

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 24 OF 2011

Thursday, this the 20th day of September, 2012

CORAM:

**HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

A.Anil Kumar
Head Ticket Examiner/B/II/Chennai
Residing at Prathyush
Athira Nagar Railway Colony
Palakkad, Kerala – 678 009

... Applicant

(By Advocate Mr. M.P.Varkey)

versus

1. Union of India represented by the Chairman
Railway Board, Rail Bhavan
New Delhi – 110 001
2. The Chief Commercial Manager
Southern Railway
Chennai – 600 003
3. The Divisional Personnel Officer
Southern Railway
Palghat Division, Palghat
4. Senior Divisional Personnel Officer
Southern Railway
Madras Division, Chennai – 600 003 ... Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

The application having been heard on 20.09.2012, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The applicant was transferred on administrative grounds by Annexure A-1 order dated 16.11.2000. The transfer order reads that the same is issued subject to the conditions mentioned thereunder. It is specifically conditioned in para 2 that " his lien will be maintained for further avenue. In other words, the

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transfer is not permanent to sever the lien. He is placed under the administrative control of another Division. This arrangement will continue till further orders." The transfer was made from Palghat Division to Madras Division as above. Going by the conditions mentioned in Annexure A-1, it is only a temporary transfer on administrative grounds and not a permanent one. He continued to have his lien at Palghat Division and consistent with that he was promoted as TTI/Hd in the pay scale of Rs. 5000-8000 vide Annexure A-2(a) dated 11.08.2006. This promotion was effected by the Madras Division where he was working. This is evident from Annexure A-2 (b) dated 06.10.2006. There was a vigilance case pending consideration against the applicant and finally it culminated in reduction of pay in four stages. That became final. He made a representation to the authorities to transfer him back to Palghat Division. No action was taken thereon. He approached this Tribunal by filing OA 644/10. Even though the applicant contended the order of transfer was punitive one, the respondents controverted the said contentions showing that it is not punitive but it is purely on administrative grounds as he was working in Coimbatore and when the divisions were reorganized Coimbatore came under Salem Division which is under the jurisdiction of Madras Bench of the Tribunal. Referring to Rule 226 of the IREC, it is held that a reading of the above would clearly indicate that the power for this transfer can be exercised by the President and in case of Group-C and Group-D Railway officials by the General Manager. However, this rule does not show that a person transferred from one division to another have to work there for ever. The relevant Rule 226 is extracted hereunder:

"226. Transfers.- Ordinarily, a railway servant shall be employed through his service on the railway or railway establishment to which he is posted on first appointment and shall have no claim as a right for transfer to another railway or another establishment. In the exigencies of service, however, it shall be open to the President to transfer the railway servant to any other department or railway or railway establishment including a project in or out of India. In regard to Group C and Group D railway servants, the power of the President under this rule in respect of transfer, within India, may be exercised by the



General Manager or by a lower authority to whom the power may be re-delegated."

2. Taking that view this Court directed the respondents to consider the representation in accordance with law and dispose of the same. Subsequently the representation was disposed of by Annexure A-5 order dated 22.09.2010 which is impugned in this OA. It is now held that in view of the serious irregularities in his working revealed through the vigilance check, he was transferred to Chennai Division. A major penalty has been imposed on the basis of the findings after due process of enquiry. It is contended that the said contention of the respondents is contrary to the stand already taken by them in the earlier case. Further, the order of transfer does not by itself show that he was transferred on the ground of any vigilance case but only on administrative grounds. Admittedly, he was imposed a penalty of reduction of pay in four stages for 12 months. If a transfer is made by way of punishment, it should be specifically mentioned in the order. Admittedly, the transfer was not made by way of punishment and earlier to the disciplinary action he was transferred. That transfer order does not show it is in contemplation of a disciplinary action that he was transferred. Thus, neither the transfer order is imposed by way of punishment nor it is in contemplation of any disciplinary action. Even if the transfer is in contemplation of the disciplinary action, after culmination of the disciplinary proceedings appropriate orders would have been passed reposting him back so long as the transfer is not effected by way of penalty..

3. In the above view of the matter, we are of the opinion that the present order disposing of his representation on the grounds is per se illegal and untenable. We quash the same and direct the authorities to reconsider the matter and pass appropriate order on his request to transfer him back



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to Palghat Division as early as possible, at any rate, within four months from the date of receipt of a copy of this order.

4. OA is thus **allowed** as above. No costs.

Dated, the 20th September, 2012.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

VS