

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 521 1993

DATE OF DECISION 12.4.93

M. Rahiman Applicant (s)

Mr. P.Sivan Pillai Advocate for the Applicant (s)

Versus

The Sr. Divisional Mechanical Respondent (s)
Engineer, Southern Railway, Palghat and others

Mr. Thomas Mathew Nellimoottil Advocate for the Respondent (s) R 1-3

CORAM :

The Hon'ble Mr. N. DHARMADAN JUDICIAL MEMBER

The Hon'ble Mr. R. RANGARAJAN ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? AO
3. Whether their Lordships wish to see the fair copy of the Judgement? AO
4. To be circulated to all Benches of the Tribunal? AO

JUDGEMENT

MR. N. DHARMADAN JUDICIAL MEMBER

who

Applicant/is at present working as a Boiler Maker

under the third respondent at Coimbatore is aggrieved by

Annexure A-1 order dated 15.9.89 by which he has been

transferred from Coimbatore to Coonoor. ~~it was~~ kept in

abeyance, but revived by subsequent order dated 24.2.93.

2. According to the applicant, he came to Coimbatore, his native place in 1988 after various posting in different stations and he was continuing as a Boiler Maker under the third respondent. In the meantime, Annexure A-1 order was passed on 15.9.89. He has highlighted his personal difficulties caused to him on account of his transfer. After

appreciating the contentions in the representation, the Railways did not implement the transfer order. He ~~bonafide~~ believed that the Railway has cancelled the order and allowed him to continue in Coimbatore in spite of Annexure-I transfer order. Thereafter, all of a sudden in February, 1993 a further order Annexure A-3 was issued directing the CWS to relieve the applicant from Coimbatore to enable him to join/Coonoor pursuant to Annexure A-3 order. According to applicant, Annexure A-3 order happened to be issued at the instance of the fourth respondent, the Southern Railway Mazdoor Union, which is against the applicant's continuance at Coimbatore. He also stated some incidents has happened in November, 1992 which resulted/criminal cases between the family of the applicant and the union. This rivalry is the basis for the present revival of the earlier transfer order which was kept in abeyance from 1989 onwards.

3. In the reply filed by the Railways, there is no specific denial of the facts regarding the rivalry. However, it has been stated that Annexure A-3 order has been issued on account of the fact that there is no place to accommodate the applicant as Boiler Maker as such a post is not now available. One Shri Unnikrishnan ~~has~~ has been posted as Caretaker in the Running Room at Coimbatore, where the applicant was accommodated after 1989, and hence it has become necessary in the interest of exigency of service to relieve the applicant from the present post pursuant to

Annexure A-1 transfer order. It is further submitted that orders at Annexure A-1 and A-3 have been issued in the exigency of service and no malafide or extraneous reasons influenced the Railways in enforcing the ~~transfer~~ order Annexure A-1.

4. Applicant filed a detailed rejoinder and produced a judgment in O.A. 1172/92 dated 22.10.92 and submitted that the fourth respondent had considerably influenced the Railways in transferring the applicant from Coimbatore to Coonoor. In O.A. 1172/92, the applicant therein challenged his transfer on the ground that the ~~way~~ ~~of~~ ~~the~~ union influenced the Railways in his transfer. This Tribunal accepted the contention of the applicant therein and held that the transfer is unsustainable and quashed the same.

5. Having heard counsel on both sides, we are of the view that Annexure-I transfer order has already become ~~derelict~~ on account of the fact that the Railway did not enforce the same from 1989 onwards accepting the representation filed by the applicant, ~~but the~~ the fourth respondent has ~~interest in the~~ ~~revival of Annexure A-1 order. However,~~ ~~Railway~~ passed subsequent order Annexure A-3. The further submission that Shri Unnikrishnan can be provided elsewhere taking into consideration the personal difficulties of the ~~whether the applicant~~ applicant highlighted in the statement, ~~and~~ can be allowed to continue or not was not examined by the competent authority. In the light of the fact that these statements

requires further examination by the superior authority, we are of the view that the application can be disposed of with appropriate direction in the interest of justice. Accordingly, we direct the applicant to file a detailed representation stating his case against the impugned order of transfer and his reason for continuing at Coimbatore. Such a representation has to be filed before the first respondent within a period of two weeks from the date of receipt of a copy of this judgment. If the applicant submits a representation as directed above, the first respondent shall consider and dispose of the same in accordance with law within a period of two weeks from the date of ~~xxx~~ receipt of the same. The I.R. granted in this case will continue till the compliance of the direction by the first respondent.

6. The application is disposed of on the above lines.

7. There will be no order as to costs.



(R. RANGARAJAN)
ADMINISTRATIVE MEMBER



12.4.93

(N. DHARMADHAN) 12.4.93
JUDICIAL MEMBER

12.4.93

kmn