

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.589/2001.

Wednesday this the 2nd day of July 2003.

CORAM:

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

K.S.Anilkumar,
working as Office Clerk,
Personnel Branch, Southern Railway,
Trivandrum Division. Applicant

(By Advocate Shri M.P.Varkey)

vs.

1. Union of India represented by
General Manager, Southern Railway, Chennai -600003.
2. The Financial Advisor & Chief Accounts
Officer, Southern Railway, Chennai.
3. The Chief Personnel Officer,
Southern Railway, Chennai-600003
4. The Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum - 695 014. Respondents

(By Advocate Shri P. Haridas)

The application having been heard on 2nd July, 2003, the Tribunal on the same day delivered the following:

ORDER

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

The applicant who is working as an Office Clerk in the Personnel Branch, Trivandrum Division, Southern Railway is aggrieved by A-1 and A-3 orders dated 8.5.97 and 29.8.2000 respectively whereby his seniority on the basis of interdepartmental transfer from Accounts Branch, Madras to Personnel Branch at Trivandrum was allowed only with effect from 28.4.97 as against 9.11.93 claimed by the applicant to be the date on which he joined the Trivandrum Division on inter-departmental transfer. The applicant seeks the following main reliefs:

- a) Declare that A-1 and A-3 are arbitrary, illegal, discriminatory and without jurisdiction and quash the same.
- b) Declare that the applicant is entitled to count his seniority in Trivandrum Division below all the confirmed, temporary and officiating Office Clerks as on 9.11.93, with consequential benefits and direct the respondents accordingly.

2. The applicant's case is that by A-5 order dated 11.11.93 applicant's inter-departmental transfer from Chennai to Trivandrum Division had been approved by FA&CAO on the usual terms of governing inter-departmental request transfers. Having joined at Trivandrum on 9.11.93 in pursuance of the inter-departmental transfer granted to him, the applicant claims seniority with effect from 9.11.93 itself and is therefore aggrieved by the treatment of his transfer as temporary transfer and that consequent arrangement of seniority with effect from 28.4.97 on the basis of his final absorption against a regular vacancy of Office Clerk at the Personnel Branch in Trivandrum. On transfer, the applicant was originally allowed to work in Trivandrum Division for six months as if he was on temporary transfer from Madras and thereafter on several occasions his stay in Trivandrum in the same capacity was extended in six-monthly terms. The applicant would maintain that his seniority ought to have been counted w.e.f. 9.11.93 lest there be a vacuum in his career in respect of the period between 9.11.93 and 27.4.97. The rule position regarding inter-departmental transfer was so clear that the action on the part of the respondents in denying him seniority right from the date on which he joined Trivandrum in pursuance of the inter-departmental transfer was wholly unjustified, according to the applicant.

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3. In the reply statement filed by the respondents, the applicant's claim is opposed mainly on the ground that this O.A. is barred by limitation since the cause of action, if at all, arose in the light of A-1 order dated 8.5.97. The benefit of such temporary transfer was availed by the applicant because of the periodical extensions granted to him. The respondents would rely on Annexure R-4(a) Memorandum dated 3.11.93 whereby his transfer was described as temporary transfer and it was made known to him that his lien would be maintained at Madras. It was thus clear that he was borne substantively in his parent department at Madras Division and that his accommodation at Trivandrum was by way of temporary transfer only. The respondents would also lay stress on Annexure R4(b) Office Order dated 18.2.97 which would show that his transfer to Chennai was ordered though such transfer did not materialise.

4. The applicant has filed a rejoinder contesting the stand of the respondents and pointing out that in the light of the system of registration for inter-Railways and inter-divisional transfers including inter-departmental transfers as explained in A-6 Circular dated 31.3.1971, the applicant had duly expressed his desire and made a request for inter-departmental transfer from Madras to Trivandrum and that it was on the basis of that procedure that the applicant got the transfer to Trivandrum.

5. We have heard Shri M.P.Varkey, learned counsel appearing for the applicant and Shri P.Haridas, Standing Counsel appearing for the Railways. According to the learned counsel for the applicant, the applicant was transferred only on the basis of the rules governing inter-departmental transfers and he too expected

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that his seniority would eventually be settled once he was given confirmation. The treatment of his transfer as temporary and his retention in Trivandrum on six-monthly tenures was more of an administrative convenience for which he could not be held responsible. He was not a party to such an agreement. The applicant had applied for regular inter-departmental transfer on the usual terms like assignment of bottom seniority, forfeiture of transfer grants etc. It is vehemently contended by the learned counsel for the applicant that there is no rule or instruction which can convert a regular inter-departmental transfer or inter-divisional transfer already given effect to into a temporary transfer. Rule 226 to Rule 231 of the Indian Railway Establishment Code Vol(I) govern such transfers and the corresponding provisions are contained in paragraphs 309 to 312 of the Indian Railway Establishment Manual. There is no reference to any temporary transfer there. The retention of lien in the parent department was only as a safeguard for the employee according to the learned counsel. If his transfer to Trivandrum division was reckoned only w.e.f.28.4.97, there would be an un-explained vacuum in respect of the period between 9.11.93 which is indisputably the date on which he joined Trivandrum and 28.4.97, the date of conferment of seniority on the basis of the alleged absorption. Counsel would submit that this would seriously affect the applicant's service interest. It is also pointed out that since there was no seniority list other than the seniority list published in 1995, there was no occasion for the applicant to implead any one else in the matter as he did not know as to who were his juniors and who had gained advantage over him. Learned counsel for the applicant has also contended that the O.A. is filed within time since the representation made

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after A-1 was issued, had been considered by the respondents as is borne out by the impugned A-3 order. Therefore, with reference to the A-3 order read with A-1 order the applicant had a live cause of action when the O.A. was filed.

