

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 617 OF 2009

Tuesday, this the 14th day of December, 2010.

CORAM:

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Roby Abraham,
Junior Stenographer,
O/o the Deputy Chief Engineer,
Construction Ernakulam (DY.CE/CN/ERS),
Residing at Kumarickal House, Vengoor,
Kindangoor (P.O.), Angamaly. **Applicant**

(By Advocate Mr. C.S. Ajith Prakash)

Versus

1. Union of India, represented by
the General Manager,
Southern Railway, Chennai.
2. The Chief Personnel Officer,
Office of the Chief Personnel Officer,
Southern Railway, Chennai.
3. The Senior Divisional Personnel Officer,
Southern Railway, Palakkad Division,
Olavakkod.
4. The Chief Engineer Construction (CE/CN/ERS),
Southern Railway, Ernakulam.
5. The Deputy Chief Engineer,
Construction (DY.CE/CN/ERS),
Southern Railway, Ernakulam.
6. The Chief Administrative Officer (Construction)
MAS/EGMORE, Southern Railway,
Chennai. **Respondents**

(By Advocate Mrs. Sumathi Dandapani (Senior)
with Advocate Mr. Thomas Mathew Nellimoottil)



The application having been heard on 07.12.2010, the Tribunal on 14.12.10 delivered the following:

ORDER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

This O.A. has been filed by the applicant mainly for quashing Annexure A-14 order transferring him from Ernakulam to Podannur, and for a direction to retain him at Ernakulam and to disburse the pay and allowances due to him from the date of his joining duty at Ernakulam.

2. The applicant who joined the North-East Frontier Railway, Guwahati, after serving various places outside his home State, got a transfer to Palghat Division on 19.11.1999. While working as Junior Stenographer at Palghat, he had applied for a transfer to Ernakulam on account of his own health problems and his aged widowed and sick mother and other problems. His request was allowed and he reported for duty on 26.08.2009 at the office of the Chief Engineer (Construction), Ernakulam. He was posted on the same day at the office of the Dy. Chief Engineer (Construction). 5 days later on 31.08.2009, vide Annexure A-14 order, the applicant is transferred to the office of the Dy. Chief Engineer (Construction), Podannur, defeating the very purpose of request transfer. Hence this O.A.

3. The applicant submits that transferring him from Ernakulam to Podannur within a week after joining at Ernakulam is arbitrary. The

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applicant had requested for a transfer to Ernakulam narrating his compelling family circumstances warranting his presence at Ernakulam. The present transfer order put him in a most disadvantageous position. He had while submitting the request for transfer expressed his willingness to work in any office in the construction wing, Ernakulam. The applicant was posted in an existing vacancy at Ernakulam in the office of the construction wing, Southern Railway. Neither the Chief Engineer (Construction) nor the Chief Administrative Officer reported 'nil' vacancy while forwarding the applicant's request for transfer to Ernakulam. The applicant has worked in the North-Eastern States which should earn some sympathy for him for a posting to his home station.

4. The respondents contested the O.A. In their reply statement, they submitted that the order transferring him to Ernakulam was issued without ascertaining the vacancy position at Ernakulam. The applicant expressed his willingness to work anywhere in the construction organization. As there was no vacancy available in the construction wing at Ernakulam, the applicant was posted to Podannur where a Junior Stenographer is required. It is the prerogative of the competent authority to post an employee from one unit to another under his jurisdiction based on exigencies of service. The CPO is competent after getting requisition from construction wing to transfer an employee to construction wing from the Division. The Chief Administrative Officer (Construction) is competent to issue further posting orders within the construction offices under his jurisdiction. The CPO who was requested to post a Junior Stenographer to construction wing, the Senior DPO, Palghat, had posted the applicant

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directly to Ernakulam instead to construction headquarters for further posting. In the circumstances, the O.A. should be dismissed.

