

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCHO.A No. 465 / 2008Friday, this the 6<sup>th</sup> day of November, 2009..

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE MR K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

A. Murugesan,  
Junior Clerk,  
Southern Railway,  
Permanent Way/Karur East. ....Applicant

(By Advocate M TC Govindaswamy )

v.

1. Union of India represented by  
the General Manager,  
Southern Railway,  
Headquarters Office,  
Park Town. P.O.  
Chennai-3.
2. The Sr. Divisional Personnel Officer,  
Southern Railway, Palghat Division,  
Palghat.
3. The Divisional Railway Manager,  
Southern Railway, Palghat Division,  
Palghat.
4. The Divisional Personnel Officer,  
Southern Railway, Salem Division,  
Salem.
5. Smt T. Latha,  
Senior Clerk,  
O/o the Assistant Divisional Engiener,  
Southern Railway, Salem Junction,  
Salem. ....Respondents

(By Advocate Ms P.K.Nandini for R.1 to 4 )



This application having been finally heard on 16.10.2009, the Tribunal on delivered the following:

ORDER

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

Applicant is aggrieved by the Annexure A-5 office order dated 12.4.2005, Annexure A-11 letter dated 3.10.2007 and the Annexure A-16 letter dated 13/20.5.2008. By the Annexure A-5 office order, Smt T Latha, Senior Clerk, the 5<sup>th</sup> respondent in this O.A who is under orders of inter-Divisional transfer with Smt Manju Chandran, Senior Clerk was allowed to be retained in the Palghat Division itself as Senior Clerk on bottom seniority on her expressing her unwillingness for the above mutual transfer and on her request to retain her in the Division. By Annexure A-11 letter, the 2<sup>nd</sup> respondent, Senior DPO, Palghat Division in his letter to the Divisional Secretary, Southern Railway Mazdoor Union, Palakkad stated that there was no vacancy of Senior Clerk in the Works Branch to promote the applicant. By the Annexure A-16 letter dated 13.5.2008 the 2<sup>nd</sup> respondent has again informed the Divisional Secretary, Southern Railway Mazdoor Union, Palakkad that the applicant was the seniormost in his grade in the grade but because of the formation of Salem Division from 1.11.2007 there was acute reduction of staff strength due to transfer of post from Palghat Division to Salem Division in the Ministerial cadre of Works Branch. It was also stated that while there were excess operation posts in the grades, there were no vacancy available at present to promote them to the higher grade. As regards the applicant was concerned, they have stated that she is now coming under the jurisdiction of Salem Division.

2. Brief facts: The applicant, who is working in the Works Branch at Palghat Division is an Office Clerk appointed against 33 1/3 promotional quota and his

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name is at Sl.No.14 of the Annexure A-1 seniority list of Junior Clerk in the scale of Rs.3030-4590. His immediate senior Shri A.K. Devadasan was the last person to be promoted as Senior Clerk vide Annexure A-3 letter dated 5.12.2003 in which his name has been shown at Sl.No.8 in Part III. In other words, if there was one more vacancy in the grade of Senior Clerk, the applicant would have been promoted. While he was so waiting for his promotion, the 2<sup>nd</sup> respondent issued the Annexure A-5 impugned order dated 12.4.2005 retaining the 5<sup>th</sup> respondent Smt T Latha as Senior Clerk with bottom seniority and also posting Smt Manju Chandran as Senior Clerk taking the seniority position of Smt T Latha on inter-Divisional mutual transfer. According to the applicant, the inter-Divisional mutual transfer is governed by Para 3.1.2 of the P.B.Circular No.90/96 which is as under:

### "3.0 Mutual Transfer

3.1 Mutual transfer of two employees from different units are made, only in the same grade and in the same category of post on submission of either a joint application or separate applications made together accepting the condition of seniority on such mutual transfer. Such mutual transfers are to be accepted by the departmental head of the units Controlling both the persons seeking transfer. The unit which has initiated the mutual transfer, will issue the order of transfer to both the persons seeking mutual transfer, after both the controlling officials concerned accept such request. It is therefore necessary when a reference is received from the unit for the mutual transfer, the second unit should immediately clear and advise the referring unit so that there is no delay in issuing the order. Unless there is a vigilance or disciplinary case or prosecution made pending there should be no occasion to deny such mutual transfer.

