

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 461/91
~~XXXXXX~~

199

DATE OF DECISION 13.2.92

Mathew Joseph and eleven others Applicant (s)

Mr.P.Sivan Pillai Advocate for the Applicant (s)

Versus

Union of India through the Respondent (s)
General Manager,
Southern Railway, Park Town P.O, Madras-3 and 2 others.

M/s.M.C.Cherian & T.A.Rajan Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 19th March, 1991 the twelve applicants who have been working as Diesel Assistants, Southern Railway at Erode have prayed that the respondents be directed to transfer the applicants to Trivandrum Division against the existing and future vacancies in preference to all other modes of recruitment with the benefit of seniority from the dates of occurrence of the vacancies. The brief facts of the case are as follows.

2. The applicants have referred to the policy of the Railway Board enunciated in their letter dated 31.1.1971(Annexure A1) that interdivisional transfers will be made on a system of registration in the order of the dates of registration. By another letter dated 17.12.85 (Annexure A2) the Chief Personnel Officer, Southern Railway clarified that those who apply for interdivisional transfer will have preference to direct recruitment. The twelve applicants have given the priority number of their registration for transfer

82

to Trivandrum Division in 1990. The applicants feel aggrieved by the employment notice issued by the Railway Recruitment Board at Annexure-A3 for filling up the posts of Diesel Assistants of Trivandrum and Palghat Divisions. They apprehend that by such direct recruitment their chances of transfer to Trivandrum Division will be attenuated.

3. In the counter affidavit the respondents have stated that interdivisional transfer is not a matter of right. The orders at Annexures A1 and A2 only specify the methodology adopted for considering such transfer. But they do not mean that the registered employees have a vested right. Even though their names were registered in the Palghat Division for such interdivisional transfer, the Trivandrum Division was never advised about the registration of their names in Palghat Division for interdivisional transfer. There are 120 vacancies of Diesel Assistants yet to be filled in Palghat Division and these are to be filled up by a time consuming process of identifying surplus staff and giving them training in Diesel conversion course. Because of the dearth of Diesel Assistants in Palghat Division, the transfer of the applicants and others out of Palghat Division could not be considered. The inter-divisional transfer is possible only if ~~5~~ vacancies are available keeping in view the administrative exigencies. The applicants are obligated in their service conditions to work in their seniority unit of Palghat division and unless the vacancy position in Palghat Division improves and more hands are available, the applicants cannot be considered for transfer to Trivandrum Division.

4. In a statement filed by the applicants they have drawn attention to the decision of the Tribunal in O.A. 142/91 and stated that the respondents had admitted that the decision in that case would be applicable to this O.A. also but at the same time expressed the difficulty in relieving the applicants. They have argued that direct recruitment for Trivandrum and Palghat Divisions are held simultaneously as evidenced from Annexures A2 and A3. They have stated that large number of Loco Khalasis, Engine Cleaners etc. in Palghat Division are claiming ~~5~~ promotion as Diesel Assistants and some of them had even approached the Tribunal in O.A. 633/91.

O.A. 676/1990 etc. and 90 have already been sent for Diesel conversion course for being appointed as Diesel Assistants, which last only for 30 days. When they join as Diesel Assistants, the applicants can be transferred to Trivandrum Division.

5. In a statement filed by the learned counsel for the respondents Mr.M.C.Cherian it has been stated that the names of 60 Diesel Assistants including those of the applicants who had registered their names for inter-divisional transfer from Palghat to Trivandrum have been sent to Trivandrum for registration, but their transfer can be effected only when the vacancy position in Palghat improves. He has quoted a note of Senior D.M.E., Palghat indicating the acute shortage of running cadre in the Palghat Division.

6. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. A similar question arose in O.A. 142/91 in which some Station Masters in Madurai Division claimed transfer to Trivandrum Division on the basis of registration of their names for inter-divisional transfer and the instructions of the Chief Personnel Officer, Southern Railway contained in his letter of 17.12.85 which is the same as Annexure A2 in the case before us. In that case also applications were invited for direct recruitment in Trivandrum Division. This very Bench of the Tribunal in that case quoting from the letter of 17.12.85 at Annexure-A2 held as follows:-

" In view of the above instruction, the action of the respondents in inviting application for the vacancies which arose in Trivandrum Division to be filled by direct recruitment is against the spirit of the instructions and is not permissible. Unless and until the requests for transfers to Trivandrum Division from other Divisions are considered and disposed of, it is not open for the Railway Administration to make direct recruitment to the post in Trivandrum Division blocking the chances of those who have registered for transfer to Trivandrum Division for such transfer. Therefore, we are of the view that the respondents have to be

"directed to consider the request of the applicants for transfer to Trivandrum and to transfer them to Trivandrum Division to the existing vacancies and the vacancies which may arise in future according to their turn, if they are not otherwise unsuitable for such transfer before they resort to filling up of the vacancies in Trivandrum Division by direct recruitment.

