

CENTRAL ADMINISTRATIVE TRIBUNAL**ERNAKULAM BENCH****Original Application Nos.180/00794/2018**

Monday, this the 17th day of January, 2019

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

S.Rajagopal
 S/o.Sukumara Pillai, aged 55 years
 Residing at Sree Valsam
 Chandanathop Post, Kollam-691 014
 Presently working as the Station Master at
 Kochuveli Railway Station
 Trivandrum Division **Applicant**

(By Advocate – Mr.Vipin.D.G)

V e r s u s

- 1 The Ministry of Railway, represented by it's Secretary
Rail Bhavan, Raisina Road, New Delhi – 110 001
2. The General Manager
Southern Railway, Park Town
Chennai – 600 003
3. The Senior Divisional Personal Officer
Trivandrum Division, Southern Railway
Thycadu, Thiruvananthapuram – 695 014
4. The Senior Divisional Manager
Trivandrum Division, Southern Railway
Thycadu, Thiruvananthapuram – 695 014
5. The Additional Divisional Railway Manager
Southern Railway, Trivandrum Division,
Thycadu, Thiruvananthapuram – 695 014
6. The Senior Divisional Operations Manager
Southern Railway, Trivandrum Division
Thycadu, Thiruvananthapuram – 695 014

7. Senior Divisional Signal & Telecommunications Engineer
Southern Railway, Trivandrum Division, Thycadu
Thiruvananthapuram – 695 014
 8. The Divisional Manager, Trivandrum Division
Southern Railway, Thycadu,
Thiruvananthapuram – 695 014
- **Respondents**

(By Advocate – Mrs.Girija.K.Gopal)

This Original Application having been heard and reserved for orders on 15.1.2019, the Tribunal on 17.1.2019 delivered the following:

ORDER

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

Original Application No.180/00794/2018 is filed by Shri.S.Rajagopal, Station Master at Kochuveli Railway Station against his transfer issued as Order No.T.41/2018/SMs dated 21.09.2018 by the third respondent (Annexure A-1). He seeks the following reliefs:-

- “i. To set aside Annexure A-1 order being illegal, arbitrary and unreasonable.
- ii. To issue a direction to the 8th respondent to dispose of Annexure A-10 representation within a time frame fixed by this Tribunal
- Iii) To issue such other order or direction as this Tribunal may deem fit and proper in the facts and circumstances of the above case. “

2. The applicant, who has 39 years of service to his credit under the Indian Railways, has been working at Kochuveli Railway Station since 2015. In April 2018 he had been promoted from the post of Station Master in Level 6 to the post of Station Superintendent in Level 7 and posted to

Aralvaimozhi Railway Station, Tamil Nadu. A copy of the Office Order is produced as Annexure A-2. In view of various personal reasons and his urgent necessity to remain at the present Station, he declined the promotion by letter dated 22.4.2018 (Annexure A-3). This was accepted by the 3rd respondent and the applicant was allowed to continue as Station Master at Kochuveli Railway Station as per orders issued on 28.6.2018 (Annexure A-4).

3. As per Railway Establishment Rules, in view of his refusal to accept the promotion, he is to be permitted to remain at his present station till the completion of one year. However, by issue of impugned order at Annexure A-1, the applicant has been transferred to Nanguneri Railway Station which is yet another far away Station from Kochuveli, this time without the benefit of promotion. It is maintained by the applicant in the Original Application that Annexure A-1 Transfer Order is the result of an act of vengeance from the side of 7th respondent. It is stated that it is the 7th respondent who prevailed upon the 3rd respondent to transfer him from the present Station. The reason for his antipathy towards the applicant centres around an incident on 10.7.2018 when the applicant had refused permission to some staff belonging to the Signal and Telecommunication Department under the 6th respondent from entering duty at Kochuveli Railway Station without wearing prescribed uniforms. The said staff refused to follow his instructions, given in his capacity as Station Master. On 14.7.2018, applicant

filed a complaint regarding the said incident to the 4th respondent, a copy of which is available at Annexure A-5. The same provocation was repeated in front of another Station Master also, but no action was taken against the offending staff. The applicant along with the other Station Master, namely, Shri.P.Ramesh, filed a complaint before the Station House Officer of Railway Police Station, Thiruvananthapuram Central for appropriate action (Annexure A-6). Thereafter, applicant through the Station Masters' Association filed a complaint to the 4th respondent on 16.7.2018, a copy of which is available at Annexure A-7.

