

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

WA.No. 82 of 2015 IN WP(C).24413/2012

AGAINST THE JUDGMENT IN WP(C) 24413/2012 DATED 13-10-2014

APPELLANT/PETITIONER :

B.M.AJITHKUMAR, AGED 45 YEARS
S/O.K.BHASKARA PILLAI, MANAGER, CATERING SERVICE,
INDIAN RAILWAY CATERING AND TOURISM CORPORATION LIMITED
REGIONAL OFFICE, CONVENT ROAD, ERNAKULAM
RESIDING AT ALUNKAL APARTMENTS, KADAVANTHARA
ERNAKULAM.

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENTS/RESPONDENTS :

1. THE INDIAN RAILWAY CATERING AND TOURISM CORPORATION LIMITED,
9TH FLOOR, BANK OF BARODA BUILDING
16 PARLIAMENT STREET, NEW DELHI - 110 001
REPRESENTED BY ITS MANAGING DIRECTOR.
2. RAILWAY BOARD,
MINISTRY OF RAILWAYS, RAIL BHAVAN, NEW DELHI - 110 001
REPRESENTED BY ITS CHAIRMAN.

R1 BY ADV. SMT.ASHA CHERIAN
R2 BY SRI.C.S.DIAS,SC, RAILWAYS

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 03-08-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

ASHOK BHUSHAN, C.J. & A.M. SHAFFIQUE, J.

W.A. No. 82 OF 2015

Dated this the 3rd day of August, 2015

JUDGMENT

Ashok Bhushan, C.J.

This writ appeal has been filed against the judgment dated 13.10.2014 passed in W.P.(C) No.24413 of 2012 by which the learned Single Judge has dismissed the writ petition filed by the petitioner as not maintainable. The brief facts necessary for deciding the appeal are:

2. The petitioner joined the Central Railway as 'Booking Clerk' on 10.06.1992 at Mumbai. Later the petitioner was promoted as Catering Inspector in September 1993. In the year 1999 the Government of India has formed the Indian Railway Catering and Tourism Corporation Limited (hereinafter referred to as 'Corporation'). A notification was invited on 07.04.2005 from employees of catering cadre in Railways and deemed deputationists working under the 1st respondent for selection to the post of Assistant Manager. Petitioner was selected in the service of Corporation as Assistant Manager by

Ext.P2. Petitioner thereafter joined as Assistant Manager (Catering) at Mumbai on 30.11.2005 and has been continuing in the Corporation.

3. On 10.07.2007 a Circular was issued by the Corporation seeking option from deemed deputationists who have opted for absorption in the Corporation for reversion back to Railways. Though petitioner has submitted an option for reversion, he was informed that his request cannot be considered, since he was absorbed in the Corporation through special selection. The petitioner again represented, but his request was rejected by letter dated 18.02.2010. Petitioner had filed O.A. No.486 of 2010 before the Central Administrative Tribunal challenging Ext.P3, i.e. the letter dated 18.02.2010 by which his request for repatriation in the Railway service was rejected. A transfer order issued in the meantime was also under challenge. The Tribunal held that the petitioner cannot be repatriated to Railways since he cannot be treated as deemed deputationist and the option was only for those who are

continuing in the Corporation as deputationists. Petitioner having selected in the Corporation service was not entitled for that benefit. O.A. No.486 of 2010 was dismissed on 22.08.2011.

4. During the pendency of O.A., a letter dated 22.12.2010 was issued by the Railway Board calling for options from various category of the Corporation staff. Petitioner submitted the option for repatriation to Railways. Petitioner thereafter submitted a representation. Petitioner's option was not being forwarded to the Railway Board, hence the petitioner filed the writ petition in this Court being W.P.(C) No. 2572 of 2012 impleading the Corporation as 1st respondent and Railway Board as 2nd respondent. The writ petition was disposed of by learned Single judge vide judgment dated 14.03.2012. Paragraph 5 of the judgment of learned Single Judge reads as follows:

"5. This writ petition is accordingly disposed of directing the first respondent to forward Ext.P6 containing the option exercised by the petitioner to the second respondent within a period of three weeks from the date of receipt of a copy of this judgment. There shall be a further

direction to the second respondent to consider Ext.P6 in the light of Ext.P5 proceedings of the Railway Board and to pass appropriate orders thereon in accordance with law, as expeditiously as possible and at any rate within a period of two months from the date of receipt of Ext.P6.”

