

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. No. 848/93.

Dt. of Decision : 5-9-94.

Smt. G. Elizabethamma

.. Applicant.

Vs

1. The Divisional Railway Manager (Personnel)
SC Rly, Vijayawada.

2. The Chief Project Manager
Railway Electrification
Vijayawada.

3. The Chief Personnel Officer
SC Rly, Secunderabad.

4. Dy. Chief Electrical Engineer,
Railway Electrification,
Kazipet.

5. P. Vijaya Kumar .. Respondents.

Counsel for the Applicant : Mr. G.V. Subba Rao

Counsel for the Respondents : Mr. V.Bhimanna, Addl.CGSC. (R-1to4)
Mr. S.Ramakrishna Rao (R - 5)

CORAM:

THE HON'BLE SHRI A.V. HARIDASAN : MEMBER (JUDL.)

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O.A.No.848/93

Dt. of order:5.9.1994

ORDER

In this application filed under Section 19 of the Administrative Tribunals Act, the applicant has prayed that the order of the Chief Personnel Officer, South Central Railway, dated 11.3.92 and the order dated 11.5.1992 of the Divisional Railway Manager, South Central Railway, Vijayawada transferring the applicant to Secunderabad Division in purported acceptance of a request for mutual transfer between the applicant and the fifth respondent to be set aside and the respondents to be directed to treat that the applicant continued as an employee in the Electrical Branch of the Vijayawada Division with all consequential benefits such as promotion, arrears of salary, etc.

2. The facts of this case in brief are as follows: When the applicant was working as a Head Clerk in the office of the Senior Divisional Engineer(Electrical), Vijayawada, she applied for mutual transfer to Senior Secunderabad Division with one Sri P. Vijayakumar (respondent No.5) who was working at Secunderabad, on account of certain domestic circumstances. While the mutual transfer request was pending consideration by the competent authority, the applicant was transferred to the office of the Deputy Chief Engineer (Electrical)/R.E. Office at Kazipet on administrative grounds and she took over charge at that transfer station on 4.12.1991. After joining at Kazipet, finding that the mutual transfer could not be beneficial to her, the applicant, by her letter dated 24.2.1992 (at Page 9 to the OA) sought to cancel the mutual transfer. This communication was forwarded from the office of the Deputy Chief Electrical Engineer/RE/Kazipet i.e. the 4th respondent to the Senior Divisional Personnel Officer, RE, Vijayawada.

She also had informed Sri P.Vijayakumar, the 5th respondent herein about the cancellation of the mutual transfer. However, the Chief Personnel Officer, South Central Railway, Secunderabad, vide hismemorandum dated 11.3.1992 communicated the sanction for ~~internal~~ Inter Divisional/Departmental Mutual Transfer of the applicant with the 5th respondent with a direction to DRM(P), Secunderabad to relieve Shri Vijayakumar immediately under advice to all concerned and to DRM, Vijayawada to relieve the applicant immediately with intimation to all concerned, notwithstanding the fact that the applicant had revoked her request for mutual transfer. However, a copy of this memorandum dated 11.3.1992 was not communicated to the applicant. Two months thereafter, ~~the~~ ~~the~~ the DRM, Vijayawada issued an order dated 11.5.92, transferring the applicant to Secunderabad on the basis of the order of the Chief Personnel Officer, Secunderabad, in which it was mentioned that the 5th respondent, who have been relieved on 1.5.1992 reported to the office of the DRM, Vijayawada on 6.5.92 for pse posting and he had been posted at Royalapadu Station, under the control of the Divisional Electrical Engineer, Wagon Workshop Royalapadu against a vacancy. This order was also not communicated to the applicant with the result, she continued to work at Kazipet. While so, finding that, she was not considered for promotion to the post of Chief Clerk/ Office Superintendent Gr.II in the scale of Rs.1600-2660 the applicant sent a letter to the Senior Divisional Personnel Officer, Vijayawada on 4.11.92 putting forth, her grievance that she was not considered for promotion. She again made a representation on 6.2.93. While her representations were not responded to, she found that 4 juniors were promoted as Office Superintendent Gr.II in the scale of Rs.1600-2660/- on 12.4.1993. Since the applicant continued to work at

Kazipet and as her juniors were being promoted as Office Superintendent Gr.II, apprehending that the non-consideration of her case for promotion was on the basis of some decision taken on ~~her~~ request for ~~mutute~~ mutual transfer which she had already revoked, the applicant has filed this application for setting aside the impugned orders dated 11.3.92 and 11.5.92 and for the consequential benefits.

3. The first respondent on behalf of respondents 1-4 has filed a reply statement. The 5th respondent though served with notice, has not filed any reply statement though he ~~was~~ was represented by Shri S.Ramakrishna Rao, his counsel.

