

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00386/2017

Tuesday, this the 9th day of October, 2018

CORAM:

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

C. Mohanakumar, aged 54 years, S/o. Late T.K.S. Menon,
 Office Superintendent, Office of Senior Section Engineer (C&W),
 Southern Railway, Shoranur, Pin – 679 123, residing at Amrutham,
 Ganeshgiri, Shoranur, Pin – 679 123. **Applicant**

(By Advocate : Mr. T.A. Rajan)

V e r s u s

1. Union of India, represented by the General Manager,
 Southern Railway, Park Town PO, Chennai – 3.
2. Senior Divisional Personnel Officer, Divisional Office,
 Southern Railway, Palakkad, Pin – 678 002.
3. Senior Section Engineer (C&W), Southern Railway,
 Shoranur, Pin – 679 123.
4. T.M. Mallika, Office Superintendent, Office of Senior
 Section Engineer (C&W), Southern Railway, Shoranur,
 Pin – 679 123.
5. Vincent George, Office Superintendent, Office of Senior
 Section Engineer (C&W), Southern Railway, Shoranur,
 Pin – 679 123. **Respondents**

(By Advocate : Mr. P.R. Sreejith)

This application having been heard on 03.10.2018 the Tribunal on
 09.10.2018 delivered the following:

O R D E R

Hon'ble Mr. Ashish Kalia, Judicial Member –

The applicant claimed relief as under:

- “I) Call for records leading to Annexure A7 and A8 and set aside them
- II) Declare that Annexure A7 transfer of the applicant from the office of the 3rd respondent is vitiated by arbitrariness and undue favoritism.
- III) Direct the respondents 1 to 3 to allow the applicant to continue in the office of 3rd respondent as Office Superintendent.
- IV) Award costs of and incidental to this application.
- V) Grant such other relief, which this Honourable Tribunal may deem fit and proper in the circumstances of the case.”

2. The present Original Application is filed against the order of transfer Annexure A7. The applicant working as Office Superintendent in the office of Senior Section Engineer (CW) has been transferred to the office of Chief Crew Controller, Southern Railway, Shoranur. He is aggrieved by the arbitrary action of the 2nd respondent transferring him to the office of Chief Crew Controller, Southern Railway, Shoranur favouring respondents 4 & 5 who were retained in the office of the 3rd respondent even though the applicant is neither the senior most nor junior most at the station. The present transfer is due to the reduction of one post of Office Superintendent in the office of the 3rd respondent. The applicant further submits that respondents Nos. 4 & 5 has to be transferred instead of the applicant.

3. Notices were issued and respondents put appearance through Mr. P.R. Sreejith. They filed a reply statement stating that the transfer of the applicant was necessitated due to the fact that the incumbent of Chief Office Superintendent retired voluntarily on 31.3.2017 creating once vacancy of ministerial staff. It was felt by the respondent Railway administration that duties in the office of Chief Crew Controller, Southern Railway, Shoranur

could not be managed by one Office Superintendent and one Senior Clerk as they had to deal all the running staff matters and other correspondences in the said office, hence, applicant was transferred and he joined the office on 24.5.2017. Thereafter one post of Chief Office Superintendent at SSE/C&W/O/SRR was temporarily transferred to and now operated in the office of the Senior Section Engineer, Palakkad. The respondents further submitted that the 4th respondent was transferred from the office of Chief Crew Controller, Southern Railway, Shoranur to the office of Senior Section Engineer (Carriage & Wagon), Shoranur on 5.8.2002 against the existing vacancy of Senior Clerk in the office of Senior Section Engineer (Carriage & Wagon), Shoranur. She was thereafter promoted as Head Clerk against restructuring vacancy on as is where basis w.e.f. 1.11.2003. The 5th respondent who is a physically handicapped employee was posted to the office of Senior Section Engineer (Carriage & Wagon), Shoranur on 23.5.2012. It is also submitted that among the three Office Superintendents working in the office of Senior Section Engineer (Carriage & Wagon), Shoranur the applicant is the senior most in the cadre seniority which is decided by the date of promotion to the post though he is in between the 4th and 5th respondents in station seniority. The station seniority among the employees is decided by the date of joining the working station. The applicant who had already worked in the office of Chief Crew Controller, Shoranur independently for the period from 7.8.2002 to 18.5.2011, possess enough experience in the work involved in the said office and therefore, he was posted in the said office for the better functioning of the office.

