

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
ORIGINAL APPLICATION NO. 180/00524/2018

Friday, this the 28th day of September, 2018

CORAM

**HON'BLE MR.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE MR.ASHISH KALIA, JUDICIAL MEMBER**

Prasad Chirayil, S/o.Kunhiraman, Aged 33 years
Deputy Chief Electrical Engineer(Constructions)
Southern Railway, presently residing at House
No.49/761-C, Halyfax Lane, Mulakkiyil Road
Puthukkalavattom, Ernakulam

... **Applicant**

[By Advocate Mr.V.Sajith Kumar]

V.

1. The General Manager
Southern Railway
Park Town, Chennai-600003
2. The Chief Personnel Officer
Southern Railway, Park Town
Chennai-600 003
3. Mr.Mohan Pillai
Senior Deputy Electrical Engineer(Coaching)
Office of DRM, Southern Railway
Chennai-600003

... **Respondents**

(By Advocate Mrs.Girija K.Gopal for R 1& 2 and Mr.T.C.G Swamy for R3)

This application having been finally heard on 24.9.2018, the Tribunal on 28.09.2018 delivered the following in the open court.

O R D E R

Per: MR.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

Original Application No.180/00524/2018 is filed by Shri.Prasad Chirayil, Deputy Chief Electrical Engineer (Constructions) [Dy.CEE (Constructions) for short], Southern Railway posted at Ernakulam against the order issued on behalf of respondent no.1, transferring him from Ernakulam to Trichy. He alleges that this is being done merely to accommodate 3rd respondent. The impugned order

No.HPB(O) 330/2018 dated 13.6.2018 is at Annexure A-1. The prayers contained in the Original Application are as follows:

“(i) To quash Annexure A-1 to the extent applicant is transferred out of Ernakulam.

(ii) To direct the respondents 1 and 2 to retain the applicant at Ernakulam till completion of his minimum tenure.

(iii) Grant such other reliefs as may be prayed for and as the Court may deem fit to grant, and

(iv) Grant the cost of this Original Application.”

2. Applicant is a member of the Indian Railway Services Electrical Engineers (IRSEE for short) cadre selected for the 2008 batch. He has worked at Trivandrum from 2012 to till date. He claims that in 2013, he was promoted as DEE (Coaching) and then as Senior DEE (Operations) in December 2016. In October 2017 he was posted as Deputy Chief Electrical Engineer (Constructions) at Ernakulam replacing the 3rd respondent. A copy of the order dated 8.9.2017 issued on behalf of the 1st respondent, is produced at Annexure A-2.

3. After joining the post at Ernakulam in October 2017, he has occupied a private accommodation which he has taken on lease for a period of 11 months. He also has not been keeping good health due to repeated cold and fever. The state of his poor health is evidenced from the copies of documents produced at Annexures A-4, A-5 & A-6. To his shock, he received the impugned order transferring him from his present station after completing only 8 months' service there. He submits that the present transfer is merely to favour the 3rd respondent and in violation of the Transfer Guidelines, a copy of which is submitted as Annexure A-7. Applicant contends that as per the Transfer Guidelines, an employee is entitled to a minimum tenure of 2 years at one station. Besides, the incoming third respondent has been out of this post only for the last 8 months and he is a promotee official who was served in Kerala for around 15 years continuously prior to his transfer 8 months ago. The

transfer is against public interest and is arbitrary and meant to harass him.

4. As grounds applicant submits that he possesses an unblemished record of service. He had faced serious illness in the last 5 months and is in need of constant medical attention which he has arranged for at Ernakulam and a transfer to Trichy at this time would cause him grave distress. The impugned order has been issued as a general transfer order and there is no justification whatsoever for ordering the same when he has spent only 8 months at his present station.

5. Reply statement has been filed on behalf of respondent nos.1 and 2 as well as separate statement on behalf of respondent no.3. In the reply statement on behalf of respondent nos.1&2 it is maintained that certain changes in the Maintenance Department of the respondent Railways were necessitated as is seen at Annexure R-1. On account of this, there was need to post a senior officer at Trichy which necessitated the transfer of the applicant. The Electrical Department had to take over the "operations of Electric and Diesel Locomotives" in non-electrified divisions which were hitherto under the control of Mechanical Department. This required a Senior Divisional Electrical Engineer/Operations in non-electrified divisions. This was the context in which the applicant was ordered to be moved to Trichy. The post of Deputy Chief Electrical Engineer/Construction/Ernakulam, which the applicant was holding prior to the issue of impugned order, controls work related to general services whereas Loco Operations to which the applicant is now being assigned to is highly safety and technical oriented. The applicant being a Group A officer was found to have requisite experience in handling Loco Operations portfolio during his earlier tenure as Sr.DEE/OP.