6. Shri P. Haridas, learned counsel for the respondents however, maintained that the O.A. is hopelessly barred by limitation since the applicant never contested his temporary transfer to Trivandrum as is reflected in Annexure R-4(a) order. The transfer, in fact, was only on temporary basis though periodically extended on several occasions. The applicant could be accorded seniority only with respect to the date on which he was finally absorbed in the Trivandrum Division and therefore 28.4.97 being the date of actual absorption, the assignment of seniority with effect from that order was perfectly in order, according to the learned counsel for the respondents.

7. We have perused the case records and have examined the question of limitation. The respondents' contention that the application is barred by limitation is not correct and hence has to be rejected for the reason that the representation made by the applicant against impugned A-1 order dated 8.5.97 was considered by the respondents and disposed of by A-3 order dated 29.8.2000. Therefore, although the representation made by the applicant remained unattended by the respondents for a long time, thereby apparently rendering A-1 beyond the scope of limitation, the fact that the respondents issued A-3 order dated 29.8.2000 would show that the applicant had a live cause of action as on the date of filing the O.A. The argument on this count therefore, fails.

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8. On a consideration of the relevant facts and the provisions of the IREC and IREM with regard to the merits of the case, we notice that the applicant's inter-departmental transfer request from Accounts Branch, Madras to Personnel Branch, Trivandrum was effective from 9.11.93 though the approval thereof from the FA&CAO was issued as per order dated 10.11.93 (A5) which is reproduced hereunder:-

"SOUTHERN RAILWAY

FA & CAO's Office.
Madras - 600 003.
Dated : 10.11.1993

P.676/Admn/Inter Dept (Outward) Vol.II

CPO/MAS

Sub: Inter Departmental transfer of Shri K.S.Anil Kumar, Accounts Clerk, Sr.DAO/MAS to TVC Division on request.

Ref: P(GS)676/X/Change of category/Vol.II.

Approval of FA & CAO is hereby communicated for the Inter-Departmental transfer of Shri K.S.Anil Kumar, the employee in the same capacity to the Division, DPO/TVC subject to the following terms and conditions.

1. He will not be eligible for joining time, Transfer pass, Travelling allowance etc. as the transfer is at his own request.

2. He will not seek re-transfer to his parent department at a later date, under any circumstances.

3. His Administrative lien will be maintained by his parent department until such time he is permanently absorbed on the new unit to which he is transferred.

4. His pay will be fixed in scale Rs.950-1500(RSRP) as per extant orders on the subject.

There are no DAR/VIG/SPE cases pending/contemplated against him on the date of his relief.

This issues with the approval of the competent authority.

Sd/- 11-11-93
for FA & CAO/MAS "

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9. On carefully going through Rules 226 to 231 of the IREC Vol(I) dealing with transfers of Railway Servants, particularly transfer from one department to another, we do not see any provision for treating the Railway employees' transfer as temporary although there is a clear provision stating that the lien of a permanent staff transferred to another railway, will be retained by the transferring railway till he is finally absorbed on the other railway. As per Rule 231 of IREC, however, all that is required is that an inter-departmental transfer should be done only with the approval of the head of the department. Further, on such transfer the transferee, ranks below the existing confirmed and officiating staff in the relevant grade in the promotion group in the new establishment, irrespective of the date of confirmation or length of official service of the transferred employee.

10. From Annexure A-5 it is quiet clear that what was visualised was not a temporary transfer. No doubt, in Annexure R4(a) the applicant's transfer is described as temporary transfer. But that, by itself, does not change the transfer requested for and granted to a temporary transfer. There is no evidence to show that the applicant ever asked for a temporary transfer on terms like loosing seniority and other benefits like transfer grant etc.

11. On the facts and in the circumstances of the case, we are convinced that the applicant had requested for a transfer in the light of the rules and the instructions with regard to transfers contained in A-6, and that therefore, there is no justification for treating the applicant's transfer as a temporary transfer. Assigning seniority to the applicant with effect from the date of

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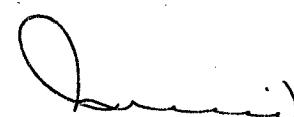
the alleged absorption is therefore incorrect since the applicant had come over on transfer on the basis of regular inter-departmental transfer duly approved by the competent authority much earlier.

12. In the light of the above findings, the impugned A-1 and A-3 orders dated 8.5.97 and 29.8.2000 have to be set aside and we do so. The applicant is entitled to count his seniority in Trivandrum Division below all the confirmed temporary and officiating Office Clerks as on 9.11.1993, the date on which he joined the new station with all consequential benefits. Respondents are directed to grant all consequential benefits to the applicant and orders in that regard shall be passed within a period of three months from the date of receipt of a copy of this order.

13. O.A. is disposed of as above. There is no order as to costs.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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