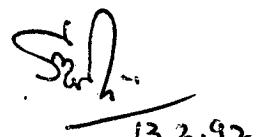
"8. In view of what is stated in the foregoing paragraph we allow the application to the extent of directing the respondents to consider the request of the applicants for transfer to Trivandrum Division, according to their turn, having regard to the dates on which they have registered their request with Madurai Division, ignoring the fact that the requests of applicants 5 and 6 have not been forwarded from Madurai Division to Trivandrum Division and that preference should be given for the transfer of the applicants in their turn in filling up of the existing vacancies and to the vacancies which would arise in future to direct recruitment."

7. Even though this case is similar to O.A.142/91, the fact remains that these two cases are not identical. The problem of large number of vacancies remaining unfilled in Palghat Division did not cloud the position of Station Masters of Madurai Division who were applicants in O.A. 142/91. The redeeming feature in favour of the applicants before us is that the employment notice issued by the Railway Recruitment Board, Trivandrum covers both Trivandrum and Palghat Divisions and accordingly the vacancies in Palghat Division, about which the respondents are justifiably worried can be filled up on a priority basis by diverting the selected candidates from Trivandrum to Palghat Division and filling up the vacancies of Trivandrum Division which would have been otherwise filled up by the direct recruits, by transferring the applicants in accordance with their registration number, to Trivandrum Division. In order, however, to avoid any dislocation of smooth working of Railway traffic by the sudden depletion of the cadre of Diesel Assistants in Palghat Division, we direct that

the transfer of registered Diesel Assistants from Palghat to Trivandrum Division should be done pari passu with the number of Diesel Assistants, direct recruits or others, coming out of the Diesel conversion course ^{and posted to Palghat Division.} from now onwards. Direct recruits should be inducted to the Trivandrum Division only after the registered Diesel Assistants of Palghat Division who had been registered on or before 3.3.1990 when the employment notice at Annexure A3 had been published, are fully accommodated. The O.A is disposed of on the above lines. There will be no order as to costs.



(A.V.Haridasan)
Judicial Member


13.2.92

(S.P.Mukerji)
Vice Chairman

n.j.j

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Date of decision: 13-7-1992

1) R.A.21/92 in DA-1735/91 and DA-1735/91

Union of India, represented
by GM, S.Railway, Madras & others - Mrs Sumathi Dandapani,
Counsel for review applicants & respondents in DA

V.

R.S.Harilal - Mr Tomy Sebastian,
Counsel for respondents in RA & applicant in DA

2) RA-48/92 in DA-461/91

Union of India, represented by GM, S. Railway & others - Mr MC Cherian, Counsel for applicants /review

V.

Mathew Joseph & 11 others - Mr P Sivan Pillai,
counsel for respondents in RA

3) DA-235/92

P Mohanan & 4 others - Mr P Sivan Pillai,
Counsel for applicants

V.

Union of India, represented by GM, S. Railway, Madras & 3 others - Mrs Sumathi Dandapani,
Counsel for respondents

4) DA-323/92

V Ravindra Babu & 3 others - Mr P Sivan Pillai,
Counsel for applicants

V.

Union of India, represented by GM, S. Railway Madras & 3 others - Mrs Sumathi Dandapani,
Counsel for respondents

4)

CORAM:

Hon'ble Mr SP Mukerji, Vice Chairman

&

Hon'ble Mr AV Haridasan, Judicial Member

JUDGEMENT

(Mr SP Mukerji, Vice Chairman)

SWL

13-7-92

RA-21/92 in DA-1735/91, RA-48/92 in DA-461/91,
DA-1735/91, DA-235/92 and DA-323/92

As a result of dieselisation of rail traction in Trivandrum and Palghat Divisions, the staff working on the steam loco staff became surplus. This Tribunal has been approached through a number of applications by different categories of steam surplus staff who had been affected by the process of ultimate absorption of the surplus staff as Diesel Assistants and ^{against} other posts. One category of applicants covers those who had been identified as Steam Surplus and had been redeployed and absorbed in various other posts. Those who could not be redeployed and were left behind as the Steam Surplus Staff were later being sent for diesel conversion course for ultimate absorption as Diesel Assistants. At this juncture, those Steam Surplus Staff who had already been redeployed but were senior to those who had been sent for diesel conversion course felt aggrieved and moved this Tribunal in DA-633/91 and similar applications praying that they should have been given preference over their juniors for being sent for diesel conversion course. Their grievance was that their juniors by being sent to the diesel conversion course were likely to steal a march over them on their appointment as Diesel Assistants while the applicants would be stagnating against posts in which they have been absorbed which according to them, were of inferior category. Lack of adequate number of vacancies of Diesel Assistants in these Divisions as also limitation in the number of seats available in the Diesel Training

course posed difficulties for the Railways in meeting the competing demands of the steam surplus staff. While so, it appears that the Railways went in for direct recruitment for the posts of Diesel Assistants to be filled up in the Palghat and Trivandrum Divisions. A merit list was prepared which was divided into a panel for the Trivandrum Division and another for the Palghat Division. When those were included in the panel for Palghat Dn., who/were ~~not~~ sent for diesel training, other direct recruits who had ranked higher than they and were allotted to the Trivandrum Division but not sent for training moved this Tribunal OA-1735/91. This Tribunal thought that the allocation of candidates and sending them for Diesel training between two Divisions, ~~and~~ ignoring the combined ranking merit in the select list, would be unfair and therefore those who are higher in the merit list should be sent for diesel training first without consideration of their allocation to Trivandrum or Palghat Division. Yet a third category of applicants before us comprised regular Diesel Assistants of Palghat Division who had been registered for their request transfer to Trivandrum Division but who ~~are~~ ^{were} not given priority for absorption as Diesel Assistants in the Trivandrum Division because of the direct recruitment. They approached this Tribunal in OA-461/91 praying that they should be given priority over the direct recruits against the vacancies in