3.2 Even after the issue of order of transfer made mutually, sometime one of the two backs out resulting in the transfer becoming one way. This will pose problem subsequently in assignment of seniority of the person who has joined the new unit by the time. Since mutual transfer is processed only on the written request made duly accepted by the Controlling Officials, once the order is issued, under no circumstance, there should be situation of half way implementation. Either should be implemented completely or not implemented at all. The person who has

sought mutual transfer must be spared as otherwise it will pose problem for the assignment of seniority to the incoming person."

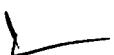
3. According to him, first of all there was no provision for retaining the 5<sup>th</sup> respondent in the higher grade of Senior Clerk itself with bottom seniority on expressing her unwillingness for the mutual transfer when her substitute from the Madras Division was already been allowed to join as Senior Clerk taking the seniority position of Smt T Latha. In other words, Smt Latha had been retained in the Palghat Division as Senior Clerk illegally and if she had not been retained, the vacancy created by her transfer at the bottom of seniority list would have gone to him by way of promotion from the post of Junior clerk to Senior Clerk. He has, therefore, made Annexure A-6 representation stating that, as per the rules, if one of the persons in a mutual transfer withdraw willingness, the transfer of the other would amount to one way transfer and in such circumstances the one who has gone on transfer can be absorbed only as a Junior Clerk with bottom seniority. He has, therefore, submitted that the retention of both Smt Latha and Smt Manju Chandran as Senior Clerk at the same time is against all service rules as it had affected the promotion chances of others. He has, therefore, requested the respondents to rectify the mistake by either relieving Smt Latha to carry out the mutual transfer or to absorb Smt Manju Chandran as juniormost Junior Clerk and render justice to him. The matter was also taken up by the Divisional Secretary, Southern Railway Mazdoor Union, Palakkad, vide his letter dated 25.10.2005. In reply to the said letter, the Senior DPO, Palghat vide his Annexure A-7 letter dated 28.11.2005 informed the Union that when the sanctioned strength of the Branch was only 92, the actual working strength was 97 and the excess of 5 persons was in the category of Senior Clerks, as its



sanctioned strength was only 18 and the working strength was 23. They have, therefore, informed the Union that in the said circumstances, the their request for promotion of the applicant as Senior Clerk cannot be considered. However, the applicant refuted the aforesaid figures given by the respondents and submitted that as per the Annexure A-8 provisional seniority list of Ministerial staff of Works Branch as on 31.7.2006, there was 27 Senior Clerks including the 5<sup>th</sup> respondent. The applicant has, therefore, again requested for his promotion as Senior Clerk vide his Annexure A-9 representation dated 10.9.2006, Annexure A-10 representation dated 10.8.2007, Annexure A-12 representation dated 9.10.2007 and Annexure A-14 representation dated 27.2.2008. The Southern Railway Mazdoor Union has again taken up his case with the Senior DPO, Palghat vide their Annexure A-15 letter dated 2.4.2008. As there was no positive response from the respondents, the applicant has filed this O.A seeking the following reliefs:

- (i) Call for the records leading to the issue of Annexures A-5, A-11 and A-16 and quash the same to the extent they relate to the 5<sup>th</sup> respondent;
- (ii) Declare that the applicant is entitled to be considered and promoted as Senior Clerk against the vacancy/post occupied by the 5<sup>th</sup> respondent on account of Annexure A-5 order;
- (iii) Direct the respondents to consider and promote the applicant against that vacancy with all consequential benefits of promotion including arrears of pay and allowances with effect from the date of Annexure A-5."

4. The respondents in their reply have submitted that the applicant was promoted against 33 1/3 promotional quota and he has working as Office Clerk with effect from 22.7.1996. They have also submitted that after bifurcation of the Palghat Division, the applicant was opted to be posted in the newly formed Salem Division and he is working as Junior Clerk in the office of the Section Engineer, Permanent Way, East, Karur of Southern Railway. As the cadre was closed on 30.6.2008 at Palghat Division the applicant now stands at Sl.No.2 in



the seniority list of Junior Clerks of Work Branch of Salem Division and he will be considered for promotion to Senior Clerk shortly, if otherwise found suitable. As regards the appointment of Smt Latha, Senior Clerk is concerned, they have submitted that while she was working at Salem is the erstwhile Palghat Division, she had applied for inter-Divisional mutual transfer with Mr Manju Chandran of Madras Division. Smt Manju Chandran, the incoming employee was relieved from Headquarters office, Chennai and joined Palghat Division on 1.12.2004. Immediately Smt Latha, the outgoing employee expressed her unwillingness for the above mutual transfer and as per the instructions contained in Headquarters Personnel Branch Circular No.90/96, she was retained in Palghat Division on bottom seniority as Senior Clerk against direct recruitment quota. Hence the prospects of the applicant for the promotion to the post of Senior Clerk against promotional quota was no way affected on the retention of Smt Latha, the 5<sup>th</sup> respondent. The relevant part of the aforesaid P.B.Circular No.90/96 is as under:

