

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

&

THE HONOURABLE MR. JUSTICE A.M.BABU

FRIDAY ,THE 26TH DAY OF OCTOBER 2018 / 4TH KARTHIKA, 1940

OP (CAT).No. 22 of 2018

AGAINST THE ORDER/JUDGMENT IN OA 852/2017 of CENTRAL
ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH DATED 28-11-2017

PETITIONER/S:

- 1 THE CHIEF PERSONNEL OFFICER, SOUTHERN RAILWAY
SOUTHERN RAILWAY, PARK TOWN PO, CHENNAI- 600 003.
- 2 THE SENIOR DIVISIONAL PERSONNEL OFFICER
SOUTHERN RAILWAY, TRIVANDRUM - 695 014
- 3 THE DIVISIONAL PERSONNEL OFFICER
SOUTHERN RAILWAY, TRICHY DIVISION, TIRUCHCHIRAPPALLI
- 620 001.

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

RESPONDENT/S:

- 1 P.U.UNNIKRISHNAN
S/O. SRI.UTHAMAN, HELPER -II (ELECTRICAL) OFFICE OF
SSE/E/TL & AC/VILLUPURAM TRICHY DIVISION, SOUTHERN
RAILWAY.
- 2 ANURAJ K.R
S/O. SRI.RAJAN KUTTY, HELPER -II (ELECTRICAL) OFFICE
OF SSE/E/TL & AC/VILLUPURAM TRICHY DIVISION, SOUTHERN
RAILWAY.
- 3 R.NAGARAJAN ASARI
S/O.RAJENDRAN ASARI, HELPER -II (ELECTRICAL) OFFICE
OF SSE/E/TL & AC/VILLUPURAM TRICHY DIVISION, SOUTHERN
RAILWAY.

4 R.P.AJITHSEN
 SON OF SRI. PRASENAN, HELPER-II (ELECTRICAL) OFFICE
 OF SSE/E/P/ TRICHY, TRICHY DIVISION, SOUTHERN
 RAILWAY-620 001

 BY ADV. SRI.MARTIN G.THOTTAN

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 26.10.2018, THE COURT
ON THE SAME DAY PASSED THE FOLLOWING:

JUDGMENT

C. T. Ravikumar, J.

This original petition is filed challenging the order dated 28/11/2017 passed by the Central Administrative Tribunal, Ernakulam Bench in O.A. No.852/2017. The respondents herein, who were the applicants filed the said original application seeking a direction to the petitioners herein/ respondents therein, to implement the order of inter divisional transfer issued in their favour and for a declaration that they are deemed to be in the grade of Helper/Electrical in Level-1 pay matrix of Trivandrum Division with effect from the date on which their inter divisional transfer orders were issued. The petitioners herein resisted the contentions raised by the applicants. They contended that what is sought to be implemented is not an order of inter divisional transfer issued in favour of the respondents and in fact, it is nothing but an inter-divisional

communication on the request of inter-divisional transfer made by the applicants/the respondents herein. That apart, they contended that the copy of the said inter-divisional communication was not marked to the respondents herein/applicants therein and needless to say that they were not served on and still, some or how they obtained the said order and then approached the Tribunal. It is further submitted that though the question of territorial jurisdiction was specifically raised by the petitioners the Tribunal without going into the said question in detail overruled the objection and entertained the O.A. Upon consideration of the original application on merits as per the impugned order the Tribunal allowed the Original Application. As a necessary sequel, the respondents therein/ petitioners herein were directed to relieve the applicants within 15 days of receipt of copy of the order. It is in the said circumstances that the respondents therein preferred this original petition challenging the order dated 28/11/2017 in O.A 852/2017.

2. We have heard the learned standing counsel for

the petitioners and the learned counsel appearing for the respondents herein/applicants therein.

3. A perusal of the pleadings in this original petition itself would reveal that the petitioners are seriously pressing their contention regarding the lack of territorial jurisdiction of the Tribunal. It is submitted by the learned counsel for the petitioners that a scanning of the impugned order would reveal that the question of territorial jurisdiction was not deeply gone into by the Tribunal. At the same time the learned counsel would submit that Paragraph No.7 of the impugned order would reveal that Tribunal had assigned twin reasons for rejecting the contentions of the petitioners regarding the territorial jurisdiction. The learned counsel further submitted that the said reasons stated by the Tribunal are absolutely unsustainable. *Per contra*, the learned counsel appearing for the respondents herein/ applicants therein submitted that the objections regarding territorial jurisdiction was absolutely devoid of basis and in the said circumstances the Tribunal was right in

repelling the said contentions and in considering the original application on merits.

