

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 611 of 2005

w i t h

Original Application No. 671 of 2005

wednesday, this the 13th day of September, 2006.

C O R A M :

HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

1. O.A. NO. 611/2005

R. Lokanathan, S/o. Raju,
Gate Keeper, at Km 134/11-12,
Southern Railway,
Mutharasanallur Railway Station and Post Office,
Thiruchirappalli, Residing at Mallatchipuram,
Kamparasam Pettai Post, Trichy District.

... Applicant.

(By Advocate Mr. T C Govindaswamy)

v e r s u s

1. Union of India represented by the
General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai - 3.
2. The Senior Divisional Peronnel Officer,
Southern Railway, Palghat Division,
Palghat.
3. The Senior Divisional Engineer,
Southern Railway, Palghat Division,
Palghat.
4. The Senior Section Engineer (Permanent Way),
Southern Railway, Thiruchirappalli,
Thiruchirappalli.



5. E. Kamala, Rest Giver Gate Keeper,
Southern Railway at KM 107/10-11,
Jeeyapuram RS & PO,
Near Kulithalai (Tamil Nadu).
6. N. Vijendran, Rest Giver Gate Keeper,
Southern Railway,
Mutharasanallur Railway Station and Post Office,
Thiruchirappalli.

... Respondents.

(By Advocate Mr. Mrs. Sumathi Dandapani)

2. O.A. No. 671/2005

N. Veejendran,
S/o. Natarajan, RGGK,
Mutharasanallur Railway Station and Post Office,
Thiruchirappalli District, Residing at No.3/71,
"Arun Illam", Thiruchendurai, Jeeya Puram,
Trichy District.

... Applicant.

(By Advocate Mr. T.C. Govindaswami)

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2. The Senior Divisional Peronnel Officer,
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3. The Senior Divisional Engineer (East),
Southern Railway, Palghat Division,
Palghat.
4. The Senior Section Engineer (Permanent Way),
Southern Railway, Thiruchirappalli,
Thiruchirappalli.
5. E. Kamala, Rest Giver Gate Keeper,
Southern Railway at KM 107/10-11,
Jeeyapuram RS & PO,
Near Kulithalai (Tamil Nadu).

... Respondents.

(By Advocate Mrs. Sumathi Dandapani)



ORDER
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

These two applications are disposed of by a common order.

2. The applicant in OA No. 611/2005 has challenged order dated 15.8.2005 (Annexure A2) whereby he stood transferred from RGGK 134/11-12 to RGGK 125/5-6. The Grounds for challenge include (i) lack of competence of the authority which issued the transfer order and (ii) the transfer has been effected to favour Respondent No. 5.

3. Brief facts of the case: The applicant was serving as a gangman and in 2004, he had made a request for transfer from gangman to Gatekeeper in any of the Gates as he had already served as many as 17 years as gangman. His request was acceded to and by an order dated 19-7-2005 he was transferred to RGGK 134/11-12, the order having been issued by the Sr. Section Engineer P.Way, respondent No. 4 . The applicant readily accepted this order passed by the Sr. Section Engineer and joined the said post. By order dated 15-08-2005 the applicant was transferred from the said gate 134/11-12 as RGGK 125/5-6. This order has also been passed by the very same authority i.e. the Sr. Section Engineer. Though there is no reference of an earlier Annexure A-4 order dated 10-08-2005, passed by the Sr. DPO, transferring Inter alia the applicant from RGGK 134/11-12 to RGGK 125/5-6,

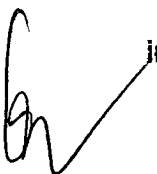
the later order is in fact a relieving order. The applicant has questioned the competence of the authority to pass this relieving order and he has also alleged that respondent 4 had been subjected to undue influence by the union, whereby he has transferred Respondent No. 5 from the post of Gangwoman, MTNL (Mutharasanallur) to RGGK 134/11-12 in which the applicant was posted only on 19-07-2005. In this regard, relevant para No. 4(D) of the OA No. 611/05 is reproduced below:

"4.D. The applicant begs to submit that Annexure A3 transfer order has been issued by the 4th respondent just to satisfy the 5th respondent on account of extreme pressure exerted by the Southern Railway Mazdoor Union upon the 4th respondent. As a matter of fact, in spite of Annexure A1 posting order, the 5th respondent had not joined at Jeeyapuram even as on this date and on the contrary she had exerted considerable pressure on the 4th respondent through Trade Union officials and it is the Trade Union officials' pressure which had forced the 4th respondent, who is not competent to issue a transfer order, to issue Annexure A2 whereby transferring the applicant. Apart from Annexure A2 there is no other transfer order issued by the competent authority, though Annexure A1 suggests that it is in continuation of an earlier transfer order. That apart, the applicant belong to Gang No. 11 at Mutharasanallur and it is within its control that the Level Crossing Gate at KM 134/11-12 is situated. The transfer of the applicant to Level Crossing at Gate No.125/5-6 means transfer of the applicant from Mutharasanallur to Jeeyapuram having Gang Headquarters bearing No.10. The applicant begs to submit that the applicant was posted to



