

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 108/2012

Monday, this the 17th day of September, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K.NOORJEHAN, ADMINISTRATIVE MEMBER

Johnson Varghese, S/o K.J.Varghese,
Senior Section Engineer, Electrical,
General Services, O/o the Senior Section Engineer,
(A/C), Trivandrum, Southern Railway,
Trivandrum Division, Residing at "TC 6/910"
Sivasakthi Nagar, Thuruvikkal.P.O.
Trivandrum-31.

Applicant

(By Advocate Mr Shafik M Abdulkhadir)

v.

1. Union of India represented by
General Manager, Southern Railway,
Headquarters Office, Chennai-3.
2. The chief Personnel Officer,
Southern Railway,
Headquarters Office, Chennai-3.
3. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum-695 001.

Respondents

(By Advocate Mr Thomas Mathew Nellimoottil)

This application having been finally heard on 13.09.2012, the Tribunal on
17.09.2012 delivered the following:



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

The applicant challenges his transfer from Thiruvananthapuram to Nagarcoil, vide Annexure A-1 and has also challenged the rejection of his representation against the aforesaid transfer order vide Annexure A-2.

2. To narrate the brief facts of the case, the applicant earlier submitted a request for transfer to Thiruvananthapuram Division on the ground of medical treatment of his wife, who was suffering from cancer. She died in 2006 leaving behind her two children aged nine and four years. The applicant entered into a second marriage and has two children through this wedlock. His wife is employed as an Upper Division Clerk in the transport department of the State of Kerala. The applicant met with an accident whereby he had his knee damaged with a torn ligament. It was at that juncture that the applicant was transferred from Thiruvananthapuram to Nagarcoil vide Annexure A-1. This was challenged by him through OA No. 956 of 2011. The Tribunal disposed of the said OA with a direction to the respondents at the level of Chief Personnel Officer to consider and decide the representation made by the applicant keeping in view the instructions of the respondent-Railways as well as the Government of India about placement of both husband and wife in the same place when both of them are employed. Respondents, in pursuance of the aforesaid order of the Tribunal did consider the case of the applicants but rejected the same vide Annexure A-2. As regards posting of husband and wife in the same place,

the respondents have stated in the last three paragraphs as hereunder:

"DOPT instructions dated 30-09-2009 are contained in Board's letter No. E(NG)I-2009/TR/29 dated 02-02-2010 states as under:

'Where one of the spouses is a railway servant and the other belongs to a state service:

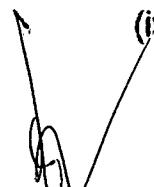
The Railway servant should be posted at the station/place in the Railway Division/PU in whose territorial jurisdiction the place/state of posting of his/her spouse falls. If it is not possible, if a request from the railway servant to the Controlling Authority of the spouse for his/her posting at the place of posting of the railway servant is received, the same may be forwarded to the concerned authority for sympathetic consideration.'

You have been posted to NCJ which is in TVC Division, 70 Kms away from TVC where your spouse is working.

Further, if any representation is received for transfer linger never had a double and other of the of your spouse forwarding the same to State government authorities will be considered."

3. The applicant has thus come up against the same and has claimed the following reliefs:-

- (i) To call for the records leading to the issue of Annexure A-1 to A-8 and to quash A-2 and A-1 to the extent it transfers the applicant to Nagercoil.
- (ii) To declare that the applicant is entitled for retention at Trivandrum in the present posting as per A-8 instructions of the Government of India.
- (iii) To pass such any other orders which this Hon'ble Court may deem fit and proper in the circumstances of the case.
- (iv) To award cost of this proceedings.



4. Respondents have contested the OA. They have contended that transfer is an incidence of service; transfer orders on administrative grounds are not to be interfered with by the courts unless malafide is cited. They have referred to a number of decisions as itemised below to substantiate that there is only limited scope for judicial review of transfer orders:

(a) **Nirmalenduj Bhardan vs GM NF Railways** (1986) 2 SLJ

(CAT) 108,

(b) **Sudhir Prasad Jain vs Union of India** 1986 (2) SLJ (CAT)

278,

(c) **Union of India vs H.N. Kirtania** (1989) 3 SLJ 44 (SC),

(d) **C.K. Chacko vs Sr. Dy. Director General Geological Survey of India, Hyderabad** (1988) 2 SLJ (CAT) 330,

(e) **Bank of India vs Jagjit Singh Mehta** (CA No. 4541 of 1991 decided on 22-11-1991),

(f) **Union of India vs S.L. Abbas** decided on 27-04-1993,

(g) **Mrs. Silpi Bose vs State of Bihar** AIR 1991 SC 532,

(h)) **Sakshi vs Union of India** (2004) supp (2) SLR 723,

(i) **Union of India vs Janardhan Debnath & Anr,**

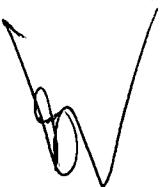
(j) **Kendriya Vidyalaya Sangathan vs Damodar Prasad Pandey and others.**

