

**Central Administrative Tribunal
Ernakulam Bench**

OA/180/00554/2017

Friday, this the 22nd day of June, 2018

CORAM

Hon'ble Mr.U.Sarathchandran, Judicial Member

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

Susagar, aged 36 years

S/o Yudhisthir Sagar

Senior Passenger Guard/Ernakulam Junction

Southern Railway, Kochi-682 016.

Residing at Railway Colony, Type III,

Quarters No.111D, Ernakulam Junction

Kochi-682 016.

Applicant

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

versus

1. Union of India represented by the General Manager, Southern Railway Headquarters Office, Park Town P.O., Chennai-600 003.
2. The Sr. Divisional Personnel Officer Southern Railway, Trivandrum Division Trivandrum-695 014.
3. The Sr. Divisional Operating Manager Southern Railway, Trivandrum Division Trivandrum-695 014.
4. Sri P.L.Ashok Kumar
Sr. Divisional Operating Manager
Southern Railway, Trivandrum Division
Trivandrum-695 014.
5. The Additional Divisional Railway Manager Southern Railway, Trivandrum Division Trivandrum-695 014.

Respondents

(By Advocate: Mrs. Girija K.Gopal)

This OA having been heard on 19th June, 2018, the Tribunal delivered the following order on 22nd June, 2018:

ORDER

By E.K.Bharat Bhushan, Administrative Member

This OA is filed by Sri Susagar, Senior Passenger Guard, Ernakulam Junction against office order bearing No.T.07/2017/Gds dated 26.6.2017 issued by the 2nd respondent (Annexure A1) transferring the applicant, among others, from Ernakulam to Quilon. The relief sought in the OA is to allow him to continue as Senior Passenger Guard at Ernakulam Junction.

2. In the OA, it is stated that the applicant, who is a member of the Scheduled Caste Community and hails from Chattisgarh had been appointed by direct recruitment as a Goods Guard under Trivandrum Division on 16.6.2007. He came to be promoted as Senior Goods Guard and later as Senior Passenger Guard, the latter promotion being with effect from 11.6.2011. He assails his transfer order on the ground that the 4th respondent who has been holding the office of the 3rd respondent has been in the habit of harassing him due to communal bias and prejudice against him for being a member of the reserved community. Annexure A2 is a periodical magazine published by the respondent organization wherein an article attributed to respondent No.4 is quoted.

3. The applicant states that he had applied for a mutual transfer to Hyderabad Division and the South Central Railway had agreed to accept him on mutual transfer (Annexure A3). He was not relieved from Trivandrum Division and instead, was being utilized as a Mail Guard despite the fact that he had declined promotion on more than one occasion to that category.

4. There is a long litany of alleged incidents of harassment that the applicant narrates (Annexure A8 to A24 refer). These incidents resulting at least on one occasion in a penalty of Censure, are cited by the applicant as examples of harassment. Some of these incidents such as the one referring to his action while

working in a particular Express Train on 15.10.2014 refer to major breach of safety protocol. Again, as per Annexure A19, he is alleged to have not behaved according to regulations while his train was arriving at a station. The applicant has termed these as incidents of unnecessary harassment. In fact, he has addressed a complaint against his supervisor Sri Varadarajan to the Director, National Commission for Scheduled Castes. There are further instances where he has been denied leave on one occasion for going on a Sabarimala pilgrimage and on various other times when he had wanted to avail of the same due to personal reasons. He has also produced Annexure A31, a copy of the APAR where he has been awarded 'average' rating as a further testimony to the harassment he is suffering from.

5. Returning to the case before us, he states that the three other employees who have been transferred on account of refusal to accept promotion as Mail Guard did not suffer from any inconvenience unlike him. He also submits that there are others who refused promotion, who have not been transferred. He sums up his contention in the OA by stating that there is no public interest or administrative exigency involved in his transfer.