4. It was made known to the applicant that the 7th respondent had issued a letter exempting his staff (Signal departmental staff) from wearing uniforms while on duty. Such instructions, if given, directly contradicts the provision in the Railway General Rules relating to wearing of uniforms while on duty. The applicant maintains that he received several threats through telephone calls and through other channels regarding the strict stand taken by him.

5. The applicant maintains that the rules mandate that the Station Master shall be responsible for the efficient discharge of the duties by the staff employed, either permanently or temporarily under his orders at the Station or within the Station limits and such staff shall be subject to his authority and direction in the working of the station. Thus, the conduct of the staff in question was unacceptable. Certain complaints which were raised by the

staff, the applicant submits, have been at the instance of the 7th respondent. It is also stated that it is the 7th respondent who influenced the 3rd respondent to issue Annexure A-1, which is a reprisal to Annexure A-4 to Annexure A-8. The 3rd respondent ought to have at least considered the fact that he himself had allowed the applicant to continue at Kochuveli Railway Station, in view of his refusal to accept promotion. A detailed representation has been filed by the applicant on 28.9.2018 before the 8th respondent, a copy of which is at Annexure A-10, but it remains un-answered.

6. As grounds, the applicant submits that the action of the 3rd respondent is violative of the principles of law, justice and equity. The applicant had only attempted to ensure that the Standing Instructions of the Railways is strictly followed. By accepting Annexure A-3 letter, 3rd respondent had agreed to retain the applicant at Kochuveli Railway Station as Station master for one more year as per extant regulations. The 7th respondent has been responsible for 'setting up' the complaints from individual members of the staff who had refused to appear for duty in uniform.

7. The respondent nos.1-8 have filed a reply statement. It appears to be partially admitted in the reply statement that one reason behind Annexure A-1 order has been the applicant's insistence that the Signal and Telecommunication Department staff must wear uniform while coming for duty. Applicant was not required to exercise any administrative control over

the Signal and Telecommunication Department staff and he was not bound to insist on staff of other departments such as the one referred to, that they must come in uniform. In fact, in view of some controversy on the subject, the Senior Divisional Operations Manager had issued a clarification note to the Station Masters (Annexure R-1) stating that “SMs need not insist for S&T staff to wear uniform while on duty”. However, the applicant continues to insist on this and his insistence soon assumed the shape of harassment to the staff, most of whom were women. His refusal to allow the staff to enter the Station Master’s room amounts to harassment and caused mental strain to them.

8. It is the duty of the Station Master to coordinate with all department staff including women for the smooth functioning of the Railways. Any deficiency noted by him could be reported through his Branch Head. While a Station Master is expected to work as sentinel of safety, protect both staff and property at the station and provide good leadership to the staff at the station, the applicant chose to create frictions by unnecessarily insisting on various matters. This has resulted in tension among staff at Kochuveli Railway Station and consequent delay in running of trains. The mental torture and suffering caused to the staff of Signal and Telecommunication Department could be ascertained from the complaints filed by them, a copy of which is produced as Annexure R-2. This was the background in which the Senior Divisional Signal and Telecommunication Engineer (respondent

no.7) addressed a report to Divisional Railway Manager, a copy of which is available at Annexure R-3. The said report details the harassment and tension caused to the lady staff working in Signal and Telecommunication Department by the non-cooperative attitude of the applicant. In the said report he narrated that the applicant is in the regular practice of serious misconduct and carries enmity towards fellow staff.

9. In view of the applicant's behaviour and failure to engender proper team spirit, he has been transferred to Nanguneri Railway Station where only few trains stop and less co-ordination work is required. This transfer was necessary because of the obstructive and non-cooperative attitude of the applicant leading to mental torture and harassment to the staff on the ground of non-wearing of uniforms. Also an internal committee had considered the case and recommended further action and this was the actual reason for the applicant's transfer now. While it is true that he had declined to be transferred on promotion, this does not bestow any special right to the applicant. His transfer is on account of his continued harassment towards lady staff which could not be tolerated.

10. Applicant has filed rejoinder in which the contentions in the reply statement have been strongly rebutted. It is maintained that Chapter II of the General Rules of the Indian Railways contemplates that "a railway servant shall wear the badge and uniform, if prescribed, and be neat and tidy in his

appearance while on duty”. Senior Divisional Operations Manager concerned has no authority to issue Annexure R-1, which is contrary to the prescribed rules and regulations. Respondents admit that the staff working in the Signal and Telecommunication Department had appeared for duty without wearing uniform under the supposed protection granted by Annexure R-1 circular. In the conflict between General Rules and Annexure R-1 circular, the former will clearly hold the field.

