

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 519 of 2002

Tuesday, this the 22nd day of October, 2002

CORAM

HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. V.K. Sabu Hari,
S/o V.K. Kochan,
Commercial Clerk, Irumpanam Yard Office,
Southern Railway,
Residing at: Vadakkekara House,
Kannan Kulangara Thuruthy,
PO Kuriachira, Trichur District.Applicant

[By Advocate Mr. T.C. Govindaswamy]

Versus

1. Union of India, represented by the
General Manager, Southern Railway,
Head Quarters Office, Park Town PO,
Chennai-3
2. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum-14
3. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum-14
4. The Senior Divisional Commercial Manager,
Southern Railway, Trivandrum Division,
Trivandrum-14Respondents

[By Advocate Mr. P. Haridas]

The application having been heard on 22-10-2002, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

The applicant who was working as Senior Commercial
Clerk in the scale of pay of Rs.4000-6000 at Irumpanam Yard
Office of the Southern Railway suffered a penalty of reduction
in rank by Annexure A1 order dated 30-3-2000 and was thus
posted in the same station as Commercial Clerk in the scale of

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pay of Rs.3200-4900. While continuing as Commercial Clerk at Iruppanam, by Annexure A2 order dated 18/23-5-2001 the applicant was transferred to Trivandrum Central. In Annexure A2 transfer order, the applicant's name appears at Sl.No.2 under the category of Senior Commercial Clerks in the scale of pay of Rs.4000-6000 and his transfer is described as "periodical". The post of Commercial Clerk in general is considered to be a sensitive post and hence, periodical transfer of incumbents who occupy such posts should be subject to the guidelines contained in Railway Board's letter dated 6-2-2002 (Annexure A5). However, since the applicant found that in the transfer order his name was shown under a higher grade and pay scale, and in view of his personal problems, the applicant approached the 4th respondent, explained the facts and requested for reconsideration of the impugned transfer order Annexure A2. It is stated that he was given an assurance that the matter would be set right either by cancelling the transfer order or by posting the applicant against one of the vacancies at Ernakulam Junction, Ernakulam North or at Trichur. No formal order was passed, however, in pursuance of such promise. But, the applicant was allowed to continue in the same station. In the absence of a formal communication regarding cancellation or modification of Annexure A2 transfer order, the applicant made a representation dated 16-12-2001 (Annexure A3) to the 2nd respondent highlighting the errors in the transfer order, the fact of his continuing in the same station pending cancellation of the transfer order under permission of the authority concerned and the details of his family problems. There was still no response. The applicant continued to work at Iruppanam. While so, by a communication dated 27-6-2002 (Annexure A4) from the 4th respondent, the Chief Goods Superintendent, Ernakulam was informed that the

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periodical transfer for the next year, i.e. 2002, should be completed before 10-7-2002 and that the previous year's (2000-01) transfers should be effected and completed before 20-7-2002. Annexure A4 communication apparently is as per the orders of the 2nd respondent. Being aggrieved, the applicant has filed this Original Application seeking the following reliefs:-

- "(a) Call for the records leading to the issue of Annexures A-2 and A-4 and quash the same, to the extent it relates to the applicant, and direct the respondents to grant the consequential benefits thereof;
- (b) Direct the 2nd respondent to consider Annexure-A3 and to consider him for a posting either at Trichur or Ernakulam Junction in one of the existing vacancies of Commercial Clerks within a time limit as may be found just and proper by this Hon'ble Tribunal;
- (c) Award costs of and incidental to this Application;
- (d) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

2. Respondents have filed reply statement opposing the Original Application by stating that the transfer, having been made on administrative exigencies, did not warrant judicial interference, that no promise regarding cancellation or modification of the transfer order to Trivandrum has been given to the applicant, that the transfer guidelines as per Annexure A5 did not prevent the respondents from transferring officials of the applicant's category outside under any circumstances, and that depending on the administrative requirement, the respondents would be free to position the officials in different areas.