6. Per contra, the respondents 1 to 3 and 5 have filed a detailed statement. They deny any sort of personal targeting in so far as the applicant is concerned and affirm that Annexure A1 transfer order is a chain transfer which involves several other employees. The order has been issued, as is seen from the impugned order itself, on the basis of a Resolution of the Placement Committee and no individual malice can be assigned to any supervisory officer such as respondent No.4. Quilon is suffering from shortage of Passenger Guards having only 16 when the requirement is 18. In contrast, Ernakulam Junction is having surplus where 28 Passenger Guards are available while the requirement is only 25.

7. Respondents also deny the contention of the applicant that he was transferred under Rule 224 (II) of IREM Vol.I. The said Rule is quoted below:

“(i) Such an employee should be debarred for future promotion for one year but not be transferred away from that station for one year if unavoidable domestic reasons exist. He should again be debarred for promotion for one year in case he refuses promotion again after the first year of debarment or refusal of promotion for second time, the Administration can however transfer him to out-station in the same grade and the employee has again to appear for a suitability test when his turn for promotion comes.”

8. The persons whom the applicant has referred to as having been not transferred despite refusing promotion had refused the promotion only once unlike the applicant who had refused it on three occasions. It is stated that the applicant is concocting stories by attempting to correlate various independent incidents during his service to allege malafide on the part of senior officers.

9. The applicant has filed a rejoinder reiterating his contentions and goes on to dispute the work load at Quilon and Ernakulam Junctions. An additional reply was filed on behalf of the respondents where the necessity for the transfer has been further underlined as it has become difficult to operate Mail/Express Trains without optimal deployment of Guards. Further, in order to dispel the allegation of harassment of persons belonging to reserved community, certain other officials' names have been cited, who were also transferred but have not alleged any kind of harassment. The applicant has filed an additional rejoinder citing yet other incidents from his service.

10. Heard Sri T.C.Govindswamy, learned counsel for the applicant and Smt Girija K. Gopal on behalf of respondents 1 to 3 and 5. Respondent No.4 Sri P.L.Ashok Kumar, Senior Divisional Operating Manager did not appear after being served notice . When the OA was heard for the first time on 12.7.2017, an interim order was issued directing not to relieve the applicant from the present

station and this order has been continued during the subsequent hearings.

11. The applicant in this case is aggrieved by his transfer from his current station Ernakulam to Quilon Junction. As is evident from Annexure A1, this is a consequence of his having refused promotion offered to him as a Mail Guard. In keeping with Rule 224 (II) of IREM, on account of the fact that he had refused promotion, it was not obligatory on the part of the respondents to retain him in the same station. As a matter of fact, it is seen that he had refused promotion thrice. No individual could be blamed for Annexure A1 as it is seen that it is an order issued in pursuance of the Placement Committee empowered for the purpose.

12. The Apex Court in the case of *Mrs. Shilpi Bose v. State of Bihar and Ors*, has held:-

“The courts should not interfere with transfer orders which are made in public interest and for administrative reason unless that transfer orders are made in violation of any mandatory statutory rule or on the ground of the malafide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to other. Transfer order issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instruction or orders, the courts ordinarily should not interfere with order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which should not be conducive to public interest”.

13. The applicant has chosen to piece together a long narrative of alleged persecution that he has been forced to endure during his long tenure under the respondents. Examining these instances, we can only conclude that his career has been anything but exemplary. The respondents appear to have been somewhat generous even when there were instances where public safety was jeopardized by the conduct of the applicant. We are unable to discern any malice, individual or collective, shown to the applicant. Probably disappointed by the respondents in

not allowing his request for transfer to Hyderabad, he has been performing less than optimally. His refusal to function as a Mail Guard even on officiating basis may be an indicator of his state of mind. Thus, so far as his long list of alleged incidents of harassment is concerned, he appears to be more to blame than anyone else. Having regard to the facts of the case, the documents on offer and the pleadings of the contesting counsel, we are of the view that OA is devoid of merit and is liable to be dismissed. We proceed to do so. No order as to costs.

