

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO.509/2009

Dated 16th day of June, 2010

C O R A M

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

Sreejith B S/o P.M. Balakrishnakurupu
Head Clerk, O/o Deputy Chief Engineer, Construction
Southern Railway, Calicut
residing at Sreedevi, Marunnalli PO
Puthupanam, Vadagara.

Applicant

By Advocate Mr. Martin G. Thottan

Vs

- 1 The General Manager,
Southern Railway
Chennai
- 2 The Chief Administrative Officer
Southern Railway, Construction
Chennai
- 3 The Deputy Chief Engineer (Construction)
Southern Railway, Cannanore
- 4 N.J. Mariamma Head Clerk
O/o Deputy Chief Engineer Construction
Southern Railway, Calicut.

Respondents

By Advocate Mr. Thomas Mathew Nellimoottil

The Application having been heard on 4.6.2010 the Tribunal
delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant at the time of filing the O.A. was working as Head Clerk in the Construction office of Southern Railway at Calicut, holding lien in the Palghat Division of Southern Railway. According to him, the post of Head Clerk in the Construction office is Divisionally controlled one and the seniority is maintained at Divisional level. For the purpose of Mangalore - Shoranur Line doubling works, two Construction offices were started at Calicut and Cannanore within the territorial jurisdiction of Palghat Division. Among the 7 Head Clerks working in the Construction offices at Calicut and Cannanore, the applicant is one among the two who belongs to Palghat Division and holding lien in Palghat Division. Three are holding the post on ad hoc basis out of whom one belong to Mysore Division. According to him, Construction Organisation does not have any permanent staff and the offices are being maintained by transferring willing employees from the main stream. Filling up of vacancies and curtailment in the cadre are controlled by procedure contained in circular Annexure A-1 and that the juniormost employees should be transferred first whenever any curtailment takes place (A2). As the Shornur-Mangalore doubling work was nearing completion, the respondents took steps to curtail the staff. Accordingly, A-4 was issued transferring him out to Podannur while retaining the 4th respondent. The contention of the applicant is that he has a preferential right to continue at Calicut in preference to 4th respondent. Apprehending transfer against the provisions contained in A-1 and A-2 circulars, the applicant approached the Tribunal through O.A. 435/2009 which was disposed of by directing the respondents to consider the OA as

74.

representation and dispose of the same within two weeks (A-5). The respondents rejected the claim of the applicant (A-6). Hence he has filed this O.A seeking to quash A-4 & A6 and for a declaration that he is entitled to continue at Calicut in preference to the 4th respondent.

s2 The respondents filed reply statement contending that the PB Circular No.93/73 relied on by the applicant is no longer valid as the same was superseded by Circular No. 56/2002 and 137/2007. They further contended that the Podanur Construction unit is looking after the construction activities of Palghat division area also and therefore the applicant has been transferred within the Palghat Division itself.

3 Heard learned counsel for the parties.

4 The learned counsel for the applicant argued that the staff has been declared surplus in the Construction Wing and hence, according to the instructions, the juniormost should have been transferred in accordance with PB Circular No. 93/73. The learned counsel for the respondents on the other hand argued that the applicant has already carried out the transfer and that the circular PB No. 93/73 is no longer valid as the same was superseded by PB Circular No. 56/2002 and PB Circular No. 137/2007.

5 It is seen that the Construction Organisation does not have any permanent staff and the offices are maintained by transferring willing employees from the main stream. Out of the 7 posts of Head Clerk in the Construction Wing at Calicut and Cannanore, 3 are holding the post on ad hoc basis out of whom one belongs to Mysore Division of South Western Railway. The question that comes up for consideration in this O.A is whether the applicant has a better right to continue at Calicut than the 4th respondent or others appointed on ad hoc basis. The respondents were directed to produce the Circular PB NO. 56/02 and PB

74

No. 137/07 which are stated to have superseded the PB circular No. 93/73 and to state whether any weightage is given for retention to those who belong to Palghat Division in comparison to those who came from other divisions and the guidelines for granting request to choice stations when the project work is over. They have produced the Circulars PB No. 56/02 and PB 137/07 which do not deal with the issue raised in this O.A. Therefore, as regards readjustment of staff due to curtailment in the cadre in the Construction Units are concerned, Annexure A-1 circular dated 20.3.1976 and PB Circular No. 93/73 would apply. The relevant portion in Annexure A-1 is extracted below:

.....In this office PB Circular No. 93/73 dated 3.7.1975 detailed procedure has been outlined for drafting of Office Staff to fill up the vacancies in the Construction organisation. Accordingly, first preference is given to the volunteers from the works Branch/Personnel Branch of the Division or Headquarters as the case may be where construction offices are located. In the event of vacancies still becoming available in the construction units, second preference is given to the volunteers from the Works Branch/Personnel Branch of other divisions including Headquarters and third preference to the volunteers from other departments excluding Stores and Accounts of the division / Headquarters.

