

CENTRAL ADMINISTRATIVE TRIBUNAL: ERNAKULAM BENCH

Date of decision: 12.3.1990

Present

Hon'ble Shri NV Krishnan, Administrative Member
and

Hon'ble Shri AV Haridasan, Judicial Member

CA 198/89

PK Appu

Applicant

Vs.

1. The Divisional Railway Manaver
Southern Railway, Palghat Division,
Palghat.
2. The Senior Divisional Mechanical
Engineer, Southern Railway,
Palghat Division, Palghat.
3. The Senior Divisional Personnel
Officer, Southern Railway,
Palghat Division, Palghat.
4. Shri K Ramachandran, Skilled Fitter
Gr.II, Loco Shed, Shoranur,
Southern Railway, Palghat Divn.
Palghat.

Respondents

Mr Babu Mathew P Joseph

Counsel of Applicant

M/s MC Cherian, Saramma Cherian &
TA Rajan

Counsel (for R 1 to 3

M/s P Santhosh Kumar &
P Santhosh Kumar (T)

Counsel (for R-4)

O R D E R

Shri NV Krishnan, Administrative Member.

The applicant was employed as Skilled Fitter Gr.III in the Loco Shed, Shoranur, and while so appointed he was promoted to the cadre of Fitter Gr.II and posted to Coonoor by the impugned order dated 31.1.1989 of Respondent-2, the Senior Divisional Mechanical Engineer, Palghat. He is aggrieved by this order on two counts. Firstly, he contends that there was no need to transfer him to Coonoor because vacancies of Grade II Fitters were available in Shoranur itself. Secondly,

Respondent-4 who is junior to him in all respects has been promoted as Fitter Gr.II and retained at Shoranur while he has been transferred.

2. The facts of the case leading to the grievance of the applicant may first be noticed:

2.1 The applicant and Respondent-4 are surplus to the requirements of Railways, they being originally employed in connection with steam traction which has been replaced by diesel traction. He contends that in order to make available more avenues of promotions and absorb such surplus staff like him, 354 posts were created at Shoranur and Erode as per details given in Annexure-A3. He also states that in this arrangements, 26 posts of Highly Skilled Gr. II Fitters have been created for Shoranur. According to him, out of these 26 posts, only 18 posts have been filled up at Shoranur and therefore, 6 posts (sic. 8?) out of the posts created by Annexure-A3 are still vacant. Therefore, he contends that there was no need for his transfer at all on promotion from Shoranur to Coonoor because he could have been appointed to one of the vacant of Highly Skilled Fitter Gr.II at Shoranur itself.

2.2 In any case, he further contends that Respondent-4 has always been junior to him. Nevertheless, he has been retained after promotion at Shoranur on administrative grounds as mentioned in the Annexure-A1 order, which, according to him, have no basis whatsoever.

3. Respondents 1-3 (Government Respondents) and Respondent-4 have filed their replies denying the allegations. The Government

respondents have contended that it is wrong to allege that the posts of Highly Skilled Grade Fitter Gr.II are still vacant at Shoranur. They also contend that the applicant proceeds on a wrong assumption that 354 posts have been created at Erode and Shoranur. According to them, these are not ~~evenly~~ ^{newly} created posts, but are diverted for the purpose of temporarily accommodating such surplus people, like the applicant. This contention can better be understood in their own words in the reply / affidavit.

"2 At the outset it is submitted that the statements and allegations of the applicant to the effect that there are vacant posts available at Shoranur in which he can be accommodated is incorrect and is denied. It may kindly be noted that the said statement is made on the basis of the provisions made in Annexure A-3 and Annexure A-5 for 354 posts at Erode and Shoranur. In this connection it may kindly be noted that certain number of supernumerary posts were created in the Mechanical department of Palghat division in early 1982. To avoid retrenchment of a large number of staff who were working in the steam loco sheds consequent on the said dieselisation, some were transferred to other divisions, some others were transferred to other departments in the same division and the remaining persons have been retained in the Mechanical department itself by creating supernumerary posts for the time being. The basis for such action is the order dt. 15.1.82 of the Railway Board, a true copy of which is produced herewith and marked as Exhibit R1(a). On the basis of the above order, there were inter departmental correspondence regarding creation of Special supernumerary posts to provide for the same surplus staff in the Palghat division. As a result of such correspondence, the Railway Board had ultimately gave sanction for diversion of 354 posts in various grades, as per order dt. 11.2.86, a true copy of which is produced herewith and marked as Exhibit R1(b). Annexure A-3 produced by the applicant is the order passed on the basis of Ext.R1(b). The word "creation" occurring in the first line of Annexure A3 was subsequently changed as "diversion" by a separate order so as to bring it in consonance with Ext.R1(b) order. It can be seen from Ext.R1(b) as also Annexure A3 order that the diversion of 354 posts have been sanctioned for the time being only and on specific condition that no fresh induction will be made, as also the staff strength available will be reviewed on 1st April every year commencing from 1.4.87, thus bringing down the residual strength of staff in various grades. Thus it will be self-evident that the sanction is not for

creation or diversion of 354 posts for all time to come. On the other hand it is only a temporary thing, so as to tide away the situation which has arisen consequent on the abolition of steam engines and steam locomotives in the division".

