

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 4 OCT 1988

APPLICATION NO. 1120 / 88(F)

W.P. NO. _____

Applicant(s)

Smt Rohini N. Pawale

To

Respondent(s)

V/s The Divisional Personnel Officer,
South Central Railway, Hubli

1. Smt Rohini N. Pawale
Junior Clerk
Divisional Railway Management Works Office
South Central Railway
Hubli
2. Shri Suresh S. Joshi
Advocate
No. 15, 3rd Cross
Nehru Nagar
Bangalore - 560 020
3. The Divisional Personnel Officer
South Central Railway
Hubli
4. Shri M. Sreerangaiah
Railway Advocate
3, S.P. Building, 10th Cross
Cubbonpet
Bangalore - 560 002

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER ~~/BY~~ ~~/INTERIM ORDER~~
passed by this Tribunal in the above said application(s) on 22-9-88.

Encl : As above

[Signature]
for DEPUTY REGISTRAR
(JUDICIAL)

o/c

[Signature]
4-10-88

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THIS THE TWENTYSECOND DAY OF SEPTEMBER, 1988

Present: Hon'ble Shri L.H.A. Rego

.. Member (A)

APPLICATION NO. 1120/1988

Smt. Rohini N. Pawale
W/o. Nivruthi Pawale
aged 28 years
working as Junior Clerk
Divisional Railway Management
Works Office
South Central Railway
HUBLI.

.. Applicant

(Shri Suresh S. Joshi, Advocate)

Vs.

The Divisional Personnel Officer
South Central Railways
HUBLI.

.. Respondent

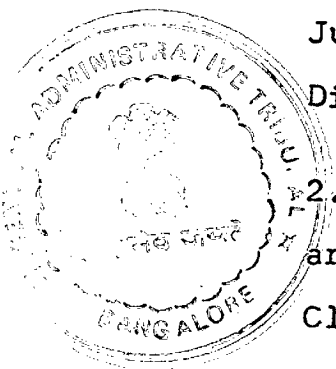
(Shri M. Sreerangaiah, Advocate)

This application having come up
for hearing before the Tribunal today, Hon'ble Member (A)
made the following:

ORDER

The applicant herein prays, that the
order passed by the respondent on 8/11.7.1988 (Ann. 'D')
be quashed, with a direction to him, to retain her as
Junior Clerk in the Works Branch in the Office of the
Divisional Railway Manager, South Central Railway, Hubli.

The salient features of this case
are as follows: The applicant was appointed as a Junior
Clerk on 23.9.1981 in the Commercial Branch, in the office
of the Divisional Railway Manager, South Central Railway,
Hubli. She was promoted as a Senior Clerk in the said
Branch on 23.6.1984. On 4.9.1985 (Ann. 'A') she [REDACTED]tted



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a representation to the Divisional Engineer (Co-ordination) South Central Railway, Hubli, requesting for her transfer to Belgaum, on domestic grounds. The applicant states, that as there was no post of Senior Clerk vacant in the Commercial Branch at Belgaum, she volunteered to be reverted as Junior Clerk in the Works Branch at Hubli, to facilitate her transfer to Belgaum.

3. Even^hthough, more than 3 years elapsed, since that representation was made, she alleges, that her request for transfer to Belgaum was not considered. She, therefore, finally decided to shift her family members from Belgaum to Hubli, in January, 1988, on allotment of residential quarters to her at Hubli.

4. Thereafter, on 16.6.1988 (Ann. 'B'), she addressed a letter to the Divisional Personnel Officer, South Central Railway, Hubli, inviting attention to her earlier letter dated 4.9.1985, addressed to him, stating that she withdraws the request made by her therein, for transfer to Belgaum, as she had settled herself at Hubli. This letter seems to have been acknowledged by the Office Superintendent, Works Branch, South Central Railway, Hubli, on 16.6.1988, i.e., on the very date of that letter. Thereafter, she addressed a letter on 28.6.1988 (Ann. 'C'), to the Chief Engineer (Open Line), South Central Railway, Secunderabad, referring to her

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earlier application dated 4.9.1985, for transfer to Belgaum and requesting for its cancellation, as she had settled at Hubli. In that letter, she also referred to the earlier letter addressed by her on 16.6.1988, to the Divisional Personnel Officer, South Central Railway, Hubli, and enclosed a copy thereof.