11. Applicant’s insistence that the staff should come wearing uniform provided by the Railways should not be called an unreasonable demand and cannot be interpreted as eroding team spirit and harmony; nor can it be cited as a reason for mental stress on the part of the staff who refused to wear prescribed uniform. The applicant has been working at his present Station since April 2015 and there has not been even a single complaint until the issue of non-wearing of prescribed uniform cropped up. It is not he alone who had pointed out the alleged defiance on the part of the staff, Mr.P.Ramesh, Station Master had also made a complaint (Annexure A-6).

12. An insidious attempt has been made to hoist a case under The Prevention of Sexual Harassment of Women at Work Place Act upon the applicant. But document at Annexure A-12 indicates that there has been no Internal Complaints Committee constituted under the Act for the reason that there was no complaint befitting such action.

13. Respondents have filed an additional reply statement to the rejoinder and thereafter applicant filed additional rejoinder. In the additional reply statement it is reiterated that the applicant has been transferred to a far away road side station on account of complaints raised against him by the staff of Signal and Telecommunication Department. His continued failure to lead the team at the station has resulted in underperforming of the Railways in that sector. Copies of complaints received against the applicant are at Annexures R6(1) to R6(4) which indicate that the contentions raised by the applicant are baseless and the transfer was necessitated purely on administrative interest.

14. Heard Mr.Vipin.D.G, learned counsel for the applicant and Mrs.Girija.K.Gopal, learned counsel for the respondents and perused the records.

15. The applicant who had been promoted in 2018 as Station Superintendent and was posted out of Trivandrum Division had agreed to forego the promotion in order to remain at his present station at Kochuveli. The said declining of promotion had been allowed by respondent no.3 who has also issued the impugned order at Annexure A-1. In the Railway Establishment Rules, under “Effect of Refusal of Promotion on Transfer” it is stated as follows:

“A Railway servant refusing promotion on transfer or seeking reversion after some time shall be dealt with as under:

(1) The employee should give in writing his refusal and accept that he would not be eligible for promotion to that post for a period of one year. This will apply in the case of promotions whether to selection or non-selection posts. In both the case the employee who refused promotion for a year due to unavoidable domestic reasons should not be transferred away for that year.” (emphasis supplied)

16. Thus, in the ordinary course, the applicant would be allowed to complete at least one year at his present station, in favour of which he chose to decline the promotion. However, it is seen that in a matter of few months, he has been shifted through the impugned order at Annexure A-1. No reasons whatsoever are seen mentioned in the said order except the term “Administrative” mentioned under Remarks column. He finds himself transferred out of Trivandrum Division to a Station in Tamil Nadu further than the earlier placement which he had chosen to forego.

17. Clearly, there must be valid reasons why the authorities have chosen to go against the condition mentioned in the General Rules. Hence it is necessary to examine “administrative reasons” which compelled respondent no.3 to act the way he did. The examination of the documents on offer and the pleadings made by the contesting counsel reveal that the trigger for issuance of the impugned order is the incident at Kochuveli Railway Station on 10.8.2018. It is not denied that on that day, applicant had refused to allow

certain staff members of the Signal and Telecommunication Department (both men and women) from attending to their duties on the ground that they were not wearing prescribed uniforms supplied by the employer Railways. The respondents at certain places have stated that this was not the reason why an adversarial relationship developed while at the same time citing Annexure R-1, purportedly a communication dated 16.7.2018 from SDOM instructing the Station Masters “not to insist on S&T staff to wear uniform while on duty.” A situation seems to have developed on account of the intransigent attitude of the applicant as is discerned from Annexure R-3 communication dated 31.7.2018 whereby respondent no.7 has addressed a communication to Sr.DPO castigating the behaviour of the applicant in strong terms. The communication refers to complaints received from Signal and Telecommunication Department staff namely “Ms.Syda.S, Ms.P.S.Asha Rani and Ms.Devi Krishna.V” , who all are working as Technicians in Signal Department, about obstruction created by the applicant. However, the respondents have annexed the complaints received from these individual employees along with their additional reply statement from Annexures R 6 (1) to R6(4). Curiously, these complaints are of same date i.e, 08.08.18 which is well after the date of Annexure R-3, which is 31.7.2018. It is also seen that the authorities had examined whether the complaint against the applicant would fall under the category of 'The Prevention of Sexual Harassment of Women at Work Place Act' as per Annexure A-4 and it was decided that it would not fit this bill.

18. Shri.Vipin.D.G, learned counsel for the applicant argued at length that the applicant possessed an unblemished record of service and he was the victim of a manufactured complaint due to his insistence on employees wearing uniforms while attending duty. The lax and non-serious control wielded by respondent no.7 has emboldened the staff to militate against standing instructions in force in the Railways and the applicant, as the Station Master, with definite responsibilities in his chosen post is being taken to task for being strict in implementation of extant regulations.

