
(2022) 07 CAT CK 0014

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00303 Of 2022

S.Harsha Krishnan

APPELLANT

Vs

Additional Divisional Railway Manager, Southern Railway,
Thiruvananthapuram Division, Thiruvananthapuram ? 691014
& Others

RESPONDENT

Date of Decision : 15-07-2022

Acts Referred:

Constitution Of India, 1949 — Article 15(3)

Citation : (2022) 07 CAT CK 0014

Hon'ble Judges : K. V. Eapen, Member (A)

Bench : Single Bench

Advocate : R. Sreeraj, O.M. Shalina

Final Decision : Disposed Of

Judgement

K.V. Eapen, Member A

1. This is second round of litigation by the applicant, who is aggrieved by the Office Order dated 19.05.2022 produced at Annexure A-1, by which she, working as a Chief Commercial Clerk at Kochuveli Booking Office under the Thiruvananthapuram Division of Southern Railway, has been transferred to the Aluva Booking Office in the same designation on administrative grounds.

2. The applicant approached this Tribunal earlier by filing O.A.No.180/258/2022. This was disposed by this Tribunal on 31.05.2022 directing the applicant to make a representation to the competent authority among the respondents and directing the respondents to consider the representation and take a decision on the request made by the applicant within a period of one week. The respondents passed the Annexure A-2 order dated 08.06.2022 turning down her representation after some consideration. It is admitted by them in the said order that periodical transfer in her case would be due only in 2024 and her name was not included in the alert list for periodical transfer for the year 2022. However,

her transfer had been considered purely on administrative grounds and not on periodical transfer basis. For such administrative transfers there is no convention of issuing alert notices to employees. The position taken by the respondents is that the competent authority has the power to transfer an employee from one post to another provided they are not transferred to a post carrying lesser pay than the pay of the post on which they hold a lien. Such transfers on administrative grounds can be ordered irrespective of request registrants. It is also indicated in the Annexure A-2 order that the applicant has been transferred to Aluva Booking Office which is a major depot under Thiruvananthapuram Division, and is an important railway station with respect to passenger traffic. Hence, the filling up of vacancies against supervisory staff arising therein is crucial for public interest. It is mentioned that the applicant's vast experience in the cadre was found to be eminently suitable by the administration for the posting at the Aluva Booking Office so as to ensure proper delivery of services at a station as crucial as Aluva. Thus, she was transferred after a holistic consideration of the requests registered by other employees and administrative exigencies. The transfer has been done in administrative interest after routing through the placement committee and with necessary approval of the competent authority.

3. Further, the ground taken by the applicant that she will be due for promotion has been replied to by the respondents by stating that her seniority position was 21st in CCC (L-6) and that promotion would be effected based on vacancies in the higher grade of Level -7. It is indicated that a transfer is not a natural concomitant of a promotion. It is the prerogative of the administration to transfer an employee as per the requirements of the organization at that time. Finally, it has also been mentioned in the said Order that the policy of the railway administration is to make every effort to post both husband and wife at the same station as far as possible. In that consideration several requests made by the applicant in the past have been entertained by the administration. This establishes that the administration has made genuine efforts in this regard; however this cannot be a permanent arrangement and interest of improvement in public service has also to be considered.

4. The applicant has contested the above considerations of the respondents. At the outset it is submitted that her transfer from Kochuveli to Aluva is absolutely unnecessary and unwarranted and it is without any factual background or foundation. There is actually no bonafide administrative ground warranting her transfer. She was not due for a periodical transfer and was not in the alert list issued as a prelude to Annexure A-1 transfer order. She has not requested for a transfer to Aluva. Infact, the request she made in 2018 which is still alive was for a posting to Thiruvananthapuram Booking Office (opposite KSRTC bus stand) or Thiruvananthapuram Booking Office at Power House Road or Kochuveli Booking Office. That request, it is contended by her, is not yet exhausted. Her transfers in 2019 and again in 2021 have not eliminated the consideration of her request to be posted either at Thiruvananthapuram Booking Office or at Kochuveli Booking