3.7 As far as retaining the 4th Respondent at Shoranur, who is junior to the applicant, is concerned the government respondents state that this has been done on administrative grounds, as he is the only man who ^{has} achieved expertise in repair and maintenance of hydraulic equipments used in breakdown operations, maintenance of compressors and diesel pumps and sheds, electrical hoists and pulley blocks and maintenance of other machineries such as lathes etc.

4. The reply of Respondent-4 does not add much except to highlight his proficiency in the repair and maintenance of diesel pumps etc.

5. We have perused the records and heard the counsel on both sides. There is no dispute about the fact that people originally engaged in steam traction had gradually become ~~xxx~~ surplus to the requirements of the railways as steam traction was progressively being replaced by diesel traction. Accordingly, supernumerary posts were created initially in early 1982. ^{This} makes sense when it is ^{first} noted that the surplus posts were ^{first} abolished. In other words, permanent posts were abolished and they were replaced by temporary supernumerary posts, the numbers of which would decrease ^{gradually as} and when the holders of such supernumerary posts are absorbed elsewhere.

The surplus staff who were not retrenched had therefore, been absorbed in areas other than those related to steam tractions. Therefore, some were transferred to other

divisions where vacancies existed and some were transferred to other departments where also vacancies existed. As there was a limit to absorb ^{surplus personnel} in this manner, it was only natural to find that a large number of persons could ^{not} be absorbed. It is for them that the 354 posts referred to by the applicant (Annexure A3) were sanctioned by the Railways. Ext.R1(b) produced by the government respondents in their second additional reply clarifies this matter. Though the Annexure A3 refers to the creation of 354 posts it is pointed by the government respondents that it is actually a diversion of the supernumerary posts as would be clear from the Ext.R1(b) referred to above. The diversion itself is understandably only temporary as the objective is only the ultimate absorption of surplus staff. There is a direction that the strength available would be reviewed on the 1st of April every year so as to bring down the residual strength in various grades.

6. Respondents have submitted a note Ext.R1(c) alongwith the second additional reply which explains the matter further. It is stated that as on 1.4.88 the total strength of supernumerary staff like the applicant working at Shoranur and Erode have now been reduced to 229 only thus progressively reducing the

number of supernumerary posts diverted for this purpose.

7. In so far as the specific allegations of the applicant that the posts of Fitter Gr.III are still ^{are concerned,} available at Shoranur, we are of the view that this is a miscalculation because the applicant proceeds on the assumption that 354 posts are permanently available in ^{strength;} which 26 posts of Fitter Gr.III were made available at Shoranur. As rightly pointed by the government respondents, this is not a static situation. The number of diverted supernumerary posts will vary from time to time and according to the latest information furnished by the government respondents their number is only 229 at Erode and Palghat and they have also clearly submitted that no post of Fitter Gr.III is available at Shoranur against which the applicant can be appointed.

8. That leaves only the question of transfer of the applicant to Coonoor. A point made by him is that in terms of the Annexure A5 order dated 14.4.88 dealing with distribution of 354 posts among various categories, it is stated, inter-alia, that ^{no} new persons should be inducted into this cadre from outside and no recruitment should also be made into this cadre. He contends that this only means that these posts are meant only for the 354 surplus

people of whom he is one and therefore, he should have been given a posting at Shoranur ^{it}self where there was a vacancy, instead of inducting outsiders from Palghat or Coonoor, as has been indicated in Annexure A1 order. We have considered this aspect. The arguments of the learned counsel do not carry conviction. The purport of direction No.5 is only to ensure that the problem of surplus staff is not accentuated by inducting outsiders by resorting to fresh recruitment. It is made clear in the Instruction No.6 that, if necessary, the staff in these sheds would be asked to carry out transfer to other railway establishment in the same or promotional grades. As the ultimate objective is the absorption of surplus staff, the government respondents are left with considerable flexibility ^{to} post the surplus people such that the objective is achieved to the maximum extent.


9. His more specific grievance in regard to the transfer is that his junior, Respondent-4 has been given a promotion at Shoranur itself while he has been transferred on promotion to Coonoor.


10. The grievance of the applicant in this regard has to be dismissed shortly by stating that it is the prerogative of the administration to determine where an employee has to be posted or where ^{employee} ~~an~~ ^{an} should be

transferred. Unless it is established that a person has
been transferred out ^{of} malice or a grave irregularity
has been committed we will not be inclined to interfere
in the matter. However, there is an assurance of the
government respondents that the applicant had already
joined at Coonoor and submitted an application for
retransfer to Shoranur which would be considered on
merit according to its turn, as there are several such
applications pending.

11. For the reasons given above, we find there is
no substance in this application made by the applicant
and therefore, the reliefs sought by him cannot be granted.

12. The application is, therefore, dismissed and
there will be no order as to costs.


12/3/90
(AV Haridasan)
Judicial Member


12/3/90
(NV Krishnan)
Administrative Member