

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

B

O.A.No.64/04, O.A.No.225/04 & O.A.No.423/04

TUESDAY.....this the<sup>10th</sup> Day of April, 2007

A

CORAM:

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN  
HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER

O.A.No.64/04

1. R.C.Unnikrishnan,S/o.R.Chandran Pillai,  
Diesel Assistant,  
Southern Railway, Quilon.  
Residing at Plavilaputhanveedu,  
Karicode, Quilon – 5.
2. P.Jiji,S/o.Falgunan Nair,  
Diesel Assistant,  
Southern Railway, Quilon.  
Residing at Mattibhavan,  
Palodu, Pacha P.O., Quilon.
3. Nisarudeen,S/o.Shamsudheen Kunju,  
Diesel Assistant,  
Southern Railway, Quilon.  
Residing at Rukkudale, Kuttichira,  
TKMC (PO), Quilon.
4. E.S.Sudheer,S/o.Sankaran,  
Diesel Assistant,  
Southern Railway, Ernakulam Jn.  
Residing at Thaivalappil House,  
Peruvallur P.O., Trichur.
5. P.N.Anil Kumar,S/o.Narayana Pillai,  
Diesel Assistant,  
Southern Railway, Quilon.  
Residing at Mullolil House,  
Edamathoor Post, Mannar, Alleppey District.
6. K.V.Babu,S/o.Varghese,  
Diesel Assistant,  
Southern Railway, Ernakulam Jn.  
Residing at Kathamattathi House,

1. Edayapuram Road, Cochin Bank,  
Ashokapuram PO, Aluva.

7. Anto Kuriakose, S/o. John Kuriakose,  
Diesel Assistant,  
Southern Railway, Ernakulam Jn.  
Residing at Kinattukarayil,  
Thalayolaparambu, Kottayam.

8. K.P. Sethumadhavan, S/o. Sankaranarayanan,  
Diesel Assistant,  
Southern Railway, Ernakulam.  
Residing at Kulanpurathu House,  
Nhamanghat, Trichur.

...Applicants

(By Advocate Mr.T.C.Govindaswamy)

Vs

1. Union of India represented by the General Manager,  
Southern Railway, Headquarters Office,  
Park Town PO, Chennai – 3.

2. The Chief Personnel Officer,  
Southern Railway, Headquarters Office,  
Park Town PO, Chennai – 3.

3. The Divisional Personnel Officer,  
Southern Railway, Headquarters Office,  
Park Town PO, Chennai – 3.

4. The Senior Divisional Personnel Officer,  
Southern Railway, Trivandrum Division,  
Trivandrum.

5. M.Santhosh Kumar,  
Diesel Assistant, Southern Railway,  
Ernakulam Marshalling Yard, Ernakulam.

6. P.N. Shaine,  
Diesel Assistant, Southern Railway,  
Ernakulam Marshalling Yard, Ernakulam.

7. C.S. Suresh,  
Diesel Assistant, Southern Railway,  
Ernakulam Marshalling Yard, Ernakulam.

8. V.Ashok,  
Diesel Assistant, Southern Railway,  
Ernakulam Marshalling Yard, Ernakulam.

9. P.D. Sainkumar,  
Diesel Assistant, Southern Railway,  
Ernakulam Marshalling Yard, Ernakulam.

10. C.K.Biju,  
Diesel Assistant, Southern Railway,  
Ernakulam Marshalling Yard, Ernakulam.
11. A.N.Unni,  
Diesel Assistant, Southern Railway,  
Ernakulam Marshalling Yard, Ernakulam.
12. P.Ahilan,  
Diesel Assistant, Southern Railway,  
Nagarcoil Jn, Nagarcoil.
13. M.Sibi,  
Diesel Assistant, Southern Railway,  
Ernakulam Jn., Ernakulam.
14. Ramesan Mothanga,  
Diesel Assistant, Southern Railway,  
Ernakulam Jn., Ernakulam.
15. T.J.Gorathy,  
Diesel Assistant, Southern Railway,  
Ernakulam Jn., Ernakulam.
16. B.Titus,  
Diesel Assistant, Southern Railway,  
Quilon Jn., Quilon.
17. O.V.Rahulakumar,  
Diesel Assistant, Southern Railway,  
Quilon Jn., Quilon.
18. J.Pius,  
Diesel Assistant, Southern Railway,  
Quilon Jn., Quilon.
19. C.P.Anil Kumar,  
Diesel Assistant, Southern Railway,  
Quilon Jn., Quilon.
20. D.R.Arundas,  
Diesel Assistant, Southern Railway,  
Quilon Jn., Quilon.
21. Eldo Paul,  
Diesel Assistant, Southern Railway,  
Ernakulam Marshalling Yard, Ernakulam.
22. T.R.Vijayakumar,  
Diesel Assistant, Southern Railway,  
Ernakulam Jn., Ernakulam.

...Respondents

(By Advocate Ms.P.K.Nandini [R1-4])

Mr.P.Ramakrishnan [R5-12, 14-23])

O.A.No.225/04

1. A.S.Sajeev,Diesel Assistant,  
Crew Controllers Office,  
Southern Railway, Ernakulam South.
2. T.C.Sundaram,Diesel Assistant,  
Crew Controllers Office,  
Southern Railway, Ernakulam Marshalling Yard.
3. T.K.Millet,Diesel Assistant,  
Crew Controllers Office,  
Southern Railway, Ernakulam South.
4. C.V.Guptan,Diesel Assistant,  
Crew Controllers Office,  
Southern Railway, Ernakulam Marshalling Yard.
5. B.Nandakumar,Diesel Assistant,  
Crew Controllers Office,  
Southern Railway, Ernakulam South.
6. G.Suresh Babu,  
Diesel Assistant,  
Area Supervisor's Office,  
Southern Railway, Kollam.
7. E.Santhosh,Diesel Assistant,  
Crew Controllers Office,  
Southern Railway, Ernakulam South.
8. E.R.Joshy,Diesel Assistant,  
Crew Controllers Office,  
Southern Railway, Ernakulam South.
9. Saji K Paul,Diesel Assistant,  
Crew Controllers Office,  
Southern Railway, Ernakulam Marshalling Yard.
10. K.K.Prakash,Diesel Assistant,  
Crew Controllers Office,  
Southern Railway, Ernakulam South.
11. K.P.Purushothaman,Diesel Assistant,  
Crew Controllers Office,  
Southern Railway, Ernakulam South.

