well as private respondents in A7 are governed by para 312 of IREM (Vol.I). In A-7 judgment, para 312 of IREM has not been adverted to. In Government of Andhra Pradesh and another Vs. Satyanarayana Rao (dead) by L.Rs and others [AIR 2000 SC 1729] it has been held that:

"Rule of per incurium can be applied where a Court omits to consider a binding precedent of the same Court or the superior Court rendered on the same issue or where a Court omits to consider any statue while deciding that issue."

In A-7 judgment, as the provisions of para 312 of IREM (Vol.I) have been omitted to be considered, it is per incurium. That being so, the applicants cannot seek any relief based on A-7."

9. We find that A-7 judgement mentioned in the above paragraph refers to the judgement in OA No.956/90 and OA No.160/91 dated 21-4-1992. Thus, in the above order of this Tribunal, of which one of us was a party, had already held that the said order is per incurium. In the light of the above, we are of the considered view that this Original Application is liable to be dismissed.

10. After arguments in the case by both sides, learned counsel for the applicant submitted that the applicant would be satisfied if a direction is given to the respondents to consider A-7 representation. When this was put to the learned counsel for the official respondents, the learned counsel submitted that the official respondents had denied receipt of



..10..

A-7 representation. Keeping in view the above averment of the official respondents in the reply statement as also the fact that the Original Application had been pending in this Tribunal since April, 2000 and the applicant had not chosen to deny any of the averments made in the reply statement by filing any rejoinder and R-2 letter dated 5-8-1998 being not under challenge, we declined to give permission as prayed for by the learned counsel for the applicant.

11. In the result, we do not find any merit in this Original Application.

12. Accordingly, we dismiss this Original Application with no order as to costs.

Monday, this the 24th day of June, 2002



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

Ak.

A P P E N D I X

Applicant's Annexures:

1. A-1: A true copy of the Mutual Transfer application dated 23.6.97, submitted by the applicant to the 3rd respondent.
2. A-2: A true copy of the reminder dated 23.2.98 submitted by the applicant to the ADRM/PGT.
3. A-3: A true copy of the letter bearing No.J/P 676/VIII/10/Vol.XVIII dated 7.5.98 issued by the 3rd respondent.
4. A-4: A true copy of the representation dated 25.5.98 submitted by the applicant to the 2nd respondent.
5. A-5: A true copy of the Office Order No.T.72/98 dated 29.7.98 issued by the Divisional Personnel Officer, Southern Railway, Pálghat.
6. A-6: A true copy of the representation bearing No.NTB/TVC/98/02 dated 2.8.98 submitted by the applicant to the Additional Divisional Railway Manager, Southern Railway, Pálghat.
7. A-7: A true copy of the representation dated 16.12.98 addressed to the 2nd respondent.

Respondents' Annexures:

1. R-1: True copy of letter No.J/P.676/VIII/10/Vol.XVIII dated 16.9.98 issued by the Senior Divisional Personnel Officer, Southern Railway, Palghat.
2. R-2: True copy of letter No.V/P.676/II/IDT/ASM/Vol.9 dt.5.8.1998 (O.O.No.T.17/98/ASM) of Senior Divisional Personnel Officer, Southern Railway, Trivandrum.

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2.7.02