**"3.0 Mutual Transfer**

3.1 Mutual transfer of two employees from different units are made, only in the same grade and in the same category of post on submission of either a joint application or separate applications made together accepting the condition of seniority on such mutual transfer. Such mutual transfers are to be accepted by the departmental head of the units Controlling both the persons seeking transfer. The unit which has initiated the mutual transfer, will issue the order of transfer to both the persons seeking mutual transfer, after both the controlling officials concerned accept such request. It is therefore necessary when a reference is received from the unit for the mutual transfer, the second unit should immediately clear and advise the referring unit so that there is no delay in issuing the order. Unless there is a vigilance or disciplinary case or prosecution made pending there should be no occasion to deny such mutual transfer.

3.2 Even after the issue of order of transfer made mutually, sometime one of the two backs out resulting in the transfer becoming one way. This will pose problem subsequently in assignment of seniority of the person who has joined the new unit by the time. Since mutual transfer is processed only on the written request made duly accepted by the Controlling Officials,

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once the order is issued, under no circumstances, there should be situation of half way implementation. Either should be implemented completely or not implemented at all. **The person who has sought mutual transfer must be spared** as otherwise it will pose problem for the assignment of seniority to the incoming person.

3.3 In case the outgoing person requests for retention inspite the incoming person having been released from his unit and/or joins, then it may be done **only his written request for retention on assignment of bottom seniority** on the date of joining of the incoming person who in any case gets his own seniority or the seniority of outgoing persons whichever is later. However this may result in usurping the promotional quota for want of vacancy against Direct Recruitment quota to retain him in addition but being inevitable it may have to be adjusted by the subsequent vacancy arising. It is therefore preferable not to entertain such request and once the order is issued it is to be implemented completely."

5. In the rejoinder filed, the applicant has submitted that the Annexure R-3 circular of the P.B. dated 30.10.1996 must yield to subsequent orders of the Railway Board. He has also denied their contention that the 5<sup>th</sup> respondent was adjusted against the direct recruitment quota vacancy as in Para 5 of their reply, they themselves have stated that there were no direct recruitment vacancies on date. The applicant has submitted that in terms of Annexure A-18 Railway Board order RBE No.24/2000 dated 8.2.2000, any transfer/appointment against DR quota vacancies must be subject to the fulfilment of the requisite educational qualification. Educational qualification for direct recruitment as Senior Clerk is Graduation whereas the respondent 5 is not a Graduate and she has only Matriculate as evident from the final seniority list of Ministerial Staff of Works Branch, Salem Division as published vide Annexure A-19 letter dated 16.12.2008. In Annexure A-19, among the Senior Clerks in scale Rs.4500-7000, the name of Smt T Latha is at Sl.No 8 and her qualification is shown as only SSLC. Moreover, there is no provision under the statutory rules enabling adjustments of persons in the manner adopted by the respondents. The RBE No.24/2000 is extracted as under:



## R.B.E.No.24/2000

(Supplementary Circular No.9 to Master Circular No.24)

Subject : Transfer on request on bottom seniority – Amendment to Indian Railway Establishment Manual.

[No.E(NG)-I/99/TR/15, dated 8.2.2000]

In terms of Note (ii) below Para 312 of the Indian Railway Establishment Manual, Volume-I, 1989, transfer on request of railway employees working in grades in which there is an element of direct recruitment can be accepted on bottom seniority in such grades. No such transfer is permissible in the intermediate grades, in which all the posts are filled by promotion of staff from the lower grade(s) and there is no element of direct recruitment. It is not, however, necessary that the employees seeking transfer should possess the educational qualifications prescribed for direct recruitment to the post to which transfer is sought.

2. The Central Administrative Tribunal/Chandigarh in its judgment dated 22.9.98 in OA No.413/HR/98 filed by Shri.Anand Prakash and others in the matter of transfer on request against direct recruitment vacancies quashed the instructions contained in this Ministry's letter No.E(NG)65/SR6/31 dated 1.4.1966 which stipulates that it is not necessary for the employees seeking transfer to possess the educational qualifications laid down for direct recruitment to the relevant post. The Central Administrative Tribunal also questioned the transfer of employees against direct recruitment quota vacancies in the absence of a provision in the rules for filling up posts in a grade by transfer. The Punjab and Haryana High Court at Chandigarh has upheld the judgment of the CAT Chandigarh. The SLP filed against the said judgment in the Supreme Court has also been dismissed.