5. In the rejoinder, the applicant submitted that there is a vacancy of Stenographer in the office of the Executive Engineer (Construction), Ernakulam, and yet another post lying vacant in the office of the Executive Engineer, Muvattupuzha and another vacancy under the Deputy Chief Engineer (Electrical), Ernakulam. Further, the applicant stated that his claim is genuine and merited consideration by the concerned authority. The request transfers are to be processed based on the family convenience or other personal purposes without directly affecting the administration.

6. In the affidavit filed on behalf of the respondents it was stated that there is no post of junior Stenographer sanctioned in the entire construction wing both Electrical as well as civil and both in the Chief Engineer's office and other offices including the Executive Engineers. It was further stated that the Deputy Chief Electrical Engineer (Construction), Ernakulam and Deputy Chief Engineer (Construction), Ernakulam, have already been advised to disburse the salary and allowances to the applicant from 1.9.2009 onwards.

7. Vide M.A. No. 953 of 2009, the applicant sought an amendment in the O.A. to incorporate certain details, which was allowed on 01.06.2010.

8. In the reply to the amended O.A., the respondents submitted that

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the vacancy available at Electrical wing at Ernakulam is that of a Senior Stenographer while the applicant is only a Junior Stenographer. For the said vacancy of Senior Stenographer, action was already taken to fill it up. It was further submitted that the posting of the applicant at Podannur is temporary till such a time a vacancy arises at Ernakulam.

9. We have heard Mr. C.S. Ajith Prakash, learned counsel for the applicant and Mrs. Sumathi Dandapani (Sr.) with Mr. Thomas Mathew Nellimoottil, learned counsel for the respondents and perused the records.

10. On a careful careful perusal of the records and the contentions of the rival parties, I find that the applicant had certain genuine personal problems which necessitated his request for a posting at his home station. He had spent a major part of his services in the North-Eastern States. He himself is a cardiac patient. His aged mother is also a cardiac patient and is bed ridden. The respondents have considered his case very sympathetically and allowed his request for a transfer to Ernakulam. However, instead of placing him at the construction wing headquarters, he was directly posted to Ernakulam, where apparently there was no vacancy of Junior Stenographer. Therefore, he was transferred to Podannur. But this transfer does not meet the requirement of the applicant. He has been placed in a worse situation than he was earlier, by the impugned transfer order. In complying with the interim order dated 10.09.2009 on Anenxure A-14 transfer order dated 31.08.2009, the respondents have temporarily accommodated the applicant against an

existing vacancy of Senior Stenographer of Electrical Department keeping in abeyance the posting of Sri K.V. Eswaran Kutty, Senior Stenographer, TRD Branch, Palghat Division. Meanwhile, vide order dated Shri K.V. Eswaran Kutty and the applicant were granted financial upgradation under ACP Scheme, 2008, as a result, both of them are having the same pay scale of Rs. 9300-34800 with the same grade pay of Rs. 4600/-. As per the say of the applicant, Sri K.V. Eswaran Kutty is not interested in getting a posting at Ernakulam. The respondents all along having been very sympathetic to the applicant, it would be in the fitness of things, if he could be accommodated at Ernakulam. It may be possible to accommodate the applicant against the existing vacancy of a Senior Stenographer as the applicant is at par with a Senior Stenographer in the matter of pay and allowances, or any other arrangement be made to keep the applicant at Ernakulam. It is true that the applicant does not have an enforceable right to get a particular posting. The competent authority has the discretion to transfer an employee from one place to another in the exigencies of service. But it is insensitive to transfer the applicant within a week of appointing him at Ernakulam which he got after strenuous efforts.

11. Having considered the facts and circumstances of the instant case, I direct the respondents to consider the case of the applicant afresh for a posting at Ernakulam and pass suitable order within a period of 60 (sixty) days from the date of receipt of a copy of this order. Till such time, the interim order granted on 10.09.2009 shall continue. Within the aforesaid period, the respondents are further directed to disburse the salary and

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allowances payable to the applicant from the date of his joining the duty at Ernakulam.

12. The O.A. is allowed to the extent indicated above. No order as to costs.

(Dated, the 14th day of December, 2010.)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER

CVR.