

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00172/2019

Thursday, this the 7th day of November, 2019

CORAM:

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

Divya T.S., aged 33 years, W/o. M.S.Vinod,
 Junior Engineer, Power System Installation (PSI),
 O/o. SSE/PSI/Chalakudy, Trivandrum Division,
 Southern Railway, Permanent Residence at
 Thandassery House, Ananthapuram PO,
 Thrissur District – 680305. **Applicant**

(By Advocate : Mrs. Shameena Salahudheen)

V e r s u s

1. Union of India, represented by the General Manager,
 Southern Railway, Park Town, Chennai – 600 003.
2. The Chief Personnel Officer, Southern Railway,
 Chennai-600 003.
3. The Senior Divisional Personnel Officer, Southern Railway,
 Trivandrum Division, Trivandrum – 695 014.
4. The Senior Divisional Electrical Engineer, Southern Railway,
 Trivandrum Division – 695 014.
5. Additional Divisional Electrical Engineer, Traction Division,
 Ernakulam, Southern Railway, Trivandrum Division – 682 011.
6. The Senior Section Engineer, Power System Installation (PSI),
 Chalakudy, Southern Railway, Trivandrum Division,
 680 307. **Respondents**

(By Advocate : Mrs. Girija K. Gopal)

This application having been heard on 30.10.2019 the Tribunal on
 07.11.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The applicant claimed the relief as under:

- “i) Call for the records leading to Annexure A-1 and set aside the same;
- ii) Declare that the applicant is entitled to continue in the present post till she completes her tenure or in the alternative;
- iii) Direct the respondents to give a posting to the applicant to any of her choice stations mentioned in Annexure A-3;
- iv) Direct the 3rd respondent to consider and pass orders on Annexure A3 immediately
- v) To pass any other orders which this Hon'ble Court may deem fit in the facts circumstances of the case;

And

- vi) To award costs of these proceedings to the applicant.”

2. The brief facts of the case are that the applicant is working as Junior Engineer in the Traction Division at Chalakudy. She has been transferred from Chalakudy to Punnapra which is around 100 Kms. away from the present station, malafidely just to satisfy the ego of some of the officers. Moreover, she had not even completed her minimum tenure of four years in the present post. The applicant is a native of Trissur District in Kerala and joined the service as Junior Engineer on 5.4.2014 and is posted at Power System Installation Division. Applicant submitted that during the annual maintenance of the overhead line in the open line, she was deputed for night duty supervision. The open line section starts from Chalakudy and ends at Nellore. Usually there will be 1 supervisor and 9 to 10 staff including Technicians and Helpers and being a lady she requested that one lady staff be included in the batch as it will be comfortable for them at night hours

rather than be in the company of men employees. However, the respondents given a reply in the negative. The respondents later deputed a lady staff for duty. The applicant due to some unpleasant work atmosphere requested the 3rd respondent for a transfer to the Overhead Head Equipment Section either at Trissur or at Chalakudy. Instead Annexure A1 transfer order was issued transferring the applicant 100 Kms. away stating that it is on administrative grounds without even posting a substitute for the applicant. The applicant is now residing at her parents house at Trissur and her husband is employed in a private company at Coimbatore. She has three kids elder one of 7 years, and younger twins of 4 years. Being the mother of 3 small children who needs constant care and attention, she is not in a position to relocate herself to Punnapra which is 100 Kms. away and it will be impossible for her to travel such a distance to and fro every day. Applicant submitted a detailed representation stating her grievances against the transfer. But the respondents have not yet considered the representation. Aggrieved the applicant has filed the present OA.

3. Notices were issued to the respondents. They entered appearance through Mrs. Girija K. Gopal who filed a detailed reply statement in the matter contending that applicant was appointed as Apprentice Junior Engineer at Chalakkudi in the Traction Department, Southern Railway on 13.3.2013. She had a child even prior to her appointment in Railways. After duly accepting the condition stipulated that the service of the Railway employee is transferable, she is bound to work anywhere in India including serving in the Territorial Army when in need towards which she had

