

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.518/2007

Monday this the 29 th day of October, 2007.

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

K.Chandran,
S/o Late M.Kutty Raman Nair,
Senior Stenographer, Office of the
Deputy Chief Engineer/Construction/
Southern Railway, Ernakulam Jn.,
Pemanent Address: "Vedhas" House No.13/66,
Ayyanthole, Trichur.

Applicant

(By Advocate Shri TC Govindaswamy)

Vs.

1. Union of India, represented by
General Manager, Southern Railway,
Headquarters Office, Park Town Chennai-3.
2. Chief Administrative Officer,
Construction, Southern Railway,
Egmore, Chennai - 8.
3. Deputy Chief Engineer, Construction,
Southern Railway, Ernakulam Jn.,
Ernakulam. Respondents

By Advocate Shri (Thomas Mathew, Nellimoottil)

The application having been heard on 29.10.2007,
the Tribunal on the same day delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

This is the second round of litigation. On earlier occasion when the applicant was transferred to Madurai along with the post, this Tribunal has passed the following order:

"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 in house 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 totally the prescribed guidelines do not appear to have been followed.

15. Hence, the O.A. 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-3 circular. No order as to costs."

2. Subsequently, the respondents have chosen to file a Writ Petition in O.P. No.2021/06 which is still pending, but no stay has been granted. Accordingly the applicant was continued in the same post at Ernakulam. By A-1 order dated 7.8.07, the respondents have repatriated the applicant stating therein, "In compliance with the Hon'ble CAT/Ernakulam Bench, orders in O.A. 299/05". The applicant has challenged this order at A-1 on various grounds as contained in para 5 of the O.A. At the time of initial hearing on 17.8.07, while calling for the reply of the respondents, by an interim order the impugned A-1 repatriation order was directed to be kept in abeyance.

3. The respondents have contested the O.A. According to them, there was no work available at Ernakulam to keep the applicant engaged and that the applicant wants to work only in the office of the Dy.Chief Engineering (Construction) at Ernakulam and not in any other office of the Dy Chief Engineer's Office/ Executive Engineers Office of the Construction organization. (Para 6 & 9 of the counter refer). As to the non-following of the guidelines of repatriation as contended by the applicant in his O.A., by referring to one Shri Prabhavathi

Amma, the respondents have stated that, the said individual is working in a different Unit viz., Signal and Telecommunication Construction Unit, Ernakulam, whereas the applicant is working in the Engineering Construction Unit. Likewise, in respect of another example that Shri Alexander, PK George and Shri Surendra Panicker, it has been stated that, they are working in Trivandrum and not at Ernakulam.

4. The applicant has stated in the rejoinder that, though the respondents have stated in the reply, that the service of the applicant is no longer required at Ernakulam, the exact reasons have not been shown. The applicant has also filed a M.A.No.646/07 annexing therein two Annexures MA-1 and MA-2. Annexure M.A.-1 is an order of transfer on request and one Shri T.D.Babuji, CA who is transferred from Chennai to Ernakulam in the place of the applicant vide order dated 28.8.07. Annexure MA-2 is the relieving order of the said TD Babuji.

5. The respondents have filed an additional reply statement stating that the applicant was asked orally, whether he would be prepared to move to Trivandrum Construction Unit, but he has declined. (Para 2 of additional reply statement refers). In addition vide para 8 in the additional reply statement the respondents refers the move of Mr. TD Babuji, which is stated as under:

8. " Further it is submitted that Shri T.D.Babuji, Confidential Assistant in scale Rs.5500-9000 is transferred from, construction office Headquarters, Chennai Egmore to Construction Unit at Ernakulam vide Office Order No.222/2007 dated 28.8.2007 (Annexure - MA1) in the interest of the administration as the remaining incumbent Shri K.C.Ravindran will be retiring from service on superannuation on 31.5.2008. Further, the pay and allowances of Shri T.D.Babuji is charged against the vacant post of Headquarters for which sanction of Sr.Stenographer post was available upto 30.6.2007 only. Further, it is denied the claim of the applicant that the Stenographer in scale Rs.5500-9000 cannot be attached to the Executive Engineers. It is submitted that the said



T.D.Babuji is attached to the Junior Administrative Grade Officer for the transitional period till the retirement of Shri K.C.Ravindran.