5. The order of learned Single Judge was produced before the Corporation by the petitioner and Corporation forwarded the option of petitioner to Railway Board. The Railway Board considered the petitioner's case and rejected the petitioner's request for repatriation into Railways. The order the Railway Board was communicated to the Corporation by letter dated 26.09.2012. Ext.P11 was the letter issued to the Corporation indicating the decision of Railway Board rejecting the prayer of petitioner. Challenging Ext.P11 order the petitioner filed the present writ petition before this Court where following reliefs have been claimed.

“a) Issue a writ of certiorari or other appropriate writ or order quashing and setting aside Exhibit P11.

b) Hold that Exhibit P7 option submitted by the petitioner is liable to be allowed and that he is entitled to be repatriated back to the Central Railways.

c) Issue a writ of mandamus or other appropriate writ or order directing the respondents to repatriate the petitioner back to Central Railways.”

6. Learned counsel for the petitioner in support of his submission contended that the Corporation, i.e. the 1st respondent has not been notified under Section 14(2) of the Administrative Tribunal Act, 1985. Hence the petitioner who is an employee of the Corporation has, however, jurisdiction to approach this Court in exercise of writ jurisdiction. It is further submitted that the petitioner's option was entitled to be accepted and the Railway Board committed error in rejecting the said request. He has also referred to a Circular dated 02.03.2015 which is produced as Annexure-F in the appeal, according to which the petitioner's option ought to have been accepted.

7. Learned counsel appearing for the Railways refuted the submission of learned counsel for the appellant and contends that the petitioner wants to be repatriated to Railway service which is a service under the Union of India. Remedy of the petitioner was to approach the Central Administrative Tribunal

under Section 14 of the Act, 1985. He further submits that in the writ petition no reliefs are claimed against the Corporation and the reliefs are against Railway Board and an order under challenge was issued by the Railway Board. Hence the remedy of the petitioner was to approach the Tribunal. Learned counsel for the 1st respondent has also adopted the said submission and submits that the writ petitioner ought to have approached the Central Administrative Tribunal.

8. We have considered the submission of learned counsel for the parties and perused the records.

9. There is no dispute to the issue that the Corporation had not been governed under Section 14(2) of Act, 1985. But in the present case from the reliefs claimed in the writ petition, it is clear that in essence the petitioner wanted to be repatriated to Railway services. The order of learned Single Judge vide judgment dated 14.03.2012 which was passed in the writ petition filed by the petitioner himself has directed the Railway Board to consider the petitioner's request. Ext.P1 was an order

communicating the decision of the Railway Board to the petitioner. The letter dated 26.09.2012 by which the Railway Board's decision has been re-produced in paragraph 2 of Ext.P11. Paragraph 2 of Ext.P11 reads as follows:

"2. In reference to the above, the Chairman/Railway Board has passed the orders as communicated to this office through Railway Board's letter No.E(NG)I/2011TR/2 dated 26.09.12,; reproduced as under:-

"Sub.: WP(C) No.2572/2012 filed by one Shri B.M. Ajith Kumar, Manager/ERS regarding forwarding of option for going back to the Railways - Issue of appropriate speaking order."

As per the direction of Hon'ble High Court of Kerala/Ernakulam in its judgment dated 14.3.2012, delivered in above mentioned Writ Petition, the second respondent, i.e. CRB has passed the following order:-

"I have gone through the case and the circumstance of the deputation of Shri.B.M. Ajith Kumar to IRCTC. From the facts as adduced, I am of the view that Shri.Kumar has of his own volition and being fully aware of the situation, voluntarily opted for deputation with IRCTC. He went through the selection held by IRCTC featured in the panel declared by IRCTC, accepted the terms and conditions of absorption, was thereafter relieved by

his parent Railway i.e. C.Railways to join his post with IRCTC, which he did on absorption basis. He also enjoyed the perks and privileges and salary of a regularly absorbed employee of IRCTC., which were much higher than deemed deputationists. In view of the above he cannot at this stage claim to be a "deemed deputationist". Consequently he cannot now seek repatriation to the railways, as it is not within the ambit of rules and regulations. He is a regular employee of IRCTC and will continue to remain with the company."

