

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00213/2018

Friday, this the 17th day of August, 2018

CORAM:

**Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member**

Madan Lal Meena,
Aged 38 years, S/o. Ramanath Meena,
Chief Commercial Clerk III/ Southern Railway/
Mangalore Junction/ Palakkad Division,
Residing at: Railway Quarters, 10-B, Railway Colony,
Padil Post, Mangalore Junction,
Mangalore – 575 007. **Applicant**

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

- 1 Union of India, Represented by the General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 600 003.
- 2 The Chief Personnel Officer,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 600 003.
- 3 The General Manager (P),
North Western Railway, Hassenpura Road,
Jaipur – 302 006.
- 4 The Sr. Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat – 678 002.
- 5 The Sr. Divisional Commercial Manager,
Southern Railway, Palghat Division,
Palghat – 678 002. **Respondents**

(By Advocate – Mr. P.R. Sreejith)

This Original Application having been heard on 10.08.2018, the Tribunal on 17.08.2018 delivered the following:

O R D E R

Per: E.K. Bharat Bhushan, Administrative Member

1. OA No. 180/213/2018 is filed by Shri. Madan Lal Meena, Chief Commercial Clerk III working under Palakkad Division of Southern Railway aggrieved by the failure on the part of the Respondent Nos. 4 and 5 to relieve the applicant to join Ajmer/Jaipur Division of North Western Railway as per the order of transfer already issued.

2. The reliefs sought in the OA are as follows:

- (i). Declare that the non-feasance on the part of the respondents to relieve the applicant on inter-Railway transfer to Ajmer/Jaipur Division of North Western Railway in terms of A1 is arbitrary, discriminatory, contrary to law and hence, unconstitutional;
- (ii). Direct the respondents of Southern Railway to issue necessary orders, for relieving the applicant to Ajmer/Jaipur Division of North Western Railway and direct further to ensure relief of the applicant to Ajmer/Jaipur Division of North Western Railway forthwith;
- (iii). Direct the respondents to grant the applicant the benefit of seniority in the North Western Railway with effect from the date of Annexure A1 order;
- (iv). Award costs of and incidental to this application;
- (v). Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

3. The applicant, who is a native of Rajasthan, had joined Palakkad Division of Southern Railway in 2005 as sweeper cum porter. In 2008, he was promoted as Commercial Clerk and in 2012 as Senior Commercial Clerk. From 05.07.2017 onwards the applicant has been functioning in the promoted post of Chief Commercial Clerk III. He had applied for inter-divisional transfer to Ajmer/Jaipur division of North Western Railway and as per proceedings issued by Respondent No. 3 had been accepted on transfer.

However, Respondent Nos. 4 and 5 refused to relieve him to join his new station despite representations made by the applicant in writing and in person. The applicant submits that there are compelling personal reasons for seeking transfer to his native State. He has an aged father and a daughter, who is aged 18 months, to look after. There is also urgency in the matter as once existing vacancies of Commercial Clerk in North Western Railway are filled, there is little chance of being accommodated there. This Tribunal itself had held on several other instances that inter-divisional transfer ought to be allowed. Even delay would be to his grave detriment as his seniority in the new division will be counted only from the time he joins.

4. Respondents have filed reply statement, wherein Rule 226 of the Indian Railway Establishment Code (IREM) Vol. I has been quoted, wherein, a Railway employee is expected to continue through out his service under the Railway establishment to which he is posted on first appointment and he will have no claim for transfer to another Railway or another establishment. While it is true that individual circumstances are to be considered while adjudicating such matters, predominantly it is the requirement of the employer organization, which should count. The application of an employee seeking inter-divisional transfer is invariably forwarded to the Chief Personnel Officer, Chennai but it is forwarded for the purpose of registration only and not to be relieved until the vacancy position improves.

5. It is further stated that there are 17 employees, who had applied for inter-railway / inter-divisional transfer including the applicant. The list at

Annexure R1 indicates these names, wherein, it can be seen that the applicant is on top of the list and his case will be considered when the vacancy position improves. This has been clearly stated in Annexure R2 communication. It is further stated that there are 33 vacancies in Commercial Clerk Cadre in Palakkad division and if inter-zonal transfers are indiscriminately allowed, the services provided by the division to the passenger public will suffer.

6. The respondents have quoted orders of the Hon'ble Apex Court in 2004 AIR SCC 5563 in which it is held that "*Transfer, which is an incidence of service, is not to be interfered with by the courts unless it is shown to be clearly arbitrary or vitiated by malafide or infraction of any prescribed norms of principles governing the transfer*". The applicant can claim no reliefs under any of these grounds.

7. Heard Shri. T.C. Govindaswamy, learned counsel for the applicant and Shri. P.R. Sreejith, learned counsel for the respondents. All pleadings, oral and documentary, were examined.

8. The sole question to be examined here is whether an employee, whose name had been forwarded for inter-divisional transfer way back in 2014 is not to be relieved to wake up his assignment in the new division. The respondents argue that his name had been forwarded "only for registration purposes" and transfer is not a matter of right. Besides, the applicant has no case that he has been discriminated against or that another, who applied for

inter-divisional transfer after him, had been relieved. A large number of vacancies in the Commercial Clerk Cadre exists in Palakkad Division and immediate departure of personnel from this category would add further burden for the organization to grapple with. The Hon'ble Supreme Court had also discouraged interference in transfer matters unless the same is vitiating by the malafide. There is no such case here.

9. The applicant is stated to be number one in the list to be relieved. The recruitment of more personnel to fill up the vacancies, fall under the purview of the employer as the RRB is the agency to conduct the recruitment as advised by the Railways. While, we do not wish to interfere with the stand that the respondents have adopted and order immediate relief of the applicant, we would direct the respondents to take immediate steps to recruit more personnel so that the employees, like applicant, who had applied for inter-divisional transfer, can be relieved on priority. We direct the respondents to initiate urgent steps for the same and thereupon, when the new inductees join, consider relieving the applicant on priority basis, possibly at the end of six months from now.

10. OA is disposed of. No costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

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List of Annexures of the Applicant

Annexure A-1 - A true copy of the order bearing No. 939/EC/I/ACC Madan dated 25.02.2014, issued by the 3rd Respondent.

Annexure A-2 - A true copy of the recent representation submitted by the applicant to the Chief Personnel Officer of Southern Railway, Head Quarters, Chennai dated 23.11.2017.

List of Annexures of the Respondents

Annexure R-1 - True copy of list of applicants registered for the IRT/IDT.

Annexure R-2 - True copy of Folio-8 of the file and CPO/MAS vide letter No. 676/II/13/CC/Vol. 23, dated 27.10.2010.

Annexure R-3 - True copy of Comprehensive Transfer Policy vide Board's letter No. E(O)III/2014/PL/05 dated 31.08.2015, communicated vide PBC No. 184/2015.

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