

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 299/2005

Thursday, this the 25th day of August, 2005.

CORAM:

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K. Chandran,
Senior Stenographer,
O/o the Deputy Chief Engineer/
Construction/Southern Railway,
Ernakulam Jn.

- Applicant

By Advocate Mr TC Govindaswamy

VS

1. Union of India represented by
General Manager,
Southern Railway,
Headquarters office,
Park Town, Chennai-3.
2. Chief Administrative Officer,
Construction/Southern Railway,
Egmore, Chennai-8.
3. Deputy Chief Personnel Officer,
Construction/Southern Railway,
Egmore, Chennai-8.
4. Deputy Chief Engineer/
Construction,
Southern Railway/
Ernakulam Jn.,
Ernakulam.

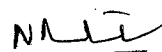
- Respondents

By Advocate Mrs Sumathi Dandapani

ORDER

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The grievance of the applicant in this O.A. is his transfer from
Ernakulam to Madurai in alleged violation of transfer norms.



2. The facts of the case as revealed from the records are that the applicant, Shri K Chandran, Senior Stenographer, office of the Deputy Chief Engineer/ Construction/ Southern Railway, Ernakulam joined Trivandrum Division as Typist on 2.8.1982. He volunteered to work in the Construction Organization of the Southern Railway under the control of the Deputy Chief Engineer, Construction. He reached the level of Senior Stenographer on ad hoc basis. Vide A-1 impugned order dated 18.4.2005, the applicant, while working under Deputy CE/CN/ERS was transferred on his existing pay and scale to Deputy Chief Engineer/OC/MNM at MDU along with the post on administrative grounds

3. Conceptually, Construction Organization draws employees from open line to meet the seasonal requirements of construction offices for executing projects. On completion of projects, the employees are repatriated to their parent cadre and open line where their lien is maintained. A-3 document is a set of instructions issued for filling up of vacancies of Office Staff including Clerical staff and Stenographic staff in the Construction Units. While so filling, the preference to be followed is specified - volunteers from the works branch/Personnel Branch of the Division or Headquarters where Construction Offices are located should be preferred followed by volunteers from the works branch/Personnel Branch of other Divisions including Headquarters followed by volunteers from other departments excluding Stores and Accounts. A-2 order bearing No.P(S)676/1/5/Surplus/Vol.IV dated 26.3.1976 issued by the Chief Personnel Officer of Southern Railway



deals with the process of repatriation of surplus staff in the Construction Organizations on completion of projects. Such repatriation is envisaged in an order reverse to that of filling in the posts at the time of formation of the office.

4. According to the applicant, his transfer violates instructions in A2 and A3 documents. According to him, his case falls within the meaning of repatriation surplus staff in the Trivandrum office. Hence following the instructions in A2, in view of surplus in the Construction Offices falling within the jurisdiction of Trivandrum Division, persons drafted from other Divisions must be moved first. But according to him, he belonging to the Trivandrum division was being moved out, whereas there are cases of four senior stenographers working in the Construction Offices of the Trivandrum Division but having lien in Madras Division and Headquarters Units still being retained in Trivandrum Division. Such retention is in violation of A-2 and A-3. Besides, he would contend that the presence of one Junior Administrative Grade Officer and two Senior Scale Officers in the Deputy CE/CN/ERS in Trivandrum Division would necessarily need stenographic support and he could be very well accommodated against any one of such vacancies. Apart from the violation of established instructions, the transfer would affect adversely the education of his two daughters.

5. His prayer is to get the A-1 order quashed on the grounds that the order is arbitrary, discriminatory and violative of guidelines issued especially.



6. In reply, the respondents contend that there is insufficient work in Ernakulam, the applicant has been moved to the construction office in Madurai division with heavier work load and it is not only the applicant but eighteen others too who have been so moved to Madurai. As regards the question of retention at Trivandrum, out of the two JA grade officers referred to by the applicant, one has been moved out of Ernakulam to Quilon and the other one has already another Senior Steno working with him. As regards the question of applicability of the A2 and A3 instructions, the respondents contend that the prescribed preference should be followed only in the case of repatriation to open line and not in the case of intra-construction organization movement as in the present case.

7. The applicant seeks the remedy of quashing A-1 order to the extent it relates the applicant and to grant consequential benefits arising therefrom. He rests his case on the following grounds:

- i) The impugned order is arbitrary, discriminatory and contrary to law.
- ii) The transfer ordered is violative of A-2 and A-3 guidelines.
- iii) Non-disturbance of persons drafted from other Divisions working in the Construction Offices falling within the territorial jurisdiction of Trivandrum Division and transferring the applicant belonging to the Trivandrum Division is in violation of the guidelines mentioned in the A-2 and A-3 documents.



iv) Such transfer would cause irreparable damage to the education of his children.

8. We have heard the learned Counsel Shri Govindaswamy for the applicant and Smt Sumathi Dandapani for the respondents. We also perused the documents of the case and considered the scope of judicial review on matters of transfer. From the law laid down by the Hon. Supreme Court and various benches of this Tribunal, such scope of judicial review on matters of transfer is rather limited except on grounds of malafide, infraction of statutory laws, violation of rules or of incompetence of transferring authority and transfer on administrative contingency is not to be interfered with.

9. The points for consideration are the following:

- a) Whether the transfer was ordered by an authority not competent to issue the same.
- b) Whether the transfer order is violative of any law or orders
- c) Whether the transfer order is attacked on grounds of malafide,
- d) Whether the transfer order is made on administrative contingency

10. On the point whether the transfer was ordered by an authority not competent to issue the same, the applicant has no case that the authority issuing the transfer order lacks competence. Hence, it has to be concluded that the order was issued by a competent authority.



11. On the question of whether the transfer order is violative of any law or orders, it is the definite case of the applicant that the order is violative of the orders of the Southern Railway, Headquarters Office, Personnel Branch, in A-2 and A-3. A3 covers filling up of vacancies by volunteers from open line whenever a construction office of the Construction organization is opened in a division, specifying the order in which the office staff is to be filled up. A-2 deals with the question of repatriation of surplus staff and the order of such repatriation is opposite to that of induction of staff as envisaged in A3. The contention of the respondents is that there is no curtailment of staff in the Construction Offices in the Trivandrum Division which led to the impugned transfer of the applicant to the Madurai office in that Division and hence the instructions in A2 and A3 have not been violated. However, the respondents could not explain why the applicant should be moved with his post, if there was no curtailment. Besides, the respondents would themselves say that a Junior Grade officer with whom the applicant was working was moved to Quilon due to lesser workload and the applicant was **rendered surplus**(emphasis added). This is an implicit admission of surplus staff at least in so far as the category of Stenographers. On the question of four Senior Stenographers belonging to Madras Division and Madras Headquarters, continuing to work in Trivandrum Division, the respondents would contend that the posting order under challenge presently does not represent the case of repatriation but one of posting within the Construction Organization. Even in that case, it is not properly explained as to why persons from other Divisions are still retained at



Trivandrum while the applicant is disturbed. The respondents would also contend that it was not only the applicant but many others covered under R-1 and R-2 who were moved to Manamadurai office. It is difficult to accept this contention in support of the transfer order of the applicant: first the others are all technical officers, not comparable with the applicant who is a Stenographer and in respect of such technical hands, the extant guidelines, if any, have not been produced; secondly, the orders do not speak of posts having been shifted as in the case of the applicant. According to the respondents, the office in Manamadurai has come into being for attending to the work of gauge conversion up to Rameshwaram, but they were unable to explain whether for filling up the posts of Stenographer/Typists in the new office, the guidelines in A-3 were applied, especially that portion of the guidelines asking for volunteers for filling up the post. In the end, it is seen that the applicant is a surplus hand, the guidelines relating to repatriation from the Trivandrum Division and induction into the Madurai Division have not shown to have been followed in respect of his case atleast.

12. On the question of whether the transfer order is attacked on grounds of malafide, the applicant would argue that he was being disturbed from Trivandrum Division while others from other Divisions are left undisturbed only because he had filed an O.A. in relation to the issue of non-regularization.

13. On the question of whether the transfer order is made on administrative contingency, the applicant would contend that enough



work has been ordered in the Trivandrum Division itself which would facilitate his retention at Ernakulam. The respondents would maintain that the transfer was a matter of administrative exigency.

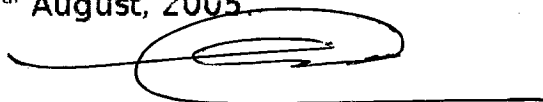
14. In sum, it appears that no case appears to have been made out on grounds of incompetence, malafides or lack of administrative grounds. But a prima facie case exists on apparent violation of prescribed instructions. The respondents have admitted that the applicant is surplus which would mean a post is surplus which should set in a chain of activities leading to repatriation. No evidence is led to the commencement of such a chain nor on the process of filling in vacancies in the newly emerging construction office in Madurai Division. Once a surplus post is admitted, the repatriation of an in house candidate from Trivandrum Division, retaining Senior Stenos from other Division is neither justifiable nor understandable all the more so when other posts are available as pointed out. Hence, in totality the prescribed guidelines do not appear to have been followed.

15. Hence, the O.A. Is allowed setting aside A-1 transfer of the applicant out of Trivandrum Division to Madurai and the respondents are directed to allow the applicant to work in the Construction Office of the Trivandrum Division in any appropriate post till his repatriation is carried out strictly in accordance with the guidelines in A-3 circular. No order as to costs.

Dated, the 25th August, 2005.



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.V. SACHIDANANDAN
JUDICIAL MEMBER