

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.259/04

Wednesday this the 15th day of December 2004

C O R A M :

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

P.B.Shyamkumar,
S/o.P.N.Bharathan,
Station Master III,
Ambur Railway Station.
Permanent Address - No.M.II,
Kasturba Nagar, Kadavanthara Post, Cochin. Applicant

(By Advocate Mr. T.C.Govindaswamy)

Versus

1. Union of India represented by the General Manager, Southern Railway, Headquarters Office, Park Town P.O., Chennai - 3.
2. The Senior Divisional Personnel Officer, Southern Railway, Chennai Division, Chennai - 3.
3. The Senior Divisional Personnel Officer, Southern Railway, Trivandrum Division, Trivandrum.
4. The Senior Divisional Operating Manager, Southern Railway, Chennai Division, Chennai - 3.
5. The Chief Personnel Officer, Southern Railway, Headquarters Office, Park Town P.O., Chennai - 3.

(By Advocate Ms. P.K. Nandini)

This application having been heard on 15th December 2004 the Tribunal on the same day delivered the following :

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant initially recruited for Palghat Division of Southern Railway was on account of exigencies of service appointed as Station Master Grade III at Ambur Railway Station of Southern Railway, Chennai Division. He had applied for inter divisional transfer and appointment to Trivandrum in August 1996. However in 1998 when he was asked to express his willingness to

be relieved back to his parent division viz Palghat Division, he declined and therefore he was maintained in Chennai Division by order dated 18.2.1998 giving him seniority in that Division with effect from that date. He again submitted an application for inter divisional transfer to Trivandrum Division on 11.3.1998 in the prescribed format (Annexure A-1). Coming to know that direct recruitment was being resorted to in Trivandrum Division the applicant allegedly submitted Annexure A-2 representation. The applicant came to know that by an order dated 5.6.2000 Station Master from Palghat Division belonging to SC Community overlooking alleged priority of the applicant was transferred to Trivandrum Division while the applicant was awaiting for inter divisional transfer to Trivandrum Division on the basis of his request dated 11.3.1998. Finding that his request was not being acceded to while persons who had lower priority on the basis of registration were being transferred the applicant submitted representations Annexure A-6, Annexure A-7 and Annexure A-8. Finding that the representations were not considered and disposed of and he was not considered for transfer the applicant filed O.A.650/03, for a declaration that his date of registration for transfer and appointment to Trivandrum Division was liable to be recorded as 11.3.1998 in the Register maintained for that purpose and for a direction to the respondents to consider the applicant for transfer and appointment as Assistant Station Master in the Trivandrum Division of Southern Railway accordingly. The above O.A. was disposed of by order dated 7.8.2003 as agreed to by the learned counsel on either side permitting the applicant to make a comprehensive representation to the Chief Personnel Officer, Park Town, Chennai and directing the 5th respondent (the Chief Personnel Officer) to consider and dispose of such representation

if received in time by passing appropriate order. Pursuant to the above direction the applicant submitted Annexure A-11 representation dated 10.8.2003 which was considered and disposed of by the 5th respondent by the impugned order (Annexure A-12) informing the applicant that his request for inter divisional transfer to Trivandrum made in March 1998 along with similar applications of many others were called back owing to a large number of vacancies of Assistant Station Masters in Chennai, that in the year 1998 persons who were registered prior to the applicant alone were transferred, that the applicant's request for transfer to Trivandrum was forwarded to the Trivandrum Office by office order dated 20.10.2000, that although a common seniority is maintained at Trivandrum Division, in which, the requests of Station Masters from various divisions are registered transfer can be made only according to the administrative feasibility, that the transfer of Shri.Vibina Kumar, Station Master from Palghat to Trivandrum Division does not give a cause of action to the applicant as he cannot compare himself with Vibina Kumar who is in a different Division and that the applicant's position in the priority of request to Trivandrum being 112 his case could be considered at the appropriate time subject to the availability of vacancies at Trivandrum. Aggrieved the applicant has filed this application seeking to set aside Annexure A-12, for a declaration that the applicant's date of registration of request for transfer and appointment to Trivandrum Division is liable to be recorded as 11.3.1998 in the Register maintained for that purpose under the 3rd respondent and to direct the respondent to do accordingly and to consider the applicant for transfer and appointment as Assistant Station Master in the Trivandrum Division of Southern Railway taking his



date of registration as 11.3.1998 and to grant him consequential benefits in preference to those in General and reserved category Station Master whose date of registration under the 3rd respondent is later than the applicant.

2. The respondents contend that in terms of the provision contained in Rule 226 of the Indian Railway Establishment Code Vol.I a railway servant has no enforceable right for transfer, that inter divisional transfer, though made on the basis of a register maintained reckoning the date of registration, is to be made according to the administrative feasibility, that the applicant's request for transfer to Trivandrum Division has been forwarded to the Senior Divisional Personnel Officer, Trivandrum only on 20.10.2000, that the position of the applicant in the priority, the date on which the reply statement was filed, was at serial No.79, that no person who has registered from Chennai Division to Trivandrum Division, after the request of the applicant was registered, has been transferred to Trivandrum Division and that there is absolutely no infirmity in the Annexure A-12 order and that the applicant is not entitled to any relief. It has also been contended that the prayer of the applicant to give priority over others who has registered after 11.3.1998 is not maintainable as the same is bad for non joinder of the necessary parties who would be affected by such reliefs.

