

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
TXXXXX

176/1992199

DATE OF DECISION 19.3.1992

S.J.Fernandez Applicant (s)

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

Versus

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

Mr.M.C.Cherian(R1-3) Advocate for the Respondent (s)
Mr.P.Santhosh Kumar(R4-6)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Ans*
2. To be referred to the Reporter or not? *Ans*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Ans*
4. To be circulated to all Benches of the Tribunal? *Ans*

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 29th January, 1992 the applicant who has been working as Chief Clerk in the Office of the Deputy Chief Engineer(Construction), Southern Railway, Ernakulam has challenged the impugned order dated 20.12.91 (Annexure A.1) by which he was promoted and transferred from Ernakulam to Alleppey in the promoted scale of Rs.1600-2660. According to him, apprehending such a transfer he had submitted a representation dated 15.12.1991 on the ground of education of his children and other family circumstances when he had left with only three years for retirement. He had also claimed retention on the ground of his seniority in his category and age. He followed it up with a further representation dated 9.1.1992 at Annexure-A3. In spite of these representations the second respondent directed the third respondent to relieve the applicant immediately vide Annexure A4. The applicant's contention is that his wife is also employed in the same office of the Deputy Chief Engineer, Ernakulam and

amongst the five Clerks he is neither the seniormost nor juniormost at Ernakulam. Three more Chief Clerks are junior to him at Ernakulam. He reiterated the grounds of his children's education at Ernakulam and disruption of his family life and his impending retirement. He is about 58 years of age and had earlier been transferred to Southern Railway by loss of seniority. According to the Railway Board's order(Annexure A5) the husband and wife should be kept in one station as far as possible and mid-session transfers should be kept down. The applicant's transfer is not on administrative exigencies ^{and} as he is neither the seniormost nor juniormost.

2. In the counter affidavit the respondents have stated that the staff strength of Chief Clerks at Ernakulam was sanctioned as four vide the memorandum dated 21.1.92 at Ext.R4. Earlier vide the memorandum dated 23.10.91 the staff strength at Ernakulam of Chief Clerks was five. When the applicant was promoted and transferred to Erode from his parent department of Controller of Stores, Perambur vide the order dated 27.6.91 at Ext.R2 he represented on 19.7.91 against the transfer. To avoid his transfer to Erode the third respondent recommended to the second respondent that in case he is found to be surplus in the Construction Unit at Ernakulam he may be accommodated in the same Unit at Alleppey(Ext.R7). It is on that basis the impugned order of transfer was issued modifying his transfer to Ernakulam in the Stores Unit to Alleppey in the Construction Unit. Instead of complying with this order the applicant went on medical leave from 27.12.91. After getting the interim order of the Tribunal on 30.1.92 the applicant reported for duty on 3.2.92. They have denied the allegations and imputations against the respondents made by the applicant regarding his transfer to Alleppey. They have argued that had the applicant opted for the Trivandrum Division from his parent department of Controller of Stores he would have been given bottom seniority but because he was continuing in the Construction organisation with lien under the Controller of Stores, his previous service and seniority had been given due consideration. Thus with his lien in the Stores Unit

he was bound to comply with the order of the parent department transferring him to Erode. In order to save him from that transfer and on sympathetic consideration he has been transferred in the Construction Unit at Alleppey because of surplus^{at} at Ernakulam. The mere fact of his wife working at Ernakulam does not give him a right to be retained at Ernakulam till his retirement^{and} even his wife can be transferred to Alleppey.

3. In the counter affidavit the respondents 4 to 6 have stated that the clerical staff required for the functioning of the offices of Works Construction Branch are drafted from the Works/Personnel Branch of the Division in which the office is located. Only if the latter is not able to cater^{for} the requirements of the Works Construction Branch, the volunteers from Works/Personnel Branch of the other divisions are considered. In the absence of the volunteers from Works/Personnel Branch, volunteers from other branches except Stores and Accounts Branches are considered. They have referred to the order of the Personnel Branch of the Southern Railway dated 26.3.1976 at Ext R1 excluding the Stores and Accounts Divisions for filling up the vacancies in the Construction Unit. The 4th and the 6th respondents being in the Works Branch of Trivandrum Division they should have preferential claim over the applicant in accordance with Ext.R1. The 5th respondent belongs to the Headquarters Office at Madras and is a member of Scheduled Caste and being a Works Branch Clerk belonging to the Headquarters unit, she is also entitled to preference over the applicant. Had the applicant opted for joining the Works Branch of Trivandrum Division he would have lost in seniority. Having enjoyed the benefit of his seniority in the parent department he cannot continue to work at Ernakulam against a post which has to be given to the Works/Personnel Branch Clerks. These respondents, have, as a matter of fact, challenged the applicant being accommodated in the Works Division at Alleppey as irregular.

