

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 452 of 2007

Thursday, this the 26th day of June, 2008

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE DR. K S SUGATHAN, ADMINISTRATIVE MEMBER**

P.B. SIAMLAL,
S/o. P.K. Bahuleyan,
Station Master Grade III, Pasur R.S. & P.O.,
Southern Railway, Palghat Division,
Permanent Address: Padathu House,
Thuruthipuram, Moothakunnam P.O.,
Ernakulam District : 683 516

... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India represented by
The General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai : 3
2. The Divisional Railway Manager,
Bhuvasaval Division, Bhusaval,
Jalgaon, Central Railway, Maharashtra.
3. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat. ... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant was initially appointed as Assistant Station Master at Bhusaval Division of the Central Railway on 13-08-1990 in the pay scale of Rs

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1200 – 2040 (RPS Rs 4,500 – 7000). He got his regular promotion as Station Master Grade III in the scale of pay of Rs. 1400 – 2300 (RPS 5000 – 8000) during 1993/94. Again, he was promoted on regular basis as Station Master Gr. II in the scale of Rs 1600 – 2660 (RPS 5,500 – 9,000/-) in October 1997.

2. Provision exists for Inter-Zonal/Inter-Divisional Transfers vide Para 312 of the Indian Railway Establishment Manual (IREM) Vol I, in any grade where there is an element of Direct Recruitment. In so far as the cadre of Station Master is concerned, such an element of Direct Recruitment is available in the grade of Assistant Station Master (1200 – 2040 = Rs 4,500 – 7,000) and Station Master Gr.II (Rs 1600 – 2660 = Rs 5,500 – 9000). The applicant, While working in the post of Assistant Station Master, in January, 1992 applied for Inter Railway One Way Request Transfer, in which he had made his declaration that he would accept bottom seniority under the rule as his transfer is at his own request. However, before the aforesaid application could fructify and he was transferred, he had been, as aforesaid, promoted to the two higher grades, the latest being one with an element of Direct Recruitment. It was in February, 1999 that the transfer of the applicant materialized and the applicant was relieved from Bhusaval Division on 24-02-1999 and joined the Palghat Division on 10-03-1999 in the grade of ASM in the scale of Rs 4,500 – 7,000 and his pay was fixed at Rs 5,375 + 75 in the scale of Rs 4,500 – 7,000 as per the extant rules. According to the applicant, at the time

of his transfer to Palghat Division, there were vacancies against the 15% direct recruitment quota in the grade of Station Master Gr. II (Rs 5,500 – 9,000).

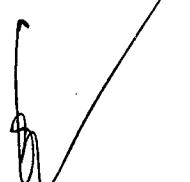
3. According to the applicant, one Shri V. Viswanathan, who was initially appointed in the South Central Railway as Assistant Station Master, applied for Inter-Railway one way Transfer on request to Southern Railway and was accommodated in the Palghat Division in the scale of Rs. 4,500 – 7,000, but at a time when the said Viswanathan was in the higher grade, like the applicant herein, of Station Master Grade II (Rs 5,500 – 9,000). The said Viswanathan joined Palghat Division a month after the date of joining by the applicant to the post as ASM at Palghat Division. The said Viswanathan had filed OA No. 187/2004 before the Madras Bench of the Central Administrative Tribunal for protection of last pay drawn and fitment in scale of Rs 5,500 – 9,000 and the Tribunal vide order dated 15-10-2004 disposed of the OA holding that the applicant would be entitled to the same relief that would be granted in the Writ Petition (No. 16172/98) pending before the Hon'ble High Court of Madras and when disposed. The Hon'ble High Court had dismissed the said Writ Petition filed by the Railways along with Petition Nos. 4037/04 and 4028/04; the writ petition filed by the applicants before the C.A.T. was allowed. The Railway Board vide letter No. F (E) II/2005/FOP/2 dated 14-10-2005 in WP No. 4027/04 and 4028/2004 had directed the Southern Railway to comply with the order of the High Court. In compliance with the same, the said Viswanathan was fitted in as Station Master Grade II in

the scale of Rs 5,500 – 9,000 on his transfer to Palghat Division from Guntakkal Division of South Central Railway w.e.f.08-04-1999 and his pay was re-fixed vide office order T. 52/05 dated 28-12-2005. This decision was communicated to some of the Station Masters Gr. II, whose seniority would be affected, by way of a show cause notice, vide Annexure A-1. Copy of the judgment dated 08-07-2005 in W.P. Nos 16172/98 and connected petitions is at Annexure A-2.

4. It was on coming across the aforesaid show cause notice at Annexure A-1 that the applicant had penned a representation dated 05-06-2006 seeking an identical benefit, as he is identically situated as the said Shri V.Viswanathan, vide Annexure A-3. However, by the impugned Annexure A-4 order, the respondents have rejected the claim of the applicant, stating that in the case of V. Viswanathan, the same was on the basis of a Court order and that in the case of the applicant, his pay has been fixed rightly under the provisions of the extant rules. Hence this O.A seeking the following relief(s):-

(i) Call for the records leading to the issue of Annexure A/4 and quash the same.

(ii) Declare that the applicant is entitled to the same benefits as were granted to Shri Viswanathan in terms of Annexure A1 and direct the respondents to extend the benefit of Annexure A1 and A2 to the applicant also and grant all consequential benefits, including the arrears thereof;



(iii) Award costs of and incidental to this application;

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

5. Respondents have contested the O.A. Consciously, they have raised the issue of limitation. Their contention on merit, without any prejudice to the aspect of limitation, is that the applicant having accepted the terms and conditions of reversion and bottom most seniority while applying for Inter Railway One Way Transfer on own request. Again, the respondents have referred to yet another case of one Shri L. Viswanathan whose case is identical to that of the applicant and wherein, the Central Administrative Tribunal, Madras Bench had dismissed the OA preferred by the said Shri L. Viswanathan.

6. The applicant had filed his rejoinder, contending that even without filing a copy of the order in L. Viswantahan, the Respondents cannot claim that the case of the applicant and that of the said L. Viswanathan are identical.

7. The counsel for the applicants has reiterated the contentions as contained in the O.A. and rejoinder and similarly, counsel for the respondents has emphasized the decision in the case of L. Viswanathan. As the facts in the case of L. Viswanathan are not available in the pleadings, after hearing the parties, order was

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reserved with a direction to the respondents to make available a copy of the decision in the case of L. Viswanathan.

8. The said copy of the order in L. Viswanathan has been made available by the counsel for the respondents.

9. Before referring to the merit of the case, the preliminary objection raised by the respondents should be adverted to. Limitation is the objection. True, the applicant was transferred in March, 1999 and this OA has been filed in 2007. But what is to be seen is that the cause of action has arisen not just at the time when the applicant was transferred. In fact, when in an identical case, there has been a decision by the Court and the same has attained finality, for extension of that decision in the case of the applicant the cause of action could be treated as arisen at that time. From that point of view, the order to implement the decision of the High Court's Judgment vide Annexure A-2 is dated 11-05-2006. The applicant, vide Annexure A-3 represented for a similar benefit on 05-06-2006, just within 35 days. If the claim of the applicant in the earlier case had been rejected, there was no question of the applicant applying for the same. On the basis of such a decision by the Court, one could stake his claim. The case of *Lt. Governor of Delhi v. Dharampal, (1990) 4 SCC 13*, is the precedent in this regard. In the said case, the Apex Court has held as under: -

"2. The matrix of the case, in short, is that the services of the respondents who were appointed as constables in Delhi Police in

the years 1964-66 were terminated because of their participation in the agitation along with other police constables in April 1967.

..... Later, in view of the assurance given in the Parliament by the then Home Minister, prosecutions were withdrawn and the dismissed constables were reinducted into service. Some of the dismissed constables filed Civil Writ Petition Nos. 26 of 1969 and 106 of 1970 in the High Court of Delhi and High Court by its judgment dated October 1, 1975 quashed the order of termination and the petitioners in that case were declared to be throughout in service.

3. Subsequently, some other constables whose services were similarly terminated but were not reinstated in service even as fresh entrants, filed writ petitions in the High Court of Delhi being C.W.P. Nos. 270 and 937 of 1978. These writ petitions were heard by Anand, J. who rejected the contention raised by the respondents in the writ petitions regarding the delay and laches in moving the writ petitions, allowed the writ petitions quashing the impugned order of termination declaring that the petitioners will be deemed to have been in service and would be treated as such subject to certain conditions. The Police Administration filed LPA against this judgment, which was dismissed on August 29, 1983. Thereafter the respondents herein filed the writ petitions in the High Court against the order of termination of their services praying for quashing of the orders of termination and for reinstating them in service with effect from the respective dates of their termination of services and to treat them as being in service throughout and to award them all consequential benefits. These writ petitions were subsequently transferred to the Central Administrative Tribunal, Delhi. The Tribunal while rejecting the plea of the respondents that the petitioners should be denied any relief because of delay and laches held that the claims of the petitioners (respondents in these appeals) was identical to the claim of the petitioners in C.W.P. Nos. 270 and 937 of 1978 whose petitions were allowed by the High Court of Delhi. The Tribunal further held that the petitioners were entitled to the same relief as was granted to the petitioners by Anand, J. in C.W.P. Nos. 270 and 937 of 1978.

4. Against this judgment and order the instant appeals on special leave have been filed before this Court.

5. We have heard learned counsel for the parties. Considering the facts and circumstances as well as the judgment rendered by

Anand, J. in C.W.P. Nos. 270 and 937 of 1978, we dismiss the appeals and confirm the judgment and order dated November 26, 1987 of the Tribunal with the modification that the respondents, excepting respondent No. 24, Kanwal Singh who is dead, will file affidavits stating whether they had been gainfully employed or not during the period of the termination of service and if so employed, they will state further in the affidavits the period of such employment. The appellants may verify the same and will be at liberty to deduct the pay and allowances during the period of such gainful employment while determining the arrears of salary and allowances for the period of termination. We, however, make it clear that for the purposes of seniority, promotion and retiral benefits, the entire period between termination and reinstatement shall be taken into account."

10. The above decision in Dharampal goes to show that when an order has been given by a Court on the basis of the same similarly placed individuals could move the court for an identical relief. Hence, the limitation aspect is answered in favour of the applicant and against the respondents.

11. Now on merits.

12. In the case of L. Viswanathan, there was a reference to the Writ Petition No. 16172/98 in the following terms: -

"3(d). The matter is covered by the decisions of the Hon'ble High Court in W.P. 16172 of 1996 and etc., batch dated 8.6.2005 and W.P. 16562 and etc., batch dated 7.11.2005.

"30(a). The Hon'ble High Court in W.P. 16172/98 etc., batch dated 8.7.1985 was dealing with a case in which the applicant had requested to protect the last pay drawn. In that case, the appellant was working as Station Master Grade III, applied for inter Railway request transfer to Southern Railway as Assistant Station Master. The categorical case of

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the applicant was that his claim for promotion in the scale of Rs. 1400-2300 was not on regular basis. The case of Railway Administration was that the pay protection was denied on the ground that he had not completed two years in the scale of Rs. 1400-2300 in the Parent Division and there was no mention about the reduction in the scale of pay as one of the conditions for transfer in that case. Their Lordships also found that the Central Administrative Tribunal merely applied and followed the decision rendered by the Ernakulam Bench of the Tribunal. The plea of the Railway Administration in that case was that the post of Station master did not have the element of direct recruitment. The Hon'ble High Court held that there is an element of direct recruitment to the post of Station Master to the extent of 25% and following the judgement of another Division Bench reported in 2002 (2) ILN 352 allowed the OA. The Hon'ble High Court was not dealing with the case of reversion and transfer thereafter. Their Lordships also distinguished the judgement of the Hon'ble Supreme Court in Comptroller & Auditor General of India vs. Farid Sattar's case on the ground that there was no condition stipulated for technical resignation."

13. The Madras Bench of the Tribunal distinguished the case on facts, in respect of L. Viswanathan, vis-à-vis the respondents in the Writ Petition No. 16172/98 etc.

14. Now the question is as to whether this Tribunal has to follow the latest decision of the Madras Bench in L. Viswanathan or the case of V. Viswanathan. Answer to this rests with the fact as to whether the case of the applicant is identical to that of V. Viswanathan or L. Viswanathan or if by any chance, the case as in L. Viswanathan and the respondents in the Writ Petition No. 16172/98 etc., be one

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and the same and by an error if these two have been distinguished, whether the case has to be referred to a larger bench.

15. For entering into such a compare and contrasts in the facts of the case, it should be essential to have a thumb nail sketch of the facts of the case of the respondents in WP No. 16172/98 etc., and that of L. Viswanathan. The same are as under:-

(i) Case of respondents in CWP No. 16172/98:

"3. For convenience, we shall refer the case of the parties in W.p. No. 16172 of 1998.

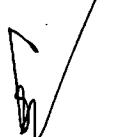
(a) The applicant before the Tribunal / second respondent in this writ petition by name S. Santhanam, approached the Central Administrative Tribunal, for setting aside the order No. T/P. 481/I/3/SMS/Pilot dated 22.04.1994 and order No. T/P. 721/SO/94 dated 17.10.1994 issued by the Divisional personnel officer, Southern Railway, Tiruchirappalli Division as illegal and consequently direct the said authority to protect the last drawn pay of the applicant on the date of his transfer to southern Railway and to pay his salary with all consequential fixation and revision and other benefits.

(b) According to the applicant , he joined the Railway service as Assistant Station master on 19.02.1988. He was appointed in the Western Railway and in due course, he was promoted to the scale of Rs. 1400-2300/. After he had functioned as such in the scale of Rs. 1400-2300 for more than two years in the Western Railway, he made a request for transfer to Southern Railway. By office order dated 22.05.1992, he was transferred to Southern Railway and posted in Tiruchirappalli Division. The transfer having been ordered at his request, he has to forego his seniority in the category of Assistant Station Master. The order dated 22.05.1992, thus placed the applicant as

junior to all permanent, temporary and officiating Assistant Station masters in the Division to which he was transferred on the date of his joining the new seniority unit.

(c) After the applicant joined the new seniority unit in Southern Railway, he was fitted in the lower scale of Rs, 1200-2040, to which the applicant did not have any objection, as that was the scale at the bottom of the seniority unit. However, the actual pay that he was drawing at the time of transfer, viz., the scale of Rs. 1400-2300 is to be protected and such payment is in consonance with the provisions of Indian Railway Establishment Code and the manual as well as the conditions of transfer. While so, the Divisional Personnel Officer, Southern Railway, Thiruchirappalli Division issued an order dated 22.04.1994, refixing the pay of the applicant by reducing it considerably in the scale of 1200-2040. The said order is illegal and arbitrary; identical action of the same Southern Railway has been held to be illegal in the case of similarly situated employees by the Central Administrative Tribunal, Ernakulam bench in O.A. No. 333 of 1992. In spite of the said order, the Thiruchirappalli Division has fixed the applicant's pay to less than what he was drawing before his transfer. It is also contrary to para 1313 (a) (ii) of the Indian Railway Establishment Code Volume II.

(d) The Railway Administration filed a reply statement before the Tribunal, wherein it is stated that while the applicant was holding the post of Station Master Grade III in the scale of Rs. 1400-2300, he applied for Inter-Railways request transfer to Southern Railway on bottom seniority in the scale of Rs. 1200-2040 as Assistant Station Master. His request was accepted and the applicant joined the Thiruchirappalli Division on 29.06.1992 as Assistant Station master in the scale of Rs. 1200-2040 on bottom seniority. His pay was refixed in the scale of Rs. 1200-2040, after joining Thiruchirappalli Division, as the orders then in force. The judgement of the Central Administrative Tribunal (Ernakulam Bench) is not applicable to the case of the applicant, since the applicant in O.A. no. 333 of 1992



had been confirmed in higher grade of Rs. 1400-2300 in Palghat Division.

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6. The Central Administrative Tribunal (Madras bench), on going through the materials and the order of Central Administrative Tribunal (Ernakulam Bench) dated 10.12.1996 in O.A. No. 1041 of 1995, wherein an identical issue had been decided in favour of the applicant therein and also taking note of the fact that following the said decision, Railway Board circulated the same by its letter dated 14.08.1997, affording pay protection to the applicant therein, allowed the application."

(ii) The facts in the case of L. Viswanathan, as could be culled out from the decision dated 15th December, 2006 are as under:-

"2. The brief facts of the case are as follows:

The applicant was initially appointed as Assistant Station master in Hubli Division of the South Central Railway. He was promoted as Station Master Grade II in the scale of Rs. 1600-2660 / 5500-9000 (IV / V CPC recommendation respectively w.e.f. 26.8.1997. While working so, the applicant submitted an application dated 10.02.1999 for inter-railway / inter divisional one-way transfer from Hubli Division of Southern Railway. The applicant submitted a declaration to the effect that he will rank junior to all permanent / officiating and temporary Assistant Station Masters in the scale of Rs. 1200-2040 in Southern Railway on the date of his joining the new seniority unit. Sanction was accorded by the third respondent by order dated 18.02.2000 for the request of 39 employees, of which, the applicant was one among them (Annexure R2). One of the conditions governing the said inter Railway transfer set out in the said order was to the effect that he will rank junior most to all employees in the scale of Rs. 4500-7000 on the date of joining the new seniority unit. Based on this transfer order, the Divisional Railway Manager Hubli issued and office order

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T/40-2000 dated 19.06.2000 (Annexure R3) indicating that the competent authority sanctioned the request transfer of the applicant alongwith 16 others to the Division of Southern Railway on reversion as Assistant Station masters in the scale of Rs. 4500-7000 on bottom seniority. Conditions are set out in the said order and copies were marked to the employees concerned. Pursuant to the above, the applicant joined Madurai Division as Assistant Station master in the scale of Rs. 4500-7000 on 17.7.2000 and his pay fixed at Rs. 6500 + 50 P.P., in the scale of Rs. 4500-7000 (Annexure A1) dated 31.7.2001. The applicant made representation dated 10.8.2001 requesting that his basic pay ought to have been fixed at Rs. 6550/- in the scale of pay of Rs. 5500-9000 with reference to the Railway Ministry's decision under Rule 226 of the Indian Railway Establishment Code (IREC) and Note under para 312 of the Indian Railway Establishment Manual (IREM). However, the respondents have failed to act on the representation and hence the applicant preferred another representation dated 25.11.2004. On the respondents failure to act on the request, the above OA came to filed."

16. The facts of the case in the three cases, i.e. case of the respondents in the CWP No. 16172/98, of Shri L. Viswanathan and of the applicant are now to be kept in juxtaposition as hereunder:-

Particulars	WP No.16172	L. Viswanathan	Applicant
Initial appointment	Asst. Station Master (19-02-1988)	Asst. Station Master	Asst. Station Master
Dt of Tfr. application	2 years after promoted as Station Master Gr. III	10-02-1999	01-01-1992
Post held at the time of transfer appn.	Station Master Gr. III (Rs 5000-8000)	Station Master Gr. II (Rs 5,500 - 9000)	Asst. Station Master

Declaration given to accept lower scale	Yes. To forego seniority and accepting lower post of ASM against D.R.	Yes. For bottom seniority in Asst. Station Master grade in 4500 – 7000	Yes. For bottom seniority and in pay scale of ASM
Dt when transferred	22-05-1992	18-02-2000	10-03-1999
Post held on date of transfer	Station Master Gr III	Station Master Gr. II	Station Master Gr. II (Rs ,5500 – 9,000)
Whether pay scale reduced on transfer	Yes. Both scale and post.	Yes. Both scale and post	Yes. Both scale and post.
Whether pay protected	Yes.	Yes. Pay Rs 6,500 + Rs. 50 as P.P	Yes. Rs 5,375 + 75 but in Rs 4500 – 7000
Whether claimed pay scale as prior to transfer plus pay protection	No.	Yes. In the scale of Rs 5,500 – 9,000	Yes in the scale of 5500 – 9000 and in grade.

17. In addition to the above, there has been a reference of the case of V. Viswanathan, which has been discussed by the High Court in para 18 to 20 of the judgment at Annexure A-2 (which has been the basis of issue of Annexure A-1 order by the Respondents). The facts in the said case, as narrated in the judgment in that para are as under:-

"18. The second respondent therein entered the service in South Central Railway in the post of Traffic Signaller. He was promoted to the post of Assistant Station Master, then to Station Master Grade III and ultimately to Station master Grade II, where his pay was Rs. 1600-2660. He was then serving in the Hubli Division in Karnataka... From there, he sought transfer to the Southern Railway, which transfer was given, but strangely he was placed in the pay scale of Rs. 1200-2040. For this, the Railway Board relied upon their resolution that where there is a transfer from one Railway to another, the person concerned would be entitled to be placed at the bottom of the seniority list only. Its further case was that the transfer from one Railway to another

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can be done only if the post in which such an employee is transferred has the element of direct recruitment. It is also its claim that since the post of Station Master did not have the element of direct recruitment, he was placed in the post of Assistant Station Master, which had the element of direct recruitment and therefore he was bound to be placed in the lower pay scale of Rs. 1200-2040. Aggrieved by this, the second respondent has approached the Tribunal. The Tribunal has allowed the Original Application and directed that he shall be placed in the pay scale of Rs. 1600-2660, which is applicable to the Station Master Grade II, but in that his seniority will be at the bottom.

19. An argument was advanced on behalf of the Railway Administration that it was not possible for an employee to seek transfer from one Railway to another like the second respondent, if only an employee sought for a post, which could be filled in by direct recruitment, fully or partly. For this, learned counsel invited the attention of the Court to the decision of the Railway Ministry under Rule 226 of the Railway Establishment Code. On the side of the applicant, it was argued that the post of Station Master always had an element of direct recruitment to the extent of 25 per cent. The Division Bench, accepted the argument of the applicant and rejected the argument of the Railway Administration for the simple reason that it is a trite principle that where the concerned person has to be put at the bottom of the seniority, for doing so, he cannot be straight away reverted to the post in which he was working earlier. The following conclusion of the Division Bench is relevant:-

"8. The argument raised on behalf of the writ petitioner Railway Board must fail for the simple reason that it is a trite principle that where the concerned person has to be put at the bottom of the seniority, for doing so, he cannot be straight away reverted to the post in which he was working earlier. Here is clear example where a person who was working as Assistant Station Master and had earned two promotions, is being posted in the post which is two stages below the post of Station Master, merely because of his request transfer. This is to say the least absurd interpretation of the rule."

20. After finding so, the Division Bench has concluded that the Tribunal has correctly read the Rule and ordered the second respondent to be placed in the pay scale applicable to the Station Master Grad II and dismissed the Writ Petition as devoid of any merit. It is also brought to our notice that the Special leave Petition filed by the Railway Administration came to be dismissed by the Hon'ble Supreme Court at the admission stage....."



17. Now, it is to be seen from the above, that when the Madras Bench tried to compare the case of the respondents in the W.P. No. 16172, they have narrated the facts of the case as in para 3 thereof and not the one at para 18. There is difference in the case of Shri Santhanam discussed in para 3 of the judgment in the writ petition and of the other one (presumably Shri V. Viswanathan) discussed in para 18. In the case of Santhanam, he was holding the post of Station Master Grade III at the time of his move on inter-Railway One Way request Transfer. And, the post of Station Master Gr.III is a post, which does not contain an element of Direct Recruitment. Hence, the claim in that case was only to the extent of Pay protection, which the High Court allowed and also the Madras Bench expressed in its order in L. Viswanathan vide para 30(a). The very first sentence of that para states, "*The Hon'ble High Court in WP 16172/98 etc., batch dated 8-7-1985 (sic 2005) was dealing with a case in which the appellant had requested to protect the last pay drawn.*" (Emphasis supplied). This is not the case, which has been cited as precedent in respect of the applicant's case. The case discussed in para 18 of the judgment of the High Court in WP 16172/98 etc., fits in the case of the applicant. Therein, the applicant joined as signaller and then promoted as A.S.M. when he had applied for inter Railway One Way Request Transfer. By the time his transfer could materialize, he was promoted as Station Master Gr. III (Rs 5,000 – 8000/- where there was no element of Direct Recruit) and also as Station Master Gr. II (Rs 5,500 – 9000/-) where there is an element of Direct Recruit. This has been referred to in the case of L. Viswanathan also. Thus, if V. Viswanathan could be treated as

having been transferred on the Inter-Railway One Way Request Transfer in the higher post of Rs 5,500 – 9,000 with his seniority in that grade and pay as drawn by him at his parent Railways, there is no reason to deviate from that in so far as the case of the applicant is concerned.

18. Further, it is to be noted here that in the case of L. Viswanathan, decided by the Madras Bench, he had applied for the grade of A.S.M. (Rs 4,500 – 7,000/-) after he became Station Master Gr. II. He had also given the declaration to accept bottom seniority in the grade of A.S.M. In contra distinction to the above, in the case of the applicant, he had applied for inter Railway request transfer when he was holding the post of A.S.M. He gave the declaration when he was A.S.M. But before his transfer application could fructify, he had got not one but two hikes i.e. Station Master Gr. II in the scale of Rs 5,500 – 9,000 and this is the grade where there is an element of Direct Recruitment. This deep distinction cannot be brushed aside. That makes all the difference, to distinguish the case of L. Viswanathan relied upon by the respondents from the case of the applicant. Hence, the reliance placed by the respondents on the decision of L. Viswanathan should be held to be as displaced.

19. Of course, one aspect has to be seen at this juncture. True, there is an element of direct Recruitment in the post of Station Master Gr. II (Pay Scale Rs 5,500 – 9,000/-). But it is only under the contingency that there was vacancy in

that grade under the Direct Recruitment Quota, that the transfer of the applicant could be treated to have been made as Station Master Gr. II. If it is not so, but the transfer was against only the Direct Recruitment Vacancy in the grade of Asst. Station Master (pay Scale Rs 4,500 – 7,000) the applicant would be entitled to only pay protection in the scale of Rs 4,500 – 7,000/- Even if in the case of Shri V. Viswanathan, there were no vacancies but he was given the seniority and pay scale as of a Station Master Gr. II, then also, the applicant cannot be considered for seniority in the grade of Station Master but he has to satisfy himself with the pay protection in the lower post and pay scale.

20. In view of the above, the O.A. is disposed of with the direction to the respondents –

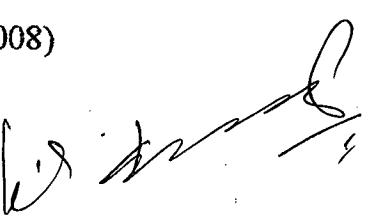
- (a) to ascertain ~~from~~ as to whether there were vacancies in the post of Station Master Gr. II in the scale of Rs 5,500 – 9,000.
- (b) If the answer to (a) above is in affirmative, then the applicant be granted seniority in the grade of Station Master Gr. II and other benefits as given to Shri V. Viswanathan as contained in Annexure A-1. In that event, as given in the case of V. Viswanathan, due notice/show cause notice to the affected individuals be also given before making available the benefits to the applicant.
- (c) In case answer to (a) above is in negative, then, the applicant's pay drawn prior to his transfer to Palghat Division be protected in the scale of Rs 4,500 – 7000.



21. The benefit arising out of the above [either (b) or (c) above as the case may be] be made available to the applicant within a period of four months from the date of this order. No costs.

(Dated, the 26th June, 2008)


(Dr. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER


(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.