3. The respondents have filed an additional reply statement contending that this Bench of the Tribunal has no jurisdiction, for, the applicant is for the time being posted in Chennai Division which is within the territorial limits of the Madras Bench of the C.A.T. The respondents rely on the decision of this

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Bench of the Tribunal in O.A.513/04.

4. I have carefully gone through the entire material placed on record and have heard at length the arguments of Mr.T.C.Govindaswamy learned counsel of the applicant and Ms.P.K.Nandini learned counsel who appeared for the respondents. The contention of the respondents that this Bench of the Tribunal has no jurisdiction is only to be rejected because the impugned order was issued pursuant to the direction contained in the order in O.A.650/03 of this Bench of the Tribunal. Shri.T.C.Govindaswamy taking me through the averments in the application argued that since the applicant had put forth his claim for transfer to Trivandrum Division on 11.3.1998 the non forwarding of the request of registration on time and not considering the applicant for transfer based on his date of registration as 11.3.1998 is arbitrary, irrational and opposed to Articles 14 & 16 of the Constitution, for, right for appointment by transfer is also a fundamental right and not considering the applicant on par with those who have registered on that date would violate Articles 14 & 16 of the Constitution. It is not disputed that the applicant had on 11.3.1998 made a request for transfer but it has been stated in the impugned order as also specifically contended in the reply statement that this request for transfer was called back along with similar requests of Assistant Station Masters for transfer to Trivandrum Division. It is contended that as there was a shortage of Station Masters in Chennai Division the representations of the applicant and three other Station Masters for transfer to Trivandrum Division were forwarded by the Chief Personnel Officer, Chennai vide letter dated 10.5.2000, that it was forwarded to Senior

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Divisional Personnel Officer, Trivandrum only by letter dated 20.10.2000 only after receipt of the request for transfer at Trivandrum Division the Senior Divisional Personnel Officer could have registered the request, that therefore the prayer for a declaration that the date of registration of the request of the applicant for transfer and appointment to the Trivandrum Division is to be recorded as 11.3.1998 is unsustainable.

5. Shri.T.C.Govindaswamy the learned counsel of the applicant argued that since the applicant had requested for inter divisional transfer on 11.3.1998 and was not aware of calling back of the request the respondents are not justified in denying the applicant the priority of his registration with effect from 13.11.1998. He further argued that since it has been provided in Rule 217 of Indian Railway Establishment Code Vol.I that the rules for recruitment to Group C and D posts would be what is contained in paragraph 102 (A) of the Indian Railway Establishment Manual has statutory force and therefore allowing inter divisional transfer overlooking the priority of registration on the ground that the administration feasibility of Chennai Division is illegal and unjustified. Shri.T.C.Govindaswamy argued that the applicant is entitled to the declarations and directions as sought in the application. The counsel of the respondents, on the other hand, argued that the provision contained in paragraph 102 (A) of the Indian Railway Establishment Manual and other provisions regarding inter railways and inter divisional transfers are only permissive provisions and not mandatory and therefore do not clothe a railway servant with an indefeasible right to be enforced through Court and that inter divisional transfer will be and can be

allowed only if it is feasible taking into account the need of each division. Since Madras Division could not afford to relieve Station Masters in 1998 the requests made by the applicant and similar others were called back and the requests were forwarded only in 2000 when conditions improved stated the counsel. From Palaghat Division persons who registered later might have been transferred to Trivandrum Division, for, it was feasible and that does not mean that the Madras Division should also relieve Station Masters in spite of shortage of hands there, submitted the learned counsel. Since the requests of the applicant for transfer to Trivandrum Division was forwarded only in 2000 it could be registered at Trivandrum only then and therefore the applicant is not entitled to any declaration argued the learned counsel. He further argued that railway servants from other divisions transferred to Trivandrum Division after 11.3.1998 not being made parties the O.A. bad for non joinder of necessary parties argued the counsel of the respondents. I find considerable force in the argument of the counsel of the respondents. The applicant has no right to claim transfer as a matter of right. Since Madras Division could not spare Station Masters in 1998 the request of the applicant and others have been forwarded only in 2000 those Station Masters from Palaghat had been transferred to Trivandrum does not give rise to any claim to the applicant paramount importance being for exigencies of service and inter divisional transfer is only permitted subject to administrative convenience the applicant has no right to claim that he should be transferred to Trivandrum in preference to all who registered for transfer after 11.3.1998. The contention regarding non joinder also has considerable force. The applicant



can be considered for transfer as stated by the respondents in its turn among those who registered for transfer to Trivandrum from Chennai.

6. In the light of what is stated above finding no merit the O.A. is dismissed with no order as to costs.

(Dated the 15th day of December 2004)

A. V. HARIDASAN
VICE CHAIRMAN

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