

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 7 1992.

DATE OF DECISION 8.6.93

P.K. Sivaprasad Applicant (s)

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

Versus

Union of India through the Respondent (s)
General Manager, Southern Railway
Madras-3 and others

Mr. M.C. Cherian Advocate for the Respondent (s) 1k4

CORAM :

The Hon'ble Mr. N. DHARMADAN JUDICIAL MEMBER

~~The Hon'ble Mr.~~

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

MR. N. DHARMADAN JUDICIAL MEMBER

Applicant is at present working as Station Master Grade III at Walayar Railway Station of the Palghat Division of Southern Railway. He is aggrieved by the denial of inter-divisional transfer to Trivandrum Division based on his request made in 1979, repeated in 1985.

2. According to applicant when Trivandrum Division was formed in 1979 he submitted his option for getting inter divisional transfer to Trivandrum Division. That was accepted by the Railway and registered as Sl. No. 50 in the list of employees prepared by them, as on 15.8.79. While expecting orders he got information that Railways issued another order calling upon persons working in the Palghat

Division to submit their option before 28.2.85 for getting transfer to Trivandrum Division. Though applicant submitted his willingness to get a transfer to Trivandrum Division, he was not given transfer. M/s. P.N.Thankachan and Satheesh Babu who were senior to the applicant were also transferred to Trivandrum Division. By a further order Annexure A-3 three juniors of applicant, respondents 5, 6 & 7 were given transfer to Trivandrum Division. According to applicant this transfer has been passed ignoring the claim of applicant. Hence, he filed representation Annexure A-4 10.7.91 before the DRM which was considered and rejected by impugned Annexure A-5 stating that applicant has not responded to the letter issued in February, 1985 inviting option from persons working in Palghat Division. ~~XXXXXXXXXXXX~~ By proceedings dated 8.3.85 name of applicant was deleted from the list of optees on the ground that he is ^Munwilling to get a transfer to Trivandrum division. Applicant in this application filed under section 19 of the Administrative Tribunals' Act is challenging Annexures A-3 and A-5. He also prays for a direction to respondents to grant inter-divisional transfer to the applicant with seniority above Respondents 5, 6 & 7.

3. Respondents have filed statement and reply statement. They have stated that respondents 5, 6 & 7 have registered their request on 6.2.81, 6.4.81 and 12.6.81 respectively for getting inter divisional transfer to Trivandrum Division. The option given by applicant in 1979 cannot be acted upon for giving inter-divisional transfer with bottom seniority because a specific letter had been issued on 28.2.85 requesting employees working in the Palghat Division to express their willingness for getting transfer to Trivandrum Division, ^{which was not responded to by applicant} Out of 19 employees referred to in Annexure A-2, 7 employees expressed their unwillingness, 5 expressed their willingness and the remaining 7 were deleted from the list because of no option. The applicant is one of the persons whose name was deleted from the

list because of the failure to respond to letter dated 28.2.85 was treated as unwillingness for getting inter-divisional transfer to Trivandrum Division with bottom seniority. The said letter is produced as Ext. R-1. Hence, applicant's request for getting any inter-divisional transfer cannot be granted on the basis of the original request. Since applicant has not produced his option submitted pursuant to Annexure A-2 his case for giving transfer to Trivandrum Division is to be rejected.

4. In Annexure A-4 representation submitted by applicant on 10.7.91 he has very clearly stated that pursuant to the option given by him a list was published in which he is at Sl. No. 50. His enquiry revealed that the said option would be acted upon for giving inter-divisional transfer with bottom seniority even though the original idea was to grant inter-divisional transfer maintaining the seniority. He further submitted that in 1985 also he reiterated the request for getting inter-divisional transfer.

5. The case of respondents 5, 6 & 7 for getting inter-divisional transfer to Trivandrum Division can be distinguished by taking into consideration that they have been appointed for Palghat Division after submission of applicant's request in 1979 and their request registered by respondents only in 1981/82 and their cases were not considered accepting request. Their case might have been separately dealt with.

Hence, I am of the view that applicant's earlier request in 1979 deserves consideration in the light of clear statement made by applicant in Annexure A-4 representation. The reason given by DRM for rejecting request does not make mention about earlier request. He only stated that applicant did not respond to the letter issued in February, 1985 calling upon persons working in Palghat Division to express their willingness.

6. Applicant asserted that he has submitted representation again in 1985 pursuant to letter issued by the Railway

expressing his willingness to go to Trivandrum Division with bottom seniority. But the Railways denied the statement. According to them no such letter was received from the applicant pursuant to letter dated 15.2.85. According to the applicant even if he has not responded to the letter issued by the Railways on 15.2.85, his prior request for getting inter-divisional transfer submitted in 1979 can be acted upon and he can be given inter-divisional transfer to Trivandrum Division. The Railway has no case that the request made in 1979 for getting inter divisional transfer cannot be treated as an option at all for considering the request of the applicant. Their case is that in 1979 during the formation⁴ period of Trivandrum Division options⁴ had been called for with the object of giving transfers⁴ protecting the seniority, but in 1985 when the situation changed a fresh option was called for after taking a decision to give inter-divisional transfers⁴ only with bottom position. So, the only difference between options called for in 1979 and 1985 is that while the former protects seniority, the latter gives the optee bottom most position on implementation of the transfer. The learned counsel for applicant very fairly submitted that⁴ applicant⁴ seeks inter-divisional transfer with only bottom seniority. In the light of the request now made at the bar I am satisfied that interest⁴ will be met in this case if the application is disposed of with direction after accepting the request.

7. Since I have already indicated that the case of the respondents 5, 6 & 7 are different and distinguishable, I am not⁴ quashing Annexure A-3. Without disturbing the seniority of respondents 5, 6 & 7 relief can be granted to the applicant on the facts and circumstances of the case. The respondents 1 to 4 can give inter divisional transfer to the applicant taking into account the option given by applicant in 1979 as indicated above. The original request made by applicant for getting transfer cannot be treated as having been superseded by the letter

issued by Railways on 15.2.85 and it cannot be ignored altogether.

8. Having regard to the facts and circumstances of the case I am of the view that since the DRM has not considered applicant's earlier option given in 1979 while disposing of Annexure A-5 the impugned order cannot be sustained.

Accordingly, I quash the same and direct second respondent to consider the claim of applicant for inter-divisional transfer based on 1979 option and post him in any of the existing or next arising vacancy of Station Master in the Trivandrum Division.

9. The application is allowed as above.

10. There shall be no order as to costs.



8.6.93

(N. DHARMADAN)

JUDICIAL MEMBER

8.6.93

kmm