...Applicants

(By Advocate M/s.Santhosh & Rajan)

Vs

1. Union of India represented by the General Manager,  
Southern Railway, Chennai.
2. The Chief Personnel Officer,  
Southern Railway, Chennai.
3. The Senior Divisional Personnel Officer,  
Southern Railway, Thiruvananthapuram.
4. M.Santhosh Kumar,Diesel Assistant,  
Crew Controller's Office, Southern Railway,  
Ernakulam Marshalling Yard, Ernakulam.
5. P.Ahilan,Diesel Assistant,  
Crew Controller's Office,  
Southern Railway, Nagarcoil, T.Nadu.
6. P.N.Shaine,Diesel Assistant,  
Crew Controller's Office,  
Southern Railway, Nagarcoil, T.Nadu.
7. C.S.Suresh,Diesel Assistant,  
Crew Controller's Office,  
Southern Railway, Nagarcoil, T.Nadu.
8. V.Ashok,Diesel Assistant,  
Crew Controller's Office,  
Southern Railway, Nagarcoil, T.Nadu.
9. P.D.Sainkumar,Diesel Assistant,  
Crew Controller's Office,  
Southern Railway, Nagarcoil, T.Nadu.
10. K.S.Manoj,Diesel Assistant,  
Crew Controller's Office,  
Southern Railway, Nagarcoil, T.Nadu.
11. C.K.Biju,Diesel Assistant,  
Crew Controller's Office,  
Southern Railway, Nagarcoil, T.Nadu.
12. M.Sibi,Diesel Assistant,  
Crew Controller's Office,  
Southern Railway, Ernakulam South.
13. Ramesan Mothanga,Diesel Assistant,  
Crew Controller's Office,  
Southern Railway, Ernakulam South.
14. A.N.Unni,Diesel Assistant,  
Crew Controller's Office,  
Southern Railway, Ernakulam Marshalling Yard.

15. T.J.Gorathy,Diesel Assistant,  
Crew Controller's Office,  
Southern Railway, Ernakulam South.
16. B.Titus,Diesel Assistant,  
Crew Controller's Office,  
Southern Railway, Kollam.
17. C.P.Anilkumar,Diesel Assistant,  
Crew Controller's Office,  
Southern Railway, Kollam.
18. O.V.Rahulakumar,Diesel Assistant,  
Crew Controller's Office,  
Southern Railway, Ernakulam South.
19. D.R.Arundas,Diesel Assistant,  
Crew Controller's Office,  
Southern Railway, Kollam.
20. P.Santhoshkumar,Diesel Assistant,  
Crew Controller's Office,  
Southern Railway, Kollam.
21. P.R.Vijayakumar,Diesel Assistant,  
Crew Controller's Office,  
Southern Railway, Ernakulam South.
22. J.Pius,Diesel Assistant,  
Crew Controller's Office,  
Southern Railway, Kollam.
23. T.S.Sudheer,Diesel Assistant,  
Crew Controller's Office,  
Southern Railway, Ernakulam South.
24. A.P.Varghese,Diesel Assistant,  
Crew Controller's Office,  
Southern Railway, Ernakulam South.
25. M.A.Jose,Diesel Assistant,  
Crew Controller's Office,  
Southern Railway, Ernakulam South.
26. P.A.Eldo,Diesel Assistant,  
Crew Controller's Office,  
Southern Railway, Ernakulam Marshalling Yard.
27. Sunil K Jose,Diesel Assistant,  
Crew Controller's Office,  
Southern Railway, Ernakulam South.
28. K.O.Johnson,Diesel Assistant,  
Crew Controller's Office,

Southern Railway, Ernakulam  
Marshalling Yard.

Respondents

(By Senior Advocate Mrs.Sumathi Dandapani,  
Ms.P.K.Nandini [R1-3],  
Mr.T.C.Govindaswamy [R24-29]  
Mr.P.Ramakrishnan [R4-11, 13-20, 22 & 23])

O.A.No.423/04

1. M.Anil Kumar,S/o.M.Sankaran,  
Crew Controller, Southern Railway,  
Marshalling Yard, Thamanam P.O. Ernakulam.  
Residing at Sruthi, Melevadakkian P.O.,  
Farook College, Kozhikode.
2. K.A.Gee Varghese,  
S/o.G.Abraham,  
Crew Controller, Crew Booking Office,  
Southern Railway, Quilon.  
Kunnathuparambil House,  
Valanjavattom P.O., Thiruvalla.
3. K.E.Muhammed Kunju,S/o.K.S.Ibrahim,  
Crew Controller, Southern Railway,  
Ernakulam Marshalling Yard, Ernakulam.  
Residing at Elavadathuparambil,  
Kannoottu House, Edappilly P.O. Kochi – 24.
4. V.Mohanan,S/o.N.Velappan Nair,  
Crew Controller, Crew Booking Office,  
Southern Railway, Quilon.  
Residing at Chaithram, Puthuval Road,  
Vallamcode, Ooty P.O. Trivandrum.
5. P.N.Prakash,S/o.Narayanan Nair,  
Crew Controller, Crew Booking Office,  
Southern Railway, Ernakulam.  
Residing at Pulikkal House,  
South Thoravur P.O., Pudukad, Trichur.
6. Biju S Paul,S/o.T A Poulose,  
Diesel Assistant, Crew Booking Office,  
Southern Railway, Ernakulam.  
Residing at Tholanikunnel, Ayamkara.
7. K.Ramesh,S/o.P.V.Krishnan Nambiar,  
Crew Controller, Crew Booking Office,  
Southern Railway, Ernakulam.  
Residing at Desom P.O. Aluva (Via),  
Ernakulam.

...Applicants

(By Advocate Mr.T.C.Govindaswamy)

Vs

1. Union of India represented by the General Manager,  
Southern Railway, Headquarters Office,  
Park Town PO, Chennai – 3.
2. The Chief Personnel Officer,  
Southern Railway, Headquarters Office,  
Park Town PO, Chennai – 3.
3. The Divisional Personnel Officer,  
Southern Railway, Headquarters Office,  
Park Town PO, Chennai – 3.
4. The Senior Divisional Personnel Officer,  
Southern Railway, Trivandrum Division,  
Trivandrum.
5. P.K.Gopakumar,Diesel Assistant,  
Crew Booking Office, Southern Railway,  
Ernakulam South R.S., Ernakulam.
6. G.Arokraj,Diesel Assistant, Crew Booking Office,  
Southern Railway, Quilon.
7. K.Roy Philip,  
Diesel Assistant,  
Crew Booking Office, Southern Railway,  
Ernakulam South R.S., Ernakulam.
8. M.Santhosh Kumar,Diesel Assistant,  
Crew Booking Office, Southern Railway,  
Ernakulam Marshalling Yard, Ernakulam.
9. P.Ahilan,Diesel Assistant,  
Crew Booking Office,  
Southern Railway, Nagarcoil.
10. P.N.Shaine,Diesel Assistant,  
Crew Booking Office,  
Southern Railway, Nagarcoil.
11. C.S.Suresh,Sr.Diesel Assistant,  
Crew Booking Office, Southern Railway,  
Ernakulam Marshalling Yard, Ernakulam.
12. V.Ashok,Diesel Assistant,  
Crew Booking Office, Southern Railway,  
Ernakulam Marshalling Yard, Ernakulam.

