

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHO.A No.569/2007

Thursday, the 7th day of February, 2008.

CORAM

HON'BLE MRS SATHI NAIR, VICE CHAIRMAN

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

K.M.Babu,
Technician Gr.II,
Carriage & Wagon/
Southern Railway, Erode,
Palghat Division.Applicant

(By Advocate Mr TC Govindaswamy)

v.

1. Union of India represented by the
General Manger,
Southern Railway,
Headquarters Office,
Park Town.P.O.
Chennai-3.
2. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.
3. The Additional Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.
4. The Senior Divisional Mechanical Engineer,
Southern Railway, Palghat Division,
Palghat.Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

This application having been finally heard on 16.1.2008, the Tribunal on 7.2.2008
delivered the following:

ORDER**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

The applicant is a Technician Gr.II, Carriage & Wagon of Southern



Railway, Erode, Palghat Division. His grievance is against the Annexure A-1 order transferring him from Erode to Coimbatore.

2. The applicant submitted that he had submitted Annexure A2 representation on 23.2.2007 against the Annexure A-1 transfer order, followed by Annexure A-5 representation dated 6.6.2007. According to him, the respondents are planning to relieve him after 7 months without any further notice and without disposing of his representations. The applicant has, therefore, approached this Tribunal by this O.A against the aforesaid transfer order and the impending relieving order. Considering the aforesaid circumstances, the Tribunal on 14.9.2007 stayed the impugned Annexure A-1 order of transfer.

3. The applicant has challenged the aforesaid transfer on the ground that it is arbitrary, discriminatory, contrary to law and hence violative of the constitutional guarantees enshrined in Articles 14 and 16. He has also submitted that the transfer was neither on any public interest nor on any administrative exigencies. On the other hand, he alleged that the transfer is a punitive action on the part of the respondents to suppress his lawful trade union activities as an office bearer of SRMU, Erode. He has also stated that his transfer order was in violation of the respondents' own Annexure A-3 circular No.24 issued by the Railway Board which reads as under:

"6. Transfer of Railway servants who are office bearers of recognised Trade Unions:

Any proposal to the transfer of an office bearer of a recognised Trade Union including its Branches should be advised to the Union concerned and the Union should be allowed to bring to the notice of the Divisional Officer and if necessary, later to the G.M any objection that they may have to the proposed transfer. If there is no agreement at the lower level(s) the decision of the G.M will be final. Sufficient notice should be given to the Union of a proposed transfer to enable the Union to make alternative arrangements for carrying on the work or for making a representation against the proposed transfer."

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4. The respondents in their reply submitted that one Smt. Arayee, Khalasi Helper, C&W, Erode submitted a complaint on 29.3.2004 to the Senior Divisional Mechanical Engineer against the applicant that he had eve-teased her at the work spot. There was also another complaint of Smt.G Padmavathy, Khalasi against him. The "Sexual Harassment Committee" after considering the matter, vide Annexure R-1 report dated 8.6.2006, held that the applicant and another one Shri Udayakumar were creating unhealthy working atmosphere in their words and action. They have, therefore, recommended for their transfer out of the present place of work and issuance of a confidential note of displeasure and to keep a copy of the same in their service records. The committee has also warned the applicant and Shri Udayakumar not to misbehave with the lady staff and if they are not correcting themselves and continue to behave in an unhealthy manner, further action would be taken by the Divisional Complaint Committee, Palghat. The respondents submitted that the applicant was transferred on the basis of the aforesaid report of the Sexual Harassment Committee.

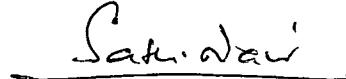
5. They have also denied the allegations of the violations of guidelines for transferring the trade union office bearers made by the applicant. They have referred to the Anexure R-2 copy of the Railway Board's letter dated 7.1.1987, according to which the transfer of the office bearers of a recognised Union should be brought to the notice of the Divisional Officers, and if necessary, to General Manager. According to them, the said guidelines were not at all applicable in his case as he was already transferred on 23.1.2007 on the recommendation of the Sexual Harassment Committee, whereas he was taken over charge as Secretary of the Union only vide Anenxure A-4 letter dated 29.5.2007. They have also submitted that the applicant had joined the union only to avoid his transfer. They have also pointed out that Shri Udayakumar who was involved in the same Sexual Harassment case and who was

transferred along with him from Erode to Coimbatore, has already joined the place of posting on 31.5.2007.

6. We have heard Shri TC Govindaswamy, counsel for the applicant and Shri Thomas Mathew Nellimoottil for respondents. Undisputedly, the reason for the transfer of the applicant was his involvement in the sexual harassment case initiated against him. The Committee has clearly held that the applicant along with Shri Udayakumar have created unhealthy working atmosphere in their words and action. They have also been given recordable warning by the Committee not to misbehave with lady staff in future. The complaint of the sexual harassment against the applicant was made by the lady staff on 29.3.2004. The Committee's finding was dated 8.6.2006. The applicant was not an office bearer of any trade union on those dates. By the applicant's own submission, he became the Secretary of the Trade Union of Erode Branch only in May 2007 as intimated by letter CPO/MAS No.P(L) 694/ONB/SRES/SRMU/Vol.III dated 0.5.2007. Therefore, the applicant's contention that he has the protection of Annexure A-3 guidelines of the Railway Board imposing restrictions on transfer of Railway servants who are office bears of the recognised trade union is not true. In the circumstances, we do not find any merit in the present O.A and, therefore, the same is dismissed. No costs.

