

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

Dated 19th day of January 1990

Present:

Hon'ble Shri N.V. Krishnan, Member(Administrative)
and

Hon'ble Shri N. Dharmadan, Member (Judicial)

ORIGINAL APPLICATION No.34/89

Sojan J. Jamesthe applicant

V.

The Chief Personnel Officer,
Southern Railway, Madras1st respondent

The Divisional Railway Manager
Southern Railway, Trivandrum2nd respondent

The Divisional Railway Manager
Southern Railway, Trichy3rd respondent

The Divisional Railway Manager,
(Personnel), Southern Railway,
Trivandrum4th respondent

The Divisional Railway Manager
(Personnel) Southern Railway,
Trichy.5th respondent

S. Radhakrishnan, Chief Booking
Supervisor, Southern Railway,
Alwaye6th respondent(additional)

M/s. Asok M Cheriya, Mathews : Counsels appeared for
Valsalan and CA Joy the applicant

Mrs. Sumathi Dandapani : Railway Counsel (R-1 to 5)

M/s. K. Ramakumar and VR
Ramachandran Nair : Counsel for R-6(individual)

JUDGMENT

Shri N. Dharmadan, JM.

The applicant in this application, a Class III railway employee, approached this Tribunal under Section 19 of the Administrative Tribunals Act 1985 with the prayer to set aside Appendix-I by which he is transferred back to Trichy from the Trivandrum Division.

2. The applicant while working as Chief Commercial Clerk Grade I in the pay scale of Rs.2000-3200 at Trichy Division applied for transfer on mutual basis to Trivandrum Division in order to look-after the unhealthy-aged parents, employed wife and the children who are at Alwaye in Ernakulam District. Shri S. Radhakrishnan who was interested to go to Trichy from Trivandrum, agreed for this mutual transfer as per paragraph 310 of the Indian Railway Establishment Manual. But the attempt of the applicant became futile since Shri S. Radhakrishnan was only officiating in scale 2000-3200 purely on ad hoc basis in Trivandrum Division. Annexure-A.1 is the letter by which the request for mutual transfer was turned down; but its foot note made it clear that Radhakrishnan had to wait to be transferred till his services were regularised in the post of Commercial Clerk Grade.I.

3. In the mean time the applicant was transferred to Trivandrum Division and worked in the post of Chief Commercial Inspector Grade-I, because of his family circumstances, retaining his lien as Chief Commercial Clerk Grade-I in Trichy Division, as an ad hoc measure pending selection and confirmation of S. Radhakrishnan in the scale of Rs.2000-3200. The ad hoc promotion of Shri Radhakrishnan was later regularised with effect from 26.4.1988. The fact was brought to the notice of DRM, Trichy by the DRM, Trivandrum by Annexure A-2 letter. The applicant and Shri Radhakrishnan again submitted jointly an application in proforma-D requesting for mutual transfer on 22.8.1988 to first respondent. The request was considered and orders transferring the applicant to Trivandrum Division and Shri Radhakrishnan to Trichy Division had been issued by the second respondent. Annexure A-4 is the order.

4. Consequent upon this transfer order, the applicant reported to Trivandrum Division and he was then posted in the Booking Office at Alwaye in the category of Chief Commercial Clerk Grade-I (Annexure A-5). After a short period of one month the 2nd respondent issued another letter dated 12.12.1988, Appendix-I cancelling the transfer order at Annexure A-4 dated 22.8.1988 and restoring the original position by putting back Shri Radhakrishnan

to Trivandrum Division and the applicant to Trichy Division. The applicant is challenging the order Appendix-I in this application.

5. The respondents 1 to 5 filed the counter affidavit upholding the validity of the impugned order of 12.12.1988, transferring the applicant back to Trichy Division. The respondent-6, Shri Radhakrishnan, who was impleaded subsequently also filed a counter affidavit.

6. The respondents 1 to 5 have no case that the cancellation order was passed in the exigency of the service. On the other ^{hand} ~~they~~ contended that the applicant was previously transferred to Trivandrum on ad hoc basis to officiate ^{on} ~~the~~ post of Chief Commercial Inspector in the grade of Rs.2000-3200 owing to family circumstances, to which regular selection was made subsequently and five persons had joined duty as Commercial Inspector Grade-I. Hence the applicant was issued with the order of repatriation to Trichy Division where he retains his lien, as no vacant post of commercial Inspector Grade-I was available to accommodate the applicant. If this is the reason why the applicant was transferred to Trivandrum on ad hoc basis on ^{SS} ~~com~~ ^A ~~pat~~ionate grounds without making a regular selection and posting. This appears to be a new reason now found out by the respondents to

to sustain the order, because the respondents 1 to 5 could have stated this reason in the impugned order itself if this was the real reason. The order of cancellation merely states that the earlier order is cancelled.

It reads as follows:

"..... Reference CPO/MAS letter dated 28.11.88 DPO/TVC, O.O. No, 90/88/CC dated 26.9.88 stands cancelled.

Accordingly Shri S. Radhakrishnan is put back on the rolls of TVC Division and posted as CCCI/AWY in scale Rs.2000-3200 vice Shri Sojan J James, who is transferred back as Ad hoc CCI/ERS in Scale Rs.2000-3200.

