

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

OP (CAT).No. 188 of 2015 (Z)

AGAINST THE ORDER IN OA 578/2013 of CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH DATED 03.06.2015

PETITIONER :

A.DIVAKARAN AGED 48 YEARS
S/O.K.ANANDHAN, CHIEF PARCEL SUPERVISOR
ERNAKULAM SOUTH, TRIVANDRUM DIVISION
SOUTHERN RAILWAY RESIDING AT DOOR NO.63/74
ST.MARY'S HILL, OOTY, NILIAGIRI - 640 001.

BY ADV. SRI.MARTIN G.THOTTAN

RESPONDENTS :

1. UNION OF INDIA
REPRESENTED BY THE GENERAL MANAGER, SOUTHERN RAILWAY
HEADQUARTERS OFFICE, PARK TOWN, CHENNAI
PIN-600 003.
2. THE DIVISIONAL PERSONAL OFFICER
SOUTHERN RAILWAY, SALEM DIVISION, SALEM -600 005.
3. THE DIVISIONAL PERSONAL OFFICER
SOUTHERN RAILWAY, TRIVANDRUM DIVISION
TRIVANDRUM-695 014
4. SENIOR DIVISIONAL COMMERCIAL MANAGER
SOUTHERN RAILWAY, TRIVANDRUM DIVISION
TRIVANDRUM-695 014.

R BY SRI.C.S.DIAS,SC, RAILWAYS

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 23-11-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (CAT).No. 188 of 2015 (Z)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 - TRUE COPY OF THE ORIGINAL APPLICATION NO.578 OF 2013 FILED BY THE PETITIONER BEFORE THE HON'BLE CAT/ERNAKULAM BENCH

ANNEXURE A1 : COPY OF THE OFFICE ORDER NO.128/2002 DATED 8.11.2002

ANNEXURE A2 : COPY OF THE MEMORANDUM NO.V/P.535/III/CC/VOL.XII DATED 14.02.12

ANNEXURE A3 : COPY OF THE REPRESENTATION DATED 01.05.12 SUBMITTED BY THE APPLICANT

P2 - A TRUE COPY OF THE REPLY STATEMENT FILED ON BEHALF OF THE RESPONDENTS IN OA NO.578/2013

ANNEXURE R1 : COPY OF THE RAILWAY BOARD RBE NO.35/1985 DATED 19.2.1986

ANNEXURE R2 : COPY OF THE RAILWAY BOARD RBE NO.250/1998 DATED 30.10.1998

ANNEXURE R3 : COPY OF THE RAILWAY BOARD RBE NO.251/1998 DATED 02.11.1998

ANNEXURE R4 : COPY OF THE RAILWAY BOARD RBE NO.123/2000 DATED 26.06.2000

ANNEXURE R5 : COPY OF THE RAILWAY BOARD LETTER NO.E(NG)I-2002/TR/35 DATED 19.02.2003

P3 - A TRUE COPY OF THE ORDER IN OA 578 OF 2013 PASSED BY THE TRIBUNAL DATED 03.06.2015

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

**K. SURENDRA MOHAN
&
SHAJI P.CHALY, JJ.**

O.P.(CAT).No.188 of 2015

Dated this the 23rd day of November, 2015.

J U D G M E N T

Surendra Mohan, J.

The petitioner in this original petition challenges Ext.P3 order of the Central Administrative Tribunal in Original Application No.578 of 2013. As per the impugned order, the OA has been dismissed.

2. The petitioner is working as the Chief Commercial Clerk at Ernakulam South Booking Office under the Trivandrum Division of Southern Railway. According to the petitioner, initially he was working in the Palakkad Division, which has subsequently been divided to create the Salem Division. His lien is being maintained in the Salem Division of Southern Railway. He was transferred, while working as Senior Commercial Clerk at Udagamandalam (Ooty) Booking Office in the Palakkad Division of Southern Railway, on the basis of allegations regarding certain irregularities found in the course of inspection. According to the petitioner, the transfer was made only temporarily, pending finalisation of the disciplinary

proceedings initiated against him. The disciplinary proceedings had ended in his punishment. Therefore, the purpose of transfer is over. In view of the above, the petitioner seeks repatriation to Salem Division, where his lien is maintained.

3. The contentions of the petitioner are opposed by the respondents. According to the respondents, the petitioner is a person against whom disciplinary proceedings have been initiated, repeatedly. He has also been punished four times. Therefore, as per the policy of the Railways, in the case of employees, who have repeatedly being subject to disciplinary proceedings, no transfer back to the parent division is permissible. The CAT has accepted the above position.

4. According to Adv.Sri.Martin G Thottan, who appears for the petitioner, the petitioner has only been temporarily transferred pending the disciplinary proceedings that were initiated against him. The disciplinary proceedings are all over and have ended in punishment. The petitioner has accepted the punishment also. To subject the petitioner to a further disadvantage of the present transfer, would amount to double punishment. His family is at Salem and therefore, it is only appropriate that, he is repatriated to his parent division.

5. Sri.C.S.Dias, the learned Standing Counsel for the Railways opposes the contentions of the counsel for the petitioner. Our attention has been drawn to Annexures R1 to R5 documents evidencing the policy of the Railways, with respect to persons like the petitioner. In view of the said policy, according to the learned Standing Counsel, it is not possible to grant the relief sought for by the petitioner.

6. Heard. This original petition has come up before us for admission. It is not in dispute that, the petitioner had been found to be committing various irregularities in the matter of handling cash, during the various inspections conducted by the superiors. As rightly noticed by the CAT, disciplinary proceedings had been initiated against the petitioner repeatedly, on the basis of vigilance cases instituted against him. Annexure R2 order of the Railways, which forms part of Ext.P2, shows that, it was the policy of the Railways to transfer staff, who repeatedly figured in substantiated vigilance cases and punished, on inter-divisional basis. The petitioner being a person who has been repeatedly found guilty of various lapses, is not entitled to seek the relief of repatriation to his parent division, in view of the policy of the Railways reflected from the

orders in point. The CAT has considered the issue in the proper perspective. Therefore, we do not find any grounds to admit this original petition or to grant any of the reliefs sought for.

For the above reasons, this original petition is dismissed.

Sd/-
K. SURENDRA MOHAN, JUDGE

Sd/-
SHAJI P.CHALY, JUDGE

AV