19. Smt.Girija.K.Gopal, learned standing counsel for the Railways, while admitting the fact of the applicant's refusal to take up his promotion would under normal circumstances have resulted in his continuance at Kochuveli Railway Station at least for one year, submitted that the misfortunes of the applicant are clearly the result of tactlessness on the part of the applicant. What is more, he has been singularly non-cooperative and his behaviour particularly with lady staff, borders on harassment. As his performance was leading to difficulties in the functioning of the Railways, the respondents had found it fit to move him out to another Division on administrative grounds.

20. We have considered the matter in detail. Under ordinary circumstances the applicant had earned his right to remain at his present station for one year till April 2019 on account of declining the promotion as Senior Superintendent. All material before us point to the fact that he appears to

have set the cat among the pigeons by his insistence that S&T staff attached to his Station or working therein must wear uniform while attending to their duties. As per rules pertaining to Railway Servants and disregarding the instructions given in Annexure R-1, we do not think this is an illegal or unnecessary stand. After all, the staff who are provided with uniforms by the Railways at considerable cost are apparently expected to wear them and senior officers who allow them freedom not to do so, in our view, appears to be bending before collective union pressure. The report at Annexure R-3 and the complaints from R6(1) to R6(4) further strengthen the contention of the applicant that his removal was a 'set up' job. The applicant appears to have been at the receiving end of harsh treatment for discharging his duties which certainly call for certain amount of strictness and a sense of command. An attempt was made to turn this into a 'Sexual Harassment of Women at Work Place' case which has been rejected by the Sr.DPO as per Annexure R-4. Thus, there appears to be no serious charge against the applicant in question.

21. Based on the above, we conclude that the applicant is entitled to continue at his present post till April 2019, at least, consequent to his declining the promotion. The so called 'administrative reasons' cited by the respondents in transferring him out clearly appear to be non-serious and intended to punish him for reading the riot act to recalcitrant workers. The Original Application succeeds and the impugned order at Annexure A-1 is

set aside. The order shall be complied with within 10 days from the date of receipt of a copy of this order. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

SV

List of Annexures

Annexure A-1 - True copy of the office order No.T.41/2018/SMs dated 21.9.2018

Annexure A-2 - True copy of the office order No.T20/2018/SMs dated 10.4.2018 issued by the 3rd respondent

Annexure A3 - True copy of the letter dated 22.4.2018 sent by the applicant to the 3rd respondent

Annexure A4 - True copy of the Order No.V/P.677/II/SM/Vol.VI(pt) dated 28.6.2018

Annexure A5 - True copy of the complaint dated 14.7.2018 filed by the applicant to the 4th respondent

Annexure A6 - True copy of the complaint filed by the applicant along with another Station Master, namely; Mr.P.Ramesh before the Station House Officer of Railway Police Station, Thiruvananthapuram

Annexure A7 - True copy of the complaint dated 16.7.2018 filed by the All India Station Masters' Association before the 4th respondent

Annexure A8 - True copy of the complaint dated 19.7.2018 filed by the All India Station Masters' Association to the Senior Divisional General Manager/Chief Vigilance Officer, Southern Railway, Chennai

Annexure A9 - True copy of the representation filed by the Station Masters' Association on 3.8.2018 before the 6th respondent

Annexure A10 - True copy of the representation dated 21.9.2018 filed by the applicant before the 8th respondent

Annexure R1 - True copy of the clarification note dated 16.7.2018 to the Station Masters issued by Senior Divisional Operations Manager

Annexure R2 - True copy of the complaint made by the ladies technicians to their Branch Head (Senior Divisional Signal & Telecommunication Engineer)

Annexure R3 - True copy of the communication by the Senior Divisional Signal & Telecommunication Engineer

Annexure R4 - True copy of the report of the committee

constituted after analyzing the complaints

Annexure A-11 - True copy of the application dated 5.10.2018 submitted by the applicant to the Public Information Officer of Southern Railway, Thiruvananthapuram Division

Annexure A12 - True copy of the Information dated 10.10.2018 furnished by the Public Information Officer

Annexure R-5 - Letter to Sr.DOM/TVC dated 13.8.2018

Annexure R-6(1) - Complaint filed by Ms.Syda.S

Annexure R-6(2) - Complaint filed by Ms.P.S.Asha Rani

Annexure R-6(3) - Complaint filed by Ms.Praveena.P

Annexure R-6(4) - Complaint filed by Ms.Devi Krishna.V

. . .