4. I have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. In accordance with the Southern Railway's circular dated 26.3.1976 at Ext.R1, for filling up the vacancies in the Construction organisation, persons of the Stores and Accounts Divisions are to be excluded. The following extracts from

that circular will be relevant:-

" In this office P.B.Circular No.93/73 dated 3.7.73 detailed procedure has been outlined for drafting of office staff to fill up the vacancies in the Construction Organisation. Accordingly, first preference is given to the volunteers from the works branch/ Personnel Branch of the Division or Headquarters, as the case may be, where construction offices are located. In the event of vacancies still becoming available in the construction units, second preference is given to the volunteers from the Works Branch Personnel Branch of other divisions including Headquarters and third preference to the volunteers from other departments excluding stores and accounts of Divisions/Headquarters.

In the event of curtailment in the cadre in the construction Units, the staff should be rendered surplus in the inverse order or preference for filling up the vacancies as laid down in the P.B.Circular No.93/73, keeping in view the Board's instructions contained in their letter No.E(NG)66 TR2/20 of 27.7.1966, forwarded under cover of this office letter No.P(S)676/P dt.19.8.1966. For this purpose, the junior-most employee from among the staff who have been drafted from other departments is to be rendered surplus first. After exhausting the entire staff from other departments, the staff from other divisions have to be moved in the 2nd phase. The staff of the unit in which territorial jurisdiction the construction offices are located should move only in the last phase."

(emphasis added)

From the above it is clear that the applicant who had been drafted to work as Chief Clerk in the Construction Division from the Office of the Controller of Stores has no 'locus standi' for being retained in the Construction Division when one of the posts of Chief Clerks at Ernakulam became surplus. Having been drafted from an excluded department, he has to go first. The contesting respondents 4' to 6 being in the included categories cannot be displaced by the applicant. The respondents 2 to 3 have been considerate enough to retain him in the Construction Unit and transfer him to the available post at Alleppey to protect him from his transfer in the parent department to Erode. He has been retained

in his ad hoc promotion as Chief Clerk. I do not find an iota of malafides or discrimination in the impugned order. The applicant cannot claim any right to be retained at Ernakulam on the ground ^{that since} ~~of~~ ^{is} his wife ~~is~~ also working at Ernakulam ^{and therefore} ~~in~~ in accordance with the guidelines he also should be retained at Ernakulam. In one of the latest judgments in Judgment Today, 1991(4) SC 460, BANK OF INDIA VS.JAGAJIT SINGH MEHTA, it has been held by the Supreme Court that one cannot claim a posting at the same place as of right on the ground of the posting of one's spouse at that place. The respondents 2 and 3 have gone out of their way to retain the applicant at a nearer place than Erode not only on administrative exigencies but also in the interest of the applicant himself.

5. In the circumstances I do not see any reason whatsoever to intervene in the matter. The application is dismissed without any order as to costs.


19.3.92
(S.P.MUKERJI)
VICE CHAIRMAN

n.j.j

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 176/92
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133

DATE OF DECISION 13-7-92

S.J.Fernandez Applicant (s)

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

Versus

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

Mr. M.C.Cherian (R 1-3) Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. P.S.Habeeb Mohamed, Administrative Member

The Hon'ble Mr. N. Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

MR. N.DHARMADAN, JUDICIAL MEMBER

This application was heard by the Single Bench consisting of Hon'ble Vice Chairman and dismissed as per judgment dated 19.3.1992. Subsequently, when the applicant filed R.A.50/92 producing Annexure-RA2 P.B.Circular No.93/73 the judgment was vacated and posted for being heard by a Division Bench. Accordingly, it came up before us for final hearing.

2. The applicant is challenging Annexure-A1 by which he was promoted and transferred from Ernakulam to Alleppey in the promoted scale of Rs.1600-2660. The main contentions raised by the applicant are that the applicant is neither juniormost nor seniormost to be shifted from the present post for transfer to Alleppey in the exigency of the service as alleged by the Railway; there is no exigency of service to sustain the impugned transfer order.

Annexures- R1 and RA2 will show that priority to RA2 applies only in respect of posts controlled by the headquarters and the applicant cannot be transferred by the Division. The applicant is entitled to the benefit of Government order providing that the husband and wife should be posted in the same station.

3. The applicant is admittedly an employee originally belonging to the Stores Branch of the Southern Railway under the Controller of Stores, Perambur. It is a separate establishment in the Southern Railway and promotion, seniority, etc. of the staff therein are separately dealt with by the same department. He has been transferred to work in the Construction Department at Ernakulam from ^{his posting} 20.12.1973. Ever since he is working at Ernakulam but his seniority and promotion etc. are maintained by the Controller of Stores, Perambur. He was promoted as Chief Clerk and posted at Erode as per Annexure-R2 order dated 27.6.1991. This being a very inconvenient posting the applicant submitted Annexure-R6 request dated 19.7.91. In that letter he has requested the Chief Engineer (CN) MS (Civil) that due to illness of his widowed aged mother and other pressing situations about the household affairs at Cochin, his wife was transferred to the Construction Organisation at Ernakulam in September 1969 and both the applicant and his wife are now working in the same office. Since the applicant is settled at Cochin for more than two decades a transfer to another place will jeopardize his family set-up. Considering this letter and taking a sympathetic view, the Chief Engineer passed Annexure-R3 letter dated 19.11.91 in which it is stated as follows:-

"In this connection, it is to advise that the services of the above named employee is essentially required in the interest of Administration in the office of XEN/CN/ALLP under Dy.CE/CN/ERS.