Office. It is submitted that bypassing the seniority of the applicant, a person who requested for Kochuveli Booking Office in 2020 ie. 2 years after the applicant, was accommodated there by Annexure A-1 transfer order. In this connection, it is also submitted that her own posting at Kochuveli in 2021 was not on the basis of her request in 2018, but it was just a temporary posting to accommodate another in the office of the Senior Divisional Commercial Manager, even without her request being considered. Thus, it is contended that she has been singled out and has been unnecessarily transferred with a harsh fallout. It is also submitted that the applicant may be required to be transferred soon again due to her impending promotion. Annexure A-2 order does not rule out the possibility. The question, therefore, is whether the applicant should be posted to a far off station now, if she will not be remaining there for a full tenure. It is submitted that this also exposes the fallacy behind the theory of administrative interest behind the transfer of the applicant. Though transfer is the prerogative of the employer, no law permits transfer just for the sake of transfer. The employer is bound to explain what was the so called 'administrative ground' which has necessitated her transfer to Aluva. The term administrative ground is vague and in the absence of proper guidelines capable of being misused and abused. It is submitted that the so called administrative ground mentioned in Annexure A-2 as the reason for the transfer is a camouflage, a smoke screen to hide the real reason. It is submitted that her track record is outstanding. However, that does not mean that somebody else can be posted to Aluva and she is the only suitable one to work there. It is submitted that her family life had gone through much trauma earlier by an abusive first marriage, which has left her with lifetime scars. Her present situation will be again disrupted if the transfer is to take place as she is trying to build up her family life with her husband, who is also working in the Railways, and with her daughters. Thus, the transfer is in violation of the Railway Board instructions that mandates that husband and wife should invariably be posted in the same station.

5. A short reply has been filed by the respondent in which they submit that they have taken into consideration all the issues mentioned by the applicant in her representation dated 03.06.2022, while turning it down vide the Annexure A-2 order. It is submitted that right from the time when she was appointed on compassionate grounds in Thiruvananthapuram Division on 06.09.1997, she had been considered for posting in and around Thiruvananthapuram on priority. It is submitted that the applicant has served a majority of her career in Thiruvananthapuram area only, whereas, her transfer liability spans from Melapalayam (Tamil Nadu) to Vallathol Nagar (Kerala). It is submitted that Aluva Booking Office is a major depot under Thiruvananthapuram Division and, hence, the filling up of vacancies arising against supervisory staff therein is crucial for public interest. The vast experience of the applicant was found to be eminently suitable by the Railway administration for posting her at Aluva Booking Office in order to ensure proper delivery of services at a station as crucial as Aluva. All the transfers covered in the Annexure A-1 order are essentially required for

functioning of the Railways and have been done after routing through the Placement Committee and after taking necessary approval of the competent authority. Further, the chain of transfers vide Annexure A-1 are linked with each other and a break in the chain will jeopardize the smooth implementation.

6. It is submitted by the respondents that the limiting period of four years stipulated for continuation in sensitive post by employees by the Vigilance Department is only an outer limit and the completing of a four year period is not necessary for transferring out an employee holding a sensitive post. The applicant had not been considered on the periodical transfer basis but on administrative grounds. Such transfers on administrative grounds do not have any convention of issuing an alert notice to the employees. The applicant is liable to serve the administration being in a service oriented sector and she is to render service to the general public at large. As such, her inconvenience will have to take a back seat. In the case of *S.C.Saxena v. Union of India & Ors.* (2006) 9 SCC 583 the Hon'ble Supreme Court has observed as follows :

"A government servant cannot disobey a transfer order 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 litigation needs to be curbed."

7. It is submitted that even if she is promoted in another six months, it is not that a transfer will be the natural concomitant of the promotion. It is the prerogative of the administration to transfer its employees as per the requirement of the organization from time to time keeping in view the availability of higher posts at that place. Even if there is availability of posts, it will not give indefeasible right to the employee claim that he or she ought to be posted there. Finally, regarding the contention in respect to the posting of husband and wife at the same station, it is submitted that the policy of the railway administration is to make every effort to post both husband and wife at the same station as far as possible. However, this is mostly to enable them to lead a normal family life and look after the welfare of their children, especially till the children attain 18 years of age. Since the children of the applicant are more than 18 years old, the contentions urged in this regard by her are to be rejected. As submitted earlier, several requests from the applicant had been favourably considered by the administration in the past, allowing her retention in the Thiruvananthapuram area and, thus, enabling her to lead a peaceful family life and take care of her children at their tender age. However, this cannot be a permanent arrangement and public and organizational interests are also important factors to be considered by the administration.

