

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.593/2002

Thursday, this the 26th day of June, 2003.

CORAM;

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

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

1. S.Sudheesh Kumar,
Senior Clerk,
General Branch, Divisional Office,
Southern Railway,
Thiruvananthapuram.
2. A.M.Nizamudhin,
Junior Clerk,
Works Branch,
Divisional Office, Southern Railway,
Thiruvananthapuram. - Applicants

By Advocate Mr T.P.Sajan

Vs

1. Union of India represented by
the General Manager,
Southern Railway,
Chennai.
2. Divisional Railway Manager,
Divisional Office,
Southern Railway,
Thiruvananthapuram.
3. Senior Divisional Personnel Officer,
Southern Railway,
Thiruvananthapuram.
4. V.Syama,
Senior Clerk,
Works Branch,
Divisional Office,
Southern Railway,
Thiruvananthapuram. - Respondents

By Advocate Mr P.Haridas(for R.1 to 3)

By Advocate Mr MR Rajendran Nair(for R-4)

O R D E R

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

There are two applicants in this case. The first applicant, Shri S.Sudheesh Kumar who was promoted from the post of Junior Clerk to that of Senior Clerk on 4.12.97 is borne on the seniority list of Office Clerks in the Engineering Branch, Trivandrum Division. The second applicant, Shri A.M.Nizamudhin who was recruited as Junior Clerk in July 1990 was the seniormost Junior Clerk to be promoted to the post of Senior Clerk, at the relevant time.

2. The essence of the applicants' grievance is that the alleged mutual transfer of Smt.Prabha Somanath, Senior Clerk in the Divisional office, Trivandrum and Smt.V.Syama, Senior Clerk in Madurai Division(4th respondent), ordered in September 1999 did not actually materialise as Smt.Prabha Somanath who was working under Deputy Chief Engineer, Construction Organisation, Madurai on deputation basis joined the Madurai Division office only on 11.2.2002 after a lapse of more than two years. This, according to the applicants, would make the 4th respondent's transfer to Trivandrum Division one way transfer on request and render the assignment of seniority position of Smt.Prabha Somanath to her (the 4th respondent) invalid. Consequently, the promotion of Smt.V.Syama as Head Clerk with effect from 1.9.2000 would cause prejudice to the applicants as they would have got promotions as Head Clerk and Senior Clerk respectively, if the 4th respondent was assigned only bottom seniority treating her transfer from Madurai to

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Trivandrum Division as one way request transfer. The representations A-3 and A-4 made by the applicants went unresponded to. In O.A.186/2002 filed by the applicants, this Tribunal directed the 3rd respondent to consider A-3 and A-4 representations and dispose of the same within two months. The 3rd respondent has passed A-5 order in purported compliance with the directions of this Tribunal. The applicants would submit that in A-5 the 3rd respondent has not considered the facts and rules and hence there is no application of mind. The applicants have therefore come up with this O.A. praying for the following reliefs:

i) Declaration that the seniority assigned to the 4th respondent in A-2 is not in accordance with law and that the 4th respondent is not entitled to be promoted as Head Clerk based on that seniority.

ii) Declaration that the mutual transfer of the 4th respondent with Smt.Prabha Somanath as per A-1 came into effect only on 11.2.2002 the date on which Smt.Prabha Somanath joined duty to the DRM, Madurai.

3. The official respondents in their reply statement would maintain that the transfer of Smt.V.Syama, the 4th respondent and Smt.Prabha Somanath was governed by Para 310 of the IREM and not Para 230 of the IREC as contended by the applicants. The seniority was rightly accorded to the 4th respondent and on her joining Trivandrum Division, Smt.Prabha Somanath lost her lien in Trivandrum Division. It is strongly

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contended by the respondents that with effect from 30.9.99, the 4th respondent and Smt.Prabha Somanath Somnath were not borne under the same Division. Thus, according to the respondents, there was no substance in the applicants' argument that because of the delay on the part of Smt.Prabha Somanath's joining in Madurai Division, the mutual transfer between her and the 4th respondent did not materialise in 1999 and that therefore, the 4th respondent should be considered to have joined at Trivandrum Division on one way request transfer entailing the inevitable assignment of bottom seniority to her. The administrative delay caused in Smt.Prabha Somanath's joining at Madurai Division from the Construction Organisation at Madurai itself, cannot be construed as any unwillingness expressed by either of the transferees, and therefore, the mutual transfer ordered as per A-1 was implemented by the respondents and complied with by the interested transferees, the official respondents would urge.