Please, therefore, arrange to issue a revised O.O. posting him under XEN/CN/ALLP duly effecting his promotion from 27.6.91 (the date of issue of your above O.O.) as the employee is already officiating in the promotional grade as Chief Clerk on adhoc basis."

Accordingly, the Chief Personnel Officer immediately issued the Exhibit-R8 office order which reads as follows:-

"In partial modification of O.O. No. S.88/91 dated 27.06.91 Shri S.J.Fernandez, Head Clerk, CN/ERS is retained at XEN/C/CN/ALLP under Dy.CE/CN/ERS on promotion as Chief Clerk against an existing sanctioned post of Chief Clerk with effect from 27.06.91 vide CE/CN/MS letter No. P.535/I/3/CN dated 19.11.91."

4. From the above facts it cannot be disputed that the impugned order has been passed in the exigencies of service giving a convenient posting to the applicant on his promotion.

5. In the course of the arguments the learned counsel for the respondents submitted that the applicant has been transferred on account of his promotion and if the applicant is not willing to proceed to Alleppey pursuant to the impugned order he can be posted at Erode on the basis of the original order, Exhibit-R2 dated 27.6.91.

6. Having regard to the facts and circumstances of the case and in the light of the finding that the transfer order has been issued in the exigencies of service in order to provide the applicant a nearest posting/possible

at present, we do not find any merit in the technical contentions raised by the applicant based on Annexure-R1 and RA2. The contention of the applicant, that he being a person drafted to work as Chief Clerk in the Construction Division from the Controller of Stores can be shifted only by the Headquarters and not by the Division, cannot be accepted particularly in the light of the earlier transfer order, Annexure-R2. The applicant accepted that transfer order and made a request to the Railway for a cancellation of the same or posting him to a nearest convenient place. It is after considering this request that the Railway has taken a sympathetic view and issued the present order. This transfer order is unassailable on the basis of the facts and circumstances of the case and we do not see any reason to interfere in the matter at this stage.

7. The Supreme Court in Union of India & Others vs. H.N.Kirtania, 1989 (3) SCC 445 and Mrs. Shilpi Bose & ors. vs. State of Bihar & Ors., AIR 1991 SC 532 dealt the scope of interference by the Courts and Tribunals in the transfer matters issued by the administrative authorities for administrative reasons. In the latter case the Court held as follows:-

"4. In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders."

8. The application is accordingly dismissed.

There will be no order as to costs.

N.Dharmadan
13.7.92

(N.DHARMADAN)
JUDICIAL MEMBER

PSH
13.7.92

(P.S.HABEEB MOHAMED)
ADMINISTRATIVE MEMBER

v/-

28-5-92

3PM

Mr. P. Sivan Pillai

Mr. M.C. Cherian

Mr. P. Santhosh Kumar

List for further
hearing on 29.5.92.

SJL

RA 50/92 in OA 176/92.

28-5-92

29.5.92 Mr. P. Sivan Pillai--for applicant
Mr. MC Cherian
Mr. P. Santhoshkumar

I have heard the learned counsel for both the parties on this Review Application and gone through the documents carefully. The judgment rendered by me dated 19.3.92 in O.A.176/92 is ~~ponderantly~~ based on the assumption that by the Southern Railway's Circular dated 26.3.76 at Exbt.R.1 in the main application.,, the applicant having come from the Stores Department of the Headquarters ^{was} ~~is~~ ineligible to be drafted to work as Chief Clerk in the Construction Division and that he had no locus standi for being retained in the Construction Division when one of the posts of Chief Clerk at Ernakulam became surplus. Thereafter I did not consider it worthwhile to ~~come~~ ^{go} into the merits of the applicant's transfer from Ernakulam to Alleppey. The Review Applicant has now produced the Southern Railway Circular No.93/73 at Annexure RA-2 which clearly shows that the exclusion of personnel in the Stores and Accounts Divisions/Headquarters applies only in respect of posts controlled by the Divisions ie., Head Clerks and below and not to the post of Chief Clerks which the applicant has been holding which is controlled by the Headquarters. Furthermore it is revealed that the applicant came from the Stores Deptt. in 1972 as Junior Clerk when the aforesaid Circular had not been issued. There has been an error apparent on the face of record.

SJL
contd....