-4-

the Trivandrum Division.

2. The Railway authorities have been expressing their difficulty in implementing the various final and interim orders of the Tribunal on the three categories of applications. They approached this Tribunal in RA-21/92 in OA-1735/91 and RA-48/92 in OA-461/91. Their contention has been that the number of posts of Diesel Assistants in Palghat Division is far less than the aspirants for the posts of Diesel Assistants and it may be difficult for them to accommodate all the applicants and those who are similarly circumstanced, in the diesel conversion training. It was also mentioned by Smt Sumathi Dandapani, the learned counsel for the Railways that once those surplus staff who had already been redeployed and absorbed elsewhere are sent for training, the efforts put in for their redeployment and absorption will go waste and it will be difficult to absorb the remaining steam surplus staff. To this, it was clarified to her that even if the senior steam surplus staff who had been redeployed are absorbed as Diesel Assistants on the basis of their seniority, their juniors who could not be redeployed so far but were proposed to be absorbed as Diesel Assistants, could still be absorbed against the posts which would be released by their seniors who had been redeployed earlier but proposed to be absorbed as Diesel Assistants.

3. The applicants in OA-257/90 also moved this Tribunal in a Contempt Petition for non-implementation of the orders of this Tribunal.

4. In order to resolve the difficulties expressed by the Railway authorities in implementing the various orders passed by this Tribunal, we heard all the applications RA-21/92 in OA-1735/91, RA-48/92 in OA-461/91, OA-1735/91, OA-235/92 and OA-323/92 today. The learned counsel for the Railways Shri Tyagarajan during the last hearing was fair enough to recognise the need to provide reliefs claimed by the applicants before this Tribunal and obtained by some of them through our orders as also the practical difficulties which the Railways have been facing about the absorption of the surplus steam staff on one hand, the expectation of the selected direct recruits and of the Diesel Assistants of Palghat Division for transfer to Trivandrum Division on the other hand. After a detailed arguments advanced by ² general discussion amongst Shri MC Cherian, Mrs ³ Dandapani, Mr P Sivan Pillai and Mr K Prabhakaran and Shri Tyagarajan, the learned counsel representing the rival parties, there was a general consensus that in order to resolve the practical difficulties in implementing the various orders passed by this Tribunal and to avoid future litigation, a scheme of priority of appointments as Diesel Assistants in Trivandrum and Palghat Divisions could be drawn up in the spirit in which this Tribunal has disposed of a number of applications but without

violating as far as possible the orders and instructions and policy decisions of the Railway Board. A draft scheme was placed before us by Shri Tyagarajan with copies to other learned counsel concerned. This was further discussed and modified. A general consensus emerged that the scheme as delineated below would under the circumstances be the most reasonable, equitable and practical. The broad outline of the scheme as agreed to by all the parties is as below:

"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 other steam 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 15.3.90 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 eventual 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

-3-

training within a period of four weeks from the date the Administration calls for their option which will not be later than 31.7.92. 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 OA-461/91 as and when vacancies arise in a phased/after priority I manner
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

I 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 I and II 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 one time measure for filling up the vacancies as on 1.7.92 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 interdivisional transfer."

5. The learned counsel for all the parties in the aforesaid applications agreed that the OAs and RAs pending before the Tribunal can be disposed of in terms of the aforesaid scheme.

6. Accordingly, we direct that RA-21/92 in OA-1735/91, RA-48/92 in OA-461/91, OA-1735/91, OA-235/91 and OA-323/92 stand disposed of on the lines of the aforesaid scheme. We direct the Railway Administration to implement the scheme in the manner indicated above without delay.

- 10 -

7. We want to express our appreciation for the valuable assistance and cooperation extended by Shri Tyagarajan, Mrs Sumathi Dandapani, Shri MC Cherian, Shri P Sivan Pillai, Shri Tomy Sebastian and Shri K Prabhakaran, which facilitated formulation of the Scheme and disposal of the applications before us on that basis. We hope that this will put a quietus to further litigation in the matter.

8. A copy of this order be made available to the learned counsel for all the parties.

Sd/-
(AV HARIDASAN)

JUDICIAL MEMBER

Sd/-
(SP MUKERJI)
VICE CHAIRMAN

13-7-1992

CERTIFIED TRUE COPY

Date ... 21-7-1992

Deputy Registrar

