

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 341 of 2008

Friday, this the 12th day of December, 2008

C O R A M :

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

R.K. Gangadharan,
S/o. R. Kannan,
Technician Gr.I/Carriage & Wagon,
Southern Railway, Mangalore,
Residing at : Railway Quarter No. 87-C,
Railway Colony, Mangalore.

... Applicant.

(By Advocate Mr. T.C.G. Swamy)

v e r s u s

1. Union of India represented by
The General Manager,
Southern Railway, Headquarters Office,
Park Town P.O, Chennai – 3
2. The Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.
3. The Divisional Railway Manager,
Southern Railway, Salem Division, Salem.
4. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.
5. The Senior Divisional Mechanical Engineer,
Southern Railway, Palghat Division,
Palghat.
6. The Senior Section Engineer,
Carriage & Wagon, Southern Railway,
Mangalore Railway Station,
Mangalore.

... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)




The application having been heard on 10.12.2008, the Tribunal on 12.12.2008 delivered the following :

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

The applicant was aggrieved by Annexure A-1 Office order dated 10.04.2008 by which he had been transferred from Mangalore under the Palghat Division to Erode under Salem Division. The contention of the applicant is that after the formation of Salem Division w.e.f. 01-11-2007, unless there is an option from his side, the authorities were not competent to transfer the employee from one Division to another. According to Annexure A-5 guidelines, for transfer of staff on account of the formation of the Salem Division, para 1.6.0 provides that no staff will be transferred against his/her willingness on a permanent basis in line with the assurance give by Hon'ble MOSR. When the applicant had filed OA No. 246/2008, the said OA was disposed of with a direction to the applicant to make a representation to the 2nd respondent, i.e. the D.R.M. who shall then dispose of the same at the earliest. Till then, the Tribunal had stayed the impugned transfer order. Annexure A-3 order in this OA refers.

2. Respondents have, by Annexure A-6 order dated 20th June, 2008 rejected the case of the applicant stating that the applicant has been there for more than 32 years and that in the past there were a number of occasions when he was visited with certain penalties. Again, there have been complaints against him from his superiors and hence, it was in administrative exigencies that he has been



transferred. They have also justified that inter divisional transfer at the level of Sr. Divisional Mechanical Engineer is well within the powers of the said authority as the cadre was to be closed only after 31st May, 2008.

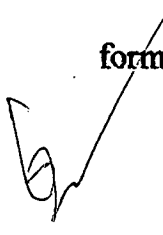
3. Challenging the Annexure A-1 and A-6 orders, the applicant has filed this OA.

4. Respondents have contested the O.A. They have almost repeated the fact as contained in the Annexure A-6 order.

5. Rejoinder and additional reply followed by additional rejoinder and reply therefore have also been filed.

6. Counsel for the applicant submitted that the order suffers from the illegality of competence of the authority who has passed the order of transfer. For inter-divisional transfer, the authority shall be one who is common to both the divisions. Again, if the applicant has been found to be inconvenient at Mangalore, respondents could shift him from there but to any nearby places, such as Kankanadi, where there is a vacancy. Instead, their action in shifting the applicant to another Division itself is not warranted at all, more so, when they do not enjoy such a power.

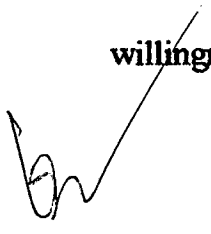
7. Counsel for the respondents submitted that though Salem Division was formed on 01-11-2007, till 31st May 2008, the cadre was not to be closed by the



Division and thus, the authorities which were competent to order transfer prior to the creation of the new Division were equally competent to order transfer. And, due to administrative grounds, as contained in the impugned order and reply/additional reply, transfer of the applicant became absolutely necessary.

8. Arguments were heard and documents perused. While it is true that transfer on administrative ground is permissible, such a transfer within the Division could be made by the Sr. Divisional Mechanical Engineer whereas for inter-Divisional transfer, the authority competent to pass such a transfer order cannot be any one whose powers are confined to the Division only. Authority, which has power to control the two divisions alone can issue transfer orders from one Division to another. Thus, it has to be either by the General Manager or any one authorized by him in accordance with the rules, who can pass such an inter-Divisional transfer order on administrative grounds. This specific requirement makes the transfer order at Annexure A-1 illegal and non-est.

9. Respondents have taken the plea to justify the transfer by the Sr.D.M.E. stating that though SA division has been formed from 01-11-2007, the cadre has not been closed till 31st May 2008 and thus, transfer/promotional orders issued till 31st May 2008 within the territorial jurisdiction of erstwhile PGT Division inclusive of the present SA Division/jurisdiction is in order till 31-05-2008. Annexure A6 order refers. This plea has to be rejected. For, para 1.6.0 of Annexure A-5 is specific that no staff will be transferred against his/her willingness on a permanent basis. Had this stipulation been not there, perhaps, the



respondents would be justified in their contention. In so far as the cadre not having been closed till 31st May 2008, it is to be with reference to certain limited purpose such as payment of settlement dues etc., as contained in para 1.10.0 of Annexure A-5. Perhaps, the same could be extended to keeping open the seniority list, so that the same could crystallize after all the inter-divisional transfers ordered by the competent authority are over. That far and no further. Thus, order of transfer of the applicant by the Sr. D.M.E. cannot stand judicial scrutiny.

10. The above, however, does not in any way curtail the powers of the Sr. D.M.E. in effecting the transfer of the applicant within the present Palghat Division. As a matter of fact, the applicant is not averse to transfer from Mangalore; what he agitates is transfer to Salem Division. As such, the respondents are at liberty to effect the transfer of the applicant from Mangalore to any other place within the present Palghat Division. Till such time such a transfer is effected, the applicant shall not be disturbed from the existing place of his posting i.e. Mangalore.

11. In view of the above discussion, the **OA is allowed**. Annexure A-1 and A-6 orders are quashed and set aside.

12. Under the above circumstances, there shall be no orders as to costs.

(Dated, 12th December, 2008)



(Dr. K B S RAJAN)
JUDICIAL MEMBER