4. The 4th respondent has also filed a reply statement challenging the averments of the applicants and stating that it was in pursuance of A-1 mutual transfer order that she joined at Trivandrum on 30.9.99. The moment 4th respondent joined at Trivandrum Division, Smt.Prabha Somanath lost her lien in Trivandrum Division and she (the 4th respondent) was assigned the seniority position of the former. Inviting our attention to the letter dated 8.1.2002 from the Headquarters office, Works, Construction Branch, Egmore, Chennai addressed to the DRM(P), Madurai(R-4(b)), the 4th respondent would point

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out that the continuance of Smt.Prabha Somanath in the Construction Organisation was at the request of the Construction Organisation Headquarters at Chennai and that her lien was with Madurai Division with effect from 29.9.99 on which date, the DPO, Madurai issued office order No.140/99/PG communicating the orders of Smt.Prabha Somanath's transfer on mutual basis with herself (i.e. the 4th respondent). The 4th respondent would therefore plead that the O.A. has no merit and that she has been dragged into unnecessary litigation and agony.

5. The applicants have filed rejoinder reiterating their averments in the O.A. and ^{have} stated that Smt.Prabha Somanath did not lose her lien in Trivandrum Division merely on the joining of 4th respondent at Trivandrum.

6. We have gone through the pleadings and other material placed on record. We have also heard Shri T.P.Sajan, learned counsel for the applicants, Shri P.Haridas, learned counsel for respondents 1 to 3 and Shri M.R.Rajendran Nair, learned counsel for R-4. Learned counsel for the applicants would contend that the assignment of Smt.Prabha Somanath's seniority position to the 4th respondent is not correct since Smt.Prabha Somanath had not been actually transferred to Madurai Division till February 2002. Her lien was also retained in Trivandrum Division till February 2002. She was still with the Construction Organisation at Madurai as was the case when A-1 was issued. In other words, the full effect of A-1 transfer order had not taken effect and therefore the 4th respondent

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could not have come to Trivandrum Division on the basis of the mutual transfer. Learned counsel would maintain that the fact that Smt.Prabha Somanath had not reported to the office of the DRM, Madurai in pursuance of the mutual transfer order, A-1, is clearly borne out in the letter dated 24.7.2001 addressed by the DRM, Madurai to DRM, Trivandrum. The said letter, according to the learned counsel, also contained an observation that, unless necessary action to relieve Smt.Prabha Somanath Somnath so as to expedite her joining at Marudai Division was taken, the transfer of the 4th respondent (Smt.V.Syama) from Madurai to Trivandrum would be treated as inter-Divisional one way transfer on bottom seniority. Learned counsel would, therefore, emphatically argue that there was no mutual transfer and that the transfer of the 4th respondent was in reality, an inter-divisional one way request transfer on bottom seniority. In that view of the matter, the 4th respondent ought to have been given bottom seniority instead of the seniority position of Smt.Prabha Somanath, the counsel would maintain. Since in any case, Smt.Prabha Somanath was not physically available in Trivandrum, the applicants being seniormost in their respective cadres, viz, as Senior Clerk and Junior Clerk, could legitimately expect all consequential benefits including ad hoc promotions to the next higher post of Head Clerk and Senior Clerk respectively, learned counsel would urge.

7. Shri P.Haridas would rely on the contentions in the reply statement filed by R-1 to 3 and state that neither the official respondents nor the parties involved in the mutual

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transfer were unwilling to carry out A-1 mutual transfer order. The whole delay in the eventual relief of Smt. Prabha Somanath was caused by the administrative exigency faced in the Construction Organisation at Madurai. Even before the mutual transfer order came through, Smt. Prabha Somanath had been working on deputation basis in the Construction Organisation at Madurai where she continued even after the formal transfer orders were issued. Her continued stay there was under proper authority though the Madurai Division owing to the pressing requirement of staff prevailed upon the authorities and got her relief. But that would not mean that the mutual transfer was not effectuated or that the 4th respondent's transfer to Trivandrum was a one way request transfer necessitating assignment of bottom seniority. The mutual transfer was totally implemented, inspite of the delay involved in getting Smt. Prabha Somanath relieved from the office of the Dy. Chief Engineer, Construction Organisation, Madurai, and she joined the Madurai Division.

