
(2022) 11 CAT CK 0016

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00285 Of 2021

Viswas Unni & Others

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 09-11-2022

Acts Referred:

Citation : (2022) 11 CAT CK 0016

Hon'ble Judges : K. Haripal, Member (J)

Bench : Single Bench

Advocate : T.C. Govindaswamy, Sreejith N

Final Decision : Dismissed

Judgement

K.Haripal, Member J

1. Applicants, 13 in number are working as Station Masters in Palakkad Division of the Southern Railway. They moved before the respondents seeking inter-Divisional transfer to Thiruvananthapuram Division. The grievance of the applicants is that after keeping the applications for long time, it were returned to them without forwarding to the Thiruvananthapuram Division, which is illegal, arbitrary and prejudicing their interests.

2. The applicants contend that they had submitted their transfer applications against direct recruitment vacancies in the cadre of Station Master in Thiruvananthapuram Division. When similar question had come up before this Tribunal in various Original Applications, by Annexure-A4 order dated 17.02.2012, the Original Applications were disposed of issuing certain directions to the respondents. Later, the respondents sought some clarifications which also were given by the Tribunal through Annexure-A5 order. Following the standing instructions, the applicants filed representations for transfer, which were registered against direct recruitment quota. But the applications were returned with Annexures-A1 and A2, without forwarding the same. It is understood that, prior to the issue of Annexure-A1 order, the 4th respondent had issued Annexure-

A6 order dated 24.01.2020, referring to Annexure-A7 communication from the Railway Board, stating that the representations could not be accepted if there is no feasibility of relieving the applicants and others and directing to return the representations. But Annexure-A7 relates to inter-Railway transfers only and has no application in inter-Divisional transfer requests. The All India Station Masters' Association also gave a representation on the subject besides the representation given by the applicants. But the respondents have not responded to the same.

3. According to the applicants, inter-Railway and inter-Divisional transfers are permissible under the provisions of the Indian Railway Establishment Code and Indian Railway Establishment Manual. Railway Board has also issued orders on the subject. Thus priority registers have to be maintained in both the Divisions where the employees are working and also in the Divisions to which transfers are sought. By returning the applications, the respondents were depriving the applicants of a lawful consideration for an eventual transfer. Therefore, Annexures-A1, A2 and A6 are sought to be quashed. A declaration is sought that the conduct of the 3rd respondent in returning the transfer requests is arbitrary, discriminatory and unconstitutional and for directing the respondents to collect back the applications and restore their original priority for the eventual transfer to the Divisions in accordance with their priority, with all consequential benefits.

4. On behalf of the respondents, the 4th respondent filed a reply statement seeking to dismiss the application. According to him, as per the norms, the applications for inter-Divisional transfer, referred to as IDT, have to be submitted in the prescribed format, in proforma D, which contains column No.18 for incorporating the remarks of the Branch Officer concerned. Before forwarding an application for transfer, the Branch Officer has to record the feasibility of relieving such an employee to other Divisions, after receiving No Objection Certificate from them for the transfer. In the case of the applicants, the applications were forwarded to the Personnel Officer without any remarks from the Senior DOM/PGT in column No.18. Hence the applications were returned to Senior DOM/PGT. The Senior DOM returned the application to the applicants finding that the transfer is not feasible. It is stated that due to acute shortage in the category of Station Master, the request cannot be considered. Before forwarding such an application it is for the administration to decide the viability and feasibility of transferring the employee. In the circumstance that there is acute shortage, there is no reasonable possibility of relieving the applicants by transfer. According to the respondents, there are 77 vacancies in the cadre of Station Master in Palakkad Division. Thus, the applications were not endorsed and returned to the applicants out of administrative exigencies. If transfers as requested are effected, it will result in shortage of sensitive train passing staff and will affect the safety of train running. Intends have been placed with the Railway Recruitment Board for providing direct quota candidates to fill 88 vacancies in 2019. Due to lock down after the spread of Covid-19 pandemic, inordinate delay has been caused in conducting fresh recruitment. Moreover, steps for filling up 25% promotional quota and 15% LDCE quota vacancies are under process. The

applicants have no bonafides and have approached the Tribunal on experimental basis.

5. Both sides were heard. The respective contentions were reiterated by the learned counsel.

6. Admittedly, the applicants are working in the cadre of Station Master in Palakkad Division. They sought inter-Divisional transfer to Thiruvananthapuram Division and representations were sought to be forwarded to that Division. The grievance of the applicants is that the respondents have sat on such a representation for long period of time and after two years it were returned without forwarding the same to Thiruvananthapuram Division. According to them, the course adopted by the respondents is unjustifiable, arbitrary and violative of the standing instructions and directions issued by this Tribunal in Annexures-A5 and A6 orders. On the other hand, the crux of the contentions of the respondents is that due to acute shortage in the cadre of Station Master in Palakkad Division, the representations could not be endorsed. Later, the representations were returned to the respective applicants.