4. The respondents 1-4 in their reply affidavit have contended that the letter alleged to have been sent by the applicant on 24.2.1992, revoking her request for mutual transfer had not been received in the office of the first respondent, that the first respondent has accepted the request for mutual transfer by impugned order dated 11.3.92 that the 5th respondent had been relieved pursuant to the order and on 1.5.92, that he had also taken over charge in ~~that~~ Vijayawada Division and ~~therefore~~, the prayer of the applicant for cancellation of the impugned order is untenable. They have further contended that once a mutual ~~request~~ transfer is made the ~~revocation~~ ^{also} should be done by both the parties who had submitted the request for mutual transfer and that, the applicant, unilaterally is not entitled to withdraw from the request. Regarding the claim of the applicant for consideration to the post of Office Superintendent Gr.II, the respondents contend she was not alerted as she did not come within the zone of eligibility. Therefore, according to the respondents, the applicant does not have any real grievance requiring redressal.

In the rejoinder filed by the applicant, it is stated that as the applicant was posted out of Vijayawada to Kazipet on deputation on administrative grounds, the 5th respondent could not have been posted to Vijayawada as that was ~~not~~ the post which the applicant was holding ~~at~~ ~~on~~ ~~the~~ ~~date~~ on the date on which the orders dated 11.3.92 and 11.5.92 were issued. She has further contended that as a matter of fact, the 5th respondent was not posted under Vijayawada Division but at Rayanapadu which obviously was not the post held by the applicant and for that reason, it cannot be said that the transfer of Sri Vijayakumar was in exchange of the applicant. As the respondents have not relieved the applicant or not even communicated to her the acceptance of the mutual transfer, the applicant contends that the non consideration of her claim for promotion is unjustified. When-th

5. When the application came up for final hearing Shri V. Bhimanna, Standing Counsel for the Respondents 1-4 were present. None appeared for the fifth respondent.

6. I have carefully perused the pleadings and materials on record and I have also heard the arguments of Shri GV Subba Rao and Shri V. Bhimanna.

7. Shri GV Subbarao argued that as the mutual transfer request originally made by the applicant was revoked by her ^a by her letter dated 24.2.1992, which was also forwarded by the 4th respondent to the ~~first~~ respondent, the ~~first~~ respondent should have forwarded the same to the Chief Personnel Officer, South Central Railway, Secunderabad, and the Chief Personnel Officer, South Central Railway,

should not have issued the order dated 11.3.92. He further argued that since the first respondent was aware of the fact that the applicant ~~had~~ revoked her request for mutual transfer, he should not have been issued the order dated 11.5.92 transferring the applicant to Secunderabad in purported obedience of the order of the third respondent. Inviting my attention to the fact that even ~~without~~ the order of third respondent sanctioning the mutual transfer being communicated to the applicant, the 5th respondent as stated in the Memo dated 11.5.92 has been relieved of his duties on 1.5.92 from Secunderabad and posted at Rayanapadu on 6.5.92. This, Shri GV Subbarao argues ~~only~~ only with a view to help the fifth respondent detriment at the ~~of~~ of the applicant and ~~cannot~~ cannot be upheld. Shri GV Subba Rao further argues that even on the date on which the applicant filed the OA, the respondents 1-4 have not communicated either the sanction of the third respondent for mutual transfer or the order dated 11.5.92 of the first respondent ~~and~~ have not taken any steps to relieve the applicant from the post which she was holding at Kazipet. Inaction on the part of the respondents 1-4 in not considering her ~~request for~~ promotion ~~of~~ to the post of Office Superintendent/Chief Clerk and the stand taken by them ~~on~~ account of mutual transfer, her name has been struck off from the Vijayawada Division is absolutely inconsistent ~~untenable~~, and unjustified, argued Sri Rao.

8. Shri V. Bhimanna, on the other hand argued that the letter of the applicant revoking her request for mutual transfer dated 24.2.92 not having been received in the office of the first respondent, the action of the ~~xx~~ first respondent in sanctioning the request for mutual transfer should not be faulted and that the order dated 11.5.92 was issued by the 4th respondent because, he was bound by the order issued by

third respondent and as the fifth respondent
pursuant to the order of the third respondent had been
relieved from Secunderabad, and posted in Rayanapadu
Station at Vijayawada. Regarding the case of the
applicant that the order dated 11.3.92 and 11.5.92
not having been communicated to her, and she having been
not relieved from her post till the date of the application
the learned counsel for the respondent under
instructions from the department, submitted
that the applicant could not be relieved from her post at
Kazipet for want of a substitute and that she would be
relieved only when a substitute ~~as~~ becomes ^{available}.

9. Learned counsel for the applicant produced before
me today a letter No.E.252/KRSE/3022/1/M dated 25/27/79
wherein the applicant has been alerted for selection to the
post of Office Superintendent Gr.II in the scale of
Rs.1600-2660/- showing her on the top of the list of
document, the learned counsel for the applicant submits that
the contention of the respondents that the applicant have been
struck off ^{from} the roll of Vijayawada Division is wholly untenable.
Shri GV Subbarao therefore argues that as the respondents
1-4 on account of administrative exigencies are not in a
position to spare the applicant from Vijayawada Division,
their contention that the mutual transfer has been accepted
and acted upon and the 5th respondent has been appointed in
Vijayawada Division in the applicant's place is meaningless and
inconsistent and therefore, he submits that the impugned order
is liable to be quashed.

