

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 827 OF 2010
&
O.A. NO.460 OF 2010

Friday, this the 22nd day of July, 2011

CORAM:

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. O.A. NO. 827 OF 2010:

1. C.James John
Loco Pilot (Goods) / Southern Railway/Erode
Permanent address: Cheeramban House
Vellur Bazaar, Trichur District
2. N.K.Vinod Kumar
Loco Pilot (Goods) / Southern Railway/Erode
Permanent address: Njattuveetil House
Puthenchira P O,Trichur District – 680 682
3. M.S.Asokan
Loco Pilot (Goods) / Southern Railway/Erode
Residing at Moolamkombil H.O
Nayathode PO
Angamaly, Ernakulam District
4. K.Zainudheen
Loco Pilot (Goods) / Southern Railway/Erode
Residing at Kootteeri House
Vaniyambalam PO
Malappuram District
5. K.R.Sarath Kumar
Loco Pilot (Goods) / Southern Railway/Erode
Residing at Kovilparambil House
Vallivattam PO
Trichur District
6. Radhakrishnan Nair V
Loco Pilot (Goods) / Southern Railway/Erode
Residing at Ambili Bhavan
Karipoor PO, Nedummanagad
Trivandrum District

Applicants

(By Advocate Mr. TCG Swamy)

versus

1. Union of India represented by the General manager, Southern Railway Headquarters Office , Park Town PO Chennai -3
2. The Senior Divisional Personnel Officer Southern Railway, Palghat Division, Palghat
3. The Senior Divisional Personnel Officer Southern Railway, Salem Division, Salem
4. S.Thilakan
Ad-hoc Loco Pilot (goods)
Southern Railway
Palghat Division, Palghat
5. M.Murali Madhavan
Ad-hoc Loco Pilot (goods)
Southern Railway
Palghat Division, Palghat
6. P.Mohanam
Ad-hoc Loco Pilot (goods)
Southern Railway
Palghat Division, Palghat

... Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil (R1-3)
Advocate Mr.Ravi K Pariyarakath (R 4-6))

2. O.A. NO.460 OF 2010

1. Jimmy Mathew
Now working as Loco Pilot (Goods), Ad-hoc,
Calicut
Koottunkil House, Thimiri Post
Kannur District - 670581
2. T.N.Haridasan
Now working as Loco Pilot (Goods), Ad-hoc,
Shoranur
Cheruthuruthy, Thrissur – 679 531
3. Abhimanyu K.P.
Now working as Loco Pilot (Goods), Ad-hoc,
Shoranur
Ramkanal Avenue
Door Np.VI B, New 18157 Mudaliyar Street
Shornur – 679 121
4. Narayananakutty
Now working as Senior Assistant Loco Pilot (Goods), Ad-hoc,
Shoranur

Madhavam, Thrangali PO
 Mannanur, Kavalappara
 Palghat

Applicants

(By Advocate Mr.Ravi K Pariyarath)

versus

1. Union of India represented by the General manager, Southern Railway Park Town PO, Chennai
2. The Additional Divisional Railway Manager Southern Railway, Palghat
3. C.James John
 Loco Pilot (Goods) / Southern Railway/Erode
 Permanent address: Cheeramban House
 Vellur Bazaar, Trichur District – 680 601
4. N.K.Vinod Kumar
 Loco Pilot (Goods) / Southern Railway / Erode
 Permanent address : Njattuveetil House
 Puthenchira P O, Trichur District – 680 682
5. Sivakumar C
 Loco Pilot (Goods) / Southern Railway/Erode
 Residing at Latha Vihar
 Surya Nagar, Maniserry East
 Ottapalam, Palghat District – 679 101
6. M.S.Asokan
 Loco Pilot (Goods) / Southern Railway/Erode
 Residing at Moolamkombil H.O
 Nayathode PO
 Angamaly, Ernakulam District – 683 572
7. K.R.Sarith Kumar
 Loco Pilot (Goods) / Southern Railway/Erode
 Residing at Kovilparambil House
 Vallivattam PO, Trichur District - 680124
8. K.Zainudheen
 Loco Pilot (Goods) / Southern Railway/Erode
 Residing at Kootteeri House
 Vaniyambalam PO
 Malappuram District – 679 339
9. V.T.Sivadasan
 Loco Pilot (Goods) / Southern Railway/Erode
 Residing at Sreeragam, Aiswarya Colony
 Malampuzha Road, Olavakkode
 Palghat District – 678 002

