

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 180/00460/2017

Tuesday, this the 10th day of April, 2018

CORAM:

HON'BLE MR. U. SARATHCHANDRAN, JUDICIAL MEMBER

Vasudeva Kaimal T., aged 52 years,
 S/o. Thankappan Pillai, Sweeper cum porter,
 Southern Railway, Ernakulam Junction,
 Permanent Address: Konjum Veedu, Koippuram PO,
 Pathanmthitta District, Pin – 689 531.

..... **Applicant**

(By Advocate : Mr. T.C. Govindaswamy)

Versus

1. Union of India, represented by the General Manager,
 Southern Railway, Head Quarters Office, Park Town PO,
 Chennai – 600 003.
2. The Chief Personnel Officer, Southern Railway,
 Head Quarters Office, Park Town PO,
 Chennai – 600 003.
3. The Senior Divisional Personnel Officer,
 Southern Railway, Trivandrum Division,
 Trivandrum – 695 014.

..... **Respondents**

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

The application having been heard on 28.03.2018, the Tribunal on 10.04.2018 delivered the following:

O R D E R

Hon'ble Mr. U. Sarathchandran, Judicial Member -

Applicant is an ex-serviceman with 26 years of military service. After his discharge from military on 21.12.2010 he was re-employed as Platform Porter in the Ahmedabad Division of Western Railway with effect from 22.6.2011. Thereafter he was transferred and relieved to Trivandrum Division by way of inter-railway mutual transfer vis-à-vis one Shri Prahalad Kumar

Meena. On being relieved from Ahmedabad Division Applicant reported at the Southern Railway headquarters on 10.6.2016. But he was refused to be accepted on the rolls and was directed to go back to Ahmedabad Division. Thereupon the applicant approached this Tribunal by filing OA No. 509 of 2016. In that case the applicant had prayed for an interim relief for posting him in the Southern Railway. The interim relief sought was strongly resisted by the respondents. As per the interim direction of this Tribunal he was posted as Sweeper-cum-Porter in the Thiruvananthapuram Division and was allowed to join duty on 29.9.2016. However, his salary for the period from 10.6.2016 to 29.6.2016 was not paid though there was a direction in the final order in OA No. 509/2016 to consider his representation for salary and allowances for the period in question. But the salary for the period from 29.6.2016 was paid only in December, 2016. With the above backdrop the applicant seeks relief as under:

- “(i) Call for the records leading to the issue of A16 and quash the same;
- (ii) Direct the respondents to treat the period between 10.06.2016 and 28.09.2016, as duty for all purposes;
- (iii) Direct the respondents to pay the applicant's salary and all allowances for the period from 01.06.2016 to 28.09.2016, with interest calculated @9% per annum w.e.f. such date as this Hon'ble Tribunal might find just and proper;
- (iv) Direct the respondents to draw the applicant's annual increment due on 01.07.2016 with consequential arrears arising therefrom;
- (v) Direct the respondents to pay the arrears of pay and allowances consequent upon the implementation of the 7th CPC for the period from 01.01.2016, with interest @ 9% per annum to be calculated for the period from 01.10.2016 up to the date of full and final settlement of the same;
- (vi) Award cost of and incidental to this application;
- (vii) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.”

2. Respondents resisted the OA contending that applicant was taken on the rolls vide Annexure R1 order dated 5.10.2016. According to the respondents since his transfer was against PBC No. 164/2014 issued in compliance of the order of this Tribunal in OA No. 12/2013 which was

upheld by the Hon'ble High Court in OP (CAT) No. 5/2014 and OP (CAT) 3559/2013 and interim order in OA/787/2014, the applicant was asked to report back to his parent Railway. The respondents further state that in the SLP No. 33221/2014 filed against the aforesaid judgment of the High Court of Kerala, Hon'ble Supreme Court was pleased to pass interim order to maintain status quo. They state that it is due to the aforesaid order of status quo the applicant was not taken on roll when he reported at the Southern Railway headquarters. After the final order in OA No. 509 of 2016 allowing him to make a representation seeking appropriate relief, his representation was considered and he was asked to submit leave application in order to treat the intervening period from 6.6.2016 to 28.9.2016 as leave due by adjusting his accumulated leave so as to enable him to get salary. According to the respondents the intervening period is to be treated as absent and he will not be entitled to get salary for the period of absence. According to the respondents High Court of Kerala in WP© No. 3458 of 2005 had rejected the prayer for leave salary and bonus for the period the respondents therein had not rendered duty observing that though they are entitled to back wages they are not entitled to leave salary and bonus since they have not contributed to the production of the establishment. Respondents pray for rejecting the OA.

