

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHO.A No. 414/2011Tuesday this the 16th day of August, 2011.

CORAM

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

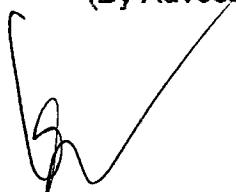
Roby Abraham,
S/o late K.V.Abraham, Stenographer,
O/o the Deputy Chief Electrical Engineer/Construction,
Southern Railway, Ernakulam Junction.Applicant

(By Advocate Mr TC Govindaswamy)

v.

1. Union of India represented by the
General Manager, Southern Railway,
Headquarters Office, Park Town.P.O.
Chennai-3.
2. The Chief Personnel Officer,
Southern Railway,
Headquarters Office, Park Town.P.O.
Chennai-3.
3. The Chief Administrative Officer,
Southern Railway,
Construction, Egmore,
Chennai-8.
4. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.
5. The Chief Engineer (Construction),
Southern Railway,
Ernakulam Junction, Ernakulam.
6. The Deputy Chief Electrical Engineer,
Southern Railway, Construction,
Ernakulam Junction, Ernakulam.Respondents

(By Advocate Mr Thomas Mathew Nellimoottil)

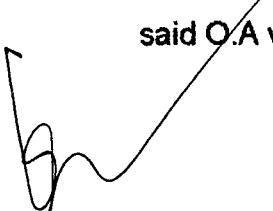


This application having been finally heard on 11.8.2011, the Tribunal on 16.8.2011 delivered the following:

ORDER

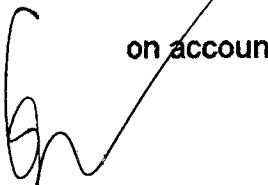
HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

The applicant was initially appointed as Stenographer in the North-East Frontier Railways in late 1980s and got transferred to Southern Railway in 1993 but posted to Bangalore Division. He was transferred to the control of Executive Engineer, Construction, Chitradurga and later transferred to Mysore in 1996-97. The applicant belongs to Angamaly of Ernakulam District and he having certain domestic demands and compulsions, requested for a posting under the control of Executive Engineer at Ernakulam right from the beginning of his posting to Southern Railway. The applicant was posted to Palghat Division on request at bottom seniority where he joined in 1999. His request for transfer to Ernakulam in the Construction Wing was renewed by him and vide order dated 19.8.2009. The applicant was posted to Construction Organisation at Ernakulam. Accordingly, the Senior DPO, Palghat by office order dated 20.8.2009 transferred the applicant against the vacancy in the Construction Organisation at Ernakulam with his lien at Palghat Division vide Annexure A-2. The applicant joined the said post on 26.8.2009. He was directed to work under the Executive Engineer, Construction, Ernakulam vide memorandum dated 26.8.2009 Annexure A-5. However, within just 5 days, the 3rd respondent has transferred the applicant from the control of the Chief Engineer, Construction, Ernakulam Junction to the control of the Deputy Chief Engineer/CN/I/PTI by office order dated 31.8.2009, Annexure A-6 whereby he was directed to report to Podanur "till such time a vacancy arises at CN/O/ERS". The issue of the above order was at a time when O.A.617/2009 filed by the applicant in regard to his transfer was pending before this Tribunal. The said O.A was finally disposed of on 14.12.2010 vide Annexure A-9 with a direction



to the respondents that the case of the applicant be considered afresh for posting at Ernakulam.

2. A representation was filed by the applicant on 31.12.2010 addressed to the 2nd and 3rd respondents for retention at Ernakulam as directed by the Tribunal vide Annexure A-10. However, the same was rejected by Annexure A-11 order by the Deputy Chief Personnel Officer/Construction for Chief Administrative Officer, Construction. The ground for rejection was something different than the one given earlier. Applicant not belonging to Trivandrum Division was given no reason for rejection of his request. The self same ground as communicated in Annexure A-11 was repeated while rejecting the representation of the applicant vide Annexure A-15 order dated 29.4.2011. It is these two Annexures A-11 and A-15 that are under challenge through this O.A. The main ground as contained in para 5 of the O.A includes that the Construction Organisation at Ernakulam Junction consist of 4 organisations, viz, (a) Office of the CE/Construction/Ernakulam Junction, (b) Office of the Deputy C.E/Construction/Ernakulam Junction, © Office of the Executive Signal and Telecommunication Engineer (XSTE)/Construction and (d) Office of the Deputy Chief Electrical Engineer/Construction/Ernakulam Junction, and in all these, out of 24 individuals functioning therein, 22 belong to the Divisions other than Trivandrum Division and as such the contention of the respondents that for work in Ernakulam the applicant has to seek inter Divisional transfer to Trivandrum Division is untenable. Yet another ground raised by the applicant is that it seems is same difference, on account of the fact that posting order to a particular post in Construction Wing has been issued by the Chief Personnel officer instead of Chief Administrative Officer, Construction. The applicant has been made victim on account of this avoidable squabble.