5. The applicant filed his rejoinder and the respondents, additional reply.



6. Counsel for the applicant argued that the applicant's wife is employed in the State Government of Kerala and the posting of the applicant is at Tamil Nadu. Hence, the question of the spouse of the applicant seeking transfer to Tamil Nadu does not arise. In so far as the policy of the Railways on transfer, the same is that both the spouses should be posted in the same place. It is only when it is not possible to post the Railway servant where his/her spouse is posted that the alternative aspect of recommending the transfer of the spouse to the place of posting of the Railway servant could be considered. In the instant case, there is no possibility of the spouse moving out of Kerala. The applicant has cited a number of individuals who have been in Thiruvananthapuram for decades. The family has four children to look after and the applicant's spouse working in Thiruvananthapuram, coupled with the fact that he has become a victim of a motor bike accident, the transfer order issued by the respondents and rejection of his representation is violative of the professed norms as contained in para 9 of the guidelines, referred to by the respondents.

7. Counsel for the respondents argued that Nagarcoil, where the applicant stands transferred is only 70 kms away from Thiruvananthapuram. The same could be covered within 90 minutes. When the respondents have stated that any representation of the spouse would be forwarded to the State Government, they meant that since the territorial boundary of Kerala State is very near Nagarcoil, there could be



offices in the border of the State where the applicant's spouse could be posted.

8. Arguments were heard and documents perused. Law is clear that judicial intervention on transfer matters is limited and save (a) where an order has been passed by an incompetent authority, or (b) where the transfer order smacks malafide or (c) where there is any infraction of the professed norms (See **N.K. Singh vs Union of India 1994 (6) SCC 98** as referred to in **State of UP vs Ashok Kumar Saxena (1998) 3 SCC 303**), the order of transfer cannot be interfered with. The case does fall in one of the exempted categories i.e. transfer order is violative of professed norms.

9. It is not the case of the respondents that there is no post at Thiruvananthapuram. In fact, justifications have been given for retention for decades of others vide para 10 of the reply. One of the reasons, of course, given by the respondents is that the applicant being one of the experienced SSEs, his services would be gainfully utilized in a depot where he could work independently. This is no doubt an administrative aspect. But what is to be seen is that this aspect has to be so considered that it does not stultify any of the other terms of transfer. The august purpose of posting the spouses in the same station is explained in para 1 of the OM dated 30-09-2009 which reads as under:-

"In view of the utmost importance attached to the enhancement of women's status in all walks of life and to enable them to lead a normal family life as also to ensure the education and welfare of the children, guidelines were

issued by DOP&T in O.M. No. 28034/7/86-Ewstt(A) dated 3-4-86 and No. 28034/2/97-Estt (A) dated 12-06-97 for posting of husband and wife who are in Government services at the same station, Department had on 23-08-2004 issued instructions to all Mins/Departments to follow the above guidelines in letter and spirit." (Emphasis supplied).

10. If there be limited number of posts at Thiruvananthapuram, then it is to be ensured that the one with longest station seniority should be posted out. In the instant case, the applicant came to be posted to Thiruvananthapuram only in 2005, while there are persons who have been there for more than one decade plus. As such, posting the applicant to Nagarcoil (Tamil Nadu) when his spouse is employed in the State Government of Kerala at Thiruvananthapuram does not appear to be legal or fair. The applicant could be posted either at Thiruvananthapuram or contiguous area so that the applicant and his family could be together.

11. On a pointed question to the counsel for the applicant, that the applicant being only of 45 years as on date, whether he insists to be at Thiruvananthapuram till his superannuation, the counsel fairly stated that it is not so.

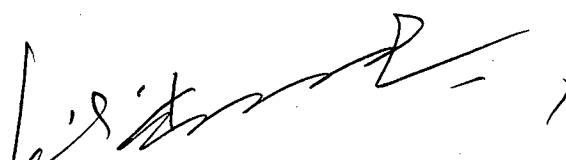
12. Keeping in view the the purpose of posting the spouses in the same station, and towards achieving this purpose, the guidelines should be followed in letter and spirit and also, keeping in view the fact that the applicant's stay at Thiruvananthapuram being comparatively less than others, the Tribunal is of the concrete view that the applicant has made out



a case in his favour. Therefore, the impugned orders at Annexure A-1 and A-2 are hereby quashed and set aside. The applicant shall not be disturbed from the present station of posting. It is left to the authorities to rotate the applicant within the same station to any other table. The authorities may consider shifting the applicant out of Thiruvananthapuram, as and when he happens to be senior most in the post of Sr. Section Engineer at Thiruvananthapuram or on his promotion to the next higher post.

13. The OA is allowed to the above extent. No costs.


K.NOORJEHAN
ADMINISTRATIVE MEMBER


Dr K.B.S.RAJAN
JUDICIAL MEMBER

trs