8. Learned counsel on both sides have repeated these contentions and points at the time of oral hearing. In addition, learned counsel for the applicant submits that the Hon'ble Supreme Court in a series of judgments has been emphasizing the need and importance of employees to follow a woman friendly transfer policy.

He has particularly brought to notice the directions of the Hon'ble Supreme Court in S.K. Nausad Rahaman & Ors. v. Union of India & Ors. in Civil Appeal No.1243/2022 delivered on 10.03.2022 reported in 2022 LiveLaw (SC) 266. In this judgment the Hon'ble Apex Court has pointed to the systemic discrimination on account of gender at the workplace which encapsulates the patriarchal construction that permeates all aspects of a woman's being from the outset, including reproduction, sexuality and private choices, within an unjust structure. The O.Ms which have been issued by DoPT from time to time have recognized that in providing equality and equal opportunity to women in the workplace of the State, it becomes necessary for the Government to adopt policies through which it produces substantive equality of opportunity as distinct from a formal equality for women in the workplace. Further the Hon'ble Apex Court has indicated as follows in paragraph 48 of the judgment :

"48.Women are subject to a patriarchal mindset that regards them as primary caregivers and homemakers and thus, they are burdened with an unequal share of family responsibilities. Measures to ensure substantive equality for women factor in not only those disadvantages which operate to restrict access to the workplace but equally those which continue to operate once a woman has gained access to the workplace. The impact of gender in producing unequal outcomes continues to operate beyond the point of access. The true aim of achieving substantive equality must be fulfilled by the State in recognizing the persistent patterns of discrimination against women once they are in the work place. The DoPT OMs dated 3 April 1986, 23 August 2004, 8 July 2009 and 30 September 2009 recognised the impact of underlying social structures which bear upon the lives of women in the work place and produce disparate outcomes coupled with or even without an intent to discriminate. The provision which has been made for spousal posting is in that sense fundamentally grounded on the need to adopt special provisions for women which are recognized by Article 15(3) of the Constitution. The manner in which a special provision should be adopted by the State is a policy choice which has to be exercised after balancing out constitutional values and the needs of the administration. But there can be no manner of doubt that the State, both in its role as a model employer as well as an institution which is subject to constitutional norms, must bear in mind the fundamental right to substantive equality when it crafts the policy even for its own employees.

(emphasis added)

9. I have considered all the above contentions. It is noted, going by the facts and circumstances of the case, that it is indeed true that the Railway authorities have considered the case of the applicant in the past and have been quite sympathetic to her needs by posting her in and around Thiruvananthapuram area. However, a consideration of the situation of the applicant as it exists and as emphasized by the judgment of the Hon'ble Supreme Court quoted above, is also extremely relevant in this regard. The applicant is a fairly low level employee who appears

to have had a traumatic life in her past. She has started a new life with her husband, who is also working in the railways. Though her children are studying in college and are above 18 years of age it is surely incumbent upon the railways to continue to take a sympathetic consideration of her circumstances. The question of her pending promotion within six months or so, is also something that should not be ignored. Her choices of posting from 2018 as per her request have yet not been responded to and it appears that whatever posting has been done, as in the present case to Kochuveli where she is working, was done on administrative grounds to accommodate the request of some other employee. Further, she was not even on any consideration list, nor was there any request for transfer as her normal tenure had not been completed.

10. In the above facts and circumstances of this case, I feel that her transfer from Kochuveli to Aluva may cause a fair amount of dislocation for her and her family. The reasoning of the Hon'ble Supreme Court in the above mentioned case is also worth considering. The Hon'ble Court has clearly mentioned that the special provisions for women should be adopted by the State a policy choice, which has to be exercised after balancing out constitutional values and the needs of the administration. In this case the posting of the applicant at the busy Aluva Booking Office, which admittedly is a very important commercial office for the Railways cannot sort out the issues there as she has personal problems and difficulties which could necessitate long periods of leave. The Railways are once again therefore directed to reconsider the matter in its entirety, taking into account the reasoning in judgment of the Hon'ble Supreme Court as brought out above in S.K.Nausad (supra). They should also consider the personal issues of the applicant as they are relevant. This reconsideration of the matter shall be done within a period of two months from the date of issue of this order and a decision communicated to her within this period. Till that time the applicant shall not be disturbed from her present place of posting at Kochuveli.

11. The O.A is accordingly disposed of with the above directions. No order as to costs.