3. The matter has been considered by the Ministry of Railways in consultation with the Legal Advisor/Railway Board in the light of the above development and it has been decided that henceforth for transfer of employees on request on bottom seniority in recruitment grades the employees should possess the qualification prescribed for recruitment to the relevant post.

4. The Indian Railway Establishment Manual, Volume-I, 1989 may also be amended accordingly as in the Advance Correction Slips No.95 and 96 enclosed.

6. We have heard the learned counsel for the parties. The main contention of the applicant is that the retention of the 5<sup>th</sup> respondent Smt T Latha as Senior



Clerk on bottom seniority vide Annexure A-5 impugned order dated 12.4.2005 is the reason why he did not get his promotion as Senior Clerk. The said contention is not true. The 5<sup>th</sup> respondent's retention as Senior Clerk was against the direct recruitment vacancy and therefore, the applicant should not have any justifiable grievance against it. Hence the prayer of the applicant to direct the respondents to consider and promote him as Senior Clerk against the vacancy/post occupied by the 5<sup>th</sup> respondent in terms of the Annexure A-5 order dated 12.4.2005 is to be rejected. Accordingly, this O.A. Is also dismissed.

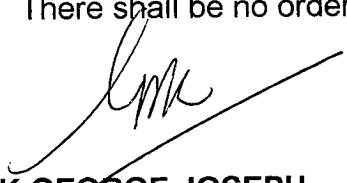
7. At the same time we also do not find any justification in the respondent's action in retaining the 5<sup>th</sup> respondent as Senior Clerk with bottom seniority in terms of the Annexure R-3 Railway Board Circular No.90/96 according to which "a Railway servant seeking *inter-unit transfer against direct recruitment vacancies need not possess educational qualification prescribed for such direct recruitment. However, they should be regularly selected candidates and posted in the regular vacancies before seeking transfer, having completed the minimum period in the grade prescribed if any, though one can register his request before expiry of the period.*" The Railway Board vide the subsequent Annexure A-18 RBENo.24/2000 dated 8.2.2000, following an order of the Chandigarh Bench of this Tribunal dated 22.9.1998 in O.A.413/HR/98 filed by Shri Anand Prakash and others in the matter of transfer on request against direct recruitment vacancies quashed the instructions contained in the Ministry's letter No.E(NG)65/SR6/31 dated 1.4.1966 which stipulates that it is not necessary for the employees seeking transfer to possess the educational qualifications laid down for direct recruitment to the relevant post. This Tribunal has also questioned the transfer of employees against direct recruitment quota vacancies in the absence of a provision in the rules for filling up posts in a grade by transfer. The said order



was upheld by the Punjab and Haryana at Chandigarh. The SLP filed against the said judgment was dismissed by the Supreme Court also. The Railway Board itself has, therefore, decided that, for transfer of employees on request on bottom seniority in recruitment grades, the employees should possess the qualification prescribed for recruitment to the relevant post, henceforth. The position that emerges as of date is that it is necessary that the employee seeking transfer should possess educational qualification prescribed for direct recruitment to the post to which transfer is sought. Admittedly, the minimum qualification for appointment as Senior Clerk against DR quota is graduation. If the 5<sup>th</sup> respondent is only a Matriculate, the reason for retaining her without fulfilling the educational qualification is a matter to be enquired into by the responsible authorities in the respondent-Railway. We also do not appreciate the manner in which the respondents have effected the transfer of Smt Manju Chandran without insisting for the 5<sup>th</sup> respondent to be relieved. The transparency in administration is very important so that the employees have faith and confidence in the system being followed by the departments.

8. We, therefore, direct that the 1<sup>st</sup> respondent to inquire into the matter and find out whether the retention of the 5<sup>th</sup> respondent as Senior Clerk against the DR quota was in accordance with the Railway Board's rules and instructions or not. In case it is found that her appointment has been made in violation of rules, the 1<sup>st</sup> respondent shall not hesitate to take action to rectify the situation as well as to take appropriate action against the officials responsible for making such illegal appointments.

8. There shall be no order as to costs.



K. GEORGE JOSEPH  
ADMINISTRATIVE MEMBER



GEORGE PARACKEN  
JUDICIAL MEMBER

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