6. The personal inconveniences of the applicant are not disputed except the state that there are good medical facilities available at Trichy where his illness can be attended to. It is also wrong to say that the order is meant to favour respondent no.3. The applicant does not belong to the same official level as respondent no.3 as

the applicant being only a Senior Scale Officer working in Junior Administrative Grade (JAG for short) on ad-hoc basis. As per para 1(vii) of the Transfer Guidelines dated 31.08.2015 Annexure A-7, minimum tenure will not be applicable for Junior Scale/Senior Scale officers of Group A.

7. Respondent no.3 has filed a reply statement where he has stoutly contested the contentions made in the Original Application with regard to himself. It is submitted in the said statement that except for one year of service at Tambaram, applicant managed to work entirely in Trivandrum Division with effect from 3.7.2012. It was as an ad-hoc measure that he was detailed to look after the duties of the present post at Ernakulam, which is of a JAG grade. He continued to be only a Senior Scale Officer and cannot claim that he is a JAG level employee. Respondent no.3 on the other hand had started his career in 1985 and has spent several years of his service outside the State. He supports the contention made by the official respondents that there had been an overall change in the organisational set up of the Mechanical and Electrical Departments of the Indian Railways, by which, works related to Train Lighting and Air-conditioning in coaches which were part of the Electrical Department earlier now stand transferred to the control of the Mechanical Department. Likewise, all works relating to the running of trains come under the control of the Operations Wing of the Electrical Department. What is attempted in the statement is to show that the transfer of the applicant to Trichy was purely for operational reasons and he cannot claim that he is being discriminated against. Also, being a Senior Scale Officer, he cannot claim protection of minimum service at one Station as per Transfer Guidelines vide Annexure A-7.

8. The applicant has filed a rejoinder where he has questioned the eligibility of respondent no.3 for the post at Ernakulam. It is submitted that respondent no.3 has been brought back to the same station without following the mandatory cooling off period of 2 years prescribed by the Railway board. He also disputes the operational reasons cited by both the official respondents as well as respondent no.3. Applicant

claims that he is performing the duties and responsibilities of a JAG Officer and is thus entitled to the protection attached to the post. It is confirmed that the post in question viz, Deputy CEE (Construction), is a sensitive post and calls for periodic rotation of the officials as per the directives of the Vigilance Branch of the Ministry of Railways and bringing the erstwhile incumbent back to the same post within 8 months is not warranted as per the Vigilance Manual. He calls to his assistance Annexure A-12, where these instructions have been detailed.

9. Applicant has also filed another rejoinder to the reply filed by respondent nos.1 & 2. He has disputed the operational reasons cited for his transfer. He charges the official respondents with partiality towards the third respondent. He also alleges that respondent no.3 has been facing vigilance issues and had suffered punishment.

10. Respondent no.3 has disputed the same through additional reply statement. He admits that he had been once hauled up by his superiors for "certain procedural lapses ending up in minor proceedings". He had an impeccable service of 33 years as evidenced in his APAR. By casting aspersions on his integrity, applicant is trying to besmirch his reputation without any rhyme or reason. Respondent no.3 has not faced any CBI case or any criminal prosecution for any act of omission or commission.

11. An additional reply statement has been filed to the rejoinder on behalf of respondent nos.1 & 2 where they have reiterated earlier contentions made in the reply statement. What is made out in this statement is that the transfer was required due to pressing operational reasons. With reference to certain allegations made in the rejoinder relating to respondent no.3, official respondents submitted that the alleged irregularities were thoroughly investigated and punishment of increment cut had been imposed by the General Manager. This in no way acts as a bar to respondent no.3 from being assigned to the post in question. In so far as the

question of Dy.CEE(Construction) being a sensitive post, as per Annexure A-11, it is submitted that Annexure A-11 copy of the order clearly mentions that "All Dy.CEE/Construction but for posts in HQrs Construction." This clearly excludes the post from the sensitive list.