7. It is not necessary to go into the standing instructions existing in the field or directions issued by the Tribunal in earlier proceedings. Suffice it to say that such complaints are raised by employees periodically, who are desirous of getting transfer to places of their choice, blaming the respondents for not endorsing and forwarding the representations to the Divisions to which transfer is sought. Now, as per the standing instructions, priority registers are being maintained both in the Division where the employees are working as well as in the Division, where they seek transfer. It has also been pointed out by the learned counsel for the applicants referring to Annexure-A4 order of this Tribunal that there is complaints against Palakkad Division, which is lagging in the matter of filling up vacancies which will ultimately reflect on the right of officers like the applicants. In the light of the fact that on obtaining transfer to a new Division, they will have to forgo the past service and seniority and will be posted in the bottom of the seniority list in the category which would ultimately cause them considerable prejudice. Therefore, according to the learned counsel, any delay in forwarding the representations will cause considerable hardship and prejudice to the applicants. According to the learned counsel, as the other Divisions are much ahead and very expedient in forwarding such representations, and officers working in such Divisions are luckily benefited whereas officers like the applicants who have long years of service, even if obtain transfer, will ultimately be placed below those whose length of service might be very short.

8. I was also taken through paragraph 11 of Annexure-A4 order. Suffice it to say that it is for the Railways at the highest level to guard against such a predicament which would no doubt affect the morale of the employees.

9. It has also come out that Thiruvananthapuram is the most sought after Division for the employees to get transfer. Looking from the angle of the

applicants similarly placed, any delay in endorsing and forwarding the applications for transfer would cause loss to them.

10. Admittedly, the role of Station Master in the operation of the Railways cannot be underestimated. It is a sensitive post. Railway stations cannot be left unmanned, without Station Masters. From the point of view of security, services of a trained Station Master is inevitable. Having regard to the nature of the work, a Station Master should be in charge of a Station, round the clock. In normal circumstances a person in one shift cannot be allowed to work in the next shift. In other words, there must be minimum number of Station Masters in every Railway Station, for daily deployment, lest that would adversely affect the smooth running of the Railways. Media reports are rife that Station Masters are often put on extra hours duty at a stretch, which often invites complaints from individual officers. If the officers are not given rest on regular intervals, that would invite wrath from individual quarters.

11. In other words, the respondents have a duty to strike balance between contradictory interests. At the first place, the welfare and interests of the individual officers have to be safe guarded; on the other, protecting the larger interest of the public and running the Railways maintaining the time schedule is also the obligation of the respondents. When these interests, which are mutually exclusive, are considered, necessarily public interest should outweigh individual interests. It is hear that the version of the respondents that there is acute shortage in the cadre of Station Master in Palakkad Division has to be considered. During the past two years there was stalemate in the matter of recruitment owing to the slackness in Covid-19 pandemic which resulted in slow pedalling the process of recruitment. It is stated that they have already made a requisition for recruiting 88 officers in the cadre of Station Master. That being the position, if the applications for transfers moved by the applicants are entertained and forwarded, that would have adverse impact on the functioning of the Railways. It would clearly harm larger public interest.

12. Even otherwise, as held by the Hon'ble Supreme Court in S.K.Nausad Rahaman and others v. Union of India (UOI) and others [AIR 2022 SC 1494] transfer is an incident of service; whether, and if so where, an employee should be posted are matters which are governed by exigencies of service; an employee has no fundamental right or, for that matter a vested right to claim a transfer or posting of his choice. Moreover, executive instructions and administrative directions concerning transfers and postings do not confer an indefeasible right to claim transfer or posting; individual convenience of persons who are employed in the service is subject to the overcharging needs of the administration.

13. The contention of the applicants that Annexure-A7 deals with inter-Railway transfer requests only, cannot be accepted in right earnest. A close scrutiny of the communication would leave no room for doubt that it deals with forwarding of one-way own request transfer applications to other Divisions/Railways. Of course, in the beginning of paragraph 2 of the communication there is mention

only about inter-Railway transfer requests, from the subject as well as last sentence in the document, there is a doubt that it deals with both inter-Division and inter-Railway transfer requests.

14. After evaluating various aspects, I am not convinced that the applicants have any cause of action for grievance. Going by the contingencies pointed out by the respondents, there are justifiable reasons for not endorsing the representations put in by the applicants and not forwarding the same to their places of choice. The Original Application is bereft of merits.

15. All the same, it requires to be pointed out that there is no justification in sitting over such representations for long period of time. If there is no feasibility of considering and endorsing the application, it should have been returned then and there. Detaining the representations in their office would only build up expectation for the applicants.

16. Annexure-A4 order of this Tribunal is only a judgment in personam. Even though certain general instructions were issued, it does not seem that Railways has taken it in right earnest. It seems that if the recruitment process is made up to date, there will not be any grievance for the applicants for the delay; even if such a transfer is given that will not cause any grievance regarding the loss of seniority in the new Division. Therefore, it is only appropriate that recruitment process should be expedited and periodical review is made in the matter of considering the applications for transfers.

Original Application is dismissed. No costs. Dated 9th November, 2022