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3. The respondents have contested the O.A. They have maintained that the applicant's request was considered and as there is no vacancy of Junior Stenographer, he was advised to opt for transfer to Trivandrum Division. Further, it has been stated that the applicant undertook to work anywhere in the Construction Organization and as such he cannot claim to stick at Ernakulam only. He had disobeyed the order of the Chief Administrative Officer in moving to Podanur initially ordered.

4. Applicant has filed a rejoinder in which he has stated that the Chief Personnel Officer has the competence to post persons to Construction Organization and that even if the contention of the respondents that for internal posting, it is the Chief Administrative Officer who shall affect transfers is accepted, then again posting at Podanur was for a period till such time vacancy at Construction Wing at Ernakulam for the post of Stenographer was available. That a post of Senior Stenographer is available at Ernakulam is evident from Annexures A-17 and A-18 notifications. Since the applicant belongs to Stenographer line, enjoying the benefit of ACP carrying the same pay scale as of Senior Stenographer, there is no impediment in his being accommodated at Ernakulam.

5. Counsel for the applicant argued that there was a clear finding that there exists a vacancy at Ernakulam under the Construction wing. This has not been taken into consideration by the respondents who are under the mistaken impression that the claim of the applicant is for a transfer to Ernakulam in the open line in the event of which inter divisional transfer is a must. The counsel argued that at the time of issue of notification inviting volunteers for the post of

Senior Stenographer, the applicant also applied and the applicant has reasons to believe that he stood second in the panel for selection and posting and that the first one having already declined to accept the posting to Ernakulam, the applicant ought to have been posted at Ernakulam. The counsel further submitted that there is no need for a person to belong to that division in which the place of duty of construction wing is situated. Division is meant for open line and construction wing is beyond the jurisdiction of such divisions. In any event, since the CPO had initially ordered the transfer of the applicant to Ernakulam (and that the Constructing Wing also accepted the same but posted the applicant to Podanur as at that time vacancy was not available at Ernakulam), CPO not belonging to a particular division, the same should have held good. The counsel also referred to certain observations made in one of the orders of the Tribunal (OA No. 509 of 2009) in which the Court has observed that strict notice is warranted against the Dy. Chief Personnel Officer/Construction, Chennai 600 008 who filed the reply in an attempt to mislead the Tribunal. And in the instant case also, it is the same authority who has filed the reply to the OA.

6. Counsel for the respondents argued that the applicant is a junior stenographer and vacancy that exists in the Construction wing at Ernakulam is for senior stenographer. Further, after the rejection of the representation, in pursuance of the order of the Tribunal, the applicant ought to have joined Podanur and instead he has stayed at Ernakulam itself.

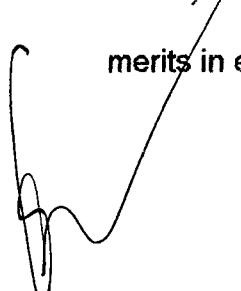
7. Arguments were heard and documents perused. That there had been a notification relating to existence of a vacancy of a senior Stenographer at Ernakulam in the construction wing is fully admitted. Annexure A-17 and A-18 are relevant. It is the case of the applicant that he had applied for the same and he

stands at serial No. 2 in the panel and that the first in the panel has already declined. There is no documents to verify nor has it been canvassed earlier. As such, it is appropriate that the respondents verify the veracity of the above.

8. There is no bar in a junior stenographer being posted against a vacancy of senior Stenographer. More so, when the junior Stenographer happens to be enjoying the the financial upgradation under ACP scheme to the extent of his placement in the pay scale meant for senior Stenographer. Such a person is competent to hold the post of senior stenographer as the benefit of ACP is granted to only those who are found suitable to the post.

9. That the CPO is competent to place at the disposal of the Construction wing any of the personnel working in any of the Divisions coming under the CPO is also not questioned. Thus, when the CPO has ordered the transfer initially, it is no doubt for the Construction wing to effect internal posting within the Construction wing. In the instant case, there being a vacancy of Senior Stenographer at Ernakulam under the Construction Wing as per the notification issued by the respondents, there should be no impediment to post the applicant there. The request of the applicant is on certain compelling personal grounds which have been appreciated by the authorities. Under these circumstances, the Tribunal is of the considered opinion that a re-look is given to the decision of the authorities in the light of the above and decision taken afresh.

10. As regards the observations passed in another OA(referred to in para 5 above) the same will least affect the present case as such cases are dealt with on merits in each case.



11. In view of the above, the Chief Administrative Officer, Construction Wing, Egmore Chennai (Respondent No. 3 to the OA) is directed to look into the matter afresh in the light of the observations made in para 8 above and pass a suitable order in regard to the transfer of the applicant to Ernakulam as Senior Stenographer in the Construction Wing. Till such time the decision is taken, the applicant shall continue at the present place of posting.

12. The OA is disposed of accordingly.

13. No cost.



Dr K.B.S.RAJAN
JUDICIAL MEMBER

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