3. Heard Mr. T.C. Govindaswamy learned counsel for the applicant and Shri P.R. Sreejith, learned standing counsel appearing for the respondents. Perused the record.

4. Annexure A2 shows that applicant was granted inter-Railway mutual transfer from Ahmedabad Division of Western Railway to the Southern

Railway vice Shri Prahlad Kumar Meena. It is not disputed by the respondents that on being relieved from Ahmedabad Division the applicant had reported at the headquarters of Southern Railway at Chennai for further orders. But the Southern Railway was not inclined to grant him any order of posting on account of the order of status quo passed by the Hon'ble apex court in an SLP wherein the contention of the Railway was that inter-railway mutual transfer between employees belonging to reserved community (SC/ST) and employees belonging to unreserved categories would upset the communal balance maintained in the Railways. According to the Railways it was in that circumstances the applicant who came from Western Railway by way of inter-railway transfer vice Shri Prahalad Kumar Meena who was a member of ST working in the Trivandrum Division of Southern Railways was not allowed to join duty.

5. However, a perusal of Annexure A2 communication approving the inter-railway mutual transfer of Shri Prahlad Kumar Meena shows that although Shri P.K. Meena is a member of ST he was 'charged against unreserved category'. Therefore the contention of the Railway that by the inter-railway mutual transfer between Shri Prahlad Kumar Meena who belonged to ST and the applicant who belong to the un-reserved category would upset the communal balance will not hold water. Thus, we are of the view that there was no factual justification for the respondents to deny a posting for the applicant when he reported for duty at the headquarters of the Southern Railway pursuant to Annexure A5 relieving order dated 6.6.2016.

6. Annexure A6 shows that the applicant reported at the headquarters of Southern Railway on 10.6.2016. Annexure A6 further shows that as inter-railway mutual transfer between different communities is subjudice it is not feasible to approve the inter-railway mutual transfer for the time being and hence the applicant was directed to report back to the Ahmedabad Division. It was at this juncture the applicant approached this Tribunal with OA No. 509 of 2016 wherein this Tribunal by an interim order directed the respondents to permit the applicant to join duty in the Trivandrum Division. Accordingly, the applicant was posted in Trivandrum Division as Platform Porter on 29.9.2016. OA No. 509/2016 was disposed of by Annexure A13 order permitting the applicant to make a representation in relation to the period of interregnum between 10.6.2016 to 29.9.2016. It is in response to his representation submitted as directed by Annexure A13 final order of this Tribunal the respondents sent Annexure A16 impugned communication to the applicant. It reads:

“Sub:- Order of the Hon'ble Tribunal, Ernakulam Bench in OA NO. 180/00509/2016 filed by you.

Ref.: - CPO/MAS letter No. P(S) 353/II/ OA 509/2016 dated 7.11.2016.

In compliance with the direction of the Hon'ble Central Administrative Tribunal, Ernakulam Bench in the above mentioned OA filed by you, your representation has been examined in detail by the competent authority and it is decided that you have to submit a request for treating the intervening period as leave due.

Hence, you are requested to submit a request for treating the intervening period from 10.6.2016 to 28.9.2016 as leave due, for further disposal.

The receipt of this letter may be acknowledged.

