

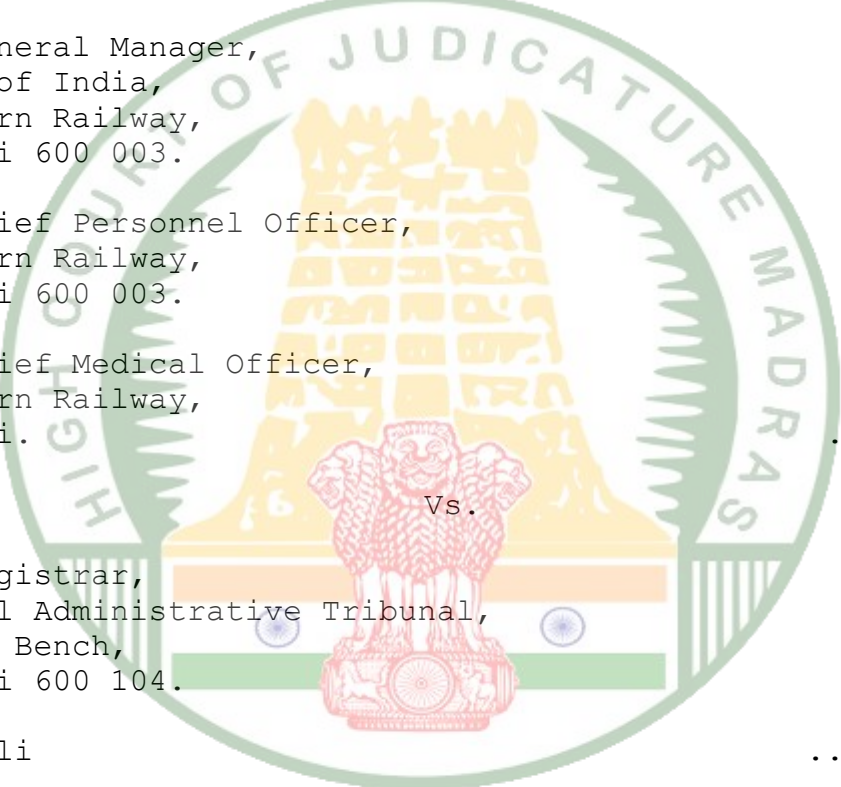
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2015

CORAM :

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P.No.8001 of 2015
M.P.No.1 of 2015

- 
1. The General Manager,
Union of India,
Southern Railway,
Chennai 600 003.
2. The Chief Personnel Officer,
Southern Railway,
Chennai 600 003.
3. The Chief Medical Officer,
Southern Railway,
Chennai. ... Appellants
- Vs.
1. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai 600 104.
2. K.Ambili ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, to call for the records of the 1st respondent in O.A.No.829 of 2013, including the order, dated 05.09.2014 and quash the same.

For Appellant : Mr.V.G.Suresh Kumar

For 2nd Respondent : Mr.L.Chandra Kumar,
for Ms.N.R.Jasmine Padma

JUDGMENT

(Judgment of the Court was made by S. MANIKUMAR, J.)

Challenge in this Writ Petition is to the order, dated 05.09.2014, made in O.A.No.829 of 2013, on the file of the Central Administrative Tribunal, Madras Bench, by which, directions have been issued to the appellants herein, to consider and accommodate the 2nd respondent herein, for transfer to Trivandrum Division, within a period of six months or whenever the next vacancy arise, whichever is earlier.

2. The abovesaid directions have been issued, on the grounds, inter alia, that the 2nd respondent stands at Sl.No.1 in the General Priority List. Before the Central Administrative Tribunal, Madras Bench, the 2nd respondent has contended that she is working as a Nursing Sister in the Railway Hospital, Chennai. On 09.02.2001, she has applied for transfer on personal request, to Trivandrum Division, which has been registered. She has also applied for transfer under Spouse Quota on 23.05.2011. She stands at Sl.No.3 in General Quota and Sl.No.11 in Spouse Quota, respectively.