Dated, the 7th February, 2008.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHR.A.17/2008 in O.A No.569 /2007Tuesday, this the 2nd day of September, 2008.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE DR K.S..SUGATHAN, ADMINISTRATIVE MEMBER

K.M.Babu,
Technical Gr.II,
Carriage & Wagon/
Southern Railway, Erode,
Palghat Division.Review Applicant

(By Advocate Mr TC Govindaswamy)

v.

1. Union of India represented by the
General Manger,
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Chennai-3.
2. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
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3. The Additional Divisional Railway Manager,
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4. The Senior Divisional Mechanical Engineer,
Southern Railway, Palghat Division,
Palghat.Respondents

(By Advocate Mr Thomas Mathew Nellimoottil)

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

This Review Application has been filed by the applicant in O.A.569/2007.

The said O.A was decided on 7.2.2008 and its operative part is as under:

"6. We have heard Shri TC Govindaswamy, counsel for the applicant and Shri Thomas Mathew Nellimootttil for respondents. Undisputedly, the reason for the transfer of the applicant was his involvement in the sexual harassment case initiated against him. The Committee has clearly held that the applicant along with Shri Udayakumar have created unhealthy working atmosphere in their words and action. They have also been given recordable warning by the Committee not to misbehave with lady staff in future. The complaint of the sexual harassment against the applicant was made by the lady staff on 29.3.2004. The Committee's finding was dated 8.6.2006. The applicant was not an office bearer of any trade union on those dates. By the applicant's own submission, he became the Secretary of the Trade Union of Erode Branch only in May 2007 as intimated by letter CPO/MAS No.P(L) 694/ONB/SRES/SRMU/Vol.III dated 10.5.2007. Therefore, the applicant's contention that he has the protection of Annexure A-3 guidelines of the Railway Board imposing restrictions on transfer of Railway servants who are office bears of the recognised trade union is not true. In the circumstances, we do not find any merit in the present O.A and, therefore, the same is dismissed. No costs."

2 The applicant has taken the following grounds for reviewing the aforesaid order:

- i. The order in the O.A suffers from errors of law apparent on the face of the records and there, the same is liable to be reviewed and recalled by this Tribunal.
- ii) The following finding of the Tribunal in para 6 at page 4 of the order was an error of law and of facts apparent on the face of the records because Annexure A-12 clearly indicate that the applicant was an office bear of the SRMU as early as on 9.12.2002 and in 2007 the applicant has been elected as the Secretary.

"The applicant was not an office bearer of any trade union on those dates. By the applicant's own submission, he became the Secretary of the Trade Union of Erode Branch only in May 2007 as intimated by letter CPO/MAS No.P(L) 694/ONB/SRES/SRMU/Vol.III dated 0.5.2007. Therefore, the applicant's contention that he has the protection of Annexure A-3 guidelines of the Railway Board imposing restrictions on transfer of Railway servants who are office bears of the recognised trade union is not true."

- iii) This Tribunal lost sight of the fact that the President, Vice

President, Secretary, Assistant Secretary, Treasurer, etc. are all office bearers of a trade union and not the Secretary alone.

3. We have heard Advocate Mr TC Govindaswamy for the review applicant and Advocate Thomas Mathew Nellimootttil for the respondents. The Hon'ble Supreme Court in the case of **M/s Tunghabhadra Industries Limited Vs. Government of A.P represented by the Deputy Commissioner of Commercial Taxes, Anantpur**, AIR 1964 SC 1372 and **Sow. Chandra Kanta and another Vs. Sheik Habib**, AIR 1975 SC 1500; held that a review of a judgment is a serious step and it is proper to resort to it only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial infallibility.

4. The contention of the review applicant is that before he was elected as Secretary of the trade Union ,of the Erode Branch vide order dated 10.5.2007, he has already been serving as the Vice President of the Union vide DPO, Palghat letter dated 9.12.2002.

5. We have upheld the transfer orders issued by the respondents mainly on the ground that he was involved in a sexual harassment case and he was given a warning not to misbehave with the lady officers in future. Again, Annexure A-3 guidelines of the Railway Board under which he seeks protection from transfer does not envisage that the employees involved in sexual harassment cases also should be given protection from transfer because he/she is an office bearer of the Union. In these circumstances, we do not find any merit in this review application and accordingly the same is dismissed.

6. Before we part with this order, we observe that the respondents

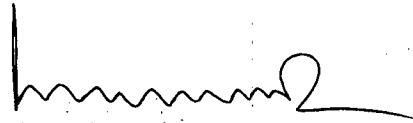


themselves are not very keen to implement their own orders. We have passed the order in O.A.569/2007 on 7.2.2008 and this Review Application has been filed on 1.4.2008. If the respondents were serious enough to implement the orders, they could have done so long back as the order was pronounced in the presence of counsel for both the parties on 7.2.2008 and certified copy of the same was available on 13.2.2008.

7. There shall be no order as to costs.



K.S. SUGATHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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