5. The applicant alleges, that inspite of the above two letters, addressed by her to the concerned authorities, the respondent, by his Order dated 8.11.7.1988 (Ann. 'D'), transferred her from Hubli to Belgaum, stating that her transfer was made on her own request. She states, that on receipt of this transfer order, she called on the Senior Divisional Engineer (Co-ordination), South Central Railway, Hubli, as also the Divisional Railway Manager, South Central Railway, Hubli (but does not specifically indicate the dates when she met them) and informed them, that she had withdrawn her earlier request for transfer to Belgaum and therefore requested them, to cancel her transfer to Belgaum, as ordered on 8/11.7.1988 (Ann. 'D'). Thereafter, she is said to have submitted a representation on 11.7.1988, to the Senior Divisional Engineer (Co-ordination), South Central Railway, (Ann. 'E'), stating that she had learnt that she was being transferred from Hubli and therefore requested she may not be transferred. She also submitted representations on 13.7.1988 and 1.8.1988, to the Divisional Railway Manager, South Central Railway, Hubli (Anns. 'F' & 'G' respectively), for cancellation of her transfer to Belgaum. As her grievance is not considered, the applicant has come before this



Tribunal with the present application, for redress.

6. Shri S.S. Joshi, learned counsel for the applicant contended, that the order of transfer dated 8/11.7.1988 (Ann. 'D'), issued by the respondent, stating at the end, that it was effected on the request of the applicant, did not accord with facts, as he had not taken into account, that the applicant had submitted a representation to him on 16.6.1988 (Ann. 'B'), stating that she had withdrawn the request made earlier by her letter dated 4.9.1985 for transfer to Belgaum; that since her transfer was not according to her own request, it could not have been in public interest; that the order of transfer by the respondent, was not in bona fide exercise of his power ^{as he} and had overlooked the above representations made by the applicant, for withdrawal of her earlier request, for transfer to Belgaum; that since the said request for transfer was made as long back as on 4.9.1985, i.e., nearly 3 years ago, and was not acted upon by the respondent and there was no communication thereon to the applicant, it was presumed by the applicant, that her request for transfer to Belgaum was treated as lapsed on account of efflux of time; and that lastly, retention of the applicant at Hubli, merited sympathetic consideration, on domestic grounds, as she had already shifted her family members to Hubli, on allotment of quarters there and had a large family to maintain.

7. The respondent has filed a reply resisting the application.

8. Shri M. Sreerangaiah, learned counsel for the respondent, refuting the above contentions of Shri S.S. Joshi stated, that the order of transfer of the applicant was issued on her own request, as when this order was processed, her highly belated application dated 16.6.1988 (Ann. 'B') for withdrawal of her request, for transfer made earlier, by her letter dated 4.9.1985, had not reached the respondent and therefore, it could not be alleged, that he had transferred her to Belgaum, overlooking deliberately, her aforesaid letter dated 16.6.1988. Besides he averred, that the said order of transfer was not actuated by any mala fides, as besides the applicant, three other employees were transferred along with her, by a common order of transfer, dated 8/11.7.1988. At no time between 4.9.195 to 16.6.1988, by which time the order of transfer was being processed, had the applicant requested the respondent, either in person or writing, to withdraw the request made by her earlier on 4.9.1985, for her transfer to Belgaum be asserted, and in fact he said, no one prevented her from doing so.



9. Shri Sreerangaiah clarified, that the request made by the applicant by her letter dated 4.9.1985, for transfer to Belgaum, was kept pending, subject to availability of a suitable vacancy. If this request of the applicant was to be rejected the respondent could have done so, but on the contrary,

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Shri Sreerangaiah asserted, that out of sympathy the respondent refrained from doing so. The applicant he said, could not at this belated stage point out a finger of accusation towards the respondent, remaining oblivious to her own inertia, in not approaching the respondent for nearly three years in the meanwhile, either to expedite her transfer to Belgaum or to cancel her request in that behalf, as the case may be.

10. The applicant he pointed out, has been working at Hubli for nearly seven years, right from her first appointment to service viz. from 23.9.1981, which is a reasonably long tenure. She cannot therefore ^{de} have any legitimate ~~grievance~~ for transfer prematurely, he argued. The conduct of the applicant when she was transferred by the respondent to Belgaum, by his order dated 8/11.7.1988, was unbecoming, Shri Sreerangaiah pointed out, as she refused to receive the order of transfer, which was violative of discipline. Under these circumstances, she had to be informed on 12.7.1988 (Ann. R-I) that she was relieved from her post at Hubli, on 12.7.1988 A.N. Shri Joshi sought to refute the statement of Shri Sreerangaiah. I have no reason to disbelieve the assertion of Shri Sreerangaiah, apart from the fact, that this assertion is supported by Ann.R-1 and that I had occasion to ascertain its veracity when I heard this matter at the preliminary stage sitting on a Division Bench on 25.8.1988, when the Bench was not convinced to extend the ex parte, ad interim order of stay, granted on 11.8.1988, on the facts which were not

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faithfully represented by the applicant.