3. The 2nd respondent has further contended that the registrant at Sl.No.2, Smt.K.A.Leela in the General Quota Transfer, has opted her unwillingness and therefore, she stands at Sl.No.2 in the General Quota. It is her grievance that overlooking her seniority in the General Quota, the appellants have transferred one Deepthilekha. On the above facts, before the Central Administrative Tribunal in O.A.No.829 of 2013, she has sought for a direction to call for the records, related to the request, submitted by her, for transfer to Trivandrum Division, Southern railway and consequently, for a direction to the appellants to issue necessary orders, relieving her to carry out the request, without overlooking her priority.

4. The appellants in their reply statement have contended that transfer of railway employees is being considered, as per the Codal provisions, under Rule 226 of the Indian Railway Establishment Code, Vol.I. They further submitted that the Railway Board has directed to maintain two separate transfer registers for registering the requests for transfer of railway servants and posting at the same place of their respective spouses. As per the instructions of the Railway Board, two separate transfer registers are being maintained, where requests for transfer are registered against "General Transfer" and other against "Spouse Grounds".

5. On the averments of the respondent, the appellants have contended that currently, the respondent is working as a Nursing

Sister, at Railway Hospital, Integral Coach Factory, Chennai. She joined Railways on 16.11.2000. She registered for transfer to Trivandrum Division on 09.01.2001 and now stands at No.2 in general grounds. Insofar as transfer on spouse grounds, is concerned, her request was registered on 23.05.2011 and she is at Sl.No.11.

6. The appellants have further contended that as per Rule 226 of the Indian Railway Establishment Code, Vol.I., a railway servant shall be employed, through out her service on the Railway Establishment, to which, she is posted and shall have no claim as a matter of right for transfer to another division. The appellants have also submitted that in terms of Rule 229 of the Indian Railway Establishment Code, Vol.I., requests for transfer are also considered, as per the priority list of registrants.

7. The appellants have further submitted that as per the Railway Board's Circular, dated 25.02.2013, requests have been considered against the spouse and general quotas, in the ratio of 1:3. In addition to the above, it is also submitted that transfer of personnel depends upon the vacancies in the unit to which, transfer is sought for.

8. Thus, in sum and substance, appellants have submitted that while considering the request for transfer, the following aspects are required to be taken into consideration.

1. registration priority.
2. Availability of vacancy.
3. Requirement of staff for resultant vacancy.

9. Insofar as the case of Smt.Deepithi Leeka, is concerned, it is admitted by the appellants that the General Manager of Southern Railways, who is the competent authority, at the Zonal Level, has ordered the transfer of Smt.Deepithi Leeka, on "out of turn" basis and in exercise of his powers, which is done in a very rare case. It is also submitted that the request of the 2nd respondent would be considered, as and when, vacancies arises in Trivandrum Division, as per the turn, in both the categories, ie., under General and Spouse Quotas. As such, she is at priority No.2 in General Quota and Sl.No.11 in the Spouse Quota and therefore, she cannot be considered for transfer to Trivandrum Division, overlooking the priority of other registrants, who are similarly placed.

10. After considering the rival submissions, at Paragraph 6, the Central Administrative Tribunal, Madras Bench, in O.A.No.829 of 2013, dated 05.09.2014 has ordered as follows:

"6. The applicant is aggrieved that one Deepthilekha who is not in the priority list has been transferred out

of turn overlooking her request. The applicant is completing about 5 years of service in Chennai and waiting for a transfer, as per the priority in the General Priority list and Spouse Priority List and is now stated to be No.1 in General Priority. In view of the above, the respondents are directed to consider and accommodate the request of the applicant for transfer to Trivandrum Division within a period of 6 months or whenever the next vacancy arises whichever is earlier, since the applicant stands at Serial No.1 in the General Priority list. O.A., is disposed of with the above direction. No order as to costs."