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3. The applicant has filed a rejoinder reiterating his stand that being a Commercial Clerk at Irumpanam, he could not be transferred to Trivandrum under the guise of a Senior Commercial Clerk and that in any case, the guidelines as per Annexure A5 should have been complied with.

4. I have heard Shri Martin representing Shri T.C.Govindaswamy, learned counsel for the applicant and Shri P.Haridas, learned counsel for the respondents.

5. Shri Martin would contend that although the applicant holds a sensitive post and as such he was liable to be transferred from Irumpanam, all that he wanted was a transfer to a nearby place like Ernakulam South or Ernakulam North or even Trichur, where vacancies of Commercial Clerk existed at the relevant time. Since verbal promise was given by the 4th respondent, the applicant believed that suitable action would be taken. However, no action was taken at all. Annexure A3 representation was made to the 2nd respondent, which also went unresponded to. As per Annexure A5 guidelines of the Railway Board, the respondents were obliged to avoid large scale dislocations in the cases of staff occupying sensitive posts by taking recourse to periodical transfers, as far as possible, without involving a change of residence of the staff concerned. In the alternative, without prejudice to the objectives of the transfer, they could be accommodated at a different location in the same station or at least at a different station in the same urban agglomeration. Shri Martin's contention is that in view of these clear instructions, the respondents ought to have accommodated the applicant either at Irumpanam or Tripunithura or any other nearby place like Ernakulam South, Ernakulam North, etc. He has invited my attention to certain general

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orders of transfers of the category of staff similar to that of the applicant which would illustrate how the administration has been responsive to accommodate such staff as far as possible within the same place or within the same station or at least within the same urban agglomeration in accordance with the guidelines contained in Annexure A5 vide Annexure A6 order dated 22-4-2002. Shri Martin would conclude his argument by saying that the applicant being a Commercial Clerk in the scale of pay of Rs.3200-4900 could not have been transferred under the designation of Senior Commercial Clerk in the scale of pay of Rs.4000-6000 and that in any case, the instructions issued in regard to the periodical transfers of incumbents occupying sensitive posts have not been complied with in this case.

6. It has been contended on behalf of the respondents that the designation of the applicant as Senior Commercial Clerk was on account of a genuine mistake, that the applicant did not have a vested right to escape the transfer which was due, and that therefore, he could not object to such a transfer. With regard to the transfer to Trivandrum, learned counsel for the respondents would contend that this was strictly within the area of administrative exigency and that the Tribunal should not interfere with the administration's freedom to transfer and locate its personnel in places best suited to the organization. It has been urged that by transferring the applicant under the misclassified category of Senior Commercial Clerk at Trivandrum, no harm was caused to him, since as a Commercial Clerk in any case he was liable to be transferred. It has also been pointed out that by letter dated 10-10-1997 (Annexure R1) the applicant had, as a matter of fact, requested for a change from Irumpanam to Trivandrum and therefore, even on that score the present transfer could not be questioned as arbitrary.

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7. I have examined the facts of the case and the pleadings and have also considered the contentions of the rival counsel. When the impugned A2 transfer order was passed, the applicant was a Commercial Clerk only and not a Senior Commercial Clerk. The applicant's pay scale was Rs.3200-4900 and not Rs.4000-6000 as given out in the impugned A2 transfer order. If it was a mistake, the respondents ought to have informed the applicant about the same at the earliest opportunity. The applicant's meeting with the 4th respondent is not denied, although it is denied that any promise was given to him. Since the 4th respondent was aware that the applicant had a problem because of the erroneous designation and pay scale which were shown in the transfer orders, these things could have been set right. The records do not show that any such effort was done by the respondents. It cannot be denied that the applicant was holding a sensitive post; nor can it be refuted that the applicant is liable to be transferred from Iruppanam. Guidelines with regard to periodical transfer of incumbents occupying sensitive posts as contained in Annexure A5 communication from the Railway Board dated 6-2-2002 clearly take cognizance of the difficulties that may be caused to such transferees. The significant part of the instructions so issued as per Annexure A5 is extracted hereunder:-