Mutharasanallur by the second respondent, Senior Divisional Personnel Officer. The present transfer of the applicant is neither with the knowledge and approval of the second respondent nor of the Assistant Divisional Engineer, Karur. The 4th respondent has no authority whatsoever to transfer the applicant. Transfer of the applicant means, the applicant is presently drawing House Rent Allowance and City Compensatory Allowance at city rates applicable to Trichy Fort and in case the applicant is transferred to Jeeyapuram, he would be getting house rent allowance and CCA only at the rate applicable to unclassified cities. On the contrary, the 5th respondent, who is transferred and posted against the applicant's place of posting and drawing house rent allowance at unclassified city rates would be drawing HRA and CCA at the city rates. In other words, the applicant would suffer a loss of about Rs. 600/- in his monthly take home salary and after all the deductions, the applicant is hardly getting a monthly salary of about Rs. 2500/- and now with further loss of Rs. 600/- per month, it will be very difficult for him to manage the affairs of his home. The applicant's brother and his wife passed away leaving behind two children. The applicant's father is no more and therefore, apart from maintaining applicant's family he is also to look after and bear the expenses of the children of his brother. With the meager salary which the applicant is drawing, it will be very difficult for him to make both ends meet."

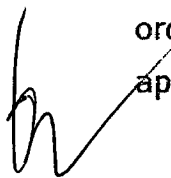
4. The transfer order in fact is triangular. R-6 who was also transferred by order dated 19th July, 2005 has been subjected to another transfer by the impugned order. R6 has been impleaded as the applicant has been



transferred to that gate where R-6 was posted.

5. Official Respondents have contested the OA. Their stand is as under:-

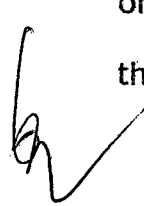
(a) For filling up the post of RGGK, volunteers were called from Gangmen/Trackmen vide SE/PW/TP letter No. TP 46 dated 9.9.2004. The applicant expressed his willingness as per letter dated 20.9.2004. His willingness was submitted wherein it is stated that he is willing to work as Gate Keeper anywhere in SE/PW/TP Section. The applicant was posted as RGGK as per office order dated 9.7.2005 (Annexure R/2) issued by the Assistant Divisional Engineer, Karur (ADEN/KRR), a Group 'B' officer who is competent to post the applicant. This order was duly intimated by the Section Engineer vide Annexure A1. Thus, Annexure A1 was issued by the Section Engineer, the 4th respondent, based on the order of Assistant Divisional Engineer, who is competent to issue posting orders in favour of the applicant. After passing Annexure R/2 order, various representations were received from staff and representatives of organised labour. Hence, the higher authority (3rd respondent) reviewed the entire issue and it was decided to partially modify the order dated 9.7.2005. The Senior Divisional Engineer has given sufficient reason for modifying the order, which is contained in the file. Modified order was communicated on 10.8.2005 by the 2nd respondent, Senior Divisional Personnel Officer vide Annexure R/3. Annexure R/3 order to the extent it relates to Trichy Fort Section (TP) was duly communicated by the Section Engineer, 4th respondent, as per Annexure A/2. Thus, Annexure A/2 was issued by the Section Engineer based on Annexure R/3 order issued by the Senior Divisional Personnel Officer with the approval of Senior Divisional Engineer, Palghat. This fact is well



within the knowledge of the applicant. However, very tactfully it is stated by him in para 4 (d) that apart from Annexure A/2, there is no other transfer order issued by any competent authority, though Annexure A1 suggests that it is in continuation of an earlier transfer order. 4th respondent, the supervisor, had only communicated the order issued by the competent authority. Since the transfer involves only a distance of 4.6 k.m. , the same cannot cause undue worry to the applicant. The applicant had approached this Tribunal without exhausting alternate remedy available to him. The applicant had made wild allegations against the 4th respondent for obtaining an order of stay from this Tribunal. In terms of Annexure R/1, the applicant had given his willingness to work as Gate Keeper anywhere in the Section. Accordingly, he was posted as RGGK in L.C. at KM 134/11-12, which was later modified and he was posted as RGGK in L.C. at KM 125/5-6. The statement of the applicant that by posting to L.C. 125/5-6, he will suffer loss of Rs. 600/- in his salary is not relevant to the subject matter under adjudication.