4. In view of the rival contentions on the question of territorial jurisdiction, we are of the considered view that it is only proper for us to consider firstly that question and needless to say that the necessity to consider the original petition on merits, would certainly depend upon the answer to that question. In the said circumstances, we proceed to consider the contentions raised by the parties on the question of territorial jurisdiction.

5. A perusal of the cause title is also not irrelevant in this context. They have shown therein their official address at Tiruchirappalli Division. It is the precise contention of the petitioners that the respondents herein/applicants therein were appointed as Helpers in the Electrical Department of Tiruchirappalli Division of Southern Railway. While working so, they applied for inter-divisional transfer to Trivandrum Division of the Southern Railway. The authority to

order inter-divisional transfer is the Chief Personnel Officer of Southern Railway. Obviously, on receipt of the applications for inter-divisional transfer from the petitioners it was forwarded for remarks of the competent authority in Trivandrum Division. In the circumstances, the submissions made on behalf of the petitioners made in elaboration of their contentions are worthy to be looked into. They would contend that the inter-divisional communication which is described as the order of inter divisional transfer by the respondents herein/ applicants therein itself would reveal that it is not an order of inter-divisional transfer ordered by the competent authority viz. The Chief Personnel Officer. In fact, Annexure-A5, dated 14/08/2017 is issued by the Assistant Personnel Officer for Senior Divisional Personnel Officer of Trivandrum Division. The fact that, if it was an order of transfer, definitely copies of the same would have been either marked to the transferees or at any rate the various authorities under both the divisions would have been required thereunder to relieve the applicants from

their places so as to enable the transferees to join at their respective transferred places. We are referring to such contentions solely for the purpose of considering the questions of territorial jurisdiction. As noticed hereinbefore, resisting the said contentions the learned counsel appearing for the respondents herein/petitioners therein contended that it is an order of transfer. As stated earlier, we do not think it necessary or proper to go into that question in detail as acceptance or otherwise of the contention of either of the parties would cause prejudice to the other parties.

6. Now, reverting to the question of territorial jurisdiction, it is appropriate to refer to the decision of a Division Bench of this Court in **Aparna Balan v/s Union of India** reported in **2018(3) KLT 832**, wherein the Division Bench held thus:-

"A person residing anywhere in the country, being aggrieved by an order of the Government, central or state, or authority or person may have a right of action in law", but at the

same time it was held that *"the jurisdiction of the High Court under Article 226 of the Constitution of India could be invoked only when the cause of action arises within the territorial jurisdiction of that Court, either wholly or in part."*

Further, it was held that the terms *"right of action"* and *"cause of action"* are neither synonymous nor interchangeable. Certainly, a right of action could arise soon on invasion of a right and it is nothing but a right to enforce a cause of action. But at the same time, there cannot be any dispute with respect to the position that the question to adjudicate upon the issue would depend upon the question of jurisdiction and it would vest if only the cause of action arose within the territorial jurisdiction of the forum concerned. In the light of the said decision, the question is whether the cause of action had arisen within the territorial jurisdiction of Ernakulam Bench of the Central Administrative Tribunal. If only the answer is in the affirmative then and then only the Ernakulam Bench of the Tribunal would have obtained the jurisdiction to

adjudicate the matter involved in the O.A, on merits.

7. As noticed hereinbefore, the question of territorial jurisdiction was specifically raised before the Tribunal. In that regard, it is to be noted that there is no dispute with respect to the position that the respondents herein/petitioners therein were appointed in the Electrical Department of Trichy Division of Southern Railway as Helpers and they are still working there. True that they applied for inter divisional transfer which ultimately led to the issuance of Annexure-A5. Even if it is an order of transfer when the fact is that despite that order the transferees are not relieved and the authorities to relieve of transferees are functioning not within the territorial jurisdiction of the Ernakulam Bench, we are at a loss to understand as to how the Ernakulam Bench of the Tribunal assumed the jurisdiction. The Tribunal, virtually considered the objection raised by the petitioners herein/ respondents therein regarding the territorial jurisdiction as can be seen from Paragraph No.7 of the impugned order and it is

reflected from the following recital from the impugned order passed by the Tribunal:-

"We have considered the case in detail. On the first issue of the jurisdiction, we are of the view that the applicants have already been assigned to Trivandrum Division by order as Annexure-A5 and also considered the fact that they have given residential addresses in Kerala, this Court is competent to consider this case". (underline Supplied)

8. It is in this context that reference to the cause title assures relevance. A perusal of the cause title of the original application would reveal that the petitioners themselves gave their official address as Helper Gr.II(Electrical) in the respective offices in Trichy Division of Southern Railway. Thus, it is obvious that they themselves recognized as employees of Tiruchirappally Division that falls within the Madras Bench of the Central Administrative Tribunal and the indisputable and undisputed fact is that they are still working in Trichy Division of Southern Railway which is

admittedly beyond the territorial jurisdiction of the Ernakulam Bench of the Central Administrative Tribunal and as already stated it lies within the territorial jurisdiction of Madras Bench of the Central Administrative Tribunal. True that after giving their official address, each of the petitioners gave their residential address as well, in the following manner in the O.A:-

- i. The 1st petitioner permanently residing at Puthennikarath, Panavally, Cherthala.
 - ii. The 2nd petitioner permanently residing at Kompanolil, Kottamonpara (P.O), Pathanamthitta.
 - iii. The 3rd petitioner permanently residing at Kaliyal Thattuvedu, Poovar (P.O), Trivandrum
- And
- iv. The 4th petitioner permanently residing at Revathy House, T.V.Puram (P.O), Vaikkom, Kottayam.

9. We are at a loss to understand as to what relevance or significance could be given to such

statements regarding their permanent residence as relates to a service related litigation when the respondents herein/applicants themselves admit the fact that at the time of moving the O.A, (even now) they work in Trichy Division of Southern Railway which situates in Tamil Nadu State and at the same time their permanent residence lie within the State of Kerala. But, as regards the question of jurisdiction to deal with service matter, the decisive factor is different. The cause of action for filing the above mentioned O.A did not occur within the State of Kerala and even the respondents/the applicants did not seriously have any such case. In such circumstances, according to us, the permanent residence was shown solely with a view to mislead the Tribunal. In such circumstances, the Tribunal ought not have taken into account the fact that they gave their permanent residences lie within the State of Kerala as that factor was not at all relevant for the purpose of deciding the territorial jurisdiction.

10. As regards the other reason stated by the

Tribunal viz. that the applicants had already been assigned to Trivandrum Division, the specific contentions of both the parties would reveal what exactly is the bone of contention. In other words, that is the pivotal issue to be decided. In the circumstances, we unhesitatingly hold that the contention of the petitioners regarding lack of territorial jurisdiction to Ernakulam Bench of the Tribunal is well-merited and it is only to be sustained. When once it is found that the Ernakulam Bench of the Central Administrative Tribunal was lacking territorial jurisdiction to deal with the issues involved in the above O.A the findings of the Tribunal on merits cannot bind the parties.

In the light of our finding on the question of territorial jurisdiction, there is absolutely no reason for us, rather jurisdiction for us too, to consider the matter on merits. In the said circumstances, this O.P is allowed. The order passed by the Tribunal in O.A. No.852/2017 is set aside. It would be open to the applicants/respondents if they so desire to take up the

matter before the appropriate forum.

Sd/-

C.T.RAVIKUMAR

JUDGE

Sd/-

A.M.BABU

JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF O.A.NO.582 OF 2017 WITH ANNEXURES DATED 19.10.2017 FILED BY THE RESPONDENTS BEFORE THE TRIBUNAL
EXHIBIT P2	TRUE COPY OF THE REPLY STATEMENT FIELD BY THE PETITIONERS BEFORE THE TRIBUNAL DATED 23RD NOVEMBER, 2017
EXHIBIT P3	TRUE COPY OF ORDER DATED 28.11.2017 PASSED BY THE TRIBUNAL IN O.A.NO.852 OF 2017

RESPONDENT'S/S EXHIBITS:

EXHIBIT R1 A	TRUE COPY OF THE LETTER BEARING NO.T/P 821/RTI/AK/5564 DATED 18.01.2018
EXHIBIT R1 B	TRUE COPY OF THE LETTER BEARING NO.T/P 721/RTI/KRA/5573 DATED 06.02.2018

avs

//TRUE COPY//

P.A TO JUDGE