8. Shri M.R. Rajendran Nair, appearing for the 4th respondent, would maintain that there was only one transfer order and that was A-1 mutual transfer order whereby the 4th respondent and Smt. Prabha Somanath were transferred to Trivandrum Division and Madurai Division respectively. The 4th respondent, accordingly, got relieved from Madurai and promptly joined Trivandrum Division in full compliance with the transfer order. It could not be therefore stated that the 4th respondent in any manner defeated or delayed the process of mutual transfer. In fact even before the 4th respondent

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came over to Trivandrum in 1999 on the basis of A-1 order, Smt. Prabha Somanath had been working in Madurai under the Construction Organisation and it was only a question of getting her relieved from there. Inviting our specific attention to R-4(b), the learned counsel for the 4th respondent would state that even in January 2002, effort was made by the headquarters of the Works Construction Branch to extend the duty tenure of Smt. Prabha Somanath in the Construction Organisation at Madurai under the Divisional Chief Engineer. The learned counsel therefore, urges that the applicants in the O.A. had no genuine grievance to be redressed.

9. On a consideration of the relevant pleadings on record and the arguments put forward by the learned counsel, we notice that the applicants in this case attempt to canvass the proposition that Smt. Prabha Somanath's lien was transferred only in February 2002, that since she was not physically present in the Madurai Division in pursuance of A-1, the mutuality of the transfer is defeated and that, as a consequence, the applicants would move up in their seniority positions and would be entitled to all service benefits including right to be considered for ad hoc promotions. We find that this view is untenable. If Smt. Prabha Somanath was not transferred, the 4th respondent could not have taken her seniority position and occupy that post. It is a fact that Smt. Prabha Somanath who had been doing duty under the Construction Organisation at Madurai much before A-1 transfer order was issued, was under some administrative compulsions, made to continue in the

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Construction Organisation, Madurai for quite some time after the 4th respondent came to occupy her position in the Trivandrum Division. That this was but a Departmental arrangement is quite obvious from R-4(b) letter dated 8.1.2002 written by the Chief Engineer/CN/Mad from the Headquarters of Work Construction Branch at Chennai addressed to Divisional Manager, Madurai. The said letter is reproduced below:

"Based on DPO/MDU O.O.No.140/99/PG dated 29.9.99, Smt.Prabha Somanath, Sr.Clerk, Dy.CE/GC/G/MDU(with lien in TVC division) was issued with orders of transfer to DRM/W/O/MDU on mutual basis with Smt.V.Syama, Sr.Clerk, DRM/W/O/MDU vide CE/CN/MS O.O. dated 22.6.2000(copy enclosed). Smt.V.Syama on relief from MDU Division has reported in Sr.DEN/O/TVC on 30.9.99. As the services of Smt.Prabha Somanath are very much required in Construction Organisation, she was not relieved and is still working in Dy.CE/GC/G/MDU.

Hence it is requested that Smt.Prabha Somanath may be allowed to continue to work in Dy.CE/GC/G/MDU duly providing lien from the date of O.O. issued by DPO/MDU."

It is evident from the above that the 4th respondent had acted in compliance with A-1 mutual transfer order and was allowed to join at Trivandrum on 30.9.99 and that the administration needed Smt.Prabha Somanath's services in the Construction Organisation. Thus, there is no deliberate attempt on anybody's part to delay the implementation or defeat the purpose of the A-1 transfer order. It is also clear from R-4(b) that Smt.Prabha Somanath's lien also was to be provided at Madurai from 29.9.99, i.e. the date on which the transfer order on mutual basis with the 4th respondent was communicated to Smt.Prabha Somanath. Therefore, we have no hesitation in holding that the 4th respondent came to

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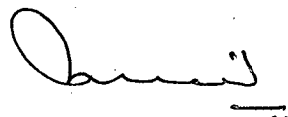
Trivandrum only in pursuance of the mutual transfer as per A-1 strictly in accordance with Rule 310 of the the IREM. Just because Smt.Prabha Somanath's relief from the Construction Organisation at Madurai got delayed for no fault of hers, but evidently on account of administrative exigency, it would not mean that her transfer to Madurai was only on 11.2.2002, the date on which she was relieved from the Construction Organisation at Madurai. Nor can it be considered that the 4th respondent's transfer from Madurai to Trivandrum would become a one way request transfer on account of that. We therefore, hold that the mutual transfer of Smt.Prabha Somanath from Trivandrum to Madurai and the 4th respondent from Madurai to Trivandrum, albeit the time lag between the dates of their joining at the respective stations, was perfectly in accordance with the rules governing the same. In that view of the matter, the assignment of Smt.Prabha Somanath's seniority position to the 4th respondent was in order and all the consequential action in pursuance thereof would also be valid under law. The applicants can have no valid grievance against such action.

10. In the light of the reasons stated above, we find no merit in this application. None of the prayers can be granted. The application is dismissed, leaving the parties to bear their respective costs.

Dated, the 26th June, 2003.



K.V.SACHIDANANDAN
JUDICIAL MEMBER



T.N.T.NAYAR
ADMINISTRATIVE MEMBER