6. On the previous date of hearing the respondents were directed to produce the records to substantiate their contention at para 2 of additional reply. The records have been produced by the respondents wherein a note is found to the effect that, the applicant had been asked over phone whether he can be transferred to TVC Construction Office. This message was also sent over phone to the office of Executive Engineer/Construction Unit, Ernakulam. The records do not indicate as to whether the applicant was conveyed this message. Subsequent note was to show that, some Union leaders seem to have requested that, the applicant be not disturbed stating that he is going to retire/ voluntary retirement shortly.

7. It has been indicated in the note that, "if that be the case the applicant may be repatriated to the parent office so that he will get his retirement benefit without any hurdle and it would be advantageous to the administration to get replacement from Trivandrum Division." It is how the impugned A-1 order came to be passed.

8. Counsel for the applicant argues that, the respondents have no justifiable reason to shift the applicant at this juncture by way of repatriation. Further in their recording, "in compliance with the Hon'ble CAT/Ernakulam Bench orders" the respondents seem to have given a legal colour to the transfer order whereas, the Tribunal's direction has been specific as contained in paragraph 15 extracted above. According to the counsel, the reasons given for repatriation of the applicant as in the counter are afterthoughts and not borne by records. For example, the respondents contended that the services of the applicant are no

longer required at Ernakulam Office as there was no work. In that case, there is no necessity for the respondents to bring Babuji in the place of the applicant as contained in Annexure MA-1. It has also been argued by the counsel for the applicant that, subsequently, when in the rejoinder the contents of the counter were denied, in the additional reply, the respondents have come with a different justification for the move of Shri Babuji stating that, Babuji's posting at Ernakulam is with a view to replacing one Shri Ravindran who would be retiring on 31.5.2008. Thus, according to the counsel, inconsistent stand is being taken in regard to the contentions of the respondents. Counsel for the applicant further submits that, since the applicant is shortly retiring on 30.4.08, any move of the applicant from Ernakulam with or without disturbing his repatriation would be thoroughly unjustified.

9. Counsel for respondents submitted that the posting of the applicant to Trivandrum was declined by the applicant whereas it would have been advantageous to him.

10. Arguments were heard and document perused. There is no reason that has been given in A-1 for repatriation of the applicant. The applicant's repatriation could be justified only when it is strictly in accordance with the guidelines as contained in A-3 of O.A.299/05, i.e. repatriation should be resorted to in respect of persons from other divisions first, and persons of the same division could be repatriated only last. This has not been followed as is seen from the reply at paragraphs 10 & 11 of the counter. Justification given therein that the individuals from other divisions are working in some other units, does not hold water. Thus, order at Annexure A-1 is patently illegal. As regards the move of the applicant within Trivandrum division, the same would have held good, had the posting of

the applicant been made immediately or within a reasonable time after the passing of the order dated 25.8.05, in which event, the applicant would have two years to serve. Applicant's repatriation, at a time when he is nearing superannuation is not justified as the applicant must be preparing himself for future resettlement during the last few months of his service career. As such, even though according to the earlier order there is no bar for the shifting of the applicant within Trivandrum division at this juncture, since the applicant is nearing superannuation, his shifting out of Ernakulam is not appropriate at all.

11. In view of the above, the transfer order being patently illegal, A-1 order dated 7.8.07 is quashed and set aside. Respondents are directed not to disturb the applicant from the present place of posting. No costs.

Dated the 29 th October, 2007.



Dr. KBS RAJAN
JUDICIAL MEMBER

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