

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No. 3 of 2000

Wednesday, this the 8th day of November, 2000

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

1. S. Kamalakannan,
S/o. M.S. Subramanian,
Mail Driver, Office of Divisional
Railway Manager (P), Palghat Division,
Southern Railway,
residing at C/o C.S. Parameswaran,
112/Swamy Iyer New Street,
Coimbatore, Pin - 641 001Applicant

By Advocate Mr. M.R. Rajendran Nair

Versus

1. Union of India, represented by the Secretary to Government of India, Ministry of Railways, New Delhi.
 2. The Divisional Railway Manager, Divisional Office, Personnel Branch, Southern Railway, Palghat Division.
 3. Raju Khalkho,
120-D, Railway Colony,
Erode - 638 002

...Respondents

By Advocates : Mrs Sumathi Dandapani (R1 and R2) and
Mr. T.C. Govindaswamy (R3)

The application having been heard on 8th of November, 2000,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks to quash A1 and to direct the respondents to allow him to continue at Erode.

2. The applicant while working as Mail Driver at Bhusawal, Central Railway, submitted an application along with the 3rd respondent for mutual transfer as per A2. As per A3, mutual transfer was ordered. He was subsequently relieved from Bhusawal on 21-12-1999 as per A4. As per A5, he joined duty at Palghat Division. Subsequently, A1 was issued directing him to go back to Bhusawal.

3. The official respondents resist the OA contending that in Office Order No. 88/1999 dated 24-11-1999 issued by the Senior Divisional Personnel Officer, Bhusawal it has been indicated to relieve the 3rd respondent to Bhusawal and that on reporting for duty by the 3rd respondent the applicant will be relieved. The applicant was relieved first from Bhusawal contrary to what has been stated in the Office Order issued by the Senior Divisional Personnel Officer, Bhusawal.

4. The 3rd respondent contends that A3 order was cancelled since it was issued without taking into account the written request made by him for cancellation of the mutual transfer and that he prior to the issuance of A3 had requested for cancellation of the mutual transfer due to unforeseen family problems. The applicant was very much aware of those facts.

5. R1 is the Office Order No. 88/1999 dated 24th of November, 1999. It says that the 3rd respondent is to be relieved first and on resumption by the 3rd respondent the applicant will be relieved. That was the request made by the Divisional Personnel Officer, Bhusawal to the Divisional Railway manager (Personnel), Palghat. Contrary to that the Divisional Railway Manager (Personnel), Bhusawal relieved the applicant before the 3rd respondent reported for duty. No doubt, it is a mistake on the part of the department.

6. The 3rd respondent has specifically stated that before issuance of A3, the order of mutual transfer, he had requested for cancellation of the mutual transfer due to unforeseen family problems. Though a rejoinder is filed, there is no denial of the same. The learned counsel appearing for the applicant submitted that since the applicant is not aware of the factual situation, the applicant is not in a position either to affirm or deny the same. From the materials

available it is seen that the 3rd respondent had requested for cancellation of the mutual transfer and it was before issuance of A3, the order of mutual transfer. That being so, it is clear that A3, the mutual transfer order, was issued without considering the request of the 3rd respondent for cancellation of the mutual transfer. That mistake was subsequently found out by the respondents and the mutual transfer ordered as per A3 was cancelled. The applicant is well aware of the cancellation as it is stated in the OA that "The respondents are estopped from cancelling the applicant's transfer" and also that "Moreover the 2nd respondent cannot unilaterally cancel the order relying on a withdrawal petition submitted by the third respondent without giving an opportunity to the applicant to be heard".

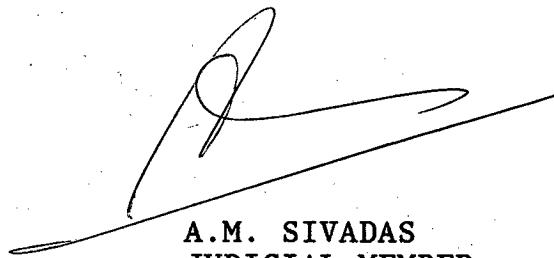
7. A1, the impugned order, is not the order cancelling the mutual transfer, but only a direction to the applicant to report back at his old station in the light of the cancellation of the mutual transfer order A3. The basis for A1 is the order of cancellation. The applicant is well aware of the order of cancellation as the applicant also says that the respondents are estopped from cancelling and the 2nd respondent cannot unilaterally cancel A3 order. But, the said order of cancellation is not sought to be quashed. As A1 is based on the cancellation order and as the applicant is aware of the order of cancellation and says that the respondents are not justified in cancelling and has not sought to quash that order of cancellation, it will not be just and proper to quash A1.

8. It is not known how the applicant was able to get A4 order relieving him before the 3rd respondent reported for duty at Bhusawal.

9. The learned counsel appearing for the applicant submitted that once the 3rd respondent has given his consent for mutual transfer, he has no right to withdraw the same and his withdrawal is not sustainable in law. The department has accepted the same and has cancelled the mutual transfer. As already stated, the order cancelling the mutual transfer is not sought to be quashed.

10. Accordingly, the Original Application is dismissed.

Wednesday, this the 8th day of November, 2000



A.M. SIVADAS
JUDICIAL MEMBER

ak.

List of Annexures referred to in this Order:

1. A1 True copy of the Order No. J/P.676/V/ID/PR/ Vol.XIV dated 30-12-1999 issued by the 2nd respondent.
2. A2 True copy of the application dated 2-6-1999 submitted by the applicant and the 3rd respondent.
3. A3 True copy of the office order No. T.104/99 dated 15-11-1999 issued by the General Manager, Southern Railway.
4. A4 True copy of the relieving order No. BSL/P/LA.30/SK dated 21-12-1999 issued by the DRM, Bhusawal.
5. A5 True copy of the reporting letter dated 24-12-1999 submitted by the applicant.
6. R-1 True copy of the Order dated 24-11-1999 issued by Divisional Office, Bhusawal.