Sd/-
(B.A. ARAVIND)
DPO/TVC
/Sr. DPO/TVC”

7. A reading of the above letter gives the impression that the respondents are giving a concession to the applicant to treat the period of interregnum

between 10.6.2016 to 28.9.2016 as 'leave due'. However, Annexure A2 letter dated 7.3.2016 issued by the respondents Southern Railway themselves clearly shows that there was no need for non-implementation of the inter-railway mutual transfer lest it should upset the communal balance for the simple reason that Shri Prahlad Kumar Meena - though a member of ST - has secured appointment in the Railway in the un-reserved category. Therefore, it is quite evident that the respondents kept the applicant in a "Trisanku" during the aforesaid period of interregnum taking themselves refuge in a misconstrued interpretation of the Hon'ble apex court's interim order. Therefore, this Tribunal is of the view that the respondents are obliged to treat the period between 10.6.2016 to 28.9.2016 as duty in respect of the applicant for all purposes and that the OA requires to be allowed.

8. The OA is allowed. However, the interest claimed by the applicant in this case shall be limited to 6% per annum. The interest on the arrears shall be paid from the date from which the salary and other allowances fell due in the period between 10.6.2016 and 28.9.2016. The arrears of pay and allowances consequent to the implementation of VIIth CPC shall also be paid with interest at 6% per annum with effect from 1.1.2016 till actual payment of such arrears. Ordered accordingly. No order as to costs.

**(U. SARATHCHANDRAN)
JUDICIAL MEMBER**

"SA"

Original Application No. 180/00460/2017

APPLICANT'S ANNEXURES

Annexure A1 – True copy of letter bearing No. P(S)676/II/IRMT/Gr'D'/Vol.II dated 7.6.2014, issued by the 2nd respondent.

Annexure A1(a) – A legible typed copy of Annexure A1.

Annexure A2 – True copy of letter bearing No. P(S)676/II/IRMT/Gr.D/Vol.II dated 7.3.2016, issued from the office of the 2nd respondent.

Annexure A2(a) – A legible typed copy of Annexure A2.

Annexure A3 – True copy of letter bearing No. E/T1140/IRMT/CL-IV/B 44 dated 5.4.2016, issued from the office of the 3rd respondent.

Annexure A4 – True copy of letter bearing No. ET/1140/1 Part-III (Inter-Railway Group D) dated 13.5.2016, issued on behalf of DRM, Ahmedabad.

Annexure A5 – True copy of letter bearing No. ET/1140/1 (Inter-Railway Group D) dated 6.6.2016, issued on behalf of DRM, Ahmedabad.

Annexure A6 – True copy of the order bearing No. P(S)676/II/IRMT/Gr.D/Vol.II dated 10.6.2016, issued from the office of the 2nd respondent.

Annexure A7 – True copy of order dated 4.7.2016, in OA No. 509/2016 rendered by this Hon'ble Tribunal.

Annexure A8 – True copy of MA No. 826/2016 in OA No. 509/2016 for direction filed by the applicant.

Annexure A9 – True copy of order in OA No. 509/2016 dated 12.7.2016 of this Hon'ble Tribunal.

Annexure A10 – True copy of order dated 5.8.2016 in MA No. 826/2016 in OA No. 509/2016 of this Hon'ble Tribunal.

Annexure A11 – True copy of order dated 6.9.2016 in MA No. 180/826/2016 in OA No. 509/2016 of this Hon'ble Tribunal.

Annexure A12 – True copy of interim order dated 7.9.2016 in MA No. 180/826/2016 in OA No. 509/2016 of this Hon'ble Tribunal.

Annexure A13 – True copy of order dated 4.10.2016 in OA NO. 509/2016 of this Hon'ble Tribunal.

Annexure A14 – True copy of representation dated 16.10.2016 submitted by the applicant addressed to the 2nd respondent.

Annexure A15 – True copy of lawyer notice dated 14.11.2016 sent by the applicant to the 3rd respondent.

Annexure A16 – True copy of communication bearing No. V/P676/II/Tfc.Gr.D/IDT/IRT/Mutual dtd. 9.11.2016 issued by the 3rd respondent.

RESPONDENTS' ANNEXURES

Annexure R1 – True copy of O.O No. T.62/2016/Tfc Gr. D dated 5.10.2016.

Annexure R2 – True copy of PBC No. 164/2014.

Annexure R3 – True copy of Memorandum No. V/P536/II/Fixation of pay/PMI/GKI/Vol.VI/Tfc.Gr.cdt. 11.07.17.

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