10. I find considerable force in this argument. Firstly, as the applicant had revoked her request for mutual consent on 24.2.92 to the knowledge of the 4th respondent as is seen from the endorsement on the mutual transfer request copy at page 9 of the OA, the action on the part of the respondents in acting upon the mutual transfer request is unsustainable. Further, the request for mutual transfer was made by the applicant at a time when she was posted at Vijayawada. When she was sent out of Vijayawada and posted at Kazipet on administrative grounds, the respondents 1-4 should have ascertained from the applicant whether she was still serious about the request for mutual transfer. Further, the orders dated 11.3.92 and 11.5.92 have not been communicated to the applicant so as to bind her. It is seen that even on the date of filing of the application, respondents 1-4 have not taken steps to relieve the applicant from Vijayawada Division for the reason that she cannot be spared from Vijayawada Division for administrative reasons. If the service of the applicant could not be spared from Vijayawada Division, then how the request for mutual transfer was sanctioned? What is the meaning of mutual transfer being sanctioned retaining the applicant in the Division from which she had requested for mutual transfer? Shri Bhimanne could not give any answer to these questions. I am of the considered view that the mutual transfer request of the applicant has not really been acted upon as the respondents themselves could not spare the services of the applicant from Vijayawada Division. The request of the applicant having been revoked by her as early as on 24.2.92, the respondent could not have acted on that also. Under these circumstances, I am of the considered view that the impugned orders are liable to be set aside. I also hold that if the applicant was senior enough

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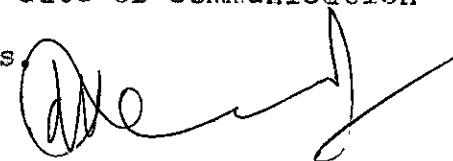
Copy to:-

1. The Divisional Railway Manager (Personnel), South Central Railway, Vijayawada.
2. The Chief Project Manager, Railway Electrification, Vijayawada.
3. The Chief Personnel Officer, South Central Railway, Secunderabad.
4. Dy. Chief Electrical Engineer, Railway Electrification, Kazipet.
5. One copy to Sri. G.V.Subba Rao, advocate, CAT, Hyd.
6. One copy to Sri. V.Bhimanna, Addl. CGSC, CAT, Hyd(R-1 to R-4).
7. One copy to Sri. S.Ramakrishna Rao, advocate, CAT, Hyd(R-5).
8. One copy to Library, CAT, Hyd.
9. One spare copy.

Rsm/-

tobe considered for the post of Office Superintendent Gr.II in the scale of Rs. 1600-2660/- against the restructured vacancies when her alleged juniors in Vijayawada Division, were promoted, the respondents should consider the case of the applicant in accordance with her seniority on the relevant date.

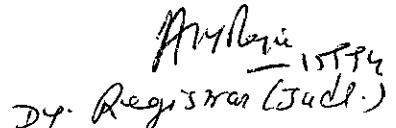
11. In the result, the OA is allowed. The impugned orders dated 11.3.92 and 11.5.92 of the third and first respondent respectively, are set aside. The respondents are directed to allow the applicant to continue in Vijayawada Division retaining her original seniority and consider her promotion to the Grade of Office Superintendent against restructured vacancies from the date on which her juniors were considered and promoted. If the applicant is found eligible for promotion as Office Superintendent with effect from the date her junior was promoted, consequential monetary benefits also be given to her within two months from the date of communication of this order. The directions as afore-said shall be complied with by the respondents within a period of two months from the date of communication of this order. No orders as to costs.


(A.V. HARIDASAN)
Member(J)

Dated: The 5th September, 1994

Dictated in the Open Court

mvl


D.Y. Registrar (Jud.)

Contd - - 10 -

OA 8487 93

Typed by

Compared by

Checked by

Approved by

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR.A.V.HARIOSAN : MEMBER (J)

AND

THE HON'BLE MR.A.B.GORTHI : MEMBER (A)

Dated: 5/9/94

ORDER/JUDGMENT.

M.A./R.P./C.P. NO.

in
O.A. NO. 8487 93

T.A. NO. _____ (W.P. NO. _____)

Admitted and Interim Directions
Issued.

Allowed.

Disposed of with Directions.

Dismissed.

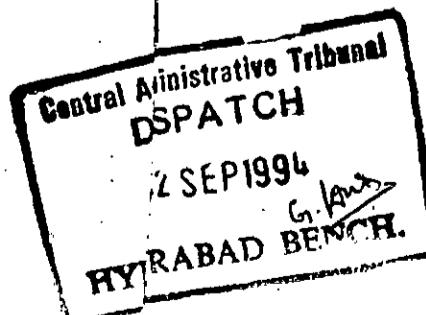
Dismissed as withdrawn.

Dismissed for Default.

Rejected/Ordered.

No order as to costs.

No spare copy



EC