Further action in the matter may be taken accordingly in compliance with the Court's above mentioned order(IRCTC's case No.IRCTC/HRD/Catg./Policy 55-09 part dated 30.08.2012 connects). "

10. The above order of Railway Board was under challenge in the writ petition. Looking to the essence of reliefs which were claimed in the writ petition it is clear that the petitioner wanted reliefs against the Railway Board i.e. the Central Government, with regard to his repatriation or joining back to railway service which relief was rejected by the Railway Board. The decision of Central Government having been challenged, the remedy available to the petitioner was to

approach the Central Administrative Tribunal which could grant the reliefs as prayed for.

11. Learned counsel for the appellant in support of his contention relied on the Apex Court judgment reported in **Major M.R. Penghal v. Union of India and others** [(1998) 5 SCC 454]. In the above case the employee of Posts and Telegraphs Department was posted on deputation to Indian Army Postal Service. The petitioner was offered employment as 'postal clerk' in the P&T Department. On deputation the petitioner was posted as postal clerk in Indian Army and was working there. Petitioner thereafter gave a representation to the Department for his promotion. The appellant was served with an order dated 06.07.1995 relinquishing his temporary commission and repatriating him to the Department of Posts. Petitioner filed a writ petition which was dismissed by the High Court observing that the High Court has no jurisdiction. Thereafter the petitioner preferred an original application before the Central Administrative Tribunal. The Tribunal in the second instance held that the

appellant was an Army personnel, hence the Tribunal has no jurisdiction. The Apex Court held that the order of High Court holding that the High Court had no jurisdiction whereas it was the Central Administrative Tribunal which has jurisdiction to decide the case. Paragraph 9 of the judgment is as follows:

"As stated above, although the appellant was selected by the Postal Department for appointment to the post of clerk, but he could not be given any appointment due to want of vacancy in the unit of his choice. Under such circumstances, the appellant was offered an appointment to work as a clerk in the Army Postal Service on the condition that he would remain a civilian employee on deputation in the Army. The appellant accepted the aforesaid offer and agreed to the conditions that he would revert to the civil appointment in Posts and Telegraphs Department on his release from the Indian Army Postal Service. With these conditions, the appellant continued to serve in the Army as a permanent employee of the Posts and Telegraphs Department on deputation and was promoted up to the rank of a Major in the Indian Army. However, the appellant was only given a temporary Commission and he worked as such till the date when his relinquishment was ordered. The aforesaid facts clearly demonstrate that the appellant has a lien with the Posts and Telegraphs Department working on

deputation in the Indian Army Postal Service and at no point of time the appellant became a full fledged Army personnel. Since the appellant was not a member of Armed Forces and continued to work as a civilian on deputation to the Army Postal Service, his case was covered under S.14 (1)(a) of the Administrative Tribunals Act. In that view of the matter, the High Court was right in rejecting the writ petition filed by the appellant, whereas the Central Administrative Tribunal erroneously accepted the claim of the appellant that he is an Army personnel. We, therefore, uphold the judgment and order of the High Court dismissing the writ petition filed by the appellant. Since the appellant while holding civil post was working in the Army Postal Service on deputation, the Central Administrative Tribunal had jurisdiction to entertain and decide the Original Application filed by the appellant. We accordingly set aside the order dated 31-1-1997 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, and remand the case to it to decide expeditiously the Original Application No. 1647/1996 of the appellant, on merits."

The above case in no manner helps the appellant in the present case.

Learned Single Judge did not commit any error in dismissing the writ petition as not maintainable. The petitioner

still have the remedy to approach the Central Administrative Tribunal.

With the above observation the Writ Appeal is dismissed.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**