This has the approval of the competent authority....."

The next reason stated by the respondents 1 to 5 for supporting the impugned order is that the mutual transfer of the applicant and Radhakrishnan was not agreed to by the Divisional Railway Manager, Tiruchirappalli as Shri Radhakrishnan was holding the post of Commercial Clerk Grade-I on ad hoc measure and not on regular basis. It was also contended that when the services of Shri S. Radhakrishnan was regularised, the second respondent revived the earlier mutual transfer order of the applicant without the approval of the Divisional Railway Manager. This is not^{an} acceptable reason. Annexure-I does not given any indication that mutual transfer was^{not} acceptable to Divisional Railway Manager. It only states that mutual transfer is not permissible due to technical reason. The order reads as follows:

"....Your application for inter Divisional Mutual transfer with Shri S. Radhakrishnan CCC/Gr.I NOJ, TVC/Divisional is not permissible as Shri S. Radhakrishnan is officiating in scale Rs,700-900 purely as a ad hoc measure only where as you are holding the post in scale Rs.700-900 as a regular measure.

Sd/-
for DIVISIONAL RAILWAY MANAGER

Copy to: CPO/MAS for information in reference to his letter No.P(S)676/III/3/Vol.I of 6.12.1985
DRM/P/TVC for information. He will please notify Shri S. Radhakrishnan accordingly. He has to wait till his ad hoc promotion is regularised after selection....."

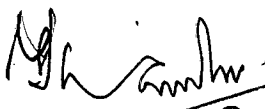
The last portion dealing with the marking of copy to Shri S. Radhakrishnan clearly indicates that the Divisional Railway Manager has no objection to the inter-divisional mutual transfer requested by the applicant and Shri Radhakrishnan. Annexure A-4 also shows that the Divisional Railway Manager had approved the transfer. The third reason put forth by the respondents also does not persuade us to sustain the impugned order. The respondents 1 to 5 contended that they have received a representation dated 2.12.1983 from S. Radhakrishnan requesting to cancel the mutual transfer order as his ailing parents are settled down at Nagercoil with his family and the withdrawal request has been accepted due to the fact that norms and rules of mutual transfer have not been strictly adhered to. Annexure R-6(1) produced along with the counter affidavit clear ^h filed by the 6th respondent makes it very/and beyond any doubt, that he had given unconditional consent for the mutual transfer and that the DRM had acted upon it by


relieving the applicant in pursuance of the transfer in 1985 itself. The 6th respondent cannot now change his stand and seek a retransfer or withdraw the consent owing to some change of circumstances and seek for a cancellation of the original transfer order already passed in this case especially because of the conditions attached to Annexure A-4 order. We are not impressed by the arguments of the respondents.

7. The further contention of the respondents that the second respondent did not obtain the approval of the third respondent is also not sustainable. In fact the approval of the third respondent is not needed since the orders are passed on the basis of the orders of the Chief Personnel Officer. Even if it is accepted, it is only a default and administrative lapse of the respondents 2 and 3 for which the applicant can not be penalised by cancelling the mutual transfer order already validity granted by the respondents. We feel that the acceptance of request of Shri Radhakrishnan for cancellation of mutual transfer at a later stage is arbitrary and discriminatory treatment and it is also against the stipulations in the transfer order, Annexure A-4.

8. Having regard to the facts and circumstances of the case, we are inclined to set aside the impugned order at Appendix-I and allow the application. Accordingly, we do so.

There will be no order as to costs.


(N. Dharmadan)
Member (Judicial)
19.1.90


(N.V. Krishnan)
Member (Administrative)
19/1/90

19.1.1990

Ganga..

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

RA 20/90 in O.A. No. 34/89
~~XXXXXX~~

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DATE OF DECISION 25.7.90

S Radhakrishnan Applicant (s) in RA

M/s K Ramakumar Advocate for the Applicant (s)

Versus

Sojan J James and 5 others Respondent (s)

Mr Ashok M Cherian Advocate for the Respondent (s)-1 (not
Mrs Sumathi Dandapani (for R 2 to 6) present)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member

The Hon'ble Mr. N Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

Shri N Dharmadan, Judicial Member


The sixth respondent in the original application has filed this review application relying on Annexure-B dated 28.11.88. The review applicant raised a contention that his seniority is being affected by the judgment and he apprehends that adverse orders would be passed by the Railways. The omission to safeguard his case of seniority in the light of Annexure-B is the ground for review of the judgment.


2 We have heard the parties. We do not think there is any ground for review and the applicant's learned counsel did not make out a case to substantiate his claim

...2

for review of the judgment already passed by us
on 19.1.1990.

3 Accordingly, we dismiss this review application
with the observation that we have only considered
the question of validity of the ^{mutual} transfer and nothing
pertaining to the seniority of the applicant and ~~as~~ ^{the}
the contesting respondents arose for our consideration
in the above O.A. However, the applicant is at
liberty to file an application, if he so desired, ^{for}
for getting his seniority fixed by the concerned
authority. .


(N Dharmadan) 25.7.90
Judicial Member


(NV Krishnan),
Administrative Member

25.7.90