10. K.K.Kandamuthan
Loco Pilot (Goods) / Southern Railway/Erode
Residing at Kolakkandam Potta HO
Muttikulangara PO
Palghat District – 678 594

11. P.S.Gopalakrishnan
Loco Pilot (Goods) / Southern Railway/Erode
Residing at Pulyassu House
Near Railway Station, Ottara
Kollangode, Palghat District – 678 507

12. K.G.Vasantha Kumar
Loco Pilot (Goods) / Southern Railway/Erode
Residing at Chathapadi House
Cherussery Po, Thykattusseri
Thrissur District – 680 008

13. Radhakrishnan Nair V
Loco Pilot (Goods) / Southern Railway/Erode
Residing at Ambili Bhavan
Karipoor PO, Nedummanagad
Trivandrum District

14. P.Unnikrishnan
Loco Pilot (Goods) / Southern Railway/Erode
Residing at Saravana
Kunnumpuram, Chevayoor
Calicut – 673 017

Respondents

(By Advocate Thomas mathew Nellimoottil)
Advocate Mr.TCG Swamy (R3,4,6-8)

The applications having been heard on 22.07.2011, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The applicants are working as Loco Pilots (Goods) with Headquarters at Erode Junction falling within the territorial jurisdiction of Salem Division, Southern Railway. They are aggrieved by the refusal on the part of the respondents to relieve them to their parent Division, viz., Palghat Division against the existing vacancies and in preference to the ad-hoc promotions ordered against these vacancies.

2. The applicants were initially appointed in the then Palghat Division of Southern Railway, promoted from time to time, reached the stage of Loco Pilot (Goods) in the Pay band of ₹ 9300-34800 with a grade pay of ₹ 4,200/- . They were transferred to the Erode Station of the then Palghat Division. Soon thereafter, they had registered their requests for eventual transfer to various stations falling within the territorial jurisdiction of the present Palghat Division. Their names were accordingly registered. While so, Salem Division was formed with effect from 01.11.2007 taking away some of the areas of the erstwhile Palghat Division. All the applicants who were then working in the Palghat Division though actually working against the post of Salem Division were permitted to retain their lien in Palghat Division for eventual transfer against future vacancies. Since they have requested to have their lien maintained in the Palghat Division, it is contended that they are borne in the priority list of Loco Pilots (Goods) of Palghat Division. Their names also remain at the top most position in the priority list and thus requested to have their lien at Palghat Division. Annexure A-1 is the communication dated 14.08.2008 issued by the 2nd respondent. It is seen from Annexure A-1 that the list appended there with is the status of each employee as on date along with the corresponding priority furnished. There is no dispute that the applicants still figure in the said list. According to the applicants they were being considered and transferred to the existing vacancies of Loco Pilots in Palghat Division. Some of the Loco Pilots (Goods) continued at Palghat preferred an OA 586/08 seeking promotion to Loco Pilot (Goods) in the then existing vacancies . Inter-alia a prayer was also made that transferring Loco Pilot (Goods) working at Salem Division is illegal and violative of Articles 14 and 16 of the Constitution of India. On coming to know of the pendency of such

an OA, the applicants came on record by getting themselves impleaded. Finally the said OA was dismissed. A copy of which is produced as Annexure A-2.

3. In para 11 of the order it is stated as follows:-

"Now on merit as to the relief sought for by the applicants in their OA. The claim of the applicants is that they should be considered for promotion, without permitting Loco Pilots of Salem Division by way of transfer. Those Loco Pilot who are at Salem Division, by who have sought to be posted in Palakkad Division, could not be posted to Palakkad Division due to service exigencies and absence of vacancies at Palakkad Division. Again, they are the persons already holding the posts of Loco Pilots and retaining their lien at Palakkad and as such, their claim for transfer to Palakkad Division is on a higher footing than the claim of the applicants for promotion to the post of Loco Pilots against the vacancies that may arise. In fact, the applicants are even otherwise not senior enough to be considered for promotion. As such, their prayer cannot be acceded to."

4. The applicants in such circumstances contend that there exists no legal hurdle in their way of coming back to Palghat Division in preference to any promotion given to Assistant Loco Pilots working in Palghat Division. But Annexures A-3 and A-4 were issued by the Department of Railways by which employees mentioned there under were promoted as Loco Pilot (Goods) on regular basis and posted to Mangalore on temporary / ad-hoc basis against the short fall vacancies upto 31.10.2010 and retained at their present stations. It is mentioned that they will be reverted to their original post of Loco Pilot (Shg) Gr.II /Senior Assistant Loco Pilot as the case may be, when Loco Pilot (Goods) from Salem Division with lien at Palghat Division report. Annexure A-4 is a similar order passed subsequently on 07.04.2010. According to the applicants, they are aggrieved by Annexures A-3 and A-4 and to quash the same to the extent they promote the Senior Assistant Loco Pilots of Palghat

Division including respondents 4 to 6 for filling up the vacancies of Loco Pilots (Goods), in preference to the applicants. It is contended that even after dismissal of their claim for promotion to the post of Loco Pilot (Goods), over the persons like the applicants by Annexure A-2 order some of them appear in the list in Annexure A-4 who had been promoted.

5. In the reply statement filed by the Department they have taken the stand that the promotion given to Assistant Loco Pilot as per Annexures A-3 and A-4 are purely on temporary / ad-hoc basis upto 31.10.2010. They will be reverted to their original post of Loco Pilot (Shg) Gr.II /Senior Assistant Loco Pilot as the case may be, when Loco Pilot (Goods) from Salem Division with lien at Palghat Division report. The first three persons in Annexure A-3 are regularly promoted as they belong to the reserved category and their promotion is also against reserved vacancies. It is also contended that Loco Pilot (Goods) are classified as safety posts, these are more essential for safe running of goods trains. Goods are to be transported without delay in public interest. And these posts cannot be left unmanned and with the approval of the General Manager the ad-hoc promotions were ordered by Annexures A-3 and A-4. Annexure R-2 is the true copy of the letter of the Chief Personnel Officer communicating the approval of the General Manager. It is their contention that as per Rule 124 of the Indian Railway Establishment Code-Vol.I, General Managers have full powers to make rules with regard to Railway servants in Group 'C' and 'D' under their control. Hence ad-hoc promotion granted purely on temporary basis with the approval of the General Manager is valid and correct. Such employees were not allowed to continue as ad-hoc Loco Pilot (Goods) after 31.10.2010. The reply statement was filed on 12.01.2011. It

is also submitted that once the vacancy position improves, applicants will be transferred and relieved to Palghat Division on their turn and thus relieving to Palghat Division is only a matter of time. A rejoinder has been filed reiterating the contentions in the OA.

6. OA 460/2010 is filed by some of the Assistant Loco Pilots aspiring for promotion as Loco Pilot (Goods) in the Palghat Division. Their main grievance is that they were not given any option to go to Salem Division on its formation. Because of this fact, they continued at Palghat Division and when Loco Pilots like the applicants in OA 827/10 are relieved to Palghat Division, there will not be any further vacancies to be filled up on promotion. This is their apprehension. According to them, in the reply statement it is admitted that certain class of employees were not given any option and the Assistant Loco Pilots is one such class. According to Annexure A-2 order was rendered on the promotion, everybody has been given an option factually there is a difference. Therefore, their claim to be promoted as Loco Pilots (Goods) in preference to Loco Pilot (Goods) working in Salem Division and awaiting to be relieved to Palghat Division. In the reply statement filed by the Department, it is stated among other things that the Railway Board have clarified vide letter dated 07.08.2001 that General Managers of the existing zones continue to have full powers with regard to the staff of all Divisions under their jurisdiction/Sections which are proposed to be eventually transferred to new proposed Zones/Divisions, as per Annexure R-6. As per provisions, it was decided to call for options only from the category of staff mentioned in Annexure A-4. The category of Loco Pilots, Station Masters, Ticket Checking Staff etc. are not included therein because they are the vital categories in train passing

duties and shortage of staff in any Division will cause a problem in running of trains. Only the employees who have registered for transfer to the stations in the Palghat Division were considered for promotion by lien and availability of vacancies. It cannot be an inter-divisional transfer. Party respondents subsequently impleaded did not file any separate reply. They seek to support their case by relying on the averments made in OA 827/10.

7. The question is whether the applicants in OA 460/10 could be promoted to the existing vacancies in preference to the claim of the applicants in OA 827/10 for being relieved to Palghat Division. Hence we dispose of these two cases together by a common order.

8. As far as applicants in OA 827/10, the right to be relieved to Palghat Division is admitted. They have registered their names to be relieved to Palghat Division even before Salem Division was formed. Their right was protected and they were asked to continue to work in Salem Division in the respective places till administration fill up these posts by recruitment when they are to be relieved to Palghat Division. As a matter of fact the reply statement filed in the OA itself admits of their right to get back to Palghat Division, but they justified the promotion made as per Annexures A-3 and A-4 showing such promotions are made only on ad-hoc basis purely on temporary basis to fill up short fall vacancies. The Administration is certainly entitled to avert inconvenience being caused for want of sufficient number of running staff. In the additional reply statement filed, it is specifically stated as follows:-

"It is most respectfully submitted that promotion cannot be claimed as a matter of right. It is prerogative of the Administration to fill up a vacancy or not. It is humbly further submitted that during the bifurcation of Palghat

Division and formation of Salem Division, a decision was taken by the Southern Railway Headquarters, Madras, to provide lien to the employees who have registered for transfer to Palghat Division and to effect transfer on 1:1 basis vide letter dated 03.03.2008. A copy of letter dated 03.03.2008 has already been produced as Annexure R-5 along with the written reply statement filed by the respondents in the OA. It is respectfully submitted that the employees who are already holding the post and lien of Loco Pilots (Goods) and waiting for their turn and chance to come back to Palghat Division have better claim over that of their juniors who are waiting for promotion from lower grade. This principle has already been upheld by this Hon'ble Tribunal in OA No.586/08 filed by Shri S.Thilakan & orders vide order dated 05.10.2009 which has already been produced as Annexure R-1 along with the written reply statement filed by Railway Administration, in which it has been observed by this Hon'ble Tribunal that :

"Those Loco Pilot who are at Salem Division, by who have sought to be posted in Palakkad Division, could not be posted to Palakkad Division due to service exigencies and absence of vacancies at Palakkad Division. Again, they are the persons already holding the posts of Loco Pilots and retaining their lien at Palakkad and as such, their claim for transfer to Palakkad Division is on a higher footing than the claim of the applicants for promotion to the post of Loco Pilots against the vacancies that may arise."

Therefore, the applicants in the present OA who are in a lower grade have no claim for filling up of higher grade vacancies by promoting them restraining the transfer registrants who are already prompted to the post of Loco Pilot (Goods) and waiting to come up to Palghat Division from Salem Division on the basis of retention of lien consequent of bifurcation of Palghat Division. Such a registrants are happened to continue at Salem Division due to Administrative exigencies only. In fact, the applicants have never registered their names for transfer to Salem Division and hence they were not provided with lien at Salem Division. If the applicants had registered for transfer to any station under the territorial jurisdiction of Salem, their lien would have been maintained in Salem Division and they too could have been considered for promotions based on their seniority. As the seniority is being maintained unit wise for each category, which is maintained as per policy decision of the Railway. If at all the applicants are aggrieved of the policy taken by the respondents in bifurcating the Palghat Division duly providing lien to the employees who have registered for transfer to the territorial jurisdiction of Palghat Division and vice versa, they could have approached competent

court of law at the material time. By not doing so, the applicants are estopped from raising objections on the action taken by the respondents in providing lien to the request transfer registrants to Palghat Division at this distant time. There is no loss caused to the applicants as alleged. In fact nothing has been taken away from the applicants which they were enjoying already. "

9. We have heard the parties. The admitted position is that the applicants have a right to be relieved to Palghat Division. Respondents are only bargaining for some more time to relieve persons like the applicants to Palghat Division. Even though the applicants in OA 827/10 would contend that Annexures A-3 and A-4 are in violation of final orders passed in Annexure A-2, there is no merit in this contention. This Tribunal in Annexure A-2 held that the Assistant Loco Pilots have no right to claim promotion in preference to the Assistant Loco Pilots in the Salem Division and who have already registered for transfer to Palghat Division. This position has already been admitted by the respondents in the reply statement. They are only waiting for the Assistant Loco Pilots now undergoing training to be appointed in Salem Division so that there may not be dearth of running staff at Salem Division when the case of the applicants will be considered and relieved to Palghat Division. But the fact remains that the Salem Division was formed in 2007 and more than four years have elapsed thereafter. Therefore, it cannot be said that there is no delay in giving effect of relieving the applicants to Palghat Division. They were promoted as Loco Pilots (Goods) even prior to the formation of Salem Division and it was while working in the area subsequently on formation of Salem Division, they have requested for transfer to Palghat Division. They have already registered their names to be relieved to Palghat Division even before the formation of Salem Division. Salem Division being a new Division formed, immediately some temporary arrangements will have to

be made so that there may not be any administrative inconvenience in running the trains, both Passenger and Goods so that public inconvenience has to be averted and necessarily for making regular appointments in Salem Division, it will take some time. At the same time, in the existing Division, viz., Palghat Division there are vacancies of Loco Pilots (Goods), it cannot be remained unfilled, in the administrative exigencies. Therefore, we do not find anything illegal in Annexures A-3 and A-4 in so far as promotions are made only on ad-hoc basis, that too on temporary basis. The period mentioned in Annexure A-3 and A-4 have already expired and applicants have not been relieved to Palghat Division. In the circumstances, the prayer to quash Annexures A-3 and A-4 are declined. However, the grievance of the applicants in delaying the process of their repatriations to Palghat Division as admitted by the respondents cannot go unnoticed.

10. Coming to the prayer made in OA 460/10, the only contention on behalf of the applicants is that they were not given the option. But it has been pointed out in the reply statement that option has been given only to those working in the Salem Division who come back to Palghat Division and not vice versa. But according to the applicants some section of the staff were given such option to go to Salem Division. This may be true. But unless the applicants have pointed out that any Assistant Loco Pilots similarly situated as that of the applicants were given such option, he cannot plead discrimination. Differentiation is permissible on a rationale basis but not discrimination. The applicants are the senior most Assistant Loco Pilots. In so far as no material is placed before us to support the allegation in the OA that any such Assistant Loco Pilots similarly situated

are given any such option, there is no merit in the contention. Further, they have no case that they have made any request for transfer to Salem Division at any point of time. If only such a request is given, there could be a case for consideration whether denial of any will offend any of their legal rights. According to the applicants, even without being asked for, some of the members of the staff at Palghat Division had been given option. But averments are too vague for consideration. If the classification is based on rationale basis and no running staff is given any option, the applicants cannot have a grievance to bring it under Article 14 of the Constitution. There is no arbitrariness or discrimination as alleged in the OA. Accordingly, there is no merit in the contentions raised in OA 460/10 and the same is dismissed.

11. As regards reliefs sought for in OA 827/10, we direct the 1st respondent, the General Manager, Southern Railway, Chennai to expedite the process of relieving the applicants as admitted in the additional reply statement, to Palghat division as expeditiously as possible at any rate, on or before 31st December, 2011. OA is disposed of as above, No costs.

Dated, the 22nd July, 2011.

sk
K GEORGE JOSEPH
ADMINISTRATIVE MEMBER

sk
JUSTICE P.R.RAMAN
JUDICIAL MEMBER

CERTIFIED TRUE COPY

Date

VS

sk
Deputy Registrar