

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.339/97

Tuesday, this the 3rd day of June, 1997.

CORAM:

HON'BLE MR AV HARIDASAN, VICE CHAIRMAN

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

P Muthaiah,  
Sanitary Cleaner,  
Office of the Chief Health Inspector,  
Southern Railway,  
Ernakulam Junction.

- Applicant

By Advocate Mr B Gopakumar

Vs

1. Union of India represented by  
General Manager,  
Southern Railway, Madras-3.
  2. Senior Divisional Personnel Officer,  
Southern Railway,  
Thiruvananthapuram.
  3. Chief Health Inspector,  
Southern Railway,  
Ernakulam Junction.
  4. N Sahodharan,  
Chief Health Inspector,  
Southern Railway,  
Ernakulam Junction.
  5. Divisional Medical Officer,  
Southern Railway,  
Thiruvananthapuram.
- Respondents

By Advocate Mrs Sumathi Dandapani

The application having been heard on 3.6.97 the  
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR AV HARIDASAN, VICE CHAIRMAN

The applicant is a Casual Labourer under the Railway  
Administration having attained temporary status with effect

from 17.2.94. He has been, in the impugned order A-13 dated 20.2.97 on empanelment, posted as Sanitary Cleaner, Nagercoil. It is the case of the applicant that there are sufficient number of vacancies in Ernakulam itself to accommodate the applicant also and that his posting to Nagercoil, a far distant place was on account of the influence exerted by the 4th respondent in the office of the 2nd respondent, as the 4th respondent is enemical towards the applicant on account of a criminal case pending between them as also because the applicant did not oblige to carry out the illegal demands of the 4th respondent. The relief of the applicant from Ernakulam, according to applicant, has been manipulated by the 4th respondent out of his enmity and therefore the applicant has filed this application seeking the following reliefs.

- "(i) to declare that the applicant is entitled to be retained at Ernakulam, and paid his salary and other allowances as payable to a Sanitary Cleaner, and he is entitled to perform of the duties of a Sanitary Cleaner at Ernakulam and receive wages for the entire period in the time scale of pay; so far as he is being treated as a temporary status sustained sanitary cleaner as directed in Annexure-A1;
- (ii) to direct the 3rd respondent to pay the entire pay and allowances and other monetary claims so far occurred to him and dues to the applicant by virtue of his employment under the respondents 1 to 3 on the basis of Annexure A1; so long as he has not been validly and legally moved out of Ernakulam by a competent authority in the exigencies of administration.
- (iii) to issue both other orders or directions which this Hon'ble Tribunal may deem fit and properly in the circumstances of the case; and

...3...

~

- (iv) to quash that portion of Annexure-A13 which directs the posting of the applicant at Nagercoil, as well as the action of the 3rd respondent in relieving the applicant from Ernakulam with effect from 1.3.97 FN directing him to join at Nagercoil, as illegal and void."

2. The respondents in their reply seek to justify the impugned order on the ground that the applicant being the juniormost of the persons empanelled for appointment as Sanitary Cleaners on regular basis had to be posted to Nagercoil, which is nearer to his native place and as there is no vacancy at Ernakulam to accommodate the applicant. It is stated in the reply that persons even senior to applicant have been sent out of Ernakulam for want of vacancies. The action having been done bonafide and without yielding to any influence from any quarters does not merit interference by Tribunal, contend the respondents.

3. The applicant in a rejoinder has stated that the low seniority position of the applicant was a result of unjustified action on the part of the 4th respondent in marking him absent when he actually reported for duty and that this dispute still under conciliation. Regarding the contention of the respondents that the applicant was transferred to Nagercoil for want of a vacancy, it is contended that one Shri Arumugam has submitted a representation (A-15) to the Divisional Personnel Officer, Trivandrum to give him a posting to Nagercoil and that if this request is acceded to, the applicant could be accommodated at Ernakulam and Arumugam transferred to Nagercoil.

4. Posting and transfers of officials are within the domain of the administration. Any interference with such routine administrative matters by the Tribunal unless malafides are established would not be justified. From the allegations made in the application we are not convinced that the applicant has been successful in making out malafides in the mind of the competent authority in posting the applicant to Nagercoil, Though the 4th respondent and the applicant may be at loggerheads, if the action of the second respondent can be justified from the factual situation, no interference is justified, especially when the 4th respondent is not the authority competent either to appoint the applicant as Sanitary Cleaner or to transfer him.
5. Aware of the legal position, the learned counsel for applicant suggested that the application can be disposed of with a direction to the respondents to consider the feasibility of posting the applicant back to Ernakulam after he joins at Nagercoil in case Shri Arumugam is transferred to Nagercoil.
6. Learned counsel for respondents states that this aspect would be considered and an order would be passed by the competent authority.
7. Though the applicant had been relieved from duty on 1.3.97 from Ernakulam, probably because of the pendency of

this case the applicant has not joined at Nagercoil. Learned counsel for applicant states that the applicant would report for duty at Nagercoil within ten days and the counsel for respondents states that the respondents would take him on duty if he report within ten days.

8. It was mutually agreed that for the period between 1.3.97 and the date of reporting at Nagercoil, the applicant shall apply for leave to the competent authority and the respondents may consider and grant leave taking into account all the circumstances of the case.

9. In the result, the application is disposed of in the light of what is stated above and the submission of the learned counsel with the following directions:

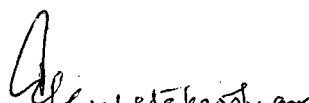
- a) The applicant shall within ten days from today report for duty as Sanitary Cleaner at Nagercoil;
- b) After joining duty at Nagercoil the applicant may make a representation to the second respondent for a convenient posting which the second respondent may consider taking into account also the representation at A-15 alleged to have been made by Shri Arumugam for a transfer from Ernakulam to Nagercoil and pass appropriate order considering the public interest and also the difficulties

projected by the concerned employees in their representation within two months from the date of receipt of the representation by the applicant; and

- c) For the period between 1.3.97 and the date of joining duty at Nagercoil by the applicant, the applicant shall make an application for leave and the competent authority may grant leave of any kind due to him.

10. No costs.

Dated, the 3rd June, 1997.

  
PV VENKATAKRISHNAN  
ADMINISTRATIVE MEMBER

  
AV HARIDASAN  
VICE CHAIRMAN

trs/56

LIST OF ANNEXURES

1. Annexure A1: True copy of the Office Order No.21/94/MD dt. Nil issued by the Office of the 2nd respondent.
2. Annexure A13: True copy of the Office Order No.0.0.5/97/MD issued by the 2nd respondent.
3. Annexure A15: True copy of the request of V. Arumugam dt. 15.2.1997.

.....