

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No.34 OF 2004

Tuesday this the 5th day of December, 2006

CORAM :

**HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER**

R.Manickavasagam,
Executive Electric Engineer, Construction
Southern Railway, Ernakulam Junction
Residing at : No.12, Sterling Apartments
Kadavanthara, Kochi - 17

: Applicant

(By Advocate Mr. T.C.Govindaswamy)

Versus

1. Union of India represented by
The General Manager
Southern Railway,
Headquarters Office, Park Town PO
Chennai - 3
2. The Chief Electrical Engineer,
Southern Railway,
Headquarters Office, Park Town PO
Chennai - 3
3. The Divisional Railway Manager
Trivandrum Division
Trivandrum - 14
4. The Senior Divisional Personnel Officer
Southern Railway,
Trivandrum Division, Trivandrum - 14
5. The Senior Divisional Electrical Engineer
Trivandrum Division, Trivandrum
6. The Chief Engineer(Construction)
Southern Railway, Egmore, Chennai - 8

: Respondents

(By Advocate Mrs. Sumathi Dandapani)

The application having been heard on 16.11.2006, the Tribunal
on 5.12.2006 delivered the following :



ORDER**HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

In this application, the applicant is aggrieved by the orders regulating the date of joining duty consequent to his transfer.

2. He is presently working as Executive Electrical Engineer in the Construction Organisation of Southern Railway at Ernakulam. While he was working as Divisional Electrical Engineer, vide A-1 order No.HPB(O)900/2002 dated 10.12.2002, the respondent-1 transferred him as Executive Electrical Engineer at Ernakulam. Vide A-2 letter dated 14.12.2002, he applied for casual leave from 20.12.2002 to 31.12.2002. Changing his mind, he availed himself of only one day's casual leave on 20.12.2002 with due intimation and notice to the 3rd and 5th respondents and relinquished his office on 21.12.2002. The intimation was given by him vide A-3 order No.V/TRD/150/1/1 dated 21.12.2002. After availing himself of the joining time, vide joining report dated 2.1.2003 (A-4) he joined duty on 2.1.2003. Copies of the joining report were sent to, inter-alia, all the respondents. The said joining report does not seem to be addressed to any one in particular. Vide A-5 letter No.V/CS/GAZ/Vol.II dated 29.12.2002, the R-3, DRM/TVC informed him that he was sanctioned casual leave from 20.12.2002 except for 26th and 27th and his relinquishment of charge on 21.12.2002 was not intimated to the DRM, this was reported to the CEE-MAS and the latter directed that the applicant should explain his conduct. A-5 ended with a direction to contact CEE/MAS before joining duty. The applicant claims that this DO letter was received after his joining on 8.1.2003. He received A-6 letter No.E133/CN/HQ/GAZ dated 6.1.2003, sent from the CEE's office wherein he was advised to report to the DRM/TVC and Senior DEE/TVC and to report at CEO's office for getting local posting order. Vide A-7 letter dated 6.1.2003, the applicant sent a reply to be A-5 letter dated 29.12.2002. Therein, he had

explained the reasons for relinquishing the charge of Divisional Electrical Engineer at Trivandrum on 21.12.2002. He was given A-8 Last Pay Certificate (LPC, which is impugned) in pursuance of the transfer order. The said certificate was issued by the Senior DPO Trivandrum on 4.2.2003. The highlights of this LPC are the following:

- i) He made over charge of his duties at Trivandrum on 13.1.2003.
- ii) He received the pay and allowances at admissible rates upto 31.12.2002.
- iii) He was to claim pay and allowances from 1.1.2003 at his end(i.e. Ernakulam).
- iv) The C.L. On 26.12.2002 and 27.12.2002 was not sanctioned.

3. In pursuance of the impugned LPC, he submitted A-9 representation dated 8.2.2003. He pointed therein that the endorsement in the LPC of 13.1.2003 as the joining date at Ernakulam was factually incorrect. In fact on that date, he was at Madras for certain official work. He ended his representation requesting treatment of the period from 21.12.2002 to 1.1.2003 as joining time and making necessary changes in the LPC in tune with the physical realities. Another representation (A-10) dated 8.2.2003 was sent to Senior DPO at Trivandrum on the same lines. Vide A-11 representation to the Chief Engineer he requested for transfer grant. In reply to his A-10 representation, the Senior DPO, Trivandrum informed him vide A-13 dated 5.3.2003 (impugned) that his date of relinquishment of the post of DEE, Trivandrum central was deemed to be 13.1.2003 and that regularisation of the period of leave and fact of relinquishment on 21.12.2002 was to be approved by the CEE and CPO, Madras. He approached this Tribunal in O.A 321/2003 challenging A-8 and A-13 orders. The said O.A was disposed of by A-14 order, permitting him to make representation projecting his grievances with regard to A-8 and A-13 orders. Such a representation was made vide A-15 letter dated



21.10.2003. The main points raised by him in the said representation are as follows:

- i) He was transferred as Executive Engineer, Construction and the post held by him earlier was downgraded.
- ii) There was nothing irregular in relinquishing office, without awaiting the arrival of successor to take charge in the downgraded post.
- lii) There is a precedent available in his own case – when he was transferred from Palghat Division, he had relinquished his office which was not frowned upon.
- iv) As he availed of only one day's casual leave on 20.12.2002 and relinquished charge on 21.12.2002, the question of sanctioning leave for a subsequent period did not arise.
- v) Such relinquishment was not made by him to avoid attending to some emergent accident duties on 21.12.2002.

