

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No. 397/2003

Tuesday, this the 17th day of June, 2003.

C O R A M

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

K. Kuttikrishnan,  
Station Manager,  
Southern Railway, Shoranur,  
Residing at : Railway Quarter No. 46,  
Railway Colony, Shoranur.

..Applicant

[By Advocate Mr. T.C. Govindaswamy]

v e r s u s

1. The Union of India represented by the General Manager, Southern Railway, Park Town P.O., Chennai - 3.
2. The Chief Operations Manager, Southern Railway, Park Town P.O., Chennai - 3.
3. The Divisional Railway Manager, Southern Railway, Palghat Division, Palghat.
4. The Senior Divisional Operations Manager, Southern Railway, Palghat Division, Palghat.
5. Shri Beji George, Senior Divisional Operations Manager, Southern Railway, Palghat Division, Palghat.
6. Sri Sivadas, Traffic Inspector, Southern Railway, Calicut Railway Station, Calicut.
7. The Divisional Personnel Officer, Southern Railway, Palghat Division, Palghat.
8. Shri Jayakumar, Divisional Operations Manager, Southern Railway, Palghat Division, Palghat.

..Respondents

[By Advocate Mrs. Sumathi Dandapani]

The application having been heard on 4.6.2003, the Tribunal on 17.6.2003 delivered the following :

O R D E R

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant, who is presently working as the Station Manager of Shoranur Railway Station in scale of Rs. 7450-11500 (Group 'C'), has been transferred to Karur by a telephonic order issued by the 4th respondent. It was stated that the said order of transfer is not in bonafide exercise of power but in malafide exercise of the same. It is the case of the applicant that he was initially appointed as Assistant Station Master in the Railway and he became the Station Manager with effect from 1.5.1998 and posted at Shornur. He is a Scheduled Caste candidate. After completing 4 years of service at Shoranur, he was transferred as Traffic Inspector, Cannanore, vide Annexure A/1 dated 12.02.2002. However, Annexure A/1 order was cancelled to the extent it relates to the applicant vide Annexure A/2 dated 18.04.2002, issued by the 7th respondent since the relieving person was died. On 29.11.2002, Shri Jayakumar, Divisional Operations Manager, Southern Railway, Palghat, directed the applicant to monitor the movement of one PGU-BCN goods train at Shoranur. He stated that right from 9 a.m. in the morning till 15.00 hours in the evening, the applicant was in the Marshalling Yard monitoring the shunting activities and other requirements of the train so that the train could leave without much delay. The Divisional Operations Manager asked the applicant to move to Palakkad on the same train and directed to meet him. The applicant informed over phone that he would meet the Divisional Operations Manager on the next day morning at 10.00 a.m. However, on the next day, the applicant received a message from the 4th respondent that he need not come and meet him. On the very next day, the applicant was served with Annexure A/3 message issued by the 4th respondent asking him to proceed on 45 days

leave with immediate effect. The applicant refused to go on leave in which the fifth respondent threatened the applicant with dire consequences. The applicant continued to express his unwillingness to proceed on leave. On 1.12.2002, by a telephonic message (A/4), the applicant was transferred to Sankari (between Erode and Salem) with immediate effect. Unfortunately, the applicant fell ill and the Railway Doctor advised the applicant to take rest and treatment upto 8.12.2002. Meanwhile, the applicant had an occasion to speak to the Chief Operations Manager (2nd respondent) over phone when he made a request for cancellation of his transfer order. The second respondent promised the applicant to do the needful. Thereafter, on 7.12.2002, the applicant received another telephonic message from the 5th respondent asking the applicant to meet him in his chamber on 9.12.2002 at 10.00 a.m. The fifth respondent kept the applicant waiting outside from 9.30 a.m. till 5.30 p.m. in the evening. At 5.30 p.m. the 5th respondent called him into his chamber when Shri Jayakumar, the 4th respondent, was also present. The 5th respondent asked the applicant why he had disobeyed the orders of Shri Jayakumar by not meeting him on 29.11.2002. The applicant expressed his inability to meet Shri Jayakumar on the said date and also expressed his retaliation on keeping him waiting on the corridor till 5.30 p.m. in the evening. However, Annexure A/4 was not further acted upon. The applicant, as an abundant caution, registered his request for transfer to Cannanore, Calicut or Mangalore in the order of preference in terms of the policy and the Railway Orders in force. For all these three stations, the name of the applicant was registered as No. 1 in the priority list and the same was communicated to the applicant by the 7th respondent vide Annexure A/5. The applicant was anticipating that he would be considered for transfer and posting to one of these stations referred to above against which he stood at No. 1 in the priority list.

Again on 10.5.2003, the applicant was received a telephonic message (A/6), informing that the 6th respondent, Traffic Inspector, Calicut, to take over as Station Manager at Shoranur and to relieve the applicant as Traffic Inspector, Karur. The office order dated 9.5.2003 mentioned in Annexure A/6 has been received in the office of the applicant only on 16.5.2003. Annexure A6(a) is the said order dated 9.5.2003. The applicant submitted that Annexure A/6 is totally arbitrary, discriminatory and unconstitutional. The same is actuated by malafide and for ulterior consideration. Aggrieved by orders A/6 and A/6(a), the applicant has filed this OA, seeking following reliefs:

- (a) Call for the records leading to the issue of Annexure A6 and A6(a) and quash the same;
- (b) Direct the respondents to consider the applicant for transfer and posting as per his priority as indicated in Annexure A5 and to grant the consequential benefits thereof;
- (c) Award costs of and incidental to this application;
- (d) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

2. The OA was not admitted. Both the learned counsel agreed that it can be disposed of at the admission stage itself by considering the reply statement filed by the respondents No. 4 and 5 for and on behalf of all other respondents, except respondent No. 6. It is stated that since the 5th and 8th respondents have been impleaded in their personal capacity as well as official capacity, the statement was filed in common.

3. In the reply statement, it is submitted that the transfer order was not on account of any hatred or animosity against the applicant. They submitted that the facts stated in the reply statement would show that there is no reason to have any animosity towards the applicant. On the other hand, the respondents had cancelled the earlier transfer order issued

against the applicant by which he was transferred to Sankari. All the Traffic staff, including Station Managers and Traffic Inspectors are under the control of the respondents and they are supposed to work anywhere in the Zone (Southern Railway). As per Annexure A/1, out of 8 persons who had been transferred, the applicant was transferred from Shoranur to Cannanore. In his place T. Balakrishnan was posted. Subsequent to the issuance of Annexure A/1, unfortunately, the incumbent T. Balakrishnan died and therefore, the order Annexure A/1 has to be cancelled as per Annexure A/2. The system of the Railway, where the train movements are to be executed by Senior Supervisors in the open line (Station Managers, Traffic Inspectors and Station Masters) and in turn, they are being monitored by officers like Assistant Operations Manager, Divisional Operations Manager and Senior Divisional Operations Manager. If there is any failure in day-to-day monitoring, it will directly reflect in the running of Express/Mail/Passenger Trains and the entire system of working will be paralysed. Shri Jayakumar, the 8th respondent, is the Divisional Operations Manager. It is his bounden duty to monitor the train services in Palakkad Division without any delay and being a Senior Supervisor, it is the duty of the applicant also to obey and execute the instructions given by his superiors. In para 7 of the reply statement, it is admitted that the applicant had to closely monitor the marshalling of the train, PGU/BCN Goods Train at Shoranur. Though he was stated that from 9.00 a.m. till 15.00 hours in the evening, he was in the Marshalling Yard, monitoring the shunting activities, from the out-put performance in SRR yard, the presence of the applicant was not felt in the yard performance. The 8th respondent, being incharge, ordered the applicant to submit his explanation. Instead of giving explanation to the 8th respondent, he contacted him over phone. Though the applicant was asked to meet the 8th respondent on the same date, he refused to turn up under the

pretext of personal inconvenience. The respondents submitted that it is correct that on 30.11.2002, the applicant was asked to proceed on 45 days leave as per Annexure A/3 and the respondents never threatened the applicant for not doing so. They further stated that the Board's order (Annexure A/6) pertains to the transfer from one Division to another or from one Railway to another, on request of the candidate. The morality, obedience, discipline and performance of the employees are also to be closely monitored and these are also well considered before postings are given. It was pointed out that on 16.7.2000, the applicant filed a complaint against some miscreants of SRR stating that those people manhandled him while he was returning from duty spot to quarter with SRR Police under Crime No. 189/2000 under Section 143, 147, 148, 323, 324 read with 149 Indian Penal Code. He has misutilised his official status for personal grudges against those people. He had been severely warned for not bestowing attention and devotion to duty. Apart, he has forwarded loan applications in favour of S/shri Sivasankaran, P/Man/SRR, A. Radhakrishnan, LM/II/SRR and P. Chandra Mohan, LM/II/SRR, to obtain a loan from the Co-operative Bank, Cheruthuruthy Branch, Thrissur, for which he was not authorised. He stood as Surety for obtaining loan for these persons. He is not supposed to stand as a surety, for which only the Divisional Personnel Officer is competent. On getting the notice against the Divisional Personnel Officer, Palakkad, regarding the lapses in repayment of the loan, DAR action is being initiated against the employee under the Conduct Rules of 1966. Because of this, a decision was taken to shift the applicant from Shoranur to Sankari and Annexure A/4 order has been issued. Thereafter, the applicant made a representation to the respondents explaining his personal difficulties to go to Sankari. Taking a sympathetic view on his representation, the said order was cancelled. The applicant submitted a declaration

(Annexure R/1) to the effect that he will perform his duties to the satisfaction of the respondents and would obey all the orders thereafter. If any deviation in his performance is found, he agreed to go on transfer to any Station in Palakkad Division, preferably, at West Coast area. But the applicant surreptitiously did not disclose about this declaration in the OA. The applicant has already completed his four years tenure at Shoranur. Presently, there is no vacancy in the West Coast area to comply with his request. It is the practice in the Railways that immediately after the issuance of the order, the order will be communicated to the incumbent over phone which will be followed by service of the said order by post. On getting the communication over phone, Shri Sivadas who had to take charge in place of the applicant, reported for duty on 13.5.2003. The 6th respondent could not be allotted duties, since the applicant has not been relieved from the post by virtue of the interim order of this Tribunal. The respondents, therefore, prayed that the OA is devoid of any merit and substance and it deserves to be dismissed.

4. The applicant has also filed rejoinder contending that the counsel appearing for the respondents 1 to 4 has no authority to represent on behalf of the 5th and 8th respondents since no written authorisation of these respondents have been produced or indicated in the statement. The 4th and 5th respondents, who are having only supervisory power, have no administrative control over the persons in the cadre of Station Managers in scale Rs. 7450-11500. Regarding the Police complaint given by the applicant on 16.7.2000, it is stated that the incident in question relates to an autorickshaw driver, whom the applicant engaged for his journey in the afternoon of 16.7.2000. There was some exchange of words with reference to auto fare. In that night, the driver accompanying a group of local goondas assaulted

the applicant brutally and he was constrained to lodge a police complaint. This incident has nothing to do with his official capacity and it is well within the applicant's right to invoke the state of protection of his life. The applicant has not subjected to any enquiry. The applicant further denied the contention of the respondents regarding forwarding of loan applications in favour of three persons. It is true that the applicant had issued a salary certificate in favour of Shri Sivashankaran for taking a loan, because his brother was seriously ill requiring money for his kidney transplantation. The applicant was under the bonafide belief that he had such power. The applicant denied the averment of the respondents that he stood as a surety for the three persons mentioned above for taking loan.

5. I have heard Shri T.C. Govindaswamy, learned counsel for the applicant and Smt. Sumathi Dandapani, learned counsel appearing for the respondents.

6. Learned counsel for the applicant submitted that the 5th and 8th respondents, out of personal vendetta and bias, managed to issue the impugned order Annexure A/6 in malafide exercise of power. No public or administrative interest is involved in the transfer of the applicant to Karur. Vide Railway Board Order No. E(NG)II/71/TR/14 dated 1.10.71 (Annexure A/7), the Board evolved a policy of registering request for transfer and to consider the Railway servants for such transfer in the order of priority. This policy is followed in Palghat Division also and it is on that background the applicant's request was registered in terms of Annexure A/5. The applicant contended that the Annexure A/6 is in ignorance of Railway Board orders A/5 and A/7 on the subject. The 7th respondent is not competent to transfer the applicant. Therefore, the orders A/6 and A/6(a) are without jurisdiction to

the extent it relates to the applicant. Annexure A/6 and A/6(a) are neither issued in bonafide exercise of power nor based on relevant materials. The learned counsel for the respondents, on the other hand, submitted that the transfer is an incidence of service and having completed 4 years of service at Shoranur, the applicant is liable to be transferred anywhere on administrative ground. The fact that he was earlier transferred to Cannanore, which was subsequently cancelled due to death of the other incumbent posted in place of the applicant. Therefore, he has no legal right to challenge the impugned orders. The allegation of mala fides is stoutly denied by the respondent.