11. Assailing the correctness of the abovesaid order and inviting the attention of this Court to the circular PBC.No.13 of 2013, dated 25.02.2013, Mr.V.G.Suresh Kumar, learned counsel for the Railways/appellants Submitted that two separate registers are maintained for transfer and as per the provisions contained in Paragraph 124 of Indian Railway Establishment Code, Vol.I, while considering the employees for transfers, under Inter Railways Transfers, Inter Divisional Transfers and also Request Transfers, within the same seniority unit, the orders for such transfer, under spouse account and that of Normal account, are to be issued in the ratio of 1:3 only.

12. Referring to the proceedings, dated 30.05.2012 of the Chief Personnel Officer, Headquarters, Personnel Branch, Southern Railways, learned counsel for the Railways further submitted that originally there were three persons, registered in the general priority quota for transfer to Trivandram Division, Southern Railways. They are (1) Smt.Magi Kutty Sebastian, Matron (2) Smt.K.A.Leela, Nursing Sister, and (3) Smt.K.Ambili, Nursing Sister. He further submitted that Smt.K.A.Leela, Nursing Sister stands at Sl.No.2 of the General Quota transfer, had expressed her unwillingness for transfer to Trivandrum Division and that therefore, the respondent had moved on to the 2nd position in the General Quota. He also submitted that the next available vacancies, in Trivandrum Division, would be only in December, 2016.

13. According to the learned counsel for the Railways, one Mrs.Alice Jose and Mrs.Elizabeth Micheal, Nursing Sisters, would retire on 30.11.2006 and as per the Railway Board's instruction, dated 10.01.2000, a decision has been taken at the Zonal Level that when the request for transfers under spouse account and normal account are pending, order for transfer under spouse account may be issued first. He also reiterated that the ratio between the Spouse Quota and Normal Quota is in the ratio of 1:3.

14. He submitted that when the respondent, Mrs.K.Ambili, who is at Sl.No.2 in the General Quota, has not reached her turn for transfer, the Tribunal has committed an error, in stating that the respondent is in Sl.No.1, in General Priority list and accordingly, issued a direction to the appellants, to consider and accommodate her in Trivandrum Division. It is also his further contention that when the anticipated vacancies, are only in the month of December, 2016, the directions of the Tribunal, to consider and accommodate the 2nd respondent in Trivandrum Division, within a period of six months, is not possible.

15. Per contra, Mr.L.Chandra Kumar, learned counsel appearing for the respondent submitted that Smt.Magi Kutky Sebastian, who has opted for transfer to Trivandrum Division, is working as a Matron, in a promotional post. The other two Nursing Sisters, who opted for transfer to Trivandrum Division, are Smt.K.A.Leela and Smt.K.Ambili (2nd respondent herein). He further submitted that Smt.Magi Kutky Sebastian, already a Matron, cannot be posted in the vacancy, against the post of Nursing Sister and she can be considered, only when there is any anticipated vacancy, in the posts of Matron in Trivandrum Division. So also, the other two persons in the General Quota Transfers, viz., Smt.K.A.Leela and K.Ambili (2nd respondent), Nursing Sisters, can be accommodated, only in the post of Nursing Sister, falling vacant in Trivandrum Division.

16. According to the learned counsel, Smt.K.A.Leela, Nursing Sister, in the abovesaid General Quota, had opted out and therefore, the Tribunal has rightly concluded that, out of two other Nursing Sisters, as one has opted out, Smt.K.Ambili/2nd respondent, has to be moved to the first position in the said list and on such conclusion, directed the appellants to consider and accommodate her in Trivandrum Division, within six months or whenever the next post is available.

17. Having regard to the fact that the vacancies are likely to arise, only in December, 2016, Mr.L.Chandra Kumar, learned counsel appearing for the 2nd respondent fairly submitted that a decision to consider and accommodate the 2nd respondent in Trivandrum Division, within six months, can be deleted. Submission of the learned counsel is placed on record. He prayed that in all other aspects, the order made in O.A.No.829 of 2013, dated 05.09.2014, may be confirmed.