(E.K.Bharat Bhushan)
Administrative Member

(U.Sarathchandran)
Judicial Member

aa.

Annexures appended by the applicant:

Annexure A1: Copy of the office order No.T.07/2017/Gds dated 26.6.2017 issued from the office of the 2nd respondent.

Annexure A2: Copy of Article written by the 3rd respondent under the head, "Awake, arise or be forever fallen" and published by the Southern Railway, Trivandrum Division in a Magazine titled, "Anantha Jaagratha"-Volume 111, November, 2008.

Annexure A3: Copy of Memorandum bearing No.SCR /P-HQ /222/ET /IRMT /Vol. VIII dated 24.6.2014 issued by the Chief Personnel Officer of South Central Railway.

Annexure A4: Copy of handwritten message issued by the Guards Supervisor, Ernakulam Junction, with Ref. Office Order No.T/46/2014/Guards and V/P535/II/Guards/Vol.10 dated 8.8.2014.

Annexure A5: Copy of Message No.V/T20/Gds/14/2 dated 14.8.2014 issued by the 3rd respondent Senior DOM, the applicant is being booked to take LR (Learning the Road) in the PGT-ED-PGT Section from 16.8.2014 to 19.8.2014 along with its enclosure.

Annexure A6(a): Copy of letter bearing No. Nil dated 20.8.2014 addressed to the respondents.

Annexure A6(b): Copy of letter bearing No. Nil dated 21.8.2014 addressed to the respondents.

Annexure A7: Copy of representation dated 29.8.2014 submitted by the applicant addressed to the respondents 2 and 3.

Annexure A8: Copy of Minor Penalty Memorandum under No.V/T GL/SF-11/ERS/132/2014 dated 2.9.2014 issued by the 4th respondent.

Annexure A9: Copy of the representation dated 3.10.2014 submitted by the applicant addressed to the 3rd /4th respondent.

Annexure A10: Copy of the Penalty Advice bearing No.V/T GL/SF-11/ERS/132/2014 dated 23.10.2014 issued by the 3rd/4th respondent.

Annexure A11: Copy of the Appeal submitted by the applicant before the 5th respondent dated 20.12.2014.

Annexure A12: Copy of the order bearing No.V/P 227/A/2015/06/Optg dated 15.7.2015 issued by the 5th respondent.

Annexure A13: Copy of the correspondence dated 15.10.2015 issued by the applicant to all concerned.

Annexure A14: Copy of the charge memorandum bearing No.V/P GL/SF-11/ERS/47/2015 dated 16.3.2015 issued by the 3rd/4th respondent.

Annexure A15: Copy of the reply dated 9.4.2015 submitted by the applicant to the 3rd respondent.

Annexure A16: copy of the letter bearing No.V/T GL/SF-11/ERS/47/2015 dated 20.4.2015 issued by the 3rd /4th respondent.

Annexure A17: Copy of the extract of phone message bearing No.P73 dated 28.10.2015, received by the Guards Supervisor, Ernakulam.

Annexure A18: Copy of the letter dated 28.10.2015 issued by the applicant to the 3rd respondent.

Annexure A19: True extract of minor penalty charge memorandum bearing No.V/T GL/SF-11/ERS/154/2015 dated 5.11.2015 issued by the 4th respondent.

Annexure A20: Copy of the detailed explanation dated 5.12.2015 submitted by the applicant to the 3rd respondent.

Annexure A21: Copy of the penalty advice bearing No.V/T GL/SF-

11/ERS/154/2015 dated 18.4.2016 issued by the 4th respondent.

Annexure A22: Copy of the appeal dated 6.6.2016 submitted by the applicant addressed to the 5th respondent.

Annexure A23: Copy of the order bearing No.V/P 227/A/2016/75/Optg dated 18.11.2016 of the Appellate Authority.