4. Heard Shri T.A. Rajan, learned counsel appearing for the applicant and the learned Standing Counsel for the respondents. Perused the records.

5. The applicant's counsel has cited Annexure A11 and submitted that there is no change in his portfolio since it does not come under sensitive posts meaning thereby that he cannot be transferred whereas respondents Nos. 4 & 5 could have been easily transferred as they are working on sensitive posts. He further submits that as per Annexure A12 master circular No. 24 in paragraph No. 4.2(i) it is mentioned that whenever any curtailment in a cadre takes place and railway servants have to be transferred, as a general rule the junior most employees should be transferred first. As per the submission of the applicant he is neither senior nor junior and he should not be transferred. In fact during the course of arguments it is transpired that the applicant's transferable post falls within 1 KM from his last posting where he was working and moreover he has joined the transferred post on 24.05.2017. Counsel for the applicant submits that this is a question of transfer against the master circular No. 24 (Annexure A12). Though the applicant's and respondent No. 4's entry in the present grade was 1.1.2006 from the date of joining the applicant is senior from respondent No. 4 as per Annexure A9 provisional seniority list. As per the transfer policy either senior most or junior most can be transferred. In the present case since the applicant had already worked in the office of Chief Crew Controller, Shoranur for the period from 07.08.2002 to 18.5.2011 and as he posses enough experience in the work involved in the said office and also being senior in comparison with respondents Nos. 4 & 5, the

respondent Railway considered him fit for transfer and posted him to the office of Chief Crew Controller, Shoranur where he has joined on 24.5.2017. Therefore, we find no irregularity or illegality in transferring the applicant to the present place of posting at CCRC/O/SRR (Chief Crew Controller, Shoranur).

6. Under these circumstances we find no merit in the present Original Application. Hence, it is dismissed. Parties shall suffer their own costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/00386/2017**APPLICANT'S ANNEXURES**

Annexure A1 - True copy of the office order No. J/P535/V/7/Vol.IX. dated 28.7.1999.

Annexure A2 - True copy of the order No. J/M226/I dated 1.8.2002.

Annexure A3 - True copy of order in OA No. 436/2009 of this Hon'ble Tribunal dated 5.4.2010.

Annexure A4 - True copy of the office order NO. J/P535/V/7/Vol.XILL dated 19.5.2011.

Annexure A5 - True copy of the office order No. J/P135/V/C&W/Ministerial dated 22.4.2015.

Annexure A6 - True copy of the representation dated 15.5.2017.

Annexure A7 - True copy of the office order J/P.535/V/7/Vol XIII dated 18.5.2017 of the second respondent.

Annexure A8 - True copy of the order No. RSS-23A/00 dated 18.5.2017 of the third respondent.

Annexure A9 - True copy of the provisional seniority list of Chief Office Superintendent, Office Superintendent, Senior Clerk and Junior Clerk along with letter bearing No. J/P 612/V/4/Vol.8 dated 19.5.2014.

Annexure A10 - True copy of the representation dated 24.5.2017 submitted by the applicant.

Annexure A11 - True copy of the office note bearing NO. RSS 23A dated 1.3.2017 of the 3rd respondent.

Annexure A12 - True copy of the Master Circular No. 24 dealing with transfer of non-gazetted Railway servant.

RESPONDENTS' ANNEXURES

Annexure R2(a)- True copy of the Railway Board letter No. 2008/V-I/CVC/I/4/New Delhi dated 11.8.2008.

Annexure R2(b)- True copy of the SDGM & CVO/MAS vide letter No. VO/G/Periodical transfer dated 31.1.2014.

Annexure R2(c)- True copy of the note dated 25.2.2014 issued by Personnel Branch, Palakkad.

Annexure R2(d)- True copy of the PBC No. 140/2014 dated 12.9.2014 of the Headquarters, Southern Railway, Chennai.

Annexure R2(e)- True copy of the RBE 109/2015 dated 21.9.2015 of the 1st respondent.

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