Heard the learned counsel for the parties and perused the materials available on record.

18. As per the proceedings of the Chief Personnel Officer, Headquarters, Personnel Branch, Southern Railways, addressed to the

Secretary (Establishment), Railway Board, New Delhi, there are three persons, registered in the general priority quota for transfer to Trivandram Division, Southern Railways and they are (1) Smt.Magi Kutty Sebastian, Matron (2) Smt.K.A.Leela, Nursing Sister, and (3) Smt.K.Ambili, Nursing Sister. As per the instructions in PBC.No.13 of 2013, dated 25.02.2013, the Railway Board has decided that while considering the employees for transfers, under Inter Railways Transfers, Inter Divisional Transfers and also Request Transfers, within the same seniority unit, the orders for such transfer, under spouse account and that of Normal account, are to be issued in the ratio of 1:3. Anticipated vacancy position at Trivandum Division is as follows:

Sl.No.	Name of the Employee	Date of Birth	Date of Retirement
1	Alice Jose	16.11.1956	30.11.2016
2	Elizabeth Micheal	21.11.1956	30.11.2016

19. As per th Railway Board's instruction, vide letter, dated 10.01.2013, a decision has been taken at the zonal level that when the request for transfers under spouse account and normal account, are pending, order of transfer under Spouse Quota should be issued first.

20. As rightly contended by Mr.L.Chandra Kumar, learned counsel appearing for the 2nd respondent submitted that Smt.Magi Kutty Sebastian, Matron, working at SRR/PGT, Southern Railways, in the promotional post, cannot be transferred and accommodated, against a post of Nursing Sister. Likewise, the 2nd respondent, Smt.K.Ambili, cannot be accommodated against the post of Matron.

21. The appellants-Railways in the details furnished to this Court, regarding the anticipated vacancies in Trivandrum Division, has not made it clear, as to whether, Mrs.Alice Jose and Mrs.Elizabeth Micheal, working in Trivandrum Division and likely to retire on 30.11.2016, are Nursing Sisters. Presuming that, both of them are Nursing Sisters, working in Trivandrum Division, Southern Railways and if the request of the 2nd respondent for transfer to Trivandrum Division, on general transfer quota has to be considered, then following the ratio 1:3, ie., between the Spouse Quota and the General Quota, the request of the respondent, has to be considered that because she now stands in the 1st position in General Quota in the post of Nursing Sister. Therefore, even taking it for granted that the Spouse Quota has the priority, as two vacancies are likely to fall on 30.11.2016 and presuming that both the vacancies are in the posts of Nursing Sister, in Trivandaum Division, Southern Railways, then the case of the 2nd respondent can be considered.

22. Yet another factor to be considered is that if the last of the vacancies in the post of Nursing Sister in Trivandaram Division, Southern Railways, had been filled up, on transfer, by considering the seniority in the Spouse Quota, then, automatically, the next available vacancy in the post of Nursing Sister, has to be filled up, only by a person, in the General Transfer Quota and further, the ratio, has to be followed.

23. Learned counsel for the appellants-Railways submitted that since the anticipated vacancies are in December' 2016, it would not be possible for the appellants to consider and accommodate, within six months. As the learned counsel for the 2nd respondent herself has fairly admitted that such directions could not be implemented, the same is liable to be set aside.

24. Be that as it may, the fact remains that two vacancies are likely to occur in December' 2016 and that the 2nd respondent has a right to be considered, on her own turn. Thus, while sustaining the directions of the Tribunal to consider and accommodate the 2nd respondent, in the next vacancy, as per her turn, the direction, with regard to accommodation, within six months, is deleted.

25. With the above modification, the writ petition is partly allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

skm

To

The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai 600 104.

+1cc to Mr.V.G.Suresh Kumar, Advocate, S.R.No.42156
+1cc to Mr.L.Chandra Kumar, Advocate, S.R.No.41956

W.P.No.8001 of 2015

MSM(CO)
CA(21/08/2015)