

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.342/2002

Friday this the 21st day of March, 2003

CORAM
HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

P.Krishnamoorthy, aged 52 years
S/oR.Palaniappan
Travelling Ticket Inspector,
Sleeper/Coimbatore Railways
residing at Sujith Nivas,
Edayar Street,
Mancavu, Palaghat.Applicant

(By Advocate Mr. TC Govindaswamy)

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1. Union of India, represented by the
General Manager,
Southern Railway, Park Town PO
Chennai.3.
2. The Chief Personnel Officer,
Southern Railway, Park Town PO
Chennai.3.
3. The Divisional Personnel Officer,
Southern Railway,
Palghat Division,
Palghat.
4. The Chief Commercial Manager,
Southern Railway, Park Town PO
Chennai.3.Respondents

(By Advocate Mr.P.Haridas, Standing counsel)

The application having been heard on 11.2.2003, the Tribunal
on 21.3.2003 delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The Applicant, Travelling Ticket Inspector, Sleeper,
Southern Railway, Coimbatore Division in the scale of Rs.
5000-8000 has filed this application challenging the order
dated 24.4.02 (A1) wherein it is stated that the employee

who is under orders of inter-divisional transfer to TPJ Division on administrative grounds consequent on vigilance cheque is clarified as P.Krishnamoorthy the applicant in the scale Rs. 5000-8000 and not R.Krishnamoorthy, TTE SL CLE in the scale Rs. 4000-6000 as also Annexure.A5 order dated 12.4.02 by which in terms of CPO Madras letter dated 1.4.02 Shri P.Krishnamoorthy TTE/SL/CLE in the scale Rs.4000-6000 is transferred to TPJ Division on his pay and scale.

2. The facts in brief can be stated as follows. On the basis of a vigilance check on 27.4.2000 the applicant was charge-sheeted and proceeded against departmentally. As a result of the above enquiry a penalty of reduction of pay by two stages for a period of two years with recurring effect was imposed on the applicant by order dated 27.6.01. While the applicant was undergoing the penalty he was served with Annexure A1 order of the third respondent purported to be in the nature of a clarification issued to order dated 1.4.02 issued by the second respondent and communicated by the third respondent by order dated 12.4.02. There is a TTE/SL by name Shri R.Krishnamoorthy in the pay scale Rs. 4000-6000 at Coimbatore itself. As the applicant had already been awarded a penalty by order dated 27.6.01 and no order of transfer was issued immediately thereafter, the applicant states that the impugned order is unwarranted and unenforceable. As there is no exigency of service the inter-divisional transfer is not sustainable, states the applicant. The second respondent not being the head of his

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department, the applicant states that order issued by the second respondent transferring him out of the Division is unsustainable. The applicant also states that as a member of the Scheduled Caste community he should not have been transferred to a distant place according to the extant instructions. Annexure A1 order if it is a corrigendum or a clarification could have been issued only by the second respondent who issued Annexure A5 and therefore, A1 is not enforceable, contends the applicant. With these allegations the applicant has filed this application seeking to set aside Annexures A1 and A5 orders.

3. The second respondent in the reply statement seeks to justify the inter divisional transfer on the ground that it was a matter of policy that the applicant who has been punished in connection with a vigilance check was transferred to Tiruchirappilly Division. As far as the clarification order A.1 is concerned it is contended that since the details of the TTEs are known only at the Divisional level finding that R.Krishnamoorthy in the scale Rs. 4000-6000 was not involved in any vigilance check case and the person who was involved in such a case was the applicant the corrigendum A.1 was issued by the third respondent. The respondents contend that by issuing the corrigendum by the third respondent no prejudice has been caused to the applicant. The respondents thus contend that the applicant does not have a legitimate grievances which calls for redressal.

4. I have gone through the pleadings and materials placed on record and have heard the learned counsel on either side. The contention of the applicant that the second respondent not being the head of his department cannot transfer the applicant is of no force at all because he being the Chief Personnel Officer has the delegated powers of the General Manager in regard to the transfer of the officers at the level of the applicant. The contention of the applicant that transfer cannot be made outside the division even in case where an employee is detected indulging in malpractices by vigilance, as such transfer can be had only on administrative exigency also has no force because identical question was considered by this Bench of the Tribunal in OA 379/00. It was held in that case that policy decision taken by the Railway Board to transfer ticket checking staff and other commercial staff detected indulging in malpractices should be transferred out of the division was taken with a laudable objective of maintaining probity in service and in furtherance of public interest and that the Tribunal would not interfere in such cases. Therefore, the contention of the applicant that his transfer out of the Division is ultra vires also has no force.

5: However, in this case there is an infirmity in the impugned order Annexure.A1. Annexure.A5 order by which Shri P.Krishnamoorthy TTE/SL/CLE in the scale Rs. 4000-6000 was transferred to TPJ Division on his same pay and scale was issued by the third respondent on the basis of Annexure.R.1

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order dated 1.4.02 of the second respondent. In fact Annexure.A5 order is a follow up action of Annexure.R.1 order of the second respondent the competent authority to transfer Shri P.Krishnamoorthy, TTE/SL/CLE in the scale Rs. 4000-6000. The applicant though is Shri P.Krishnamoorthy he is in the scale Rs. 5000-8000 and not in the scale Rs. 4000-6000. Therefore, the third respondent issued the Annexure.A1 order clarifying that the employee under orders of inter divisional transfer to TPJ Division on administrative ground was not R.Krishnamoorthy in scale Rs. 400-6000 but was P.Krishnamoorthy, in the scale Rs. 5000-8000. The learned counsel of the applicant argued that Annexure.R.1 issued by the competent authority was to transfer the TTE in the scale Rs. 4000-6000 with the same scale and not to transfer the applicant who is in the pay scale of Rs. 5000-8000. If the intention of the second respondent was to transfer the applicant who is in the scale of pay Rs. 5000-8000 and if there has been an error in Annexure.R.1 order the competent authority to issue a corrigendum or a clarification would be the second respondent and not the third respondent, argued the learned counsel. In the reply statement what is stated to justify Annexure.A1 order is that as the full records relating to the applicant was available only at divisional level, a mistake accrued in Annexure.R1 order issued by the second respondent which was repeated in Annexure.A5 order also by the third respondent, and that it being noted that

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R.Krishnamoorthy was not involved in any vigilance case and the TTE punished in Vigilance Case was the applicant, the third respondent issued the clarificatory order Annexure.A1. I find that the clarification regarding identity of the officer transferred could have been validly issued only by the second respondent who issued Annexure.R.1 order or under his instruction by any one subordinate to it. There is no case for the respondents that the second respondent was notified of the mistake in Annexure.R.1 order and that Annexure.A1 was issued as directed by the second respondent. There is nothing on record to show that the second respondent the authority competent to transfer the applicant Shri P.Krishnamoorthy, TTE in the pay scale Rs. 5000-8000 decided to transfer him. If while issuing Annexure.R.1 the intention of the second respondent was to transfer the applicant, the second respondent alone could have issued a fresh order or corrigendum or directed issue of such an order. As that has not been done, I find that on the basis of Annexure.A1 or Annexure.A5 the applicant cannot be transferred.

6. In the result, the impugned orders are set aside. However, I make it clear that it is for the competent authority, second respondent, to consider and issue appropriate orders if a transfer of the applicant from the Division is found necessary in public interest and that this order would not preclude the second respondent from doing so. No costs.

Dated this the 21st day of March, 2003


A.V. HARIDASAN
VICE CHAIRMAN

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