12. Shri.V.Sajith Kumar, Advocate was heard on behalf of the applicant. His contention was that the transfer effected within 8 months of the applicant's entry into the present post is a violation of the minimum period mentioned in Annexure A-7 Transfer Guidelines. Respondent no.3, posted out from the same post as recently as in October 2017, is brought back to the same post. He further contends that the post in question is a sensitive post which mandates periodical rotation. This principle has been violated. Lastly, it is maintained that the applicant is a JAG Officer and not Senior/Junior Scale Officer who is exempted from the condition of minimum tenure as per Annexure A-7 Transfer Guidelines.

13. Smt.Girija K.Gopal, learned counsel for respondent nos.1 and 2 and Mr.T.C.G Swamy, learned counsel for respondent no.3 were heard.

14. Smt.Girija K.Gopal countered the reasoning adopted in the Original Application and submitted that the applicant is a Senior Scale Officer who is holding a JAG post on ad-hoc basis and thereby cannot claim that minimum tenure would apply to him. There were compelling operational reasons as to why the transfer had to be effected and as an IREES Officer, the management feels that the applicant's services can be better utilized in a Division such as Trichy rather than at Ernakulam where electrification has been completed. Further, taking into consideration the fact that the post of Dy.CEE (Construction) at Headquarters like the post in question is not a sensitive post the applicant can claim no such protection. As a result guidelines of the Vigilance Directorate are not applicable. There have been no issues with regard to the integrity of respondent no.3 which would exclude him from consideration for a posting such as the one effected through Annexure A-1.

15. We have examined all pleadings both oral and documentary. The main grievance of the applicant is that he has been transferred out of his present Station and duties before completion of his tenure. However, his contention that the tenure of 2 years is to be observed as minimum for his category is not found borne out by facts on record. There are also no compelling personal reasons which seem to merit a compassionate view to be taken in his favour. Applicant is a 'PC7 Level: 11' officer as seen from the copy of salary bill for May 2018 produced as Annexure R3(d) whereas as per Annexure R3(e) relating to respondent no.3, that officer belongs to 'Level 13'. Hence, there can be no vested claim made on behalf of applicant that he should be retained on the higher officiating post while a Senior Officer, in the form of respondent no.3, who is two rungs above him in seniority, is available.

16. In a large public utility service like the Railways, there is a need for predictable guidelines governing transfers. However, these should not entirely exclude transfers made for compelling operational reasons affecting incumbents who have spent only a short time in the present post. The impugned transfer has been to the disadvantage of the applicant. However, he has not succeeded in showing that this has been on account of any *malafide*. On the contrary, we are of the view that there are expedient operational reasons for effecting the transfers. The allegations made against the incoming officer, respondent no.3, have also not been found valid enough to exclude him from the post which he has been assigned to.

17. Based on the above, this Tribunal concludes that the Original Application lacks merit and is liable to be dismissed. Accordingly, we do so. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

List of Annexures

Annexure A-1 - A true copy of the Office Order No.HPB(O) 330/2018 dated 13.6.2018 issued on behalf of the 1st respondent

Annexure A-2 - A true copy of the Order No.HPB(O) 580/2017 dated 8.9.2017 issued on behalf of the 1st respondent

Annexure A-3 - A true copy of the lease agreement dated 1.6.2018 between the applicant and one Mr.Sasidharan Nair

Annexure A-4 - A true copy of the discharge summary issued by Lakshmi Hospital tot he applicant

Annexure A-5 - A true copy of the medical report dated 24.5.2018 by Appollo Hospital, Chennai

Annexure A-6 - A true copy of the report dated 15.6.2018 issued by Amrita Institute of Medical Science and Research Centre

Annexure A-7 - A true copy of the transfer guidelines dated 31.8.2015 issued by the Ministry of Railways;Government of India

Annexure A-8 - A true copy of the receipt dated 1.6.2018 issued by the Euro Kids to the applicant

Annexure A-9 - A true copy of the order dated 10-10.2017 in O.A 751 of 2017 CAT, Ernakulam Bench

Annexure 3(a) - True copy of Railway Board order bearing No.2018/O&M/8/1 dated 23.3.2018

Annexure 3(b) - True copy of joint procedure order issued from the office of the 1st respondent under No.P(G) 184/MECH/ELEC/Cadre dated 23.5.2018

Annexure 3(c) - True copy of Office Order bearing No.HPB(O)/221/2018 dated 20.4.2018, issued from the office of the 1st respondent General Manager

Annexure 3(d) - True copy of Pay Slip of the original applicant for the month of May 2018