13. P.D.Sainkumar,Diesel Assistant,  
Crew Booking Office, Southern Railway,  
Ernakulam Marshalling Yard, Ernakulam.
14. K.S.Manoj,Diesel Assistant,  
Crew Booking Office, Southern Railway,  
Ernakulam Marshalling Yard, Ernakulam.
15. C.K.Biju,Diesel Assistant,  
Crew Booking Office, Southern Railway,  
Ernakulam Marshalling Yard, Ernakulam.
16. M.Joseraj,Diesel Assistant,  
Crew Booking Office, Southern Railway,  
Ernakulam Marshalling Yard, Ernakulam.
17. M.Sibi,  
Diesel Assistant,  
Crew Booking Office, Southern Railway,  
Ernakulam South R.S., Ernakulam.
18. Ramesh Muthanga,Diesel Assistant,  
Crew Booking Office, Southern Railway,  
Ernakulam South R.S., Ernakulam.
19. A.N.Unni,Diesel Assistant,  
Crew Booking Office, Southern Railway,  
Ernakulam Marshalling Yard, Ernakulam.
20. T.J.Gorethy,Diesel Assistant,  
Crew Booking Office, Southern Railway,  
Ernakulam South R.S., Ernakulam.
21. B.Titus,Diesel Assistant,  
Crew Booking Office, Southern Railway, Quilon.
22. C.P.Anil Kumar,Diesel Assistant,  
Crew Booking Office, Southern Railway, Quilon.
  
23. O.V.R.Kumar,Diesel Assistant,  
Crew Booking Office, Southern Railway, Quilon.
24. Arun Dass,Diesel Assistant,  
Crew Booking Office, Southern Railway, Quilon.
25. P.R.Vijayakumar,Diesel Assistant,  
Crew Booking Office, Southern Railway,  
Ernakulam South R.S., Ernakulam.
26. J.Pius,Diesel Assistant,  
Crew Booking Office, Southern Railway, Quilon.

27. Eldo Paul,Diesel Assistant,  
Crew Booking Office, Southern Railway,  
Ernakulam Marshalling Yard, Ernakulam.
28. T.Suresh Kumar,Diesel Assistant,  
Crew Booking Office, Southern Railway, Quilon.
29. P.Unnikrishnan,Diesel Assistant,  
Crew Booking Office, Southern Railway, Quilon. ....Respondents

By Advocate Mrs.Sumathi Dandapani,Sr.  
Ms.P.K.Nandini [R1-4] &  
Mr.P.Ramakrishnan [R8-15, 17-23])

### ORDER

#### HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicants in these OAs have a common challenge against the seniority assigned to them in the seniority list of Diesel Assistants dated 9.11.2001 consequent to their inter-divisional transfer.

2 The applicants in the OAs originally belong to different Divisions of the Southern Railway and joined the Trivandrum division on inter-divisional transfer. Since they belong to the common category of Diesel Assistant, the impugned orders in all the OAs being the same, these Applications were heard together and are being disposed of by this common order.

3 The factual matrix and the summary of pleadings in the three Applications can be seen as under:

O.A. 64/2004

4 The eight applicants in this O.A. were transferred from Madras Division to Trivandrum Division on their own request in 1999. The particulars of the applicants, date of their initial appointment, date of registration and date of joining at Trivandrum Division are given below:

Sl. No.	Name of applicant	Date of initial appointment	Date of Registration	Date of joining at Trivandrum.
1	R.C. Unnikrishnan	10/05/93	07/03/96	25.6.1999
2	P.Jiji	10/05/93	07/03/96	28.6.1999
3	Nizarudeen	77.6.1993	22.3.1996	01/07/99
4	E.S.Sudheer	20.10.1993	19.1.1996	11/02/99
5	P.N. Anilkumar	29.5.1993	30.1.1996	16.6.1999
6	K.V. Babu	8.7.91 (initially Palghat Divn)	07/03/96	18.6.1999
7	Anto Kuriakose	10/05/93	07/03/96	24.6.1999
8	K.P.Sethumadhavan	20.10.1993	22.3.1996	07/07/99

5 Annexure A-5 is the provisional seniority list dated 9.11.2001 wherein the applicants are at Sl. Nos. 190, 194, 197, 158, 180, 189 & 196 respectively. The party respondents are at Sl. Nos. 133, 135, 136, 137, 138, 139, 140, 146, 134, 141, 142, 144, 147, 148, 151, 157, 150, 153, 176 & 156 respectively. The respondents 5 to 19 were initially appointed as Trainee Diesel Assistants. Respondents 21 to 23 were persons who joined Trivandrum Division on inter divisional transfer on mutual basis with

persons who belong to SC/ST communities. According to the applicants, respondents 5 to 19 joined Trivandrum Division on 6.4.1999 and respondent No. 20 joined on 16.11.99. The applicants have submitted that they have registered their names for inter-divisional transfer in 1996 and the delay in transferring them to Trivandrum Division was totally unjustified for the reasons attributable to the official respondents only and they ought to have been transferred and appointed to Trivandrum Division in preference to Respondents 5 to 23. The representations submitted by the applicants were not considered by the respondents for a period of two years and were disposed of by Annexure A-7 series of orders in 2003 which is totally arbitrary and discriminatory. The respondents 5 to 23 have no right to be transferred against vacancies left by SC/ST community. Therefore the applicants are entitled to be placed above these respondents. The following reliefs have been prayed for:

- (a) Call for the records leading to the issue of Annexure A-5 and quash the same to the extent it places the respondents 5 to 24 above the applicants.
- (b) Call for the records leading to issue of Annexure A-7 series and quash the same.
- © Declare that the applicants are entitled to be placed above the respondents 5 to 24 in Annexure A-5, with all consequential benefits emanating therefrom and direct the respondents to place the applicants above the respondents 5 to 24 and direct further to grant all the consequential benefits.
- (d) Award costs of and incidental to this Application.
- (e) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.

