

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.40107 of 2016
and WMP No.34165 of 2016

V.Kumar

.. Petitioner

versus

1. The Registrar,
Central Administrative Tribunal,
High Court Campus,
Chennai - 600 104.

2. Union of India rep. by the General Manager,
Southern Railway,
Park Town, Chennai - 600 003.

3. The Senior Divisional Mechanical Engineer,
Tiruchirrapalli Division,
Southern Railway, Trichy.

4. The Senior Divisional Personnel Officer,
Tiruchirrapalli Division,
Southern Railway, Trichy.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of certiorarified Mandamus, calling for the records of the first respondent passed order in original Application No.925/2016 dated 26.08.2016 arbitrary and quash the same and direct the official respondent 2 to 4 to retain the petitioner at Villupuram.

For Petitioner : Mr.S.K.Sekar
for Mr.P.Ulaganathan

ORDER

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

Challenge in this writ petition is to an order made in O.A.No.925 of 2016 dated 25.08.2016, by which, the tribunal declined to interfere with the order of transfer dated 02.06.2016, passed by the Senior Divisional Personnel Officer, Tiruchirrapalli Division, Southern Railway, Trichy, the 4th respondent herein.

2. According to the petitioner, he was working as a Senior Technician under the Senior Section Engineer (C&W), in Mechanical Loco Workshop, Villupuram. He has 11 months of remaining service. Earlier, vide order dated 24.10.2014 of the Asst. Divisional Officer (Mech.), Southern Railways, Trichy, he was transferred from Villupuram to Tiruchirappalli. He challenged the same, in O.A.No.310/01647 of 2014, alongwith two others and the tribunal, vide order dated 10.03.2016, directed the respondents therein, to reconsider their decision, and pass a speaking order. Pursuant to the abovesaid decision, the Senior Divisional Personnel Officer, Tiruchirappalli Division, Southern Railway, Trichy, the 4th respondent herein, has passed an order dated 02.06.2016. The same is impugned in O.A.No.925 of 2016, on the grounds inter alia that he has a disabled daughter to maintain. Submission has been made that rejection of his request for retention or retransfer is without considering the Railway Board's Order, and without placing the issue, raised by the petitioner, before the Transfer Committee.

3. Per contra, before the tribunal, the respondents/railways have contended that, earlier, when the writ petitioner was transferred, vide order dated 24.10.2014, the same was challenged in O.A.No.1647 of 2014. Pursuant to the directions of the tribunal, vide order dated 10.03.2016, the case of the petitioner was considered, and decided that the same could not be acceded to, for the following reasons:

"1. As on date, there is no vacancy at VM in Sr. Technician grade

Sanction	Actual	Vacancy
3	5	+2

2. Even if vacancy arises, two employees Shri Baskaran and Shri Paramasivam who were seniors to you had registered on 14.05.2013 and 19.08.2013 respectively to be considered for transfer to VM. They were promoted well ahead of you.

3. Shri Panneerselvam had also filed OA for retention at VM. As soon as Honourable Tribunal declined the case, he carried out his orders dated 13.05.2015 and joined at Mannargudi on 04.04.2016, though he is due for superannuation on 30.06.2016."

4. Adverting to the above submissions, the tribunal has recorded that there were only two vacancies, at Villupuram and as per the seniority position of those registered for transfer, there were two seniors who had registered for transfer well ahead of the petitioner on 14.05.2013 and 19.08.2013 respectively, and that their request is still pending. However, taking note of the remaining 11 months

period of service, the tribunal has directed the respondents to consider his request for retransfer to Villupuram.

5. Though, Mr.S.K.Sekar, learned counsel for the writ petitioner assailed the correctness of the order of the tribunal dated 26.08.2016, made in O.A.No.925 of 2016, on the grounds inter alia, that the writ petitioner has got only 11 months of remaining service and that there is a differently-abled child, to be maintained, perusal of the order made in O.A.No.310/01647/2014 dated 10.03.2016 of the Central Administrative Tribunal, Chennai shows that the writ petitioner was retained at Villupuram at the time of upgradation, only for the reason that the places where senior posts to be distributed have not been identified, and that the tribunal has recorded that once it was done, the respondents therein were fully within their rights to transfer the applicants therein as long as it was not based on any extraneous considerations. The tribunal further held that the applicant (writ petitioner and two others) have not been able to establish any bias or discrimination on the part of the respondents therein in ordering transfer. Thus, the tribunal has recognised the powers of the authorities, to issue transfer orders. There is no challenge to the abovesaid orders.

6. While declining to interfere with the order of transfer dated 24.10.2014, the tribunal in O.A.No.310/01647/2014, has taken note of the remaining period of two years of service of the petitioner at that point of time, when the OA was decided, and directed the respondents therein, to reconsider their decision, and pass a speaking order. Perusal of the subsequent order dated 02.06.2016 of the Senior Divisional Personnel Officer, shows that after taking note of the request of the seniors, registered for transfer and those, who have not carried out their promotion transfers, the Senior Divisional Personnel Officer, Tiruchirappalli, ordered as hereunder.

"Considering the above facts, retaining you would amount to depriving of the rights of senior employees to join their families at Villupuram as well as the discriminating the employees, who have carried out the administrative order and again registered for request transfer to Villupuram or who have been debarred for not carrying out the promotional transfer."

7. During the course of hearing of the writ petition, Mr.S.K.Sekar, learned counsel for the writ petitioner, submitted that for more than 10 years, the writ petitioner is working at Villupuram. His submission is placed on record.

8. As rightly observed by the Senior Divisional Personnel officer, Tiruchirappalli, two seniors, who have registered for transfer, have to be permitted to join their families at Villupuram. At this juncture, we deem it fit to consider that when the seniors, who stayed in stations far away from their respective families, wanted to join their family members, it would not be appropriate to deny their request. It is stated that their request is still pending. Transfer is an incidence of service.

9. The distance between Villupuram and Trichy, is not too long and that there are adequate transport facilities also. The reasons assigned by the Senior Divisional Personnel Officer, Southern Railways, Tiruchirappali Division, the 4th respondent herein, and accepted by the tribunal to dismiss the Original Application, cannot be found fault with. However, it is open to the respondents to consider, the observation of the tribunal, on the request for retransfer.

10. With the above observation, the writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

1. The Registrar,
Central Administrative Tribunal,
High Court Campus, Chennai - 600 104.

2. The General Manager,
Southern Railway, Park Town, Chennai - 600 003.

3. The Senior Divisional Mechanical Engineer,
Tiruchirappalli Division, Southern Railway, Trichy.

4. The Senior Divisional Personnel Officer,
Tiruchirappalli Division, Southern Railway, Trichy.

+1 cc to Mr.P.Ulaganathan, advocate, sr.365676.

sk(co)
krd 26/12

W.P.No.40107 of 2016
and WMP No.34165 of 2016