

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/01040/2017

Tuesday, this the 15th day of January, 2019

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

Joydeb Sarkar
Aged 34 years, S/o.Pyarimohan Sarkar
Trackman – III, Palghat Division
Southern Railway, Residing at Railway
Quarters NO.MH 25/B, Mangalore
Karnataka – 575 001

..... **Applicant**

(By Advocate – M/s.Varkey & Martin)

V e r s u s

- 1 The General Manager, Southern Railway
Park Town P.O, Chennai – 600 003
2. The Chief Track Engineer, Southern Railway
Park Town P.O, Chennai – 600 003
3. The Chief Personnel Officer, Southern Railway
Park Town P.O, Chennai – 600 003
4. The General Manager (P), Eastern Railway
17, N.S Road, Kolkata – 700 001
5. The Senior Divisional Personnel Officer
Southern Railway
Palghat Division
Palghat – 2

..... **Respondents**

(By Advocate – Mr.V.A.Shaji)

This Original Application having been heard and reserved for orders on 10.1.2019, the Tribunal on 15.1.2019 delivered the following:

ORDER

Per: Mr.E.K.Bharat Bhushan, Administrative Member

Original Application No.180/01040/2017 is filed by Mr.Joydeb Sarkar, Trackman Grade III, Palghat Division, Southern Railway. Applicant is aggrieved by failure of the 5th respondent in relieving him on inter-railway transfer to his native place that falls in Sealdah Division of Eastern Railway.

The reliefs sought in the Original Application are as follows:

“I. Declare that the applicant is entitled to be transferred to Sealdah Division of Eastern Railway forthwith in the light of Annexure A1, A2 and A6 orders and; direct the respondents accordingly.

II. Set aside Annexure A4 order to the extent it bars the applicant's transfer until the vacancy position improves in Palghat Division.

III. Grant such other relief, which this Tribunal may deem fit and proper in the circumstances of the case. ”

2. Applicant hails from West Bengal and was selected as Trackman Grade III in PB Rs.5200-20200 + Grade Pay of Rs.1800 against Scheduled Caste quota in Southern Railway on 11.4.2012 and was posted in Palghat Division. He had applied for inter-railway transfer to Sealdah Division of Eastern Railway on 27.3.2013. The Sealdah Division as per their letter dated 17.6.2014 has accepted his request (Annexure A-1). Further, the General Manager (P), Eastern Railway has also agreed to accommodate the applicant in Sealdah Division of Eastern Railway on bottom seniority (Annexure A-2).

However, Palghat Division which had forwarded his application did not agree to relieve him and took a stand that since he had not completed 5 years' service, he cannot be relieved.

3. The applicant has several personal difficulties in continuing at the present station which is far away from his native place Bengal/Jharkhand. His father is unwell and his wife requires constant care due to prenatal problems. Pointing out all these difficulties the applicant had submitted representations to respondent no.2 on 17.7.2017. This as well as the representation sent by his father have not elicited any positive response. Palghat Division continues to refuse his request for relieving him despite Annexures A-1, A-2 and A-6 letters of Eastern Railway to Palghat Division. At the same time, one of the juniors to the applicant, Mr.Swaroop Sarkar who was a Trackman/Mangalore, had been relieved to join Sealdah Division of Eastern Railway on inter-railway transfer while the same was refused to the applicant.

4. Respondents have filed a reply statement wherein they quoted Rule 226 of the Indian Railway Establishment Code Vol.I. It is stated therein that a railway servant should be ready to work anywhere within India and no employee can seek a transfer of his choice as a matter of right. In so far as the merits of the case is concerned, it is pointed out that due to huge vacancy of Track Maintainers in Palghat Division and to ensure smooth operation of

trains, they are unable to agree to the request for inter-railway transfer.

5. Heard Mr.Martin G.Thottan, learned counsel for the applicant and Mr.V.K.Shaji, learned counsel for the respondents and perused the records.

6. This Tribunal had occasion to adjudicate near identical issues relating to personnel who have been denied inter-railway transfer on the ground that there are vacancies in the Kerala region. In an order issued on 21.12.2017 in Original Application No.180/00291/17 and connected matters, this Tribunal had ordered to relieve the concerned applicants within a week to join the Division for which they had applied for. The same argument relating to vacancies was raised by the respondents in that case also. But this Tribunal concluded that there is nothing standing in the way of respondent Railways from urgently filling up these vacancies through proper procedure. Learned counsel for the applicant also produced a copy of the order of Hon'ble High Court in OP(CAT) 3124/2013, wherein it is stated that:

“4. Respondents had demonstrated before the Tribunal, on facts, that they are eminently justified in making the request for inter-zonal transfer sought for, by them. The recipient zone has expressed consent for such transfer. Therefore, the transfers cannot be withheld merely by saying that vacancies continue to exist, affecting the functioning of the Southern Railway.

5. It is for the Southern Railway to take appropriate action to fill up the vacancies. We are sure that in this Great Bharath, that is India, a land of educated and unemployed youth, there should be no dearth of persons, if proper and prompt selections are made for the purpose of recruitment and appointments are made well in time. Lethargy on the part of the superior authorities in an establishment to

initiate necessary steps for timely recruitment is no answer to deprive the benefit of transfer to the incumbents who are eligible to such transfers in accordance with the settled norms. In effect, it only demonstrates coveted exclusion of opportunity of open market candidates in this land of the needy.

6. We do not find any ground to interfere with the impugned decision of the Tribunal calling for exercise under Article 227 of the Constitution of India.

In the result, this Original Petition is dismissed *in limine.* ”

7. As the issue involved is identical to that which has been adjudicated already by this Tribunal as well as by the Hon’ble High Court of Kerala, the prayer contained in the Original Application is allowed. Respondents are directed to relieve the applicant within 10 days from the date of receipt of a copy of this order.

8. The Original Application is allowed as above. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

List of Annexures

Annexure A1 - True copy of the letter No.EG/Misc/Inter Trf/E-12 dated 17.6.2014 issued by the DRM, Eastern Railway

Annexure A2 - True copy of the letter No.E.740/EL/TR/Trackman/JS dated 18.6.2015 issued by the 4th respondent

Annexure A3 - True copy of the letter No.P(S)677/1/1/IRT/T.Man/PGT Dn to other Rly. Dated 28.10.2016 issued on behalf of the 3rd respondent

Annexure A4 - True copy of the Letter No.P(S) 677/1/IRT/T.Man/PGT Dn to other Railway dated 9.5.2017 issued by the 3rd respondent

Annexure A5 - True copy of the representation dated 17.7.2017 submitted by the applicant

Annexure A6 - True copy of the letter No.EG/Misc/Inter Trf/E-12 dated 24.7.2017 from Sealdah Division of Eastern Railway

Annexure R1 - P(S)677/1/1/IRT/T'man/PGT to other Rly/Vol.II, dated 3.1.2018

Annexure R2 - True copy of Railway Board orders No.E(O)III/2014/PL/05 dated 31.8.2015-PBC No.184/2015 dated 5.11.2015.

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