

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXXXX~~

402 of 1991

DATE OF DECISION 20.2.1992

K.N.Subramanian Applicant (s)

Mr.P.Sivan Pillai Advocate for the Applicant (s)

Versus

General Manager, Southern Respondent (s)
Railway, Madras and others

Mr.M.C.Churian Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.Mukerji - Vice Chairman

and

The Hon'ble Mr. A.V.Haridasan - 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? Yes
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

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 10.3.1991 filed under

Section 19 of the Administrative Tribunals Act, the applicant who has been working as Electrical Foreman in the Construction Division of Southern Railway has prayed that the impugned order dated 28.2.1991 at Annexure.A.7 promoting him as Sr. Electrical Foreman and transferring him to Mysore should be set aside and the respondents directed to restore the post of Sr. Electrical Foreman at Ernakulam itself and keep him on promotion at Ernakulam.

2. The brief facts of the case are as follows. The applicant is a member of Scheduled Tribe and was promoted as Electrical Foreman in the scale of Rs. 2000-3200 in May, 1987 and transferred from Trivandrum to Madras. According to him

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this was done even though there were vacancies of Sr. Electrical Foreman at Trivandrum itself and his junior colleague was accommodated at Trivandrum. However, the applicant obeyed the transfer order and went to Madras. Because of his family circumstances and ailing aged parents he was forced to seek reversion and transfer back to Trivandrum and accordingly he was reverted in the scale of Rs. 1600-2660 and transferred back to Trivandrum. He was again promoted to the scale of Rs. 2000-3200 on 25.1.89 and posted outside and it was on his representation that he could finally be allowed to take over as Electrical Foreman in the scale of Rs. 2000-3200 on 21.3.89 at Ernakulam. While so, another post of Sr. Electrical Foreman (Construction) in the scale of Rs. 2375-3000 fell vacant on the death of the incumbent and the applicant was discharging the duties of Sr. Electrical Foreman also while holding the post of Electrical Foreman. On 1.8.90 he was posted as Deputy Shop Superintendent in the scale of Rs. 2000-3200 and transferred to Mysore vide the order at Annexure.A.2. By another order at Annexure.A.3 of the same date 1.8.90 the post of Sr. Electrical Foreman at Ernakulam was downgraded to that of Electrical Foreman and one Shri P.N. Krishnan Nair was appointed against that post. Against his transfer to Mysore he moved the Tribunal in O.A. 675/90 and on an assurance given by the respondents and statement made by them that his transfer to Mysore had been cancelled and he will be considered for promotion as Sr. Electrical Foreman when he is due for it on 21.3.91, the O.A. was closed. After that the applicant represented to the respondents to consider him for promotion at Ernakulam itself as Sr. Electrical Foreman restoring

the downgraded post of Sr. Electrical Foreman but instead of considering his representation the impugned order dated 28.2.91 at Annexure.A.7 was passed transferring him on promotion as Sr. Electrical Foreman to Mysore. The applicant's main contention is that on a number of occasions the respondents have upgraded the post to accommodate officials like him on promotion at the same station on the principle of as is where is basis but in his particular case against the policy of the Government to accommodate Scheduled Castes and Tribes officers as far as possible near their native place and in spite of a post of Sr. Electrical Foreman available at Ernakulam he was transferred to Mysore outside Kerala and in a linguistically different territory.

3. In the counter affidavit the respondents have conceded in para 3 that as per the policy followed by the Railway Administration with regard to promotion and transfer of staff, wherever vacancies are available staff on promotion will be retained in the same station or places nearer to their home stations. However, they have argued that there is only one post of Electrical Supervisor/Sr. Electrical Foreman in the scale of Rs. 2375-3500 in the Construction organisation of ^{the} Southern Railway at Madras only and it was operated at Ernakulam between 1.7.89 and 30.6.90. They have argued that between Ernakulam and Madras there is greater need for this post at Madras than at Ernakulam and it was transferred to Madras from 1.7.90. When the applicant became eligible for promotion to that post in March, 1991 there was no such post in the Trivandrum Division either in the Construction Wing or Open Line Maintenance Wing. It was

to enable the applicant to take over in the higher scale of Rs.2375-3500 with effect from 21.3.91 that he was transferred to Mysore on 1.8.90 in the lower scale. When he objected against this transfer and filed O.A.675/90 before this Tribunal the respondents withdrew the order of transfer allowing to continue him in Ernakulam itself in the lower scale of Rs.2000-3200 and since there was no vacancy in the higher grade of Rs. 2375-3500 at Ernakulam he had to be transferred to Mysore. They have given a tabular statement of various levels of posts available as Sr.Electrical Foreman, Electrical Foreman, Electricians etc. in the Construction Organisation to justify the post of Sr.Electrical Foreman at Madras instead of at Ernakulam.