6 The official respondents in their reply statement submitted that the pleadings in the O.A. are vague and seniority of the employees in the inter-divisional transfer had been assigned in terms of Para 312 of IREM Vol. I and in terms of letter dated 19.9.1995. The applicants have not cited any rules or orders which are favourable to their claims. It is admitted that the applicants had applied for inter-divisional transfer in the prescribed proforma in Annexure R-1 and they have declared in their applications that they are willing to carry out the transfer on the terms and conditions stipulated by the Railway Board for transfer from one railway unit to another. Having accepted to abide by the conditions stipulated for the inter-divisional transfer, the applicants cannot turn round and seek a differential treatment after their joining and that too without any justification. Prior to the year 2000 the inter-divisional transfers were centralised and controlled by the Chief Personnel Officer and no separate registration was done by the Division. On 1.1.2000, it has been de-centralised and further registration was being done accordingly at the Divisional level as per Chief Personnel Officer, Southern Railway Madras Letters dated 13.4.99 and 11.11.98. There was a delay in relieving the applicants on transfer which could be attributed to non-availability of reliever in Madras Division. This being a safety as well as operational category day today train operation should not be affected without upsetting the balance of the strength in Madras Division. As regards the private respondents 5 to 19 they were recruited by the Railway Recruitment Board and appointed in

Trivandrum Division against quota meant for SC/ST/OBC communities to wipe out shortfall in these categories. The respondent No. 20 failed in the test though he was sent for initial training along with respondents 5 to 19. Therefore he was sent for training again from 16.11.1998 and he was absorbed w.e.f. 18.1.1999. These respondents were not transferred from other divisions. They were appointed after completion of the training. All the respondents have fully attended the training course for 26 days and there is no curtailment in the training as alleged by the applicants. The inter-divisional transfers are governed by Para 312 of the IREM Vol. I as per which the seniority of those who joined on transfer is reckoned from the date they continuously joined the seniority unit. The applicants' pleadings that if they had joined Trivandrum Division on a day earlier they would have become senior to the respondents is purely imaginary. The provision has been applied uniformly in the case of all applicants as well as the respondents. In O.A. 691/1999 filed by some of the Assistant Station Masters on the same issue this Tribunal has given the finding that the seniority is to be fixed in terms of Para 312 of IREM Vol. I only and based on the same reasoning, the applicants' cases are liable to be dismissed. The applicants have not challenged this provision in the rules and they have also not impleaded all the seniors of the applicants. Thus this O.A. is without impleading all the seniors deserves to be dismissed for non-joinder of the parties.

7 The 8th respondent has filed a reply on behalf of respondents 5,6,7,9 to 12 and 14 to 23 as authorised by them. They have agreed with the averments of the official respondents and stated that the applicants who have joined with bottom seniority on request transfer in April, 2000 have no right to claim seniority over those respondents. The applicants have no indefeasible right to have posting at a place of their choice on request. It is for the Railway Administration to accede to the demand of an employee for transfer from one division to another depending on the administrative exigencies and public interest. Similar request has already been rejected by the Tribunal in O.A. 1046/98 filed by Diesel Assistants who had challenged the posting of the party respondents in Trivandrum Division (Annexure R8).

8 The official respondents have filed certain additional documents to support their averments viz. the Railway Board's orders Annexure R-2 and R-3 and the orders of this Tribunal in O.A. 691/99.

O.A. 225/2004

9 The applicants numbering 11 in this O.A. are Diesel Assistants transferred from Palakkad Division of Southern Division. They were initially appointed in the Palakkad Division through Railway Recruitment Board, Trivandrum. They joined their post on 21.8.1989, 1.12.1992, 17.7.1989, 21.8.1989, 21.8.1989, 21.8.1989, 10.1.1990, 21.8.1989, 21.8.1989, 10.1.1990, and 21.8.1989

respectively. They were transferred to Trivandrum Division as per Annexure A-1 order dated 27.10.1998 but they were relieved only in February/March/April, 1999. The 3rd applicant was relieved on 24.2.1999, the 2<sup>nd</sup> applicant on 24.4.1999 and the other applicants in the last week of March, 1999. All the applicants joined the Trivandrum division on the next day of their relief from the Palakkad Division. In the impugned seniority list dated 9.11.2001 (Annexure A2) the applicants were at Sl. Nos. 172, 177, 164, 170, 173, 168, 175, 169, 174, 167 and 166 respectively. The respondents 2 to 17 and 19 to 23 were appointed in the Trivandrum Division through the Railway Recruitment Board, they joined the Trivandrum Division after the issue of Annexure A-1 order. They are placed at Sl. No. 133 to 142, 144, 146 to 148, 151 and 157 of the seniority list respectively. The applicants contended that as respondents 5 to 17, 19 to 23 were appointed after Annexure A-1 order transferring them they have to be placed below the applicants in the seniority list in view of Annexure A-3 circular No. 164/1985 according to which those who apply for inter divisional transfer are to be appointed in preference to absorption of Casual Labourers /Open market recruitment. The respondents 24 to 29 were transferred to Trivandrum Division in February, 1999 whereas the applicants were transferred in October, 1998 but they joined earlier as they were relieved earlier and their earlier joining in the Trivandrum Division should not confer them seniority over the applicants as their delay in joining Trivandrum Division was not due to their fault. They had also

filed O.A. 363/2003 before this Tribunal challenging the same seniority list which was disposed of by Annexure A-6 order directing consideration of their representation and the respondents have now disposed of these representations by Annexure A-7 order. They have contended that Annexure A-7 order has been issued without appreciating the case of the applicants and as such it is arbitrary, unjust and illegal.

O.A.423/2004

10 All the 7 applicants in this O.A. are working as Diesel Assistants and were transferred from Madras Division to Trivandrum Division. They were originally recruited by the Railway Recruitment Board in 1990. They submitted their applications for inter-divisional transfer to Trivandrum Division on 8.3.1996 but on that date the respondents did not register their request. They approached this Tribunal through O.A. 440/97 which was disposed of with the direction to the respondents to register their requests. Finally the requests were materialised by order dated 29.11.1999 (Annexure A6). The particulars of the applicants, dates of registration for transfer and dates of joining are given below:

SL.No.	Name of applicant	Date of Registration	Date of joining at Trivandrum
1	M.Anil Kumar	08/03/96	17.4.2000
2	K.A. Gee Varghese	08/03/96	17.4.2000
3	K.E. Muhammed Kunju	08/03/96	17.4.2000
4	V.Mohanan	08/03/96	17.4.2000

Sl.No.	Name of applicant	Date of Registration	Date of joining at Trivandrum
5	P.N.Prakash	08/03/96	17.4.2000
6	BijuS. Paul	08/03/96	17.4.2000
7	K. Ramesh	08/03/96	17.4.2000

11 In the impugned seniority list Annexure A-2 the applicants are placed at Sl. Nos. 202, 203, 204, 205, 211, 206 and 207, respectively. The respondents are at Sl. Nos. 195, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 144, 146, 147, 148, 150, 151, 153, 154, 156, 157, 176, 200 & 201 respectively. Whereas the respondents 5 to 29 are persons appointed either on inter-divisional transfer or by direct recruitment, some are transferred on mutual basis. But for the arbitrary delay in relieving them at the level of the respondents the applicants could have joined the Trivandrum Division prior to 6.4.1999 in which case they would have ranked senior to the respondents. Therefore, the arbitrary fixation of their seniority by the respondents in the light of Annexure A-3 order is denial of right of the applicants due to negligence and deliberate inaction of the respondents. The following are the reliefs sought in the O.A.

(a) Call for the records leading to the issue of Annexure A-10 series and quash them

(b) Declare that the applicants are entitled to be placed above the respondents 5 to 29 in Annexure A8 with all consequential benefits emanating therefrom and direct the respondents to place the applicants above the respondents 5 to 29 and direct further to grant all the consequential benefits.

© Award costs of and incidental to this Application.

(d) Pass such other orders or direction as deemed just, fit and necessary in the facts and circumstances of the case.

12 Separate reply has been filed by the respondents 1- 4 and by the 12<sup>th</sup> respondent on behalf of respondents 8 to 15, & 17 to 23 as authorised by them. They have produced copies of the office orders at Annexure R-12 series in which the respondents were absorbed as Diesel Assistants and submitted that posting of these respondents was challenged by few Diesel Assistants including the 5<sup>th</sup> applicant in O.A. 1046/98 and the Tribunal had refused to interfere with the issue.

13 The official respondents have contended that the seniority of the employees who came on inter-divisional transfer has strictly been assigned in terms of Para 312 of the IREM Vol. I and in terms of the letter dated 19.9.95. The applicants have not produced any rules or orders for disputing the statement in the impugned orders rejecting their representations. They have also not impleaded several of their seniors falling between the seniority lists and they have no locus standi to make averments in the case of mutual transfers of the respondents 21, 24, 25 & 27. The applicants have not produced any documents to substantiate their contentions. They have also not challenged the delay in relieving the applicants at that time nor impleaded the authorities in the Madras Division. The respondents have also relied on the judgment of this Tribunal in O.A.691/99 and the judgment of the Apex Court in Swapan Kumar Pal and Ors Vs.

Samithabhar Chakraborty and Ors. (2001) 5 SCC 581) The Railway Board Circular No. 164/ 95 has been upheld in the above judgment wherein it has been clarified that the seniority of an employee on request transfer to another seniority unit should be assigned from the date of joining the new unit. The applicants have no case and the O.As are liable to be dismissed.

14 We have heard Shri T.C. Govinda Swamy the learned counsel for the applicants in O. A. Nos. 64/2004 & 423/2004, and Shri T.A. Rajan for the applicants in O.A. 225/2004. The learned counsel for the applicants submitted that the normal rule of seniority cannot be made applicable in these cases when the Tribunal itself in its order dated 13.7.1992 had drawn up a mutually agreed scheme according to which certain priorities were drawn up for transfer and absorption of Diesel Assistants and the applicants in O.A. 64/2004 had been transferred as per the directions of this Tribunal in O.A. 1413/96. It was also alleged that while inter-divisional transfers are implemented some administrative delay had occurred in relief of the employees from the division by which undue advantage has been conferred in some cases.

15 The Senior Counsel Smt. Sumathi Dandapani appeared for the respondents - Railways in OA Nos. 225/2004 and 423/2004 and Smt. P.K.Nandini for respondent Railways in O.A. 64/2004 and Shri. P. Ramakrishnan appeared for Respondents 8 to 15 & 17 to 23 in O.A.

423/2004, Respondents 4 to 11, 13 to 20 and 22 & 23 in O.A. 225/2004 and for Respondents 5 to 12 and 14 to 23 in O.A. 64/2004. They have contended that there was no indefeasible right for employees to get inter-divisional transfers and that the judgment relied on by the applicants have been rendered per incuriam and the judgment in O.A. 691/99 and the decision therein has been confirmed by the Hon'ble High Court of Kerala by the judgments in OP NO. 16379/2002, 16898/2002 and 17451 of 2002.

16 The questions that arise for consideration in these OAs is what is the principle for determination of seniority of employees who were transferred on inter-divisional basis on request and whether the rules presently in force in the Railways for determination of such seniority are equitable and when they confer any undue advantage to a section of employees vis-a-vis others.

17 We shall first examine the rule position. The earlier orders available on the subject is Railway Board letter No. 16/86 dated 21.1.1986. This stipulates that the:

"Board desire to point out that in cases where a Railway servant is transferred from one Railway to another at his own request the transferred railway servant should be placed below all existing confirmed as well as officiating and temporary railway servants in the relevant grade in the promotion group in the new establishment, irrespective of his date of confirmation or length of officiating or temporary service."

18 The next Railway Board Circular No. 95/95 dated 19.9.1965

which has been relied on by the respondents in the reply statement reads as follows:

"It has been reported that different procedures are adopted by divisions/workshops in fixing up the seniority of staff on Inter-Railway/Inter-Divisional transfer.

The matter was referred to Railway Board. It has been clarified by the Board that seniority on request transfer from one seniority unit to another seniority unit should be assigned with reference to the date the employee physically joins the new unit.

Past cases done in different manner are not to be dealt with as per the clarification now made available. That is henceforth uniformly the date of physically joining only will decide the seniority. In the past if in any case seniority has been assigned notionally, it should be made uniformly in all cases and it is not to be reopened on this clarification enforceable uniformly in all future cases."

19 The Railway Board's orders No. RB 16/86 dated 21.1.1986 has been incorporated in para 312 of the Indian Railway Establishment Manual Vol. I. Instructions in this para are being followed uniformly in all cases for determination of seniority in inter-divisional transfers.

20 The Railways have also prescribed the application format for inter railway/inter-divisional transfer, in which it has stipulated certain terms and conditions and the employees are required to give their willingness to these conditions. The conditions 3 and 8 thereof prescribe a declaration that the applicants are willing to carry out the transfer from one Railway unit to another on the terms and conditions

stipulated by the Railway.

21 There has been also a long history of litigation on this issue in various courts. According to the pleadings in these OAs, as far as the Diesel Assistants are concerned, the litigation started with the dieselisation of railway tracks in Trivandrum and Palghat divisions and thereby the staff working in the Steam Loco Tracks becoming surplus. Many such staff were identified as Steam Surplus and re-deployed/appointed in other works. Those who were left behind were sent for Diesel conversion training. At this juncture the earlier staff re-deployed moved this Tribunal in O.A. 631/91. While matters stood thus, the Railway went for direct recruitment in Palghat and Trivandrum Divisions. A merit list was prepared and divided into two panels for Trivandrum and Palghat Divisions. O.A. 1735/91 was filed by those Groups who were aggrieved by the fact that a common merit list was not followed. Yet another third category of applicants who were regular Diesel Assistants of Palghat Division who requested for transfer to Trivandrum division were not given priority because of direct recruitment , approached this Tribunal in O.A. 461/91.

O.A. 461/1991

22 The applicants herein were Diesel Assistants of Southern Railway Erode seeking transfer to Trivandrum Division against the existing and future vacancies in preference to all other recruitment, with benefit of seniority. Reliance was placed on a letter dated

17.12.1985 of the Chief Personnel Officer, Southern Railway that those who applied for inter-divisional transfer have preference over direct recruitment. The applicants felt aggrieved by Employment News notification by the Railway Recruitment Board for filling the vacancies by direct recruitment when their registration for transfer to Trivandrum Division was pending from 1990. The applicants have also relied on the earlier decisions of the Tribunal in O.A. Nos. 142/91 and 633/91. The OA was disposed of directing that the transfer of the applicants should be done pari passu with the direct recruits and the direct recruits should be inducted to the Trivandrum division only after the Diesel Assistants who had been registered on or before 3.3.1990, have been exhausted.

23 The Railway authorities expressed their difficulties in implementing the various orders of this Tribunal and filed several review applications viz. RA 21/92, RA 48/92, etc. and in order to resolve the difficulties expressed by the Railway authorities, these Applications and other similar OAs were disposed off by a common order. A draft scheme was prepared by mutual agreement between the learned counsel representing the rival parties and the Review Applications and others were disposed of under general consensus on the lines of the aforesaid scheme. As seen from the details of the scheme incorporated under the above orders of the Tribunal, priorities have been given to the different categories including the applicants. The first priority was given to Steam Surplus staff of

Palghat and Trivandrum Divisions and it was directed to send them for Diesel Conversion training. The second priority was for Diesel Assistants of Palgaht Division registered and transferred to Trivandrum Division upto 3.3.1990 to be absorbed in a phased manner after the first priority is exhausted. The third priority was for the direct recruits by the Railway Recruitment Board. Their absorption would be considered as and when vacancies arise under category-I & II and they have to be absorbed in the strict order of combined seniority list. The relevant portion of the order is extracted under:

**"Scheme of Priorities of absorption as Diesel Assistants in Palghat and Trivandrum Divisions**

I. Steam surplus staff of Palghat Division and Trivandrum Division in whose favour final orders have been passed by this Hon'ble Tribunal and others team surplus staff whether redeployed or otherwise and whose applications are pending before this Hon'ble Tribunal and the remaining steam surplus staff who satisfy the conditions prescribed by the Railway Board in their circular letter dated 15.3.1990 and who have not approached the Hon'ble Tribunal will be sent for diesel conversion training course in a phased manner from the next course onwards in the order of their seniority for eventful absorption as Diesel Assistants in the order of their inter-se seniority. The steam surplus staff who have not approached this Hon'ble Tribunal will have to express their option for being sent for such training within a period of four weeks from the date of the Administration call for their option which will not be later than 31.7.1992. Subject to the final orders already passed by this Tribunal so far, the requirement of fulfilling the conditions prescribed by the Railway Board in their circular letter dated 15.3.90 for purposes of being sent for diesel conversion training is applicable to those steam surplus staff who have not yet been sent for training or who have not obtained any final order from this Hon'ble tribunal.

II The Diesel Assistants of Palghat Division who have registered for transfer to Trivandrum division upto 3.3.90 will be appointed in Trivandrum Division in pursuance of the orders

of the Hon'ble Tribunal in O.A. 461/91as and when vacancies arise in a phased manner after priority I is exhausted.

III. The candidates recommended by the Railway Recruitment Board, Trivandrum in pursuance of the Employment Notice NO. 1/90 published on 3.3.90 will be sent for training after training in priority 1 is exhausted in Palghat Division and Priority I and II are exhausted in Trivandrum Division strictly in the order of their merit position in the combined list and their absorption as Diesel Assistants will be considered strictly in their merit order as and when vacancies arise after exhausting the priorities and against vacancies in Trivandrum Division and Priority I in Palghat Division even though some of the candidates in the lower order of merit have already completed training and awaiting absorption. Those directly recruited candidates who have already completed training will be discharged and their cases will be considered in their turn subject to availability of the vacancies.

IV. In view of the lesser number of vacancies as Diesel Assistants being available due to large number of steam surplus staff in Palghat and Trivandrum divisions and without treating it as forming a precedent, the candidates recommended by the Railway Recruitment Board, Trivandrum, in pursuance to Employment Notice No.1/90 will be considered for training and absorption against vacancies of Diesel/Electrical Assistants in any other Division as the Administration may deem fit as a onetime measure for filling up the vacancies as on 1.7.92 in the strict order of the combined merit list subject to the the candidate giving his consent for such appointment in any other Division after successful completion of the training. Those who are thus appointed in any other Division will have no right to claim to go to Trivandrum/Palghat Divisions except by following the normal procedure for inter-divisional transfer."

O.A. 1300/1997

24 The applicants were Assistant Station Masters from Trichirappally Division transferred on request to Trivandrum Division in 1988. They were aggrieved by the seniority given to them below the respondents who were transferred from Madurai Division but have joined earlier. The application was dismissed by this Tribunal

holding that inter divisional transfer though permissible do not confer a right on the railway servant to enforce a legal right.

O.A.1046/98

25 The application was filed for a declaration that they are entitled to be considered for appointment by transfer to Trivandrum division as Diesel Assistants/Assistant Drivers in preference to direct recruits/Open Market candidates, who were undergoing training for appointment. The Tribunal held as follows:

"4.....Though inter divisional transfer is permitted and is to be given preference on open market candidates the provision in that regard does not cloth the employee with an indefeasible right for transfer to a division of his choice which could have been forced through an application in that behalf. The paramount consideration is the exigency of service. If for any reason it is not administratively feasible to accede to the request of an employee working in the division for transfer to another division, the Tribunal would not interfere and issue a direction....."

O.A.691/1999

26 The applicants were Station Masters Grade-III who came on inter-divisional transfer to Trivandrum Division from Trichirappally Division, Southern Railway. They relied on the earlier decisions of this Tribunal in O.A. 956/90 and 160/91 wherein the Tribunal directed that the applicants should be transferred with benefit of seniority granted to some private respondents in the OAs. In these OAs it had been held that if the request for transfer of a person has been accepted on an earlier date than that of another, and for any administrative reasons the former was not relieved but in the meanwhile the latter was already relieved and joined there, then in such cases the respective dates on which the transfers were allowed

and accepted should govern the question of fixing of their inter-se seniority. Relying on the Apex Court's judgment in Swapan Kumar Pal and Ors Vs. S. Chakraborty and Ors., the Tribunal in O.A 691/99 came to the conclusion that it is difficult to hold that the respective dates on which the transfers were allowed and accepted should govern the question of fixing their inter-se seniority and therefore declared that the judgment in the OA Nos. 956/90 and 160/91 is per incuriam and declared that the seniority is to be governed by the provisions of Para 312 of IREM Vol. I only. This order was taken in Appeal before the Hon'ble High Court in OP Nos. 16379/2002, 16898/2002 and 17451/2002. The Hon'ble High Court considered the observation of the Tribunal that the earlier orders were declared to be per incuriam but concluded that the challenge to the same could not be accepted as the petitioners were not successful in producing necessary records and for non-joinder of necessary parties. Consequently the Hon'ble High Court observed "that necessarily the view taken by the Tribunal can only be sustained. Consequently this judgment shall stand followed in other original petitions as well". These Writ Petitions were dismissed.

27 We have examined the prayers of the applicants herein against this background of the rules and instructions and the history of litigation as narrated above. The applicants in O.A. Nos. 64/2004 and 423/2004 are inter-divisional transferees from Madras Division and they challenge the higher seniority given to the respondents who

are direct recruits in the Trivandrum Division. Most of the respondents are common in both the OAs but R-5, 6, 7 and 29 in O.A. 423/04 are inter divisional transferees. The applicants in O.A.225/2004 are inter-divisional transferees from Palghat Division. They challenge the seniority of the respondents who were transferred along with them on inter-divisional transfer basis from the same division in addition to the respondents who have been commonly impleaded in the other OAs who are direct recruits.

28 Notwithstanding the different categories to which the impleaded respondents belong in all the three OAs, the main question to be decided is what should be the principle to be followed for determination of seniority of inter-divisional transferees vis-a-vis those who are in the transferred cadre irrespective of whether they are direct recruits or mutual transferees or transferees from other divisions. A reading of the instructions/rules contained in the IREM Vol.I would show that there is no ambiguity in the principle to be followed in all such cases as the rules regarding regulated seniority are contained in Chapter-III of the IREM Vol. I which have been in force for quite some time and have not been subjected to frequent changes. Para 302 to 308 of the IREM Vol. I deal with the seniority of direct recruits. Para 309 deals with seniority on promotion, Para 310 deals with seniority on mutual exchange, para 311 with seniority on transfer in the interests of administration and para 312 deals with seniority on transfer on request. Here we are concerned with

provisions of Para 310 and 312 which are extracted below:

310: MUTUAL EXCHANGE:- Railway servants transferred on mutual exchange from one cadre of a division, office or railway to the corresponding cadre in another division, office or railway shall their seniority on the basis of the date of promotion to the grade or take the seniority of the railway servants with whom they have exchanged, whichever of the two may be lower.

X    X    X    X    x    X    X    X    X    X

"312:- TRANSFER ON REQUEST:- The seniority of railway servants transferred at their own request from one railway to another should be allotted below that of the existing confirmed, temporary and officiating railway servants in the relevant grade in the promotion group in the new establishment irrespective of the date of confirmation or length of officiating or temporary service of the transferred railway servants.

Note:- (i) This applies also to cases of transfer on request from one cadre/division to another cadre/division on the same railway (Rly. Bd. No. E(NG) I-85 SR 6/14 of 21.1.1986)

(ii) The expression "relevant grade" applies to grade where there is an element of direct recruitment. Transfers on request from Railway employees working in such grades may be accepted in such grades. No such transfers should be allowed in the intermediates grades in which all the posts are filled entirely by promotion of staff from the lower grade(s) and there is no element of direct recruitment.(No.E(NG)1-69 SR 6/15 dated 24.6.1969)ACS-14

29 A reading of these Rules will make it very clear that in the case of mutual transfers the seniority would be fixed on the basis of the date of promotion to the grade or the seniority of the railway servant with whom the exchange has taken place whichever is lower. In the case of transfer on request the seniority will be allotted below that of the existing confirmed temporary and officiating railway servants in the promotion group in the new establishment irrespective of date of

confirmation or length of officiating or temporary service of the transferred employee. In other words, this would mean that the transferred railway servant can take seniority only from the date of joining the new establishment and he will be placed below all those who at that point of time have joined and are serving in that establishment/unit. The source from which they have come whether they are temporary or officiating or direct recruit etc. are irrelevant for determination of the seniority of the transferred employee. This position has been confirmed by the Railways again by circular No 95/95 wherein it has been specifically stated that seniority on request transfer to another seniority units shall be assigned on the date when he physically joins the unit. There is thus no ambiguity in regard to transferred employee. The rationale of this policy has evolved from the provision in the Rule 226 of the IREM that railway employees have no right for a transfer. A consideration of the request for transfer is only in the nature of a concession and when such a concession is sought the party concerned has also a corresponding obligation to observe certain conditions which are attached to such consideration and the main conditionality in such cases being loss of seniority. This is intended to protect the rights of the individuals who are already working in the said unit and for the same reasons it has been further laid down that such conditional request transfers would be allowed only against the quota for direct recruits and not against promotional quota which will be adversely affecting the employees who are serving in the unit and aspiring for promotion. It is on this

salutary principle that the request for transfers from one unit to another is being considered not only in the Railways but in all administrative organisations. Hence as far as the rule position is concerned the applicants cannot have any grievance.

30 From the point of view of legality also <sup>and</sup> the ratio of the decisions in the earlier OAs referred to above, the position is not different. This Tribunal has been consistently holding the view that those who come on inter-divisional transfer can have the seniority only from the date of joining the new unit and that such persons have no indefeasible right for a transfer to a division of his choice which could be enforced through legal process. We have already extracted the decision in O.A.1046/98 and we reiterate the same. In fact the respondents in that O.A. are included in the array of respondents herein. The only differing judgment was that in O.A. 361/89. The applicants relied on this judgment and that in O.A. 461/91 and argued that a request transferee should be given from the date of regular appointment to the grade. In O.A. 461/91 the applicants approached this Tribunal aggrieved by the issue of employment notice which was issued by the Railways during the pendency of registration of transfer to Trivandrum Division and this Tribunal directed that a direct recruit should be inducted to the Trivandrum Division only after the Diesel Assistants who had registered for transfer to Trivandrum Division on or before 3.3.1990 are fully appointed. This was only a limited direction in the context of the

employment notice issued and also the applicants are not falling within that cut off date for registration.

31. In the present case the applicants have never raised any objection when direct recruitment was proposed to be made and notice was issued through Employment Notification. They had filed O.A. 1413/96 for a direction to register their name for inter-divisional transfer immediately below the 14 persons who had registered their name by order of this Tribunal in the OA. The applicants got their name registered w.e.f. 3.2.1997. No embargo was issued by the Tribunal on proceeding with the employment notice published on 26.9.1996 and the direct recruits came to be appointed thereafter in 1998. By virtue of their registration enabling consideration of their request transfers the applicants cannot enforce any right to be considered for transfer in supersession of all other modes of recruitment and exigencies of service. As already stated this concession has to be granted at the discretion of the administrative authorities keeping public interest in view. The Railway Administration considered that the applicants could not be relieved on account of exigencies of service in the unit in which they were working. They cannot be faulted for the same. The applicants' submissions that had they joined the Trivandrum Division on a date earlier to the date of joining of the direct recruits they would have become senior etc. are only imaginary. The conditions of transfer were known to them and provided in the instructions in force and

with full knowledge of these rules the applicants have registered their names for transfer.

32 Yet another order of the Tribunal pointed out by the applicants is that in RA 21/92 in O.A. 1735/91 and the applicants have contended that there is a binding direction in the order of the Tribunal to transfer the employees to Trivandrum Division which is actually incorrect. This Tribunal evolved a scheme for absorption of the employees in the Trivandrum Division as a one time measure taking note of the fact that there are less vacancies in the Trivandrum Division due to availability of more Diesel Surplus Employees. The Tribunal directed the respondents to appoint the applicants in any other Divisions subject to their consent. This Tribunal while prescribing the broad outlines of the scheme, specifically directed as under:.

"IV In view of the lesser number of vacancies as Diesel Assistants being available due to large number of steam surplus staff in Palghat and Trivandrum Divisions and without treating it as forming a precedent, the candidates recommended by the Railway Recruitment Board, Trivandrum, in pursuance to employment Notice No.1/90 will be considered for training and absorption against vacancies of Diesel/Electrical Assistants in any other Divisions as the Administration may deem fit as a onetime measure for filling up the vacancies as on 1.7.1992 in the strict order of the combined merit list subject to the candidate giving his consent for such appointment in any other division after successful completion of the training. Those who are thus appointed in any other Division will have no right to claim to go to Trivandrum/Palghat Divisions except by following the normal procedure for inter-divisional transfer."

33 Therefore, the applicants have to be considered only by following the normal procedure for inter-divisional transfer and it was made very clear in the beginning itself that they do not have any such right or preferential claim.

34 As far as the directions s in O.A. 160/91 are concerned, it has already been stated above that these directions were held to be per incuriam in the decision in O.A. 691/99 which was confirmed by the Hon'ble High Court of Kerala. Though these orders were in respect of the category of Assistant Station Masters, the principle of seniority is applicable to all categories. Hence the orders of the Tribunal in O.A. 691/99 attained finality and the decision in the said OA being that "when the question of seniority is governed by provisions of Para 312 of IREM Vo. I the seniority is to be fixed in terms of Para 312 of IREM Vol. I." We are in full agreement with the above decision. Applying this principle to the applicants case in O.A. 64/2004 the applicants have joined the Trivandrum Division on 25.6.99, 28.6.99, 1.7.99, 11.2.99, 16.6.99, 18.6.99, 24.6.99 and 7.7.1999 respectively and they were granted seniority from the date of joining as per Para 312 of IREM Vol.I. it is legally correct. The respondents 5 to 19 were appointed against quota meant for SC/ST/OBC to the posts of Diesel Assistants w.e.f. 8.12.1998 after completion of the prescribed training course and their seniority has been fixed from the date of declaration of results. The respondent No. 20 failed in the first attempt and he was sent for training again

and was absorbed on 16.11.1999. The applicants therefore cannot get seniority above these respondents. As regards respondents 21 to 23 they have joined Trivandrum Division on mutual transfer and their seniority is governed by the provisions of Para 310 of the IREM Vol.I according to which they will take the seniority of the railway servants with whom they have exchanged or on the basis of their date of promotion whichever is lower. The applicants cannot have a grievance over these respondents.

35 In respect of the applicants in O.A. 423/04 the same principle will apply to them as far as determination of seniority from the date of joining. In this O.A. the respondents 21,24, 25 & 27 are those who have come on mutual transfer and the remaining are direct recruits and the same contentions as in the earlier OA has been taken in this case also based on the same precedents in arriving at the decision. The provisions of Para 310 governs seniority in respect of mutual transfers. It is difficult to hold that respective dates on which the transfers were allowed should govern the seniority of the employees on mutual transfers.

36 As regards O.A 225/2004 in addition to impleading the direct recruits the applicants have also impleaded some of the transferees who were transferred along with them from the Palghat Division in the same order dated 1.6.1998 in Annexure A-1. For example respondent No. 21 and some who have been transferred

subsequently from Madras Division by order dated 9.2.1999. The applicants have contended that the delay in relieving the applicants was due to administrative reasons and that the case of the applicants was not properly considered for determining the seniority as their representations were rejected summarily. According to them the seniority of the applicants has to be determined on the basis of the order indicated in Annexure A-1. To buttress this argument they have produced an order of this Tribunal in O.A. 899/2004 wherein the question of inter-se seniority of persons transferred from the same division was considered and it was held that the practice being followed was that the seniority of the transferred division in such cases was based on the seniority position in the previous division notwithstanding the date of relief. The O.A. was allowed on the ground that the practice being followed in various Divisions protecting the relative seniority in the Parent Division would prevail when there is no rule. It was therefore declared that the seniority accorded to the applicant in that OA was not in conformity with the practice. We can agree with this decision to the extent that it can be followed in cases where transfers are effected from ~~xxx~~<sup>the same</sup> division to another by the same order, but the persons are relieved on different dates and not in accordance with the seniority indicated in the order. From the facts in the ~~xxxxx~~ O.A. 225/04 it can be seen that the applicants are placed at Sl. Nos 55 to 58, 69 to 72, 74 to 78. The respondent No. 21 is placed at Sl. No. 61. Even if it is considered that the principle enunciated in the above OA 899/04 is to be followed, it is only the

applicants No. 2, 7 and 10 who would be in seniority above the respondent No. 21. As regards inter se seniority of transferees from other Divisions to Trivandrum Division even if they had been included in the common order, it is difficult to accept this principle as administrative exigencies in each division will be different for relieving the employees on different dates according to the needs of the respective division. We cannot agree when the employees are transferred on request basis, their seniority in the parent divisions would be maintained in the transferred division irrespective of the dates of relief. This principle can be applicable for determination of the inter-se seniority of a Group of employees transferred from the same division. When persons are transferred from different divisions particularly when divisional transfers have been decentralised the date of joining as already held in terms of Para 312 of the IREM determines the seniority. This would be also in alignment with the principle of seniority applicable to direct recruits enshrined in Paras 302-305 of the IREM. Seniority of a direct recruit is determined by the date of joining in the post subject to maintenance of inter-se seniority in the order of merit. When a candidate is not able to join duty within a responsible time, according to Para 305 he can be placed below all the candidates in the same order of appointment or even below candidates selected at subsequent examinations. Therefore the principle of determination by date of joining on transfer on request is quite justified and equitable.

37 In the light of the above discussions, settled legal position, and following our decisions in O.A. 691/99, O.As 64/2004 and 423/2004 are dismissed. O.A. 225/2004 is disposed of with the direction to the respondents for observing the inter-se seniority among the employees of the same division transferred by a common order. The respondents shall examine whether there is any change required in the seniority applying the above principle and if so they shall revise the seniority to that extent after following due procedure of giving notice, etc. to the affected parties. No costs.

Dated 10.4.2007.

GEORGE PARACKEN  
JUDICIAL MEMBER

SATHI NAIR  
VICE CHAIRMAN

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