

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.387/2004

Monday, this the 13th day of September, 2004.

CORAM;

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

M.K.Subramanian,
Loco Pilot(Goods),
Gr.I (Senior Goods Driver),
Southern Railway,
Shoranur. - Applicant

By Advocate Mr TC Govindaswamy

VS

1. Union of India represented by
the General Manager,
Southern Railway,
Headquarters Office,
Par Town.P.O.
Chennai-3.
2. The Divisional Railway Manager,
Southern Railway,
Palghat Division, Palghat.
3. The Divisional Personnel Officer,
Southern Railway,
Palghat Division, Palghat.
Palghat.
4. The Senior Divisional Mechanical Engineer,
Southern Railway, Palghat Division,
Palghat. - Respondents

By Advocate Mr P.Haridas

The application having been heard on 13.9.2004, the Tribunal
on the same day delivered the following:

O R D E R

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

The applicant who was promoted as Senior Goods Driver
in the scale Rs.5500-9000 by A-1 order was transferred to

Shoranur vacating Railway quarter allotted to him in March 2003 and shifting his family to Shoranur, the applicant gave effect to the promotional transfer in March 2003 itself. However, shortly thereafter on 30.7.2003 he was served with A-3 order by which he was posted back to Palghat. The applicant submitted A-3 representation to the 2nd respondent requesting that he be allowed to continue at Shoranur as there was paucity of Passenger Drivers and the applicant had undergone and passed the pre-promotional course from goods Driver to Passenger Driver. On the basis of the representation, the applicant was allowed to continue till the end of the academic session, i.e. April 2004 by R-4 order. On 16.4.2004, the applicant submitted another representation A-4 to the 2nd respondent. In reply to which the applicant has been served with A-5 order of the 3rd respondent informing him that the competent authority had advised that the applicant should carry out his transfer to Palghat. The applicant has filed this application under these circumstances seeking to set aside A-2 order dated 30.7.2003 as also A-5 order dated 11.5.2004 and for a direction to respondents to allow the applicant to continue at Shoranur. It is alleged in the application that the transfer of the applicant from Shoranur to Palghat was at the instance of two powerful trade unions, that one Aravindakshan who is junior to the applicant in service has also in priority of registration to Shoranur had been transferred to Shoranur, that one Abhas has also been transferred overlooking the applicant's priority and that as there are Goods Drivers who are not qualified in

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pre-promotional course for Passenger Driver such as Pradeep, Abhas, Hamsa etc. being put to officiate as Passenger Drivers against the safety instructions in A-6, the order directing the applicant to give effect to the order of transfer to Palghat is against public interest and arbitrary.

2. The respondents in their reply statement seek to justify the transfer of Aravindakshan on the ground of priority of registration on spouse account and of Abhas on the ground of seniority in registration. They further contend that at present there is no vacancy of Goods Driver on which the applicant could be retained at Shoranur. They admit that 3 persons named in the application who have not qualified in the pre-promotional course for appointment as Passenger Driver are put to officiate as Passenger in terms of operational orders of the controlling authority and that they would be replaced while regular Passenger Drivers are appointed considering persons who are senior to applicant. The respondents contend that the contention of the applicant that the applicant has been shifted to Palghat on the pressure of the Union is false.

3. The applicant has filed a rejoinder reiterating the contentions raised by him in the O.A. and also stating that the contention of the respondents that there is no vacancy of Goods Driver in Shoranur to accommodate the applicant is not correct because even after 28.5.2004 when the respondents' counsel was instructed by the Tribunal to find out whether

there would be any vacancy to accommodate the applicant, 2 persons, viz, C.T.Shibu and P.Jaison Job have been transferred to Shoranur from Erode and Calicut by order dated 12.7.2004(A-7).

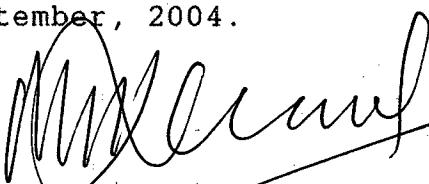
4. I have carefully gone through the pleadings and all the material placed on record and have heard the learned counsel on either side. On the basis of the interim order dated 28.5.2004 which is being extended the applicant is presently retained as Senior Goods Driver at Shoranur. Transfer being an incidence of service and the deployment of staff under its charge falls within the exclusive domain of the competent authority, I am of the view that judicial intervention as such would become necessary and justifiable only in cases where the power is seemingly exercised to achieve oblique motive. Judicial intervention therefore in matters of transfer would be slow. From A-6 it is evident that Senior Goods Drivers who have successfully completed pre-promotional course for promotion as Passenger Driver alone should be utilised to operate Passenger trains in the absence of regular Passenger Drivers. It admitted that at Shoranur, Goods Drivers who have not successfully completed pre-promotional training for Passenger Driver are being utilised. The said action even though against safety instructions contained in A-6 is sought to be justified on the ground that the controlling authority has issued such orders. The learned counsel of the applicant states that under these circumstances, it would be appropriate if the applicant is

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permitted to make a detailed representation pointing out all these details to the 2nd respondent again and the 2nd respondent is directed to consider the representation taking into account the personal problems of the applicant as also the operational requirement and to give the applicant a reasoned order keeping the relief of the applicant pursuant to A-5 pending till a decision on reconsideration is taken by the 2nd respondent. Learned counsel of the respondents also have no objection in disposing of this application with such a direction.

5. In the result on the basis of the submission made by the learned counsel on either side and in the interest of justice, the application is disposed of permitting the applicant to make a detailed representation to the 2nd respondent explaining his personal problems as also highlighting the operational requirement within 2 weeks from the date of receipt of copy of this order and directing the 2nd respondent that if such a representation is received, the same shall be considered and appropriate reply given to the applicant and that till such reply is served on the applicant, the applicant shall not be relieved from the present place of posting. There is no order as to costs.

Dated, 13th September, 2004.


A.V. HARIDASAN
VICE CHAIRMAN

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