4. In the rejoinder the applicant has given instances at Annexures A7, A1 and A2 where promotions have been given at the same station to others to mitigate the hardship.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. Being a member of the Scheduled Tribe the applicant deserves special treatment in the matter of postings. In accordance with the Department of Personnel's O.M. dated 21.8.89 at Annexure.A.8 the Government reiterated that no discrimination should be shown in the matter of postings and placements against Scheduled Castes/Scheduled Tribe officials. In a further O.M. dated 24.6.89 the Government emphasizes the need to ensure that Scheduled Caste/Scheduled Tribe officers are not transferred to far off places. The applicant has come up before us for the second time. Earlier as has

come out in the pleadings the applicant had moved this Tribunal in O.A.675/90 against his transfer as Deputy Shop Superintendent, Mysore in the scale of Rs.2000-3200 ordered on 1.8.90. In that application he sought the following four reliefs:

- "(a) To call for the records leading to Annexure A7 and A8 and quash the same in so far as it applies to the applicant.
- (b) To direct the respondents 1 to 4 to allow the applicant to continue in the post at Ernakulam which he holds at present.
- (c) To direct the respondents 1 to 4 to consider the case of the applicant for being posted at Ernakulam in the post of Sr.Electrical Foreman with effect from 21.3.91 when the applicant become eligible for promotion to that grade; and
- (d) To issue such other orders or directions as deemed fit and necessary by this Hon'ble Tribunal in the facts and circumstances of this case."

That application was closed by the Tribunal on the basis of the assurance given by the respondents. The operative portion of the order of the Tribunal dated 17.9.90 in that case was as follows:

"As the respondents have already cancelled the transfer order and stated that his promotion will be considered when he is due for it on 21.3.91, we find that nothing remains for adjudication in this case. Accordingly, we close this case."

In the context of the relief sought that the applicant should be promoted at Ernakulam itself the application could be closed only on the assurance that he would be considered for promotion on 21.3.91 at Ernakulam itself. The respondents have though given him promotion as Sr. Electrical Foreman^{yet} instead of retaining him at Ernakulam itself they have transferred him to Mysore, against such a transfer he had earlier moved ^{to which station} ~~in~~^{the} O.A.675/90. Having given an assurance to the Tribunal that the applicant will be not only promoted but retained^{at} at Ernakulam, the respondents were legally obliged to retain him at Ernakulam

on promotion. By transferring him to Mysore on promotion the respondents at best has reneged on a solemn assurance given to the Tribunal on the basis of which the earlier application had been closed. The learned counsel for the respondents have cited a number of rulings of the Hon'ble Supreme Court in Union of India Vs. H.N.Kirtania, 1989(3) SCC 445, Gujarat Electricity Board and another Vs. Atmaram Sungaomal Poshani, 1989(2) SCC 602 etc., restraining judicial bodies from interfering with transfers which are normally incidence of service. But, we are not impressed by such an argument in the circumstances of this case where the respondents stand committed by their earlier assurance before this Tribunal that he will be considered for promotion at Ernakulam itself. We, therefore, find that the rulings of the Hon'ble Supreme Court in those cases and similar cases are not applicable to this case.

6. We are also not impressed by the argument that the only post in the Construction Wing in the grade of Sr. Electrical Foreman is warranted at Madras itself. The respondents have conceded that the post of Sr. Electrical Foreman in the scale of Rs.2375-3500 was being operated at Ernakulam itself between 1.7.89 to 30.6.90. From 1.8.90 vide Annexure.A.3 Shri Krishnan Nair continued to hold the post of Electrical Foreman at Ernakulam by downgrading the post of Sr.Electrical Foreman of Madras which was being operated at Ernakulam. It is therefore, not understood why the post of Sr.Electrical Foreman could not retained at Ernakulam when the applicant became eligible for promotion as Sr.Electrical Foreman and Shri

Nair given the post of Electrical Foreman which the applicant was holding at Ernakulam. The element of discrimination against the applicant is palpable not to speak of the ^{patent} violation of the commitment made by the respondents before the Tribunal in O.A.675/90. Even otherwise, we find from the tabular statement at Annexure R.2 that Ernakulam having two posts of Electrical Foreman and two posts of Electrician 'B' grade deserves the post of Sr. Electrical Foreman more than Madras where there is only one post of Electrical Foreman and no post of Electrician at all. We are also convinced from the orders at Annexures A1, A2 and A7 that posts were being upgraded or downgraded to accommodate the officials in the same station where they have been working.

7. In the facts and circumstances, we allow the application, set aside the impugned order at Annexure A.7 in so far as the applicant is concerned and direct that in fulfilment of the assurance given by the respondents in O.A.675/90 the applicant should be retained at Ernakulam and ^{on his} ~~given~~ promotion as Sr. Electrical Foreman in the scale of Rs.2375-3500, by either upgrading the post held by him or by retaining the post of Sr. Electrical Foreman at Ernakulam itself. There will be no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

20.2.1992

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