

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No.30/2013

Tuesday, this the 26th day of March, 2013.

CORAM

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

R.Ganesh Kumar, age 36 years
 S/o A.Raja Kannu
 Trackman
 Office of the Senior Section Engineer/
 Permanent Way/Kasaragod/Palakkad Division
 Permanent address: No.4/618, Bharathidasan,
 3rd Street, Pappakkurichi Road
 North Kattoor,
 Thiruchirappalli-620 019.

Applicant

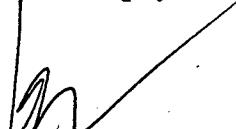
[By advocate: Mr.T.C.Govindaswamy]

Versus

1. Union of India represented by
 the General Manager
 Southern Railway,
 Headquarters Office
 Park Town P.O., Chennai-600 003.
2. The Chief Personnel Officer
 Southern Railway Headquarters Office
 Park Town P.O., Chennai-600 003
3. The Senior Divisional Personnel Officer
 Southern Railway, Palakkad Division
 Palakkad-678 002.
4. The Senior Divisional Personnel Officer
 Southern Railway, Thiruchirappalli Division
 Tiruchirappalli-620 001.

Respondents

[By advocate: Mr.Thomas Mathew Nellimoottil]



This Original Application having been heard on 22nd March, 2013, this Tribunal on 26th March 2013 delivered the following:

O R D E R

HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER

This is the second round of litigation. In the earlier round, in OA No.814/09, applicant was 17th amongst 18 applicants. In that OA, he had sought a direction to the respondents to fill up the existing vacancies of Trackman in Tiruchirapalli Division by considering applicants for transfer and appointment in preference to other directly recruited individuals. Order dated 11.02.2011 vide Annexure A-1 refers. It is the case of the applicant now that though there was rigid direction vide Annexure A-2 dated 3.2.13 that all such inter divisional transfers should be completed by 31.3.2012, the respondent had not considered the case of the applicant and vide letter dated 29.6.2012 at Annexure A-3, the applicant was only informed that his priority position is 63 and he would be considered for inter divisional transfer to Tiruchirapalli Division as per the priority and staff position in Palghat & Tiruchirapally Divisions. According to the applicant, vide A-4 order dated 14.02.12, a large number of individuals have been selected under the direct recruitment and have been posted to Palghat and Tiruchirapally Divisions, whereas no action has been taken for the transfer of the applicant. According to the applicant, his transfer has been necessitated as his mother has been suffering from a serious ailment and has been under constant medical treatment in the Railway hospital at Tiruchirapalli and to substantiate the same, medical papers of the applicant's mother have been annexed vide Annexure A-6. The applicant has prayed for the following reliefs:-

- i) *Declare that the non-feasance on the part of the respondents in relieving the applicant on inter-divisional transfer to Tiruchirapalli Division is arbitrary, discriminatory and unconstitutional;*
- ii) *Direct the respondents to consider and transfer the applicant to*



Tiruchirapally Division as Trackman and direct further to grant all consequential benefits arising therefrom;

iii) Award costs and incidental thereto;

iv) Pass such other orders or directions as deemed just and fit by this Hon'ble Tribunal.

2. The respondents have contested the OA. They have stated that the applicant's priority is 63 and none of the employees belonging to Palghat Division, who are below in priority than the applicant has been considered for inter-divisional transfer and the respondents are taking earnest efforts to fill up vacancies to consider the request of the applicant and others for inter-divisional transfer. Para 11 of the reply refers. It is also reflected that at present, there are 531 vacancies in Palghat Division and the functions of Trackman come under the safety category post.

3. Counsel for the applicant argued that there must be some expeditious action on the part of the respondents, appreciating the case of the applicant whose mother is suffering from a serious ailment. Posting of any direct recruit in preference to inter divisional transfer will be against the spirit of Railway Board Circular and by offering posting to direct recruits, the seniority of the applicant gets pushed down as the applicant has to take the bottom most seniority as on the date of his joining. The Counsel also submitted that the Chief Personnel Officer of Southern Railway was, on an earlier occasion, present in the court when the court considered the case of inter divisional transfer of some other post like Station Master or Assistant Station Master and Loco Pilot or Assistant Loco Pilot. An undertaking was given by the said Chief Personnel Officer that every efforts would be made to ensure that such inter-divisional transfers could be effected strictly on the basis of the provisions contained in the rules/instructions.

4. Counsel for the respondents stated that the applicant shall be considered for posting at Tiruchirapalli as and when his turn comes and every effort is taken to ensure that all those who had applied for inter-divisional



transfer get their due in accordance with priority position of such applicants.

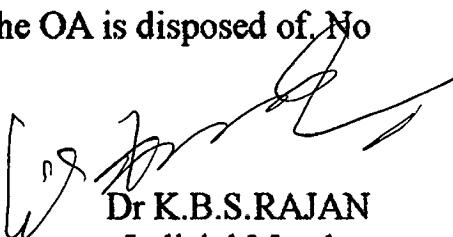
5. Arguments were heard and documents perused.

6. The main reason for inter-divisional transfer sought by the applicant is that he is not in a position to take care of his ailing mother. His mother has been taking treatment in the Railway Hospital. He has not brought to our notice whether any priority shall be granted on the basis of medical treatment of the dependents. If, on the basis of this OA, a direction is given to the respondents to consider the case of the applicant for transfer, ignoring those in the waiting list, that would be most undemocratic and against the equality clause. It is not exactly known whether any policy decision has been provided for, to consider according priority to inter-divisional transfer. If there is any such provision, the same may be invoked in this case. Otherwise the applicant has to wait till his turn comes for transfer to Tiruchirapalli division. It is at this juncture the Tribunal invites reference to the discussion that was held in respect of other inter-divisional transfers with the Chief Personnel Officer, Southern Railway, who has fairly stated that all such cases of inter-divisional transfer shall be considered earnestly and in accordance with the provisions of rules and regulations.

7. The OA is, therefore, disposed of with a direction to CPO to ascertain whether any priority is given for inter-divisional transfer on the basis of health ground of dependents of family and if so, apply the same in the case of the applicant. The present position also may be informed to the applicant since the last communication was as early as 29 June 2012.

8. With the above observations and direction, the OA is disposed of. No costs.

aa.



Dr K.B.S. RAJAN
Judicial Member