"4. The instructions for periodical transfer of Railway employees cover two broad categories of staff:-

- (i)(a) The first category includes staff of the Commercial Department (such as Commercial Supervisors, Enquiry-cum-Reservation Clerks/ Booking Clerks, Goods Clerks, Parcel Clerks, Ticket Checking staff etc.) and the staff of the Operating Department (SSs/SMs/ASMs etc.).
- (b) In order to avoid large scale dislocation in the case of this category of staff, periodical transfers may, as far as possible, be effected without involving a change of residence of the

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staff concerned so long as the fundamental objectives of such transfers can be achieved by transferring such staff to a different location in the same station or to a different station in the same urban agglomeration."

8. From a perusal of the above, it would appear that those who are liable to be transferred on account of their holding sensitive posts should not be subjected to undue disturbance. Therefore, efforts ought to have been made to accommodate the applicant by transferring him either without causing a change in residence by accommodating him at a different location in the same station or at least at a different station within the same urban agglomeration, viz. the Greater Cochin area. There is nothing to suggest that the respondents have examined the applicant's case in this regard which is safeguarded by the instructions in Annexure A5.

9. In spite of the applicant's representation also, there was no constructive response from the respondents. From Annexure A6, I find that by the transfer orders for the year 2002-03 members of staff belonging to different categories occupying sensitive posts were transferred in adherence to the instructions contained in Annexure A5. A similar dispensation ought to have been ordered in the case of the applicant also. It is not a case of promotional posting as Senior Commercial Clerk. It is a case where the respondents would hold on to the view that the applicant is only a Commercial Clerk in the scale of pay of Rs.3200-4900 and that the transfer to Trivandrum is on account of administrative exigencies only. This argument cannot be accepted. The impugned transfer order and any action visualized as per Annexure A4 in so far as those would affect the applicant's interest, therefore, have to be set aside.

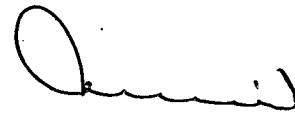
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10. In view of the above, I dispose of this Original Application in the following manner:-

- i) That part of the impugned Annexure A2 order dated 18/23-5-2001 whereby the applicant is transferred to Trivandrum is set aside.
- ii) The impugned communication Annexure A4 dated 27-6-2002 in so far as it is prejudicial to the applicant is set aside.
- iii) Respondents are directed to consider the applicant's case with reference to his A3 representation, strictly in accordance with the instructions contained in Annexure A5 dated 6-2-2002. A communication to this effect shall be issued to the applicant within a period of one month from the date of receipt of a copy of this order.

11. There is no order as to costs.

Tuesday, this the 22nd day of October, 2002



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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APPENDIX

Applicant's Annexures:

1. A-1 : A true copy of the order No.V/V0/T/FR/64/94 dated 30.3.2000 issued by the 4th respondent.
2. A-2 : A true copy of the Office Order No.26/2001/CC dated 18/23.5.2001 issued by the 3rd respondent.
3. A-3 : A true copy of the representation dated 16.12.2001 addressed to the 2nd respondent.
4. A-4 : A true copy of the Message No.V/C.415/P/Traffic 2002 dated 27.6.2002 issued by the 4th respondent.
5. A-5 : A true copy of the Personnel Branch Circular (PBC) No.16/2002 dated 6.2.2002 issued by the Chief Personnel Officer, Southern Railway.
6. A-6 : A true copy of the order No.O.O.No.14/12/CC dated 22.4.2002 issued by the 3rd respondent.

Respondents' Annexures:

1. R-1 : True photocopy of the request dated 10.10.97 of the applicant.
2. R-2 : True copy of the judgment dated 8.8.2002 of the Hon'ble High Court of Kerala in OP No.15177/2002.
