

CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

Original Application NO. 138/2007

Dated the 15th January, 2008

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

1. BB Jayaraj,
Son of Bhaskaran Nair,
Head Clerk, Works Branch,
Divisional Office,
Southern Railway, Palakkad,
Residing at Quarters No.414 G,
Railway Colony, Palakkad-9.
 2. PP Bindu, W/o Jayaraj,
Senior Clerk, Work Branch,
Divisional Office,
Southern Railway, Palakkad,
Residing at Quarters No.414 G,
Railway Colony, Palakkad-9.
- By Advocate : M/s. TA Rajan & CK Jayakumar

Applicants

-Vs-

1. The Union of India,
represented by the General Manager,
Southern Railway, Chennai-3.
2. The Chief Personnel Officer,
Southern Railway, Chennai.
3. The Chief Signal and Telecommunication Engineer
(Construction), Southern Railway, Chennai.
4. The Additional Divisional Railway Manager,
Southern Railway, Palakkad.
5. The Senior Divisional Personnel Officer
Southern Railway, Palghat.
6. The Dy Chief Signal & Telecommunication Engineer,
(Construction), Southern Railway, Ernakulam.

By Advocate: Mr. KM Anthru.

...Respondents

This application having been heard on 15th January, 2008, the Tribunal delivered the following -

ORDER

The applicants in this OA are husband and wife and they are aggrieved by the refusal of their request for transfer to the office of the 6th Respondent despite the orders of the third Respondent and existence of vacancies.

2] The applicants are presently working as Head clerk and senior clerk in the Works Branch of the Divisional office, Southern Railway, Palakkad. The first applicant's aged parents are staying at Ernakulam and hence he submitted Annexure A1 representation dated 19.11.92 for a transfer to Ernakulam which was forwarded by the fifth respondent. As it was not considered, he submitted a representation to the Hon Minister for Railways through the local member of Parliament to which he received A2 reply that appropriate action will be taken. Annexure A3 would show that after submission of his representation 13 transfers of clerical staff have taken place in the office of the Deputy Chief Engineer Construction, Ernakulam. But the applicant was not transferred. While so, 6th respondent's office was opened at Ernakulam and the applicants submitted A4 and A5 representations for transfer to the newly opened office which were forwarded by the 3rd respondent vide A6. Seven other clerical staff were transferred to the 6th respondent's office. Later by A7 letter dated 7.6.2006 the

✓

3rd respondent informed the applicants that they can be accommodated in the 6th respondent's office, however instead of relieving the applicants, the 5th respondent has referred the matter to the 2nd respondent stating that transfers to the construction unit are governed by the instructions dated 18.8.99 and 23.4.2002.

3] The applicants have contended that the posts of Head clerk and senior clerks are division controlled posts and the matter is not required to be referred to the headquarters. The applicant has also cited the cases of Ms Firoz v. Rasheed Sr clerk/DSC Palakkad and Sri G. Jayakumar, Junior Engineer Drawing Palakkad who were relieved by the 5th respondent to join the 6th respondent's office on the basis of representations only. The applicant had also approached the Tribunal in OA56/07 for non consideration of his request which was disposed of with a direction to dispose off the representation of the applicant. This has since been rejected giving the reasons as cited earlier, hence this OA.

4] The respondents have filed a reply statement submitting that there is no basis or justification for the prayer of the applicants. It is not a case of posting of husband and wife at the same station nor is it the case of the applicants that they had registered their requests for a transfer from Trivandrum division. It is also submitted that posting to the construction unit cannot be termed as a transfer which is purely a work charged establishment. Annexure-A8 instructions govern the transfers to the Construction

2

organization in terms of which the organization is required to advise every year the number of posts available and volunteers will be called for from the eligible staff and the selections will be made from the applications forwarded by the Personnel Branch after which relief will be arranged by the Personnel branch. This procedure has not been followed contend the respondents. Moreover it is urged that there is no vested right for transfer and mere submission of representation cannot be a reason for transfer.

5] A detailed rejoinder has been filed by the applicant reiterating the earlier averments and pointing out that the procedure prescribed for inter-divisional transfers need not be followed for transfers to the Construction offices. The procedures prescribed in Annexure A8 and A9 were not followed by the respondents in any case till now. The applicant has produced a list showing details of employees in Gr- C and Gr- D posts in Annexure A18 who were transferred to the Construction unit without following the procedure prescribed in A9. In an additional rejoinder, the applicant has also filed A19, A20 and A21 documents to show that many ministerial staff belonging to divisional, zonal and Headquarters have been transferred to construction organizations without following the procedure now being canvassed by the respondents.

6] The respondents have denied these allegations in a general way and submitted that the cases pointed out by the applicants are not identical and cannot be relied upon to support

2

their case.

7] I have heard the Learned counsel on both sides and perused the detailed pleadings on record. I am of the view that a simple request for transfer has been made a complicated issue by resorting to undue reliance on technicalities. The applicants who are husband and wife had been representing for a transfer to the place where their aged parents are staying since and their first representation was made as early as 1992. They renewed the request when a new office was opened at Ernakulam under the Construction wing. As admitted by them they sought the transfer to the construction wing as it would afford the convenience of being with their parents on a temporary basis whereas a permanent inter divisional transfer would affect their seniority and other service conditions. There is nothing wrong in making such a request. The instructions governing such transfers to be made to Construction offices were issued only in 1999, reiterated in 2002, while their requests were pending from 1992. No doubt that procedures when prescribed are to be followed. The onus however is more on the respondents to show that they had followed the prescribed procedure of intimating vacancies or calling for volunteers as stipulated therein. Not a piece of paper has been produced by the respondents to show that they had followed the procedure and that the applicants had not responded or that all the persons whose transfer orders have been cited by the applicant had volunteered in accordance with circulars issued if any

e

by them and were seniors to the applicants in the order of priority. Except making a general statement that the requests of the applicants are not in accordance with procedures, there is no attempt to substantiate the same by record or deny the specific averments of the applicants. In fact if at all such a priority was maintained by the respondents, the applicants would have a precedence over several of them as they had been representing since 1992. The respondents who are now taking a position that they are sticklers to procedure, could as well have returned their representations which were forwarded by the respective offices pointing out that it was not in accordance with the procedure. At least that would have enabled the applicants to take up the matter with the concerned authorities. I am therefore of the view that the respondents are now taking this view only to deny the request of the applicants. No doubt there is no vested right for transfer for any employee and the respondents can refuse to consider such requests if not administratively feasible. But here the facts are slightly different as it is on record that the immediate employer and the borrower department had no objection to the transfer but it has been denied only on the ground of procedure which is being quoted at this late stage after filing of the OA. Hence I find that this contention of the respondents cannot be accepted. Though transfers are not to be normally interfered with by courts, it does not mean that it cannot interfere when genuine requests are dealt with arbitrarily.

2

8] For the above reasons, I am of the view that the prayer of the applicants deserves to be allowed. Annexure-A12 is quashed. The respondents are directed to carry out the transfers and relieve the applicants to join the office of the 6th Respondent where it is reported that the vacancies still exist. This shall be done within three weeks of the date of receipt of this order. The OA is allowed. No costs.


(Sathi Nair)
VICE CHAIRMAN

vc/stn