In the event of curtailment in the cadre in the construction units the staff would be rendered surplus in the inverse order of preference for filling up the vacancies as laid down in the PB Circular No. 93/73, keeping in view the Board's instructions contained in their letter No. E(NG)66 TR 2/20 of 27.7.1966, forwarded under cover of this office letter No. PL(S)767/P dated 19.8.1966. For this purpose, the junior most employees from among the staff who have been drafted from other departments is to be rendered surplus first. After exhausting the entire staff from other departments, the staff from other divisions have to be moved in the 2nd phase. The staff of the unit in which territorial jurisdiction the construction offices are located should be moved only in the last phase.

Even in respect of each group or staff referred to above staff rendered surplus should be junior most in the respective groups, in keeping with the Board's instructions...."

6 Admittedly, the transfer orders at Annexure A-4 is issued due to curtailment of Construction cadre at Calicut and Cannanore and hence the PB Circular at Annexure A-1 is applicable. Hence, I am of the view a that the applicant is liable to be transferred in accordance with Annexure A1 circular PB Circular NO. 93/73 read with Annexure A-2 dated 27.7.1966 . It is averred by the learned counsel for the applicant

Ty

that even after curtailment, against 7 posts of Head Clerk, 4 are still retained including three on ad hoc basis, at Cannanore.

7 This, a simple case of transfer was filed on 28.7.2009. The respondents availed many adjournments and finally filed the reply on 22.3.2010. A sketchy two page statement was filed with the reply to the issue, contained in one sentence in para 5. It merely stated that PB Circular 93/1973 stands superseded by PB Circular 56/2002 and 137/2007. Copies of the circulars were not enclosed as required. The case had to again adjourned to grant time to the respondents to produce the circulars. It was finally handed over in person, by the learned counsel on 4.6.2010, when the matter was heard. I am shocked to observe that these circulars deal with matters like irregular ad hoc promotion being granted in Construction Organisation without regard to seniority in the parent Division leading to litigation before the Tribunal, avoiding pick and choose policy in Construction Organisation in getting lower grade employees and posting them on ad hoc basis in higher grade post. The production of these circulars have only helped to expose the malpractice, going on in Construction Organisation. In fact strict notice is warranted against the Dy. Chief Personnel Officer /Construction, Chennai-600 008, who filed the reply in an attempt to mislead the Tribunal. What is aggravating is the fact, that this reply was filed when in O.A. 299/2005, a clear verdict was given, that the prescribed transfer policy guidelines are not followed. In fact, heavy cost is to be levied on the officer to be deducted from his salary. I desist from doing so, hoping wisdom and caution will prevail and such frivolous litigation arising from violation of the directives of the Government and issuance of arbitrary and illegal orders on transfer/promotion, avoided.

74.

8 The learned counsel for the applicant placed reliance on the order of this Tribunal in O.A. 299/2005 in which the applicant a Senior Stenographer in the Construction Wing has challenged his transfer from Ernakulam to Madurai against transfer norms. The Tribunal in that case held as follows:

14 In sum, it appears that no case appears to have been made out on grounds of incompetence, malafides or lack of administrative grounds. But a *prima facie* case exists on apparent violation of prescribed instructions. The respondents have admitted that the applicant is surplus which would mean a post is surplus which should set in a chain of activities leading to repatriation. No evidence is led to the commencement of such a chain nor on the process of filling in vacancies in the newly emerging construction office in Madurai Division. Once a surplus post is admitted the repatriation of an inhouse candidate from Trivandrum Division, retaining Senior Stenos from other Division is neither justifiable nor understandable all the more so when other posts are available as pointed out. Hence in totality the prescribed guidelines do not appear to have been followed.

15 Hence, the OA is allowed setting aside A-1 transfer of the applicant out of Trivandrum Division to Madurai and the respondents are directed to allow the applicant to work in the Construction office of the Trivandrum division in any appropriate post till his repatriation is carried out strictly in accordance with the guidelines in A-2circular."

9 In this view of the matter I hold that the applicant was transferred on the curtailment of construction work at Calicut and Cannanore totally violating the instructions on the subject. Accordingly, I quash the Annexure A-4 transfer order to the extent it relates to the applicant and A-6 disposal of the representation submitted by the applicant. The applicant shall be reposted to Calicut /Cannanore according to his seniority in the Construction office.

Dated 16th June, 2010

m m —
K. NOORJEHAN
ADMINISTRATIVE MEMBER

knn