7. Vide Office Order No. T.19/2002 dated 12.2.2002 (Annexure A/1), the applicant was originally transferred to Cannanore alongwith seven others. Consequent on the death of the incumbent T.Balakrishnan, the said order was partially modified vide Annexure A/2 dated 18.4.2002. It is a clear case that when the incumbent T. Balakrishnan died, the post at Cannanore was vacant and even though the applicant was willing to go to Cannanore, he was retained at Shoranur. It is also interesting to note that the alleged criminal case was within the knowledge of the respondents even when the orders A/1 and A/2 were passed. Had it been a genuine case of ordinary transfer on administrative ground, why the reason for retaining the applicant at Shoranur has not been properly explained in any of these orders. On the other hand, it could only indicate that the service of the applicant was necessitated at Shoranur and he was retained there. The allegation of misutilisation of official power and giving surety illegally for the employees are all the matters within the knowledge of the respondents, which cannot be a reason for transfer, and therefore, according to the applicant, the order of transfer is actuated by malafide and vindictive reason.

8. On going through the factual aspects of the case, this Court finds that there is some force in the argument of the applicant. Apart from that, this Court is not very happy on the action of the respondents, directing the applicant to proceed on leave for 45 days. It has been admitted in para 8 of the reply by the respondents themselves that the applicant was asked to go on leave. It is pertinent to mention that going on leave is a prerogative of an employee and the respondents have no right to ask an employee to do so, which has rightly been refused by the applicant. Besides, this Court finds that vide Annexure R/1 dated 9.12.2002, the applicant has given a declaration that he would go on transfer to any other stations in PGT Division preferably at West Coast area, if any deviation is found in his performance. A specific question was asked to the learned counsel for the respondents whether there is any vacancy in the West Coast area for which she sought time for ascertaining the same. Learned counsel for the respondents also submitted that the transfer order Annexure A6(a) has not been strictly implemented in view of the stay order granted by this Tribunal in the present case.

9. On going through the records, this Court finds that his request for transfer as per priority list Annexure A/5 has never been considered by the respondents. It is also a fact that as directed by the 5th respondent, the applicant reached his office at the given time to meet him, but he was kept waiting from 9.30 a.m. till 5.30 p.m. outside the chamber of the 5th respondent. Whatever may be the reason, keeping an employee in the corridor for such a long time, reflects the animosity towards the applicant and such an action on the part of a very senior official of the Department is very strange and serious. Even assuming that he was busy with some other work, then he could have sent a message to the applicant to that effect and direct

*[Handwritten signature/initials]*

the applicant to wait for sometime. That was also not done. Therefore, the vindictive mind of the 5th respondent is very much reflected in this case, which this Court must say, is never expected from an officer holding an higher post.

10. In the transfer matter, this Court is conscious of the proposition laid down by Hon'ble Supreme Court in National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan and Another, 2002 (1) SLJ page 86, that the transfer is an incidence of service and normally the Court/Tribunal cannot interfere in the transfer matter unless it is mala fide or against the rules/guidelines. In another decision reported in 1989 (3) SLJ page 44, Union of India and Others vs. Shri H.N. Kirtania, Hon'ble Supreme Court has held that the transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of mala fides. Therefore, the two aspects to be looked into in transfer matters are whether there is any mala fides or it is against the rules/guidelines. This Court is not making any opinion on the question of mala fides since the 4th and 8th respondents reserved their rights to file an affidavit personally controverting the allegations levelled against them. Since the matter has been finally heard at the stage of admission as agreed by both the learned counsel, this Court finds that without any affidavit of these respondents, it will not be fair to make any comment on the question of mala fides. Thus, the violation of rules/ guidelines is the prime question to be adjudicated in this matter.