submitted a bond for training as well. The applicant has gone on maternity leave for 180 days w.e.f. 20.11.2014 for her second delivery and continued on various kinds of leave up to 24.5.2016. Thereafter she had been working at the office of Senior Section Engineer, Power Supply Installations, Traction Department, Chalakudy. Out of her total number of days of service of 1796 days, she had taken 844 days of leave with salary till the date of filing the OA. The present transfer of the applicant to Punnappra is not connected with periodical transfer as alleged by the applicant and issued by the administration in view of the present requirement of the service of Junior Engineer at this place to look after the staff and works of the Traction Substation at Punnappra, since the incumbent there has been transferred and posted to Traction Power Control, Thiruvananthapuram on exigencies of service. The respondents further submitted that the Traction Department of Southern Railway, Thiruvananthapuram Division is facing shortage of Senior & Junior Engineers since the shortfall vacancies could not be filled up due to non-availability of qualified/selected candidates. The works in the 18 field units of Traction Department are looked after by 20 Senior Section Engineers and 18 Junior Engineers. The Traction Power Control in Divisional Office, Southern Railway, Thiruvananthapuram is having 8 posts of Senior Section Engineers and 3 posts of Junior Engineers where round the clock movement of trains are being monitored and controlled over Thiruvananthapuram Division from Shornur-Ernakulam-Thiruvananthapuram Sections via Allapuzha & Kottayam and from Thiruvananthapuram to Tirunelveli via Nagercoil & Kanyakumari and vice versa. The applicant is now aged 33 years and has put in six years of service

in Railways at Chalakkudi. Since she has to continue up to 31.5.2045, she cannot be expected to be retained in her comfortable places of posting alone on the projected ground that her husband is employed in a distant place and that she has to take care of their three children.

4. The respondents relied on the apex court judgment in ***S.C. Saxena v. Union of India & Ors.*** - CA No. 280/2003 wherein the Hon'ble apex court observed that a Government servant cannot disobey a transfer by not reporting at the place of posting and then go to a Court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. Such tendency of not reporting at the place of posting and indulging in litigation needs to be curbed. Further in ***Mrs. Shilpi Bose & Ors. v. State of Bihar & Ors.*** - AIR 1991 SC 532 the apex court held that 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 the other. Respondents pray for dismissing the OA.

5. Heard Mrs. Shameena Salahudheen, learned counsel appearing for the applicant and Mrs. Girija K. Gopal, learned counsel appearing for the respondents. Perused the record.

6. When the matter came up for admission hearing on 13.3.2019, this Tribunal stayed the order of transfer of the applicant until next posting date. The interim order was thereafter continuously extended.

7. In the present case the applicant is working as a Junior Engineer in the Traction Division at Chalakudy. She has been transferred from Chalakudy to Punnapra which is around 100 Kms. away from the present station. The claim of the applicant is that she had been transferred on the ground of malafides to meet out the ego of some of the officers. In this regard we find that the applicant had not even completed her minimum tenure of four years in the present post. The applicant is a native of Trissur District in Kerala and she is posted at Power System Installation Division. The applicant submitted that during the annual maintenance of the overhead line in the open line she is deputed for night duty supervision and due to some unpleasant work atmosphere she requested the 3rd respondent for a transfer to the Overhead Head Equipment Section either at Trissur or at Chalakudy. The applicant is residing at her parents house at Trissur and her husband is employed in a private company at Coimbatore. She has three small kids elder one of 7 years and younger twins of 4 years. The applicant being the mother of 3 small children who needs constant care and attention submits that she is not in a position to relocate herself to Punnapra which is 100 Kms. away and it will be impossible for her to travel such a distance to and fro every day. Stating her difficulties applicant submitted a detailed representation. The present transfer of the applicant cannot be said to be in administrative exigency and instead of providing a secured working environment to the applicant as held by the apex court in the case of *Vishaka & Ors. v. State of Rajasthan & Ors.* - (1997) 6 SCC 241, the Department has chosen to transfer her to a far away place showing callous

attitude towards a mother of three small children who are the future prospects of the nation. Women empowerment is the requirement of the day. Since the applicant had not completed her tenure she should be allowed to continue to work in the present place of posting until completion of her normal tenure of four years. Further we find that the respondents have not yet taken any action on Annexure A3 representation submitted by the applicant against the transfer.

8. Therefore, ends of justice would be met if we direct the respondents to consider and pass a speaking order on Annexure A3 representation submitted by the applicant after taking into account the observations made by us in paragraph 7 above as well as the grounds taken by the applicant in the representation. Ordered accordingly. Till a decision is taken on the representation of the applicant the interim order granted on 13.3.2019 shall continue.

9. The Original Application is disposed of as above. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

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APPLICANT'S ANNEXURES

- Annexure A1 - True copy of the office order No. 06/2019/Elec./TRD dated 6.3.2019 issued by the 3rd respondent.
- Annexure A2 - True copy of the request dated 29.1.2019 submitted by the applicant.
- Annexure A3 - True copy of the representation dated 8.3.2019 submitted by the applicant.
- Annexure A4 - True copy of the pinpointing chart.
- Annexure A5 - True copy of the joining report of the applicant dated 26.5.2016.

RESPONDENTS' ANNEXURES

Nil

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