11. Shri Sreerangaiah further submitted, that the applicant was given due opportunity to represent her grievance if any, both to the Divisional Engineer and the Divisional Railway Manager, Hubli, who after due consideration, found no merit in her request, for cancellation of her transfer to Belgaum.

12. I have given due thought to the rival pleadings and have examined carefully the relevant material placed before me. At the outset, I should allude again, to the manner in which the applicant sought to obtain an ex parte ad interim order of stay from this Tribunal, on 25.8.1988, (vide para 10) by not presenting the facts faithfully. When the matter was minutely examined by the Division Bench (in which I sat) by going through the relevant papers it was evident, that the applicant was relieved from her post in the Works Branch, at Hubli, on 12.7.1988 itself. The conduct of the applicant, in being less than truthful in presenting the facts, is indeed reprehensible, on which ground alone she forfeits sympathy. Nevertheless, I shall examine her case on merits.



13. The applicant is seen to have first submitted her request by letter, as long back as on 4.9.1985, for transfer to Belgaum and for that purpose, she had even volunteered reversion to the post of Junior Clerk in the Works Branch, in the Office of the Divisional Railway Manager, Southern Railway, Hubli,

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Which in itself, revealed the keenness on the part of the applicant, to proceed to Belgaum on transfer. It is learnt that the applicant is a resident of Uchgaon village, which is barely 10 kms. away from Belgaum. Until 16.6.1988, the applicant does not seem to have bestirred herself, to withdraw her request for transfer to Belgaum, made on 4.9.1985. It appears, that only when quarters came to be allotted to her at Hubli, she shifted her family members from Belgaum to Hubli in January 1988 and even then, she did not promptly report to the respondent or to the concerned authorities either in person or by letter, that her request for transfer to Belgaum made on 4.9.1985 be withdrawn. It is only after a period of nearly 6 months, that she made this written request on 16.6.1988 (Ann. 'B') to the concerned authorities, as aforementioned. In fact, the applicant could have approached the concerned authorities, for cancellation of her request for transfer to Belgaum, no sooner than she made an application for allotment of quarters to her, at Hubli. Shri Sreerangaiah is not in a position to indicate as to on what date actually, she made an application for allotment of quarters. It is not unlikely, that quite sometime might have elapsed, between the date of her application for allotment of quarters, and that of actual allotment. In the ordinary course, the applicant should have, at the time of application of allotment of quarters, made a request to the concerned authorities, to cancel her earlier representation dated 4.9.1985, for transfer to Belgaum. The records placed before me do not reveal that she had endeavoured to do so. On the contrary, the request has been made far too belatedly

on 16.6.1988 i.e., close on the heels of the orders of her transfer to Belgaum, which were issued barely a month thereafter. It is mysterious as to why the applicant should have remained silent all the while, for as long a period as nearly three years.

14. The applicant has been at Hubli as stated earlier, since as long back as 1981. It is well recognised that transfer is an incident of service and is ordered for administrative reasons, of which the employer is the best judge. It may not be without its human aspect, but it needs to be realised, that mere individual inconvenience or hardship, cannot override exigencies of administration and public interest. The Tribunal is therefore generally loath to interfere with administrative transfers, unless they are tainted by mala fides, or punitive action.

15. The applicant has not imputed any mala fides to the respondent, in ordering her transfer. In fact, the order of transfer dated 8/11.7.1988 (Ann. 'D') is not confined to her alone, but covers three other employees as well. Shri Joshi contended, that the respondent did not exercise his authority reasonably, while transferring his client, as he did not take into account the request made by her on 16.6.1988, to withdraw her earlier request for transfer to Belgaum. I see no merit in this contention, as the respondent has not singled out the applicant, for hostile treatment, apart from the fact, that the applicant has enjoyed a reasonably long tenure at Hubli. Besides, Belgaum as compared to Hubli is a district headquarters and in fact, is t



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headquarters of a Divisional Commissioner and as such offers, better amenities of life. I see therefore no valid reason, as to why the applicant should fight shy to proceed to Belgaum, which really is close to her native place Uchgaon.

15. Obedience is the essence of law - obedientia est legis essentia. As an exemplar of discipline, the applicant should have first accepted the order of transfer implicitly and then made a representation to the concerned authorities, explaining her difficulty and this could have been done even before she proceeded to the place of transfer. It ill-reflects on her, that she failed to do so. Besides as stated earlier, she was disingenuous while presenting her case in seeking interim stay of her transfer order, to which I have referred earlier. All this does not redound to her credit, as a civil servant, of integrity and discipline.

16. In view of the foregoing, I see no justification to cancel the impugned order of transfer of the applicant, as prayed for. The application is therefore dismissed, as bereft of merit. No order as to costs.



TRUE COPY

mr.

sd/-

MEMBER (A) 22.12.1988

[Signature]
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE