

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXXXX~~

570 of 199 2.

DATE OF DECISION 31-08-1992

K.V.Vijayakumar Applicant (s)

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

Versus

Union of India represented by General Manager, Southern Railway and others Respondent (s)

Mr.M.C.Cherian for R.1 to 3 Advocate for the Respondent (s)
Mr.M.Ramachandran for R.4

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

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1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 20th April, 1992 filed under Section 19 of the Administrative Tribunals Act the applicant who has been working as Station Master under the Divisional Manager, Southern Railway, Palghat has challenged the impugned order dated 8.4.92 at Annexure-A.4 in so far as it transfers the 4th respondent from Vijayamangalam to Kadalundi in preference to the applicant and has prayed that the respondents be directed to transfer the applicant to Kadalundi in accordance with his priority of registration or in the alternative to transfer him to any other station of the applicant's choice shown in Annexure A.III.

2. The brief facts of the case are as follows. The applicant was appointed as Assistant Station Master on 19.3.84 and on completion of training posted at Erode on 30.9.84. He joined his present post of Assistant Station Master, Thottippalayam a way-side station on 4.4.87 and ever since he has been working there. The Railway Board has laid down a system of registration of requests for transfer of employees to the station of their choice within their seniority unit vide the order dated 1.10.71 at Annexure.A.1. The applicant is a native of Calicut and his wife is employed in the Central Bank of India there. He has aged and ailing parents leaving at the native place. In 1985 he registered his choice for posting at various stations near Calicut when he was in the pay scale of Rs.1200-2040. When he was promoted to the present grade of Rs.1400-2300 he again got his choice registered for those stations in 1988. Under the orders of the Senior Divisional Operating Superintendent when the old registrations were cancelled and fresh registration was called for, the applicant again registered his name within the time specified. When there was no response he submitted a representation on 8.1.91 to which the Senior Divisional Personnel Officer replied at Annexure.A.3 indicating that his name has been registered for transfer with first seniority for transfer to Kadalundi station. The communication ^{also gave} ~~to him~~ ^{to him} has seniority postions for his other choices of stations. He was assured in the same communication that he will

be considered for transfer in his turn. While the applicant was waiting for posting at Kadalundi for which he was at the top position, he was shocked to learn from the impugned order at Annexure.A.4 that even though he had completed 5 years of service at Thottippalayam and had been given first position of transfer to Kadalundi, it is respondent No.4 who was transferred to that post in derogation of the applicant's prior claim. Respondent No.4 had completed only 1½ years tenure at Vijayamangalam and had been promoted in the scale of Rs.1400-2300 in January, 1992. Therefore, his seniority of registration for Kadalundi cannot be prior to January, 1992.

(Un- applicant)

3. He has also mentioned another instance of one Shri C. Mohanan at item No.31 of Annexure.A.4 who had been transferred to Bangalore only in September, 1989 having been transferred to Kallai in derogation of the applicant's preferential right for that station for which he had given his choice in 1990 at Annexure A.3. The applicant's representation dated 13.4.92 at Annexure.A.5 also has not been responded to.

4. In the counter affidavit filed by respondents 1 to 3 the respondents have conceded that in accordance with the Railway Board's order at Annexure.A.1 request transfers are made on the basis of seniority in registration to a particular place. They have also conceded that in accordance with the applicant's application dated 10.2.90 the applicant's name was registered for all the seven places indicated by him including Kadalundi and that the applicant was advised of his priority positions by Annexure.A.3. They have, however,

argued that to reduce the number of stations for registration, a decision was taken to restrict the registration to three stations in the order of preference and on that basis the applicant's choice was registered for Calicut, Kallai and Tirur because the applicant had represented on 27.1.92 through an M.P (Exbt.R.1) that he should be considered for transfer to Kallai, Feroke or Calicut. They have also stated that the 4th respondent on 22.2.90 registered his name for transfer to three stations including Kadalundi and hence he has preferential right to be transferred to Kadalundi.