Annexure 3(e) - True copy of Pay slip of the 3rd respondent for the month of May 2018

Annexure 3(f) - True copy of letter bearing No.M/E.150/28 dated 18.6.2018 – relinquishing charge of the post of Sr.DEE/Coaching/MAS

Annexure 3(g) - True copy of letter bearing No.E.135/CN/ERS/Gaz dated 19.6.2018, indicating that the 3rd respondent has assumed charge of the post of Dy.CEE/CN/ERS on 19.6.2018

Annexure 3(h) series - True copy of the Discharge Summaries issued from the Amrita Institute of Medical Sciences & Research Centre,Ernakulam in favour of this respondent

Annexure 3(i) - True copy of Cardiac Catheterisation Report issued by the Institute for Cardiac Treatment & Research Department of Cardiology/Southern Railway Hospital/Perambur dated 14.11.2017 in favour of this respondent

Annexure R1 - True copy of the letter No.2018/O&M/81/1 dated 1.5.2018

Annexure R2 - A true copy of the Railway Board letter along with order No.P(G) 184/MECH/ELEC/Cadre dated 23.5.2018

Annexure A-10 - A true copy of the letter dated 26.7.2018 issued by the authority under RTI Act

Annexure A-11 - A true copy of the relevant pages of the circular dated 11.8.2008 by the Railway Board

Annexure A-12 - A true copy of the Order No.2011/V-1/CVC/1/3 dated 27.5.2011 by the Railway Board

Annexure A-13 - A true copy of the relevant pages of Engineering Code of the Railways is produced

Annexure A-14 - A true copy of the proceedings No.E.135/CN/ERS/Gaz dated 15.9.2017 signed by the applicant and 3rd respondent

Annexure A-15 - A true copy of the proceedings No.M/E.150/28 dated 18.6.2018 signed by the 3rd respondent and one Mr.P.Gopikrishna

Annexure A-16 - A true copy of the letter No.P.675/1/CN/ERS dated 16.7.2018 issued by the office of the Chief Administrative Officer, Railways

Annexure A-17 - A true copy of the Office Order No.HPB(O) 418/2018 dated 4.7.2018 issued by the 1st respondent

Annexure A-18 - A true copy of the Order No.HPB(O) 854/2016 dated 7.12.2016 issued by the 1st respondent appointing the applicant as a Junior Administrative Officer (Ad-hoc)

Annexure A-19 - A true copy of the filled in APAR format downloaded from Railway Website with respect to the applicant

Annexure A-20 - A true copy of the relevant pages of the Railway Gazette availed from official website of Southern Railway.

Annexure A-21 - A true copy of the Memorandum No.SWR(P)/R/464/O&M dated 15.5.2018 issued on behalf of the Chief Personal Officer, Western Railway

Annexure R-3 - Copy of the Office Order dated 11.3.2016

Annexure R-4 - Copy of office order dated 7.12.2016

Annexure R3[j(i)] - True copy of the office order bearing No.HPB(O) 360/2011 dated 21.6.2011 issued by the 1st respondent

Annexure R3[j(ii)] - True copy of the office order bearing No.HPB(O) 420/2012 dated 3.7.2012 issued by the 1st respondent

Annexure R3[j(iii)] - True copy of the office order bearing No.HPB(O) 780/2012 dated 21.12.2012 issued by the 1st respondent

Annexure R3[j(iv)] - True copy of the office order bearing No.HPB(O) 148/2016 dated 11.3.2016 issued by the 1st respondent

Annexure R3[j(v)] - True copy of the office order bearing No.HPB(O) 854/2016 dated 7.12.2016 issued by the 1st respondent

Annexure R3[j(vi)] - True copy of the office order bearing No.HPB(O) 580/2017 dated 8.9.2017 issued by the 1st respondent

Annexure R3[k] - True copy of the letter No.P.675/I/CN/ERS dated 16.7.2018 issued by the CAO/CN/ERS

Annexure R3[l] - True copy of the letter No.SC/V/Court Case dated 19.7.2018 issued by the PCEE/Southern Railway

Annexure R3[m] - True copy of the letter No.E.135/CN/ERS/GAZ dated 6.7.2018 issued by the applicant to the CAO/CN/ERS

Annexure R3[n] - True copy of the Railway Services (Revised Pay) Rules,2016 -Schedules for revised scale of pay

Annexure R3[o] - True copy of classifiedlist of gazette establishment in Southern Railway,Electrical as on 1.1.2018

.....