Annexure A24: Copy of the Revision Petition dated 10.2.2017 submitted by the applicant before the CPTM, Southern Railway.

Annexure A25: Copy of the representation dated 16.9.2014 submitted by the applicant addressed to the Director, National Commission for Scheduled Castes, Thiruvananthapuram.

Annexure A26: Copy of the letter bearing File No.KL/12/47/2014 dated 23.9.2014 issued by the Assistant Director of the National Commission for Scheduled Castes.

Annexure A27: Copy of the representation dated 10.10.2014 submitted by the applicant addressed to the National Commission for Scheduled Castes.

Annexure A28: Copy of the letter bearing File No.KL/12/47/2014 dated 18.11.2014 issued by the National Commission for Scheduled Castes.

Annexure A29: Copy of the letter bearing No.V/P 535/II/Guards/Vol.X dated 9.12.2014 addressed to the National Commission for Scheduled Castes.

Annexure A30: Copy of the letter bearing No.V/T 20/Guards/I dated 3.12.2014 given by the 4th respondent addressed to the National Commission for Scheduled Castes.

Annexure A31: Copy of the APAR for the PE 31.3.2015 communicated to the applicant under No.V/CS/APAR/Transptn/2015 dated 17.11.2016 by the DRM/CON/TVC.

Annexure A32: Copy of the appeal dated 29.12.2016 submitted by the applicant before the DRM (Con)/TVC (Appellate Authority).

Annexure A33: Copy of the representation dated 30.5.2016 submitted by the applicant addressed to the Divisional Railway Manager, Southern Railway, Trivandrum.

Annexure A34: Copy of the complaint dated 7.2.2017 submitted by the applicant, addressed to the National Commission for Scheduled Castes.

Annexure A35: Copy of the letter bearing File No.KL/12/4/2017 dated 16.3.2017 addressed to the DRM/Trivandrum.

Annexure A36: Copy of the letter bearing No.V/P 171/NC dated 27.4.2017 communicated by the Senior Divisional Personnel Officer to the National Commission, along with its enclosures.

Annexure A37: Copy of the representation dated 16.6.2017 submitted by the applicant, addressed to the National Commission for Scheduled Castes.

Annexure A38: Copy of the provisional seniority list of Passenger Guards communicated by the 2nd respondent under No.V/P 612/II/Guard dated 29.3.2017.

Annexures appended along with rejoinder:

Annexure A39: Copy of O.O.T.72/2014/Gds dated 3.12.2014 issued on behalf of Divisional Personnel Officer, Trivandrum.

Annexure A40: Copy of O.O.T.52/2015/Gds dated 28.10.2015 issued on behalf of Divisional Personnel Officer, Trivandrum.

Annexure A41: Copy of O.O.T. 39/2016/Gds dated 15.7.2016 issued on behalf of Divisional Personnel Officer, Trivandrum.

Annexure A42: Copy of O.O.T. 7/2017/Gds dated 26.6.2017 issued on behalf of

Divisional Personnel Officer, Trivandrum.

Annexures appended along with additional rejoinder:

Annexure A43: Copy of communication dated 31.7.2017 sent by 2nd respondent to NCSC, Trivandrum.

Annexure A44: Copy of leave application dated 4.10.2016.

Annexure A45: Copy of leave applications dated 24.10.2016.

Annexure A46: Copy of leave applications dated 8.11.2016.

Annexure A47: Copy of privilege pass bearing No.C 856895.

Annexure A48 series: Copy of cancelled tickets bearing numbers 75473761, 75473762, 75480891 and 75480892.

Annexure A49: Copy of "Consolidated report of Breach of Rest Allowance (BRA) particulars of Guards at ERS for the month of February, 2018" bearing No.ERS/CMS/OT/BRA/02/2018 dated 14.3.2018.

Annexure A50: Copy of online RTI application bearing No.DSRTVD/R/2018/50023.

Annexure A51: Copy of RTI reply dated 16.2.2018.