11. The applicant has produced Annexure A/7 instructions dated 1.10.1971 of the Railway Board on the subject "Registration of requests for transfer of non-gazetted Railway servants" wherein a

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system of registration of requests of non-gazetted Railway servants desiring transfer from one division to another or from one Railway to another Railway at their own request was introduced. In the said instructions, it was stated that "there are always some employees who may be desirous of transfer within the same seniority unit but at a particular station of their choice, having regard to their family convenience or educational facilities etc. To mitigate hardship of such staff, a system of registration of requests in some form, presumably exists on the Railways already. The Board desire that on Railways, where such system does not exist, a system of registration of requests for eventual transfer of such employees to the station of their choice within the seniority unit may also be introduced; this will statisfy a large number of employees/organised labour. Where there are certain unpopular stations, it is necessary to ensure that such stations will be manned to the authorised strength by laying down a period of service in such places as a pre-requisite to transfer to more popular places by registration". Admittedly, the applicant registered his request for transfer to the station of his choice and as per Annexure A/5, he stood at No. 1 for all the stations where he requested, i.e., Cannanore, Calicut and Mangalore. Therefore, adopting the guidelines issued in Annexure A/7, the applicant's preference for posting (Annexure A/5) could be considered while making the transfer orders. In this case, the order Annexure A6(a) has been issued without following the prescribed procedure and, therefore, the same is faulted and liable to be set aside.

12. In a decision reported in 1979 (1) SLR 309, P.Pushpakaran vs. The Chairman, Coir Board, Cochin and Another, Hon'ble High court of Kerala observed that sometimes the transfer is more dangerous than other punishments. It may, at times, bear the mask of innocuousness. What is ostensible in a

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transfer order may not be the real object. Behind the mask of innocence may hide sweet revenge, a desire to get rid of an inconvenient employee or to keep at bay an activist or a stormy petrel. When the Court is alerted, the Court has necessarily to tear the veil of deceptive innocuousness and see what exactly motivated the transfer. This Court can and should, in cases where it is satisfied that the real object of transfer is not what is apparent, examine what exactly was behind the transfer.

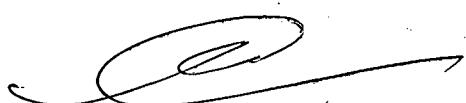
13. The learned counsel for the respondents has produced the records pertaining to the transfer. On going through the said records, I could find a letter sent by a Member of Parliament dated 19.4.2003 addressed to the General Manager, Southern Railway, Chennai, recommending consideration of transfer of one Mr. T.P.K.Sivadas as Station Manager, Calicut, who is presently working as a Traffic Inspector at Calicut Station. In furtherance of the said letter, I could find office note with reference to folios (9), (10), (11) and (12), giving the present details of posting of the incumbent Shri T.P.K.Sivadas. Finally, the Sr. DOM gave his remarks that "at present there is no vacancy at CLT as the present SMR/CLT has not completed his tenure. Shri T.P.K.Sivadas's case will be favourably considered when vacancy arises at CLT". Therefore, it is clear that Shri T.P.K. Sivadas, who is an incumbent to be posted at applicant's place in Shoranur, was transferred at the instance of such political recommendation, which is not in accordance with the transfer guidelines. Consequently, the applicant was shifted to a place, where he never requested for a posting. In the aforesaid office note, it is specifically mentioned that the case of Shri T.P.K.Sivadas will be considered favourably as and when the vacancy arises. Thus, it is clear that the present transfer of the applicant was made in order to adjust the incumbent Shri T.P.K.Sivadas, as promised. In the administrative parlance, such

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recommendation may be prevalent, but a Judicial Forum cannot ratify or justify such action. I am, therefore, of the view that the transfer of the applicant is not in accordance with the law and is against the procedure in vogue. On the pretext of administrative exigencies, the applicant has been made a scape-goat and thus the act of the respondents is stigmatic in nature. The impugned orders have not been issued in conformity with the instructions of the Railway Board and, therefore, they are faulted and liable to be set aside.

14. In the conspectus of facts and circumstances as discussed above, I set aside the impugned orders Annexure A/6 dated 10.5.2003 and Annexure A/6(a) dated 9.5.2003 to the extent it relates to the applicant and direct the respondents to consider the applicant's transfer in consonance with the Board's order Annexure A/7 and as per Annexure A/5 priority.

15. The O.A. is allowed as above leaving the parties to bear their respective costs.



K.V. SACHIDANANDAN  
JUDICIAL MEMBER

CVR.