6. Private respondents have not entered appearance.

7. Arguments were heard. With reference to R-3 (order dated 10.08.2005, also filed by the applicant vide Annexure A-4), which was passed by the competent authority, the counsel for the applicant fairly conceded that the said order being by a competent authority and the same not in conflict with the order impugned, it could be safely stated that the impugned order is only an order of communication of the order by the competent authority and thus, the ground of incompetence of R-4 in passing the order has not been



pressed by the counsel.

8. As regards alleged undue favour shown to R-5, the counsel for the applicant has submitted that R-4 had been unduly influenced or pressurized by the Union by which he had to modify the earlier transfer order of 19th July, 2005. It is this respondent that had influenced Respondent No. 2 to have the earlier transfer order modified so that R-5 could well be accommodated. The counsel for the applicant submitted that though it is true that the applicant had made a request for switching over from the post of Gangman to Gatekeeper that the said request had been consumed by passing the original order dated 19th July, 2005. Thus, this request having been consumed, the word 'Request' appearing in order dated 10-08-2005 i.e. Annexure R-3 (and also Annexure A-4) against the name of the applicant is totally incorrect, misleading and hence, the said order becomes illegal. That Respondent No. 2 had been influenced by Respondent No. 4 is evident from the fact that the order dated 10-08-2005 contains a reference from R-4.

9. Respondents' counsel in a determined tone asserted that in matters of transfer, judicial interference has only a limited scope and has referred to the following two judgments of the Apex Court:-

- (a) **State of U.P. v. Gobardhan Lal, (2004) 11 SCC 402,**
wherein, the Apex Court has held as under:-

"Transfer of an employee is not only an incident inherent in the

terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

(b) State of U.P. v. Siya Ram, (2004) 7 SCC 405 wherein the Apex Court has held as under:-

No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be

an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan—(2001) 8 SCC 574.

6. The above position was recently highlighted in Union of India v. Janardhan Debanath (2004) 4 SCC 245

7. In view of the settled position in law the judgment of the High Court is indefensible and is set aside.

10. The counsel for the respondents has submitted that since the applicant had made a request for shifting him from the post of Gangman to Gatekeeper and the same had been acceded to there is a request from his side. True, the earlier order satisfied the request of the applicant but the impugned order by virtue of inclusion of the term, "request" in the cannot be got vitiated on the ground that the said request has already been consumed.

11. I am inclined to accept the contention of the learned counsel for respondents. The request of the applicant for transfer from Gangman side to Gatekeeper has been accepted and he cannot have any grievance over his subsequent posting as long as he is allowed to perform the duties of a gatekeeper. That there may be some monetary loss on account of house rent allowance or C.C.A. etc., cannot be a ground for such challenge.



12. The applicant has not at all made out a case and as such the same is dismissed.

13. So far as OA No. 671/05 is concerned, the applicant challenges his posting as Chowkidar vide order dated 30-08-2005 {Annexure A-4/4(a) }.

14. This case is linked with the above case of 611/2005 in that vide order dated 10-08-2005 (Annexure A-3), there was almost a triangular transfer as under:-

- (a) K. Kamala had been transferred from RGGK LC 57 KM 107/10-11 (on request) to RGGKLC80 KM 133/13-14.
- (b) N. Veejendran (applicant) had been transferred from RGGKLC 80 KM 133/13-14 (on request to RGGKLC82 KM 133/13-14 to RGGKLC82 KM 134/11-12.
- (c) R. Lokanathan (applicant in 611/05) had been transferred from RGGKLC 82 KM 134/11-12(request) to RGGKLC 72 KM 125/5-6.

15. Passing of the impugned order dated 30-08-2005 became inevitable as there was a stay order against the aforesaid order dated 10-08-2005 in respect of the applicant in OA 611/05. And by that time, K. Kamala occupied the post of RGGK in gate 133/13-14, wherefrom the applicant in this OA was transferred. It has been stated by the counsel for the applicant that the applicant has now been posted out. This aspect has to be confirmed by the respondents. Be that as it may, once the earlier transfer order dated 10.08.2005 had been upheld, there would be no further requirement of the



applicant in this OA to be retained as watchman. The OA itself would, thus, become infructuous. If the respondents are desirous of shifting the applicant from the existing posting (i.e. if the applicant has been working as Gangman or in any other capacity and the respondents would like to stick to the transfer order dated 10-08-2005), it is for the respondents to decide but at the same time, they may seek the willingness of the applicant, as he would otherwise have to face frequent move.

16. The **OA No. 611/05 is dismissed** while **OA 671/05 is disposed of** on the above terms.

17. No order as to costs.

(Dated, the 13th September, 2006)



K B S RAJAN
JUDICIAL MEMBER

cvr.