5. In the counter affidavit the respondent No.4 has stated that since the applicant had given choice he could be registered for for nine stations/only three stations. The respondent No.4 had got himself registered for Kadalundi and was first in the rank of priority. He concedes that while making the application ^{for registration} he was in the lower pay scale of Rs.1200-2040 and was promoted to the higher grade of Rs.1400-2300 when the application was pending.

6. In the rejoinder the applicant has argued that seniority of registration pertains to a particular grade and in particular place. He has challenged the decision to restrict the registration to three stations in the order of preference which according to him is an after-thought intended to cover-up the lapses on the part of the respondents. He has alleged that this decision was never circulated to any staff nor has any date of the decision been indicated. He has stated that respondent No.4 was promoted to the higher grade of Rs.1400-2300 in January, 1992 and therefore, his

registration of 22.2.90 when he was in the lower grade of Rs.1200-2040 cannot be taken into account vis-a-vis the applicant who has been in the scale of Rs.1400-2300 in 1988 when he got the registration for Kadalundi. He has also argued that the registration conveyed to him by Annexure A.3 could not be cancelled by the respondents *suo moto* behind his back.

7. In the additional statement filed by respondents 1 to 3 it has been conceded by the Railways that restricting registration to three stations in the order of preference was the instruction of the Senior Divisional Operating Superintendent, Palghat and these instructions were not notified to supervisory officials. They have referred to Exbt.R.1 which is a representation through an M.P. in which ^{of the applicant} Kallai, Feroke and Calicut only had been mentioned. Since Kadalundi and other stations mentioned at Annexure A.3 was not indicated in Exbt.R.1, the earlier registrations ^{for} to these stations automatically stood cancelled. They have conceded that in respect of Respondent No.4 the priority position as per his registration in the lower grade was taken into account for his transfer even after he was promoted to the higher grade because of the availability of a number of unfilled vacancies in the higher grade.

8. I have heard the learned counsel for the parties and gone through the documents carefully. I am convinced that the applicant is entitled to transfer to Kadalundi on the basis of his occupying the first position for that station in the registration ^{as} communicated ^{as} to him by the Railways at Annexure A.3. The respondents cannot take the plea that on

the basis of a decision taken by the Senior Divisional Operating Superintendent, Palghat that only three stations will be registered, ~~and~~ Annexure-A.3 stood cancelled. The instructions issued by a Divisional officer cannot supersede the general policy decision followed through ^{out} the Southern Railway. Further, those instructions were never circulated to the supervisory officials and also ~~new~~ published for the benefit of the staff so that they could give the revised ^{thru} choices in the order of preference. Had it been so, the applicant could have given his order of preference taking into account his seniority for various stations. The ^{of three stations} ^{argument} ~~fact~~ that the respondents 1 to 3 modified the registration of the applicant for various stations on the basis of his representation dated 27.1.92 at Annexure.R.1 is also not very convincing. The respondents 1 to 3 have stated in the counter-affidavit that on the basis of the representation the order of preference and his priority position was changed to Calicut (4) Kallayi(2) and Feoke (1), whereas in Exbt.R.1 he had given the three stations of his choice in the order of preference ~~as~~ ^{to} Kallai, Feroke and Calicut. Obviously the respondents have not modified the registration strictly on the basis of the order of preference given at Exbt.R.1 representation of the applicant. Further, respondent No.4 who was promoted in the scale of Rs.1400-2300 only on 11.2.92 cannot get precedence of registration over the applicant who had ~~been~~ got himself registered for that station in the year 1988 after his promotion to the higher grade of Rs.1400-2300.

9. In the facts and circumstances I allow the application, set aside the impugned order dated 8.4.92 at Annexure.A.4 in so far as respondent No.4 is concerned and direct that the applicant should be posted to Kadalundi on the basis of his seniority position at Annexure.A.3 forthwith in place of respondent No.4. The respondents 1 to 3, however, will be at liberty to accommodate respondent No.4 at Kadalundi if another vacancy is available or to any other place, in accordance with law. There will be no order as to costs.

S.P.M.
31.8.92

(S.P.MUKERJI)
VICE CHAIRMAN
31-08-1992

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