4. The said representation was disposed of by impugned A-16 orders dated 25.12.2003. Therein, it was mentioned that despite repeated orders, he refused to attend to the accident duties, his relinquishment on 21.12.2002 was without information to any person, the reasons for relinquishment were not found convincing and the date of joining of successor in his post at Trivandrum, 13.1.2003 was taken as the deemed date of joining of the applicant at Ernakulam. Aggrieved by A-8, A-13 and A-16 he has approached this Tribunal.

5. The reliefs asked for are the following:

- i) quashing of A-18 in relation to the portion on the date of his handing over as 30.1.2003 and the sanctioning of leave on the 26th and 27th of December and quashing of A-13 and A-16 and a direction to the respondents to correct the date of relinquishment as 21.12.2002. He relies on the following grounds:

- i) His date of relinquishment in the previous post on 13.1.2003 is factually incorrect.
- ii) He has not availed of any casual leave after his date of relinquishment of 21.12.2002.
- iii) There was no communication relating to cancellation of the casual leave or recalling him for any duty, for the accident at Ernakulam.
- lii) The applicant relinquished the office with permission from the DRM as evidenced by A-12 document.

6. Respondents oppose the application on the following grounds:

- i) He was sanctioned casual leave for the period from 20th to 31st December 2002 except 26th and 27th December, 2002.
- ii) There was a specific direction issued to the applicant on 21.12.2002 vide R-1 to attend to the accident duty. Despite instruction for a second time, he refused to go to the emergency work on the plea that he was on leave.
- lii) The relinquishment of charge as per A-3 is contrary to Rule 233 of the IREC. In fact, when he joined Trivandrum he took charge from the previous incumbent following the above rule (R-2).
- iv) The fact of grant of composite transfer grant has no relation to the date of relinquishment.
- v) As he did not follow the rules for relinquishment, he cannot get A-13 and A-16 set aside.

7. Heard the counsel and perused the documents including the ACR of the applicant for the period ending 31.3.2003.

8. The first question arises about the LPC. Normally, based upon the LPC issued on transfer of an incumbent to a new location, authorisation for making payments in such stations is issued. The first thing to be noted is that though the officer relinquished the charge, according to his claim, on 21.12.2002, and



according to the respondents on 13.1.2003, the LPC itself was issued much later, on 4.2.2003. According to the LPC, he was paid upto 31.12.2002 in his previous station, viz, in the post of Divisional Executive Engineer, Trivandrum. Respondents have produced copies of the pay bills for both December 2002 and January 2003. For the later period, his designation is given as XEE/CN/ERS. Apparently this indicates he was Executive Electrical Engineer at Ernakulam. The said pay bill covers the entire month of January 2003. Has the LPC been followed, the period of payment should actually start from 13.1.2003 and not from 1.1.2003. It is seen that the components of the emoluments are more or less the same for both December, 2002 and January 2003 except HRA and PP-FP. Thus, the date of joining is not likely to cause any financial prejudice. In as much as the LPC has not been followed with regard to the commencement of duties on 13.1.2003, and no financial prejudice has been caused, prima facie we have to find that the pay bills have superseded the said LPC as relating to the date of joining. It is significant to note that the pay bill for the month of January has not followed the date of assumption of office as declared by the applicant on 2.1.2003.

9. Next point relates to mainly A-16, wherein a notional date of joining at Ernakulam has been conceptualised at 13.1.2003, on which date his successor Shri Yadav had joined the post, which has been downgraded after the exit of the applicant. The applicant contends that after his taking over, he had met the seniors. The LPC itself says that he had vacated the quarters on 20.12.2002. It is seen from ACR produced before us, especially the traveling allowance journal that after his taking over charge of DEE/CN/ERS, he undertook a journey to Madras and reported to the CEE/MAS office on 2.1.2003 and 3.1.2003. On 4.1.2003, he inspected a work at MNTT. On 6.1.2003 to 8.1.2003, he claims to have attended DRM/TVC office. And lastly, on the 12th and 13th of January, he held discussions with the Deputy Chief Engineer at Madras. All these journeys

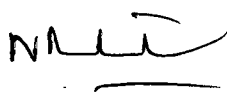


are in the nature of self serving admissions. But these are physical facts, not controverted, flying in the face of a notional date of joining on 13.1.2003. It could be very well against the IREC Rules relating to take over and handing over of charges. But in view of the physical facts states above, the notional date of taking over, viz, 13.1.2003, loses all significance. The respondents may have a very good case against the applicant, who according to them defied the instructions of the superiors as relating to his failure to attend to accident duties. But action in respect of such defiance should lie elsewhere. Equally so, about the period of absence. The respondents have no answer about the A-17 and A-18 documents, by which one Shri Sidhappa of South Western Railway and Shri Yadav, the proposed reliever of the applicant have merely relinquished and not handed over the charges. This is a case of inexplicable discrimination especially with reference to the indulgence shown to Shri Yadav. The accommodation given especially to Shri Yadav is not properly explained. If the logic relating to the applicant was to be extended to Shri Yadav, then his deemed date of joining at Ernakulam should be date on which his successor joined of Madras. This would further postpone the deemed date of joining of the applicant at Ernakulam. And this would be contrary to the discharge of his duties as described in physical terms in the T.A journal.

10. Under these circumstances, the O.A is allowed, the impugned orders are quashed to the extent of specifying a deemed date of joining and the same declared as 2.1.2003. No costs.

Dated, the 5th December, 2006.


GEORGE PARACKEN
JUDICIAL MEMBER


N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER