

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00586/2017
along with M.A.No.180/00392/2018 & M.A.No.180/00393/2018

_____, this the _____ day of September 2020

C O R A M :

HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER

1. Jayakumar MR,
Aged 57 years,
S/o.K.Ratnamuthu,
Senior Technician,
Electric Loco Tripshed,
Thiruvananthapuram.
Residing at 3/187A, Jayan Nivas,
Mecode, Kaliakavila PO,
Kanyakumari District – 629 153.
2. A Vinodkumar,
Aged 43 years,
S/o.C.Appu,
Senior Technician,
Electric Loco Tripshed,
Thiruvananthapuram.
Residing at Vadakkekara Puthenveedu,
Kavalakulam, Kodangavill PO,
Neyyattinkara, Thiruvananthapuram.
3. V.Balakrishnan Nair,
Aged 53 years,
S/o.K.K.Velayudhan Nair,
Technician Gr.II,
Electric Loco Tripshed,
Thiruvananthapuram.
Residing at Beena Bhavanam,
Thoppumukku, Vattiyoorkavu,
Thiruvananthapuram.
4. M.Abhilash,
Aged 35 years,
S/o.V.Mohanan,
Technician Gr.II,
Electric Loco Tripshed, Thiruvananthapuram.
Residing at Pratheeksha, Royal Nagar 98,
Kilikolloor PO, Kollam – 691 004.

5. S.Jyothilal,
Aged 38 years,
S/o.Surendran S,
Technician Gr.II,
Electric Loco Tripshed,
Thiruvananthapuram.
Residing at SS Bhavan, Palakkattuvila,
Kattayikonam, Thiruvananthapuram – 695 584.
6. N.V.Raghunathan,
Aged 57 years,
S/o.T.V.Sankara Wariar,
Sr.Technician, Electric Loco Tripshed, Ernakulam.
Residing at MDR Homes, First Floor,
Thaikkattussery PO, Thrissur – 680 306.
7. Roby Peter Neelangal,
Aged 42 years,
S/o.N.V.Peter,
Tech Gr.I, Electric Loco Tripshed, Ernakulam.
Residing at Neelangal, Avoly PO,
Muvattupuzha, Ernakulam.
8. P.V.Murali,
Aged 45 years,
S/o.P.K.Viswanathan Nair,
Tech Gr.I, Electric Loco Tripshed, Ernakulam.
Residing at Attakkuzhikattu Mattathil,
Kanichukulangara PO, Cherthala, Alappuzha – 688 582.
9. K.M.Shinkumar,
Aged 41 years,
S/o.K.V.Mukundan,
Tech Gr.I, Electric Loco Tripshed, Ernakulam.
Residing at Kunnathu House, Munambam,
Palliport PO, Ernakulam – 683 815.
10. S.Santhosh,
Aged 48 years,
S/o.P.Sivadas,
Tech Gr.II, Electric Loco Tripshed, Ernakulam.
Residing at Puthenparambil House,
PO Thottappally, Alappuzha Dist. - 688 561.
11. Jaison Joseph,
Aged 32 years,
S/o.V.Joseph,
Tech Gr.III, Electric Loco Tripshed, Ernakulam.
Residing at Cheruvelikkakathu, Manappuram PO,
Cherthala, Alappuzha District.

12. MU Umesh,
Aged 36 years,
S/o.Unnikrishnan,
HLPR Gr.II, Electric Loco Tripshed, Ernakulam.
Residing at Madathumpady House,
Njarakkal PO, Ernakulam – 682 505.

13. Sameer AM,
Aged 36 years,
S/o.Majeed,
HLPR Gr.II, Electric Loco Tripshed, Ernakulam.
Residing at Alappat House, Karumalloor PO,
Paravoor, Ernakulam – 683 511.

...Applicants

(By Advocate Mr.S.M.Prasanth)

v e r s u s

1. Union of India represented by General Manager,
Southern Railway, Park Town, Chennai – 600 003.
2. The General Manager,
Southern Railway, Park Town, Chennai – 600 003.
3. The Chief Manager, Personnel Branch,
Southern Railway, Head Quarters Office,
Park Town, Chennai – 600 003.
4. Senior Divisional Personnel Officer,
Southern Railway, Thiruvananthapuram Division,
Thiruvananthapuram – 695 014.
5. Senior Divisional Personnel Officer,
Southern Railway, Salem Division,
Salem – 636 001.
6. Southern Railway Mazdoor Union,
Palakkad Division, Southern Railway,
Palakkad – 678 001 represented by its Secretary.
7. Senior Divisional Electrical Engineer,
Southern Railway, Erode – 638 001.
8. K.R.Appukuttan Pillai, Aged 54 years,
S/o.Raghavan Pillai,
Helper Grade II, Electrical Loco Shed,
Erode, Salem Division.
Permanent residence at Panjami Nivas,
Aroor PO, Alappuzha District – 688 534.

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9. M.Anoop Kumar, Aged 30 years, S/o.P.Mohanan Nair,
Technician Grade II, Electrical Loco Shed,
Erode, Salem Division.
Permanent residence at Nirmalyam,
Choozathipadam Road, Irimpil,
Chottanikkara, Kureekkad.
10. Jinesh.A.R., Aged 30 years, S/o.Ravindran,
Technician Grade II, Electrical Loco Shed,
Erode, Salem Division.
Permanent residence at Arikkanezhath House,
Kasthurba Nagar, Kadavanthra PO,
Ernakulam District – 682 020. ...Respondents

**(By Advocates Mr.Sunil Jacob Jose [R1-5&7]
& Mrs.Shameena Salahudheen [R8-10])**

This application having been heard on 27th August 2020, the Tribunal
on _____ September 2020 delivered the following :

ORDER

Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER

The applicants in the above O.A (13 in number) are working as Senior Technicians/Technicians, Electrical Trip Sheds (ETS) at Thiruvananthapuram and Ernakulam. They were posted to these sheds retaining their lien at their parent Electrical Loco Shed (ELS) at Erode. They are aggrieved by the delay on the part of the official respondents in regularizing their services in the Electrical Trip Sheds in which they are presently working and closing the cadres in the respective sheds. All of them are working for the last several years in these sheds. They claim that they have been forgoing promotional opportunities at their parent shed. They submitted that when initially Electric Trip Sheds were established at Ernakulam/Thiruvananthapuram, sanction was granted for temporary transfer of posts from Erode to Ernakulam/Thiruvananthapuram for managing the work at the sheds. The postings and transfers to the Trip

Sheds at Ernakulam and Thiruvananthapuram was done after calling for option from the employees working at Erode and on the basis of the seniority of such persons who exercised options. While initially such appointments were made on a temporary basis, no outer time limit for their stay at Ernakulam/Thiruvananthapuram was prescribed. They have claimed that some of their posting orders at Annexure A-3 to Annexure A-8 shows that the transfers were without any time limit. However, in cases of certain other employees when the transfers were processed a minute was prepared in conjunction with the employees in this regard, as in Annexure A-9 and Annexure A-10.

2. Their stand is that ever since their postings at Ernakulam/Thiruvananthapuram they have been working in their respective sheds without any repatriation to their parent department. They claim that, as such, the Electrical Trip sheds at Ernakulam and Thiruvananthapuram are now permanent and there is no possibility for discontinuing these sheds. In the light of this factual position, they claim that there is no justification for keeping Ernakulam and Thiruvananthapuram as Satellite Sheds of Erode Electrical Loco Shed. The Ernakulam and Thiruvananthapuram Electrical Trip Sheds have to be sustained and maintained on their own in view of the increase in the workload. Accordingly, the relief sought by them are as follows :

- (i) To declare that the Electrical Trip Sheds at Ernakulam and Thiruvananthapuram are fully independent and separate units for the purpose of cadre formulation and appointment.

(ii) To declare that the applicants are entitled to get their services regularised either at Electrical Trip Sheds at Ernakulam or Thiruvananthapuram where they are presently working.

(iii) To issue a direction to the respondents to treat the Electrical Trip Sheds at Ernakulam and Thiruvananthapuram as fully independent units and regularise the services of the applicants herein at these stations from the date of their original transfer to these stations.

(iv) Issue such other order or direction as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case with all such other consequential relief as are required in the facts and circumstances of the case.

3. Further, vide M.A.No.392/2018 the applicants in this O.A have also sought permission of this Tribunal to carry out the following amendment to the relief part of this O.A in the interest of justice :

“(iii-a) To issue, in the alternative, a direction to the respondents to restore the service seniority at Erode, immediate quarter facility in case of repatriation and TA for the entire period of service at Thiruvananthapuram and Ernakulam and all other monetary benefits.”

4. In addition, in M.A.No.393/2018 in this O.A., the applicants prayed for stay of the operation of Annexure A-24 annexed along with their rejoinder pending disposal of the O.A. The stated Annexure A-24 is an order dated 14.3.2018 by Respondent No.5, for repatriation of staff, including some of the applicants, who are working in Trip Sheds of Thiruvananthapuram Division and who have completed 5 years of service at Trip Sheds and those who have been promoted and retained at Trip Sheds on 'as is where is basis', to ELS/Erode with immediate effect.

5. The above two M.As were taken up by this Tribunal earlier and vide order dated 13.4.2018 it has been directed that M.A.No.392/2018 for amending the O.A will be heard along with the O.A. In the matter of M.A.No.393/2018 which is against Annexure A-24, the Tribunal had ordered as follows :

“ It appears to us that in the light of Annexure A-22 order passed by this Tribunal the interim relief as prayed for cannot be granted unless the whole facts of situation is reviewed by us after getting a detailed reply.

In the above circumstance, we direct the respondent Railway to submit a detailed reply in relation to M.A.No.393/2018.”

6. Aggrieved by the above interim direction in M.A.No.393/2018 the applicants approached the Hon'ble High Court of Kerala impugning the order passed by this Tribunal declining relief sought by them in the M.A. They sought stay of Annexure A-24 being implemented. The Hon'ble High Court after hearing the applicants as well as the learned counsel for the Railways and party respondents was pleased to close the OP(CAT) No.78/2018 vide order dated 4.5.2018 granting imprimatur to the order of the Tribunal with a request that the Tribunal take up the Original Application, consider it and dispose it of as expeditiously as possible. The Hon'ble High Court also agreed with the Tribunal's conclusion that the interim prayer for interdicting their repatriation to Erode could not have been considered by the Tribunal without first assessing the merits of the contentions which could be done only when the Original Application itself is finally heard.

7. We now take up the issues raised in the application. The applicants state that ever since their posting at Ernakulam and Thiruvananthapuram they have been working in the respective sheds, without any repatriation to the parent department. The Electrical Trip Sheds at Ernakulam and Thiruvananthapuram are permanent and there is no possibility for discontinuing these sheds. Indeed, there will be requirement of more staff to carry out the works in the said Trip Sheds. In the light of this situation there is no justification for keeping Ernakulam and Thiruvananthapuram as satellite sheds of Erode Electrical Loco Shed. The Ernakulam and Thiruvananthapuram Electrical Trip Sheds have to be sustained and maintained on their own in view of the increase in the workload and, as such, the staff who were transferred to these Trip Sheds have to be regularized in their respective sheds where they are working now. Their initial appointments made to these sheds were through transfers of posts from Erode to Ernakulam/Thiruvananthapuram. Though these transfers were said to be temporary, no outer limit for their stay at Ernakulam/Thiruvananthapuram was prescribed.

8. Another contention made by them is that vide Annexure A-12 creation of permanent cadre at Thiruvananthapuram of the MEMU Car Shed at Quilon was recommended. This was also taken up in discussion at the Labour Union Level and at Annexure A-13, it was decided to explore the possibility of transfer of some posts to Thiruvananthapuram Division to create a separate cadre there for the Electrical Loco Shed after consulting the Headquarters. Representations have been given for creation of

permanent cadres at Ernakulam/Thiruvananthapuram by the applicants. Holding the view that the Trip Sheds at Ernakulam and Thiruvananthapuram are satellite sheds of Erode is not justified. The Trip Sheds require regular and permanent staff in view of the fact that these Sheds now cannot be discontinued due to the electrification of the Railway Lines and introduction of more electrical trains. Infact, the Railway has resorted to direct recruitment in these Trip Sheds though on compassionate grounds, as evidenced by Annexure A-15, Annexure A-16 and Annexure A-17.

9. The applicants and other similarly placed employees have opted for the Trip Sheds at Ernakulam and Thiruvananthapuram even relinquishing their promotional opportunities under the expectation that these Sheds would start functioning as independent ones and consequently they will be regularized in those sheds. There is no justification for inordinately delaying the said action. The persons who are working at Erode and who are juniors to the applicants have now secured promotions taking advantage of relinquishment of promotional opportunities by persons like the applicants herein. Now they cannot be considered to be seniors to the applicants for the purpose of deployment at Electrical Trip Sheds at Ernakulam and Thiruvananthapuram. The rights of persons like the applicants on their continuation at Electrical Trip Sheds at Ernakulam and Thiruvananthapuram have to be determined with reference to their original deployment to Ernakulam and Thiruvananthapuram from Erode. In the matter of the MEMU Car Shed established at Quilon, as in the case of the applicants, the persons were selected after calling for options from them,

depending on their seniority and posting at Quilon. While working so, the MEMU Car Shed at Quilon was treated as independent and all persons who were transferred to Quilon were retained at their parent stations. The respondents are bound to apply the very same principle which they applied in the case of MEMU Car Shed at Quilon as otherwise it will amount to hostile discrimination meted out to them.

10. In their rejoinder, the applicants have made additional points that the Southern Railway has issued an order stating that the Electrical Trip Sheds at Thiruvananthapuram and Ernakulam will be manned at the control of DME/ERS, a true copy of which is produced at Annexure A-23. The applicants claimed that this practically amounts to separation of the Thiruvananthapuram and Ernakulam Trip Sheds from the Erode/ELS. Therefore the contention that others can also be, in turn, appointed in these Trip Sheds from Erode is not tenable. In addition, the contention that the appointment of the applicants at Thiruvananthapuram and Ernakulam is a tenure appointment for five years is also not legally sustainable as the Railway Establishment Code does not provide for tenure appointment of this nature. The person who is working at a particular place can only be transferred temporarily or permanently. If the transfer is a temporary one, it can only be for a maximum period of 180 days, no temporary employment can be made for more than 180 days. In the transfer orders of many of the applicants five years tenure is not specifically stated and thus they cannot be brought under the tenure posting and transfer order. They further contend that people from different departments from Thiruvananthapuram Division

have been appointed in the Electric Trip Sheds and the entire expenditure on salary, materials and day to day expenses are met by the Thiruvananthapuram Division only. Moreover the disciplinary control over the applicants is also done by the Thiruvananthapuram Division. Thus, the contention that the Thiruvananthapuram and Ernakulam Electric Trip Sheds are satellite sheds of Erode is incorrect. The applicants in their rejoinder also contend that in case their transfers at Thiruvananthapuram and Ernakulam are only temporary or on deputation basis, they are entitled to several protections at the place where their lien is maintained, such as, service seniority and quarter seniority for accommodation. However, they were forced to vacate their quarters on transfer to the Ernakulam and Thiruvananthapuram. If they are repatriated to Erode, they will have no preference for quarters and they have lost their service seniority also. No TA has been paid for the entire period even though the Railway Establishment Code provides for TA for all temporary transfers. If the respondents are insisting that the applicants are liable to be repatriated to Erode, the applicants are entitled to their service seniority, quarter seniority, TA and other monetary benefits.

11. The respondents in their Reply have submitted that a settlement has been reached between the organized labour and the Railway administration during 2007 that the employees who are registering for transfer from Electric Loco Shed/Erode to Trip Shed/Ernakulam/Thiruvananthapuram will be transferred for a 5 years tenure period. Thereafter, they will be repatriated to Electrical Loco Shed/Erode and in their places, other

employees in the same grade will be transferred to Trip Shed, Thiruvananthapuram/Ernakulam. In the event that an employee is promoted to next higher grade within the 5 year tenure period, he will be repatriated and posted to Electrical Loco Shed/Erode and the next employee registered for Trip Shed, as per priority, will be transferred to Trip Shed/Thiruvananthapuram/Ernakulam. It is submitted that the applicants were transferred to Trip Shed/Thiruvananthapuram/Ernakulam only on the condition that they will be transferred to Electrical Loco Shed/Erode on completion of 5 years service at Trip Shed/Thiruvananthapuram/Ernakulam or on their promotion to the higher post against the lien maintained at Electrical Loco Shed/Erode whichever is earlier. The Trip Sheds of Ernakulam and Thiruvananthapuram are satellite sheds of Electrical Loco Shed/Erode of Salem Division and employees belonging to Electrical Loco Shed/Erode, who are willing, are considered for transfer to Trip Shed/Ernakulam and Thiruvananthapuram for a tenure period of 5 years or on their promotion to the higher post, whichever is earlier, duly maintaining their lien in Electrical Loco Shed/Erode. There has been no separate seniority unit at the Trip Sheds as their lien is maintained at Electrical Loco Shed/Erode. Their promotion is based on their original seniority unit of Electrical Loco Shed/Erode. In Annexure A-3 to Annexure A-4 and Annexure A-6 to Annexure A-8, it had been clearly mentioned that the employees were transferred to Trip Shed/Ernakulam, duly maintaining their lien at Electrical Loco Shed/Erode in erstwhile Palakkad Division, now under Salem Division. Further, consequent on cadre restructuring with effect from 1.11.2013, the revised sanction of the posts in the Electrical

Rolling Stock Department was issued where in 24 posts of Electrical Loco Shed, Erode were temporarily transferred and utilized at Trip Shed, Thiruvananthapuram and Ernakulam vide Memorandum No.SA/P135/Misc.Pinpointing/ELS dated 3.11.2015 (Annexure R-1). Further, some of the applicants in the present O.A, had earlier filed O.A.No.339/2016 and O.A.No.340/2016 before this Tribunal to allow them to continue to work at Trip Shed, Ernakulam and Thiruvananthapuram. The Tribunal by common order dated 27.2.2017, a copy of which is produced at Annexure A-22, upheld the tenure period of 5 years as under :

“22. We would not look upon the matter as repatriation as contended by applicants while advocating the principle of “last come first go”. We consider this movement as a tenure based transfer for 5 years which would give a chance to all natives to volunteer to work for a limited period in the home State. It is an attempt to give an equal chance to all natives working outside the State to work in the State and attend to family and other needs.

23. We are of the view that there is no need to interfere with the respondents' attempt to spread equity to a larger number of persons. Original Application is devoid of merits and is dismissed. No costs.”

12. The respondents therefore contend that the matter raised in the present O.A is, thus, already settled through the order of this Tribunal and therefore, it is submitted that nothing further survives consideration and the O.A is liable to be dismissed. The respondents contend that the Trip Sheds at Ernakulam and Thiruvananthapuram were set up to facilitate trip inspection of Electric Locomotives terminating at Ernakulam and Thiruvananthapuram as per safety requirements and they are only satellite sheds of Electrical Loco Shed/Erode. The fact that employees from Electrical Loco Shed/Erode who are registering for transfer to Trip Shed at

Ernakulam and Thiruvananthapuram will be posted as per priority and their lien will be maintained at Electrical Loco Shed/Erode, can be seen from Annexure A-10, A-10/2 and Annexure A-4 submitted by the applicants. As regards the direct recruit candidates selected as Trainee Technician Grade III in Railways, the respondents maintain that some of the candidates selected on compassionate grounds were deputed for initial training at Trip Shed, Ernakulam and as such it is not an order for their regular absorption at that Trip Shed. After their absorption in a working post, their lien will be maintained in their respective departments only and not in Trip Shed, Ernakulam and Thiruvananthapuram.

13. The respondents contend that with regard to the averment of surrender of promotional opportunities, as per Indian Railway Establishment Manual Vol.I the concerned paragraphs indicate as follows :

Para 224 : whenever, employee refusing promotion expressly or otherwise is debarred for future promotion for one year but he is allowed to be retained at the same station in the same post. Promotion after one year will be subject to continued validity of the panel in which he is borne, otherwise he will have to appear again in the selection.

(ii) At the end of one year if the employee again refuses promotion at the outstation, his name may be deleted from the panel, deletion being automatic requiring no approval from any authority and the administration may transfer him to outstation in the same grade.

As such, as the lien is maintained at ELS, Erode, the applicants cannot work permanently at Trip shed and have to be transferred on completion of five years tenure period or whenever promoted, whichever is earlier.

14. Regarding the filling up of posts at Mainline Electrical Multiple Unit(MEMU)/Quilon and Palakkad, it is submitted that the posts are headquarters controlled posts and not administered by Electrical Loco Shed/Erode. These posts are filled by Southern Railway, Headquarters, Chennai by calling for volunteers from employees working at Trip Shed/EMU/MEMU sheds of Electrical Department viz. from the Electrical Loco Shed/Erode, Chennai Division and Palghat Division. For these posts certain conditions are specified, namely that lien will be maintained in their respective parent cadre and that there will not be any separate seniority unit. Their promotion will be based on their original seniority position in the division/units maintained etc. In this regard, the Madras Bench of this Tribunal vide order dated 29.4.2016 in O.A.No.1185/2014 had directed the Railways to expedite the process of transfer of higher grade deputationists to pinpointed posts at various places. It was directed that once this is accomplished, the case of the applicants therein for deputation shall be considered as per rules/Railway Board circulars in their due turn. The applicants in O.A.No.1185/2014 filed a Contempt Petition No.56/2017 alleging that the respondents did not comply with the order dated 29.4.2016 in the said O.A by not replacing the staff who are promoted and retained at MEMU Shed/Palakkad with those who had opted for MEMU Shed/Palakkad and were waiting for their turn. Instead the respondents had resorted to closing the Cadre. Only in order to comply with the directions of the Madras Bench of this Tribunal, the Southern Railway took a decision not to take any further action in regard to filling up of the vacancies or any other changes in respect of the cadres of MEMU Shed/Palakkad and Quilon

until further advice regarding cadre closure was issued. Thus, the cadre closure procedure at MEMU Shed was kept on hold to avoid further litigation as well as contempt of court and to necessarily give effect to the conditions stipulated originally in the promotions under cadre restructuring granted to the applicants.

15. The Respondents further contend that some of the employees working at Trip Shed/Thiruvananthapuram and Ernakulam on their promotion to the next higher grade have already been repatriated to Electrical Loco Shed Erode by Office Order No.SA/P19/ELS/2016 dated 6.4.2016. The principle of repatriation on completion of 5 years of tenure has been upheld by this Tribunal in O.A.No.339/2016 and O.A.No.340/2016. The respondents mentioned that cadre restructuring orders have been issued by Railway Board's letter RBE No.102/2013 dated 8.10.2013. Under this order employees were promoted and allowed to continue in the same unit on 'as is where is basis' at the Trip Shed Thiruvananthapuram and Ernakulam for a period of 6 months in terms of Para 10 of the Cadre Restructuring orders, till the pinpointing of posts is accomplished. After pinpointing of posts, based on the exigency of services, employees are to be transferred where lien is maintained. The promoted incumbents were not repatriated immediately only due to delay in pinpointing and due to administrative reasons. It is submitted by the respondents that the promotions under cadre restructuring, the applicants are now enjoying, is only a result of their seniority position at Electrical Loco Shed, Erode.

16. The Respondents submit that there are large number of employees who have registered for transfer to Trip Shed at Thiruvananthapuram and Ernakulam. Now that the revised pinpointing of posts has been made, the request transfer of the employees who have registered for transfer to Trip Shed at Thiruvananthapuram and Ernakulam will be considered and the applicants who had worked for more than 5 years and also got one promotion have to be repatriated to Electrical Loco Shed at Erode. The common order of this Tribunal dated 27.2.2017 in O.A.No.339/2016 and O.A.No.340/2016 also has directed for equal chance to be given to all natives working outside the state. If the applicants are allowed to continue in Trip Shed/Ernakulam/Thiruvananthapuram those repatriated earlier will claim their re-transfer to Trip Shed/Ernakulam/Thiruvananthapuram. The closing of cadre is a policy issue and the applicants have not been deprived of their promotion and other benefits. Further, another cadre restructuring has been ordered vide RBE No.116/2016 issued by the Railway Board letter dated 30.9.2016 with effect from 1.9.2016, a copy of which is produced at Annexure R-5. Under this also the employees presently working at Trip Sheds at Ernakulam and Thiruvananthapuram may get benefit of promotion and they may be likely to be repatriated back to the parent unit which is Electrical Loco Shed, Erode of Salem Division.

17. It is submitted by the Respondents that, as far as Annexure A-23 is concerned, this is an internal correspondence which has not attained finality. The Respondents explain that Chief Motive Power Engineer/Diesel/Chennai (CMPE/Dsl/MAS) letter dated 19.3.2018 (Annexure A-23) regarding

manning of AC Loco Trip Sheds by Diesel Shed is only for the change of control of maintenance of Trip Sheds at Ernakulam and Thiruvananthapuram which is presently under the control of Divisional Electrical Engineer/Trip Shed/Thiruvananthapuram to Divisional Mechanical Engineer/Ernakulam. The above arrangement is only for the purpose of operation and maintenance by Divisional Mechanical Engineer, Ernakulam for administrative reasons. It has nothing to do with regard to the grievance of the applicants since the same is an administrative action. As regards payment of salary etc., due to proximity and administrative reasons, salary is being disbursed through the Divisional Personnel Officer, Thiruvananthapuram. As far as disciplinary powers are concerned, the equivalent authority or higher authority can exercise disciplinary powers as per Railway Servants (Discipline and Appeal) Rules, 1968.

18. Further, the seniority list of staff of Electrical Loco Shed, Erode is being published every year which contains the names of applicants. This has not been challenged by the applicants. The cadre of the Trip Shed, Thiruvananthapuram and Ernakulam are controlled by Senior Divisional Electrical Engineer/Rolling Stock/Erode and their lien is maintained in Electrical Loco Shed, Erode of Salem Division. Their promotions are ordered in Salem Division. Only willing employees are to be transferred to work at Trip Shed at Ernakulam or Thiruvananthapuram and it is not against anybody's will. As regards temporary versus permanent transfers, Railway employees are transferred on deputation to various stations/units for specific

purpose for a fixed tenures. This cannot be treated either as a temporary or as a permanent transfers. It is again submitted that the promotions under cadre restructuring the applicants are now enjoying is a result of their seniority position at Electrical Loco Shed/Erode of Salem Division. The Respondents contend that if their transfers were on permanent basis, they would have joined as the junior most officials in the transferred Division with the least seniority. They would not have been considered for promotion to the higher grade in 2013 under the control of Salem Division. The Respondents point out that the applicant Nos.1,2,8 and 9 have accepted the promotions ordered by the 5th respondent based on the lien maintained at Electric Loco Shed, Erode without any objection and have been drawing the higher salary of the promoted post for the last many years. The reason why the promoted incumbents were not repatriated immediately was only due to delay in pinpointing and due to various administrative reasons. Thus, if the applicants are allowed to continue at Trip Shed, Ernakulam or Thiruvananthapuram permanently, those who were repatriated already as well as those who have registered and waiting for their turn will be definitely affected. It will not be in the best interest of all the employees and not in consideration of equity, fairness and good conscience. The attempt to give an equal chance to all natives working outside the state to work in the state will be defeated.

19. With regard to the issue raised in M.A.No.392/2018 the respondents have objected to the same. They contend that only willing employees are transferred to work at Trip Sheds at Ernakulam and Thiruvananthapuram.

As per Indian Railway Establishment Code Vol.II, Rule 1642. (1) Travelling Allowance is not to be paid to a Railway Servant on transfer from one station to another, unless he is transferred in public interest. It is submitted that the amendment sought by the applicants would change the nature of the O.A. It would be directly hit by the provisions of Rule 10 of the CAT (Procedure) Rules and therefore, is not maintainable. They contend that the applicants are attempting to create a different class among the similarly placed employees by seeking differential treatment like service seniority, immediate quarter facility and TA for the entire period of service at Thiruvananthapuram and Ernakulam and the same cannot be allowed.

20. We have heard learned counsel for the applicants and the respondents. We have also considered all the documents submitted along with the contentions. In this connection, we find that this Tribunal's earlier order in O.A.No.339/2016 and O.A.No.340/2016 has upheld the principle of fixed tenure transfer for five years under certain conditions. We do not find any convincing case made by the applicants to interfere with this position. There is no illegality and injustice in a convenient arrangement attempted by respondents to give natives of Kerala State posted in Erode a five year chance to work in their home state as pointed out in the earlier order. The arrangement of "distributing the bounty" of a posting to home State equally has been negotiated by the Staff Federation and the respondents and is an example, as pointed out in the Order, of collaborative conciliation taking the interests of a larger group of affected employees into consideration. We

agree that such a benefit is required to be shared amongst all interested persons and should not be restricted to a few who happened to be the first to enter the field.

21. As regards creation of a separate cadre and independent units, we are of the opinion that the respondents have been able to convincingly put forth their case that the Trip Sheds of Ernakulam and Thiruvananthapuram have always been subsidiary sheds of the Electric Loco Shed, Erode. Only those employees belonging to Electric Loco Shed, Erode, who are willing are considered for transfer to Trip Sheds at Ernakulam and Thiruvananthapuram for a fixed five years tenure period or on their promotion to a higher post, whichever is earlier, duly maintaining their lien at Electrical Loco Shed, Erode. This has been the position from the very beginning. We find that no separate seniority list has been published for these Trip Sheds and that the lien was always maintained at ELS, Erode. Promotions have been carried out on the basis of the original seniority list of the Electrical Loco Shed, Erode. The orders passed by the Railway Board under Annexure R-3 and Annexure R-5 cover the issue of cadre restructuring and employees working at the Trip Sheds at Ernakulam and Thiruvananthapuram are getting the benefit of promotion by seniority at ELS, Erode. We note that some of the employees were allowed the benefit of upgradation/promotion for the time being on 'as is where is basis' but we accept the contention that they will have to join the pinpointed posts at the new station within a specified time from the date of issue of the promotion order in order to give way to those employees who are waiting for their chance.

22. We, therefore, do not find that the Trip Sheds at Ernakulam and Thiruvananthapuram are either independent or separate units for the purpose of cadre formulation and appointment. No case is made that the applicants are entitled to get their services regularised either at Ernakulam or at Thiruvananthapuram. Their lien and seniority have always been maintained at Electrical Loco Shed, Erode. Their service conditions and promotions temporarily may have been controlled by lower level units at Ernakulam or Thiruvananthapuram; however, this does not establish any claim that Trip Sheds at Ernakulam or Thiruvananthapuram are independent of the Electrical Loco Shed, Erode under Salem Division.

23. The principle of allowing all the natives of Kerala to take a chance to serve in their home state for a period up to five years or till promotion orders were issued, whichever is earlier, is in our view, a laudable one and has been arrived in the best interest of all employees. We do not think that it should be interfered with. The respondents have also produced a list showing that there are large number of employees, tracing origins to Kerala, still waiting their turn to be posted. The applicants have not been able to establish any convincing basis for interference with this arrangement that is being followed. Nor have there been any instructions or orders produced, which establishes any alternative basis for consideration of their case. Whatever orders have been produced only show some arrangements made for administrative reasons or in furtherance of court orders and do not establish any financial or administrative independence of the ETS at Ernakulam/Thiruvananthapuram.

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24. In the light of the above, the Original Application, M.A.No.180/392/2018 and M.A.No.180/393/2018 do not succeed and are liable to be dismissed. We do so accordingly. We do not impose any costs on the parties.

(Dated this the _____ day of September 2020)

K.V.EAPEN
ADMINISTRATIVE MEMBER

P.MADHAVAN
JUDICIAL MEMBER

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List of Annexures in O.A.No.180/00586/2017

1. **Annexure A-1** – A copy of the Memorandum issued by the 2nd respondent dated 14.9.2001.
2. **Annexure A-2** – A copy of the Memorandum issued by the 2nd respondent dated 6.8.2003.
3. **Annexure A-3** – A copy of the Posting Order dated 21.8.2003.
4. **Annexure A-4** – A copy of the Posting Order dated 1.10.2007.
5. **Annexure A-5** – A copy of the Posting Order dated 19.2.2007.
6. **Annexure A-6** – A copy of the Posting Order dated 1.10.2003.
7. **Annexure A-7** – A copy of the Posting Order dated 3.4.2008.
8. **Annexure A-8** – A copy of the Posting Order dated 9.3.2010.
9. **Annexure A-9** – A copy of the Minutes of the meeting dated 23.1.2007.
10. **Annexure A-10** – A copy of the Seniority List of staff deployment dated 24.1.2007.
11. **Annexure A-11** – A copy of the representation dated 9.5.2016 submitted by the applicants.
12. **Annexure A-12** – A copy of the proceedings dated 20.7.2016 of Divisional Office, Thiruvananthapuram.
13. **Annexure A-13** – A copy of the proceedings dated 8.4.2016 of Divisional Office, Thiruvananthapuram.
14. **Annexure A-14** – A copy of the representation dated 11.5.2017 submitted by the applicants and others.
15. **Annexure A-15** – A copy of the appointment order dated 29.3.2016.
16. **Annexure A-16** – A copy of the appointment order dated 17.3.2016.
17. **Annexure A-17** – A copy of the appointment order dated 31.7.2015.
18. **Annexure A-18** – A copy of the communication dated 20.12.2011.
19. **Annexure A-19** – A copy of the communication dated 24.7.2013.
20. **Annexure A-20** – A copy of the communication dated 27.7.2015.

21. **Annexure A-21** – A copy of the Memorandum issued by the respondents dated 3.3.2017.
 22. **Annexure A-22** – A copy of the Order dated 27.7.2017 in O.A.No.180/00339/16 & O.A.No.180/00340/16.
 23. **Annexure A-23** – A copy of the Order No.M/DSL/301/III/Elec. dated 19.3.2018 issued by the Southern Railway.
 24. **Annexure A-24** – A copy of the Order No.SA/P.177/ELS/Grievances dated 14.3.2018 issued by the Divisional Personnel Officer/SA.
 25. **Annexure R-1** – A copy of the Memorandum No.SA/P 135/Misc.Pinpointing/ELS.
 26. **Annexure R-2** – A copy of the Letter No.P(S)135/VII/MEMU Shed/PGT/Vol.II.
 27. **Annexure R-3** – A copy of the Railway Board's RBE No.102/2013.
 28. **Annexure R-4** – A copy of the list of employees registered to Tripshed/Trivandrum and Ernakulam.
 29. **Annexure R-5** – A copy of the Railway Board's RBE No.116/2016.
 30. **Annexure R-6** – A copy of the seniority list of staff belonging to Electrical Loco Shed/Erode.
 31. **Annexure R-7** – A copy of the interim orders in OP(CAT) No.289/2017(Z) in RA No.17/2017 in O.A.No.339/2016.
 32. **Annexure R-8** – A copy of the letter No.V/E/OP/XV/RG – Request for retention.
 33. **Annexure R-9** – A copy of the letter No.V/E/OP/XV/RG.
 34. **Annexure R-10** – A copy of the restructuring promotion Office Order No.SA/17/ELS/2014 – Technician Gr.I to Sr. Technician.
 35. **Annexure R-11** – A copy of the restructuring promotion Office Order No.SA/18/ELS/2014 – Technician Gr.II to Technician Gr.I.
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