

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 474 of 2011

.....*Friday*....., this the 18th day of November, 2011

CORAM:

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

1. Girish Babu,
S/o. K. Subramoniam,
Assistant Loco Pilot, Southern Railway,
Office of the Chief Crew Controller,
Ernakulam Junction,
Residing at: Parayil House,
Kumaranellur P.O., Kottayam : 686 016
2. P. Biju,
S/o. Padmanabhan,
Assistant Loco Pilot, Southern Railway,
Office of the Chief Crew Controller,
Ernakulam Junction,
Residing at : Biju Bhavan,, CMC-4,
Cherthala, Alappuzha District

... Applicants.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India, represented by
The Secretary to the Government of India,
Ministry of Railways, Rail Bhavan,
New Delhi : 110 001
2. The Divisional Railway Manager,
South Western Railway,
Bangalore Division, Bangalore : 560 046
3. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum : 695 014
4. Shri P.S. Suralal,
Senior Assistant Loco Pilot,
Chief Crew Controller's Office,
Southern Railway,
Kollam Junction R.S. and P.O.,
Kollam : 673 307

... Respondents.

(By Advocate Mr. V.V. Joshi for R1-3)



This application having been heard on 11.11.2011, the Tribunal on 18.11.2011 delivered the following :-

ORDER

HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicants in this O.A were initially appointed as Assistant Loco Pilot in the Bangalore Division, Southern Railway on 17.05.1999. They had registered their requests for inter divisional transfer to Trivandrum Division on 01.06.2000 as per rules. They joined the Trivandrum Division on 31.10.2007. Thereafter, they realised that a number of persons who had registered their requests for transfer to Trivandrum Division later than them were transferred earlier overlooking their priority in such registration. They made representations to the 3rd respondent for revising their seniority which elicited no response. O.A. No. 649/2009 filed by them was disposed of with a direction to the 3rd respondent to consider the representations of the applicants and to dispose of them with a reasoned and speaking order within a period of 2 months from the date of receipt of a copy of the order. Complying with the order of this Tribunal, the 3rd respondent issued Annexure A-11 order dated 09.11.2009 stating that their seniority will count from the date of appointment as Assistant Loco Pilot in the Trivandrum Division as per the existing rules. Aggrieved, the applicants have filed this O.A. for the following reliefs :

- (i) Call for the records leading to the issue of A-11 and similar orders issued as regards the 1st applicant and quash the same;
- (ii) Declare that the applicants are entitled to seniority in the cadre of Assistant Loco Pilots of Trivandrum Division, over those who had registered their request for transfer and appointment later than the applicants, but transferred and appointed earlier than the applicants overlooking their priority;



(iii) Declare that the applicants are entitled to the benefit of the order of this Tribunal in O.A. No. 781/2007 produced as Annexure A-8;

(iv) Direct the respondents to assign the applicants' seniority in the light of the declarations in para (ii) and (iii) above and direct further to grant all the consequential benefits emanating therefrom;

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

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

2. The applicants contended that they had registered their requests for inter divisional transfer to Trivandrum on 01.06.2000. In terms of the decision of this Tribunal in O.A. No. 781/2007 dated 19.06.2008, they are entitled to seniority over those who had registered their requests for transfer and appointment later than them. The delay in transferring and appointing them against the direct recruitment quota vacancies in the Trivandrum Division was not for any reason attributable to the applicants, but for reason directly attributable to the respondents. The applicants, therefore, cannot be put to suffer for any fault on the part of the respondents. They are entitled to seniority over those who had been transferred and appointed in the Trivandrum Division based on their requests submitted later than the applicants. The law declared by this Tribunal in O.A. No. 781/2007 holds good and there is no reason to deprive the applicants of the benefit of seniority.

3. In their reply statement, the respondents submitted that the applicants are not entitled to the benefit of the order in O.A. No. 781/2007 for the reason that they are not parties in the said O.A. Also, the said order has been stayed by the Hon'ble High Court of Kerala in O.P. No. 31443/2008. The applications



of the applicants for transfer to Trivandrum Division were received in Trivandrum Division and were registered in the priority register with effect from 07.09.2002. The appeal filed against the order in O.A. No. 781/2007 is pending before Hon'ble High Court of Kerala. Since there is a stay against the order in the said O.A., the applicants cannot claim similar order in their cases.

4. In the rejoinder filed by the applicant, it was submitted that the similarity of the facts in O.A. No. 781/2007 as also in the present O.A. has not been disputed by the respondents. The priority in the matter of inter divisional transfer must be based on the date of submission of the proforma for such transfer in the parent division.

5. We have heard Mr. T.C. Govindaswamy, learned counsel for the applicant and Mr. V.V. Joshi, learned counsel appearing for the respondents and perused the records.

6. The contention of the applicant is that their seniority in the cadre of Assistant Loco Pilot in the Trivandrum Division should be based on the date of registration of their requests for inter divisional transfer and appointment. They claim seniority over those who had registered their requests later than them. This issue was dealt with in O.A. No. 781/2007. The relevant part from the order dated 19.06.2008 in the said O.A. is extracted as under :

"8. Various Divisions forward the request transfer applications to the concerned Division which maintain a register and separate pages are allocated for each Division and likewise, separate page is allotted in respect of requests from other Railways. Certainly, the list forwarded by each Division would contain the requests in chronological order. But the forwarding of such request transfer would be on different dates by various divisions. Thus, an individual applying for transfer to a particular Division at a particular date



has no control over the date of despatch of the list by the Division to the concerned division. If in another Division, the administration acts fast in sending the transfer applications, and if that be taken as the priority list for effecting transfer, the individual who had applied fast but whose Division acts slow in forwarding the applications to the concerned Division, would be a great loser inasmuch as, he may not perhaps get his transfer and even if he gets his transfer, his seniority in the new Division would be reckoned from a later date. This is purely illegal. The Apex Court in a recent case of Union of India vs. Smt. Sadhana Khanna, 2008 (1) SCC 720, has held that mistake of Department cannot recoil on employees.

9. Equality in matters of employment is guaranteed under the provisions of Art. 14 read with Art. 16 of the constitution. Appointment and seniority are included in the term, 'matter of employment'. This is trite law. Under such a circumstance, when inter divisional transfer is against vacancies in the direct recruitment quota, the said transfer amounts to direct recruitment. So is the case of fixation of seniority on the basis of the date of their joining the new division. As such, if the transfer is not on the basis of the date of their registration, the same directly infringes the fundamental right under Art. 14 and 16 of the Constitution of India.

10. Thus, the sequence in which the transfer on inter-divisional/inter-zonal basis is to be effected and the sequence in which the seniority of the individuals is to be allotted in the transferred division should be based on the date of application. The same can well be followed adopting the existing system of maintaining separate pages for each division/other zonal Railways. While asking for willingness, offer should be made strictly on the basis of the date of registration of application in the respective parent division/railway and orders of transfer should, on receipt of willingness should be again in the order of the respective initial date of registration. Time limit for joining the new Division should be uniform to all and in the event of joining within the stipulated date, the date of seniority shall be on the basis of the order of transfer order. In case there be any delay in relieving the individual due to administrative reasons/service exigencies, then the marginal delay in joining shall not affect the seniority of the individuals, as held by this Tribunal in the case of R. Syama Kumar & 11 Others vs. Union of India & Ors (OA 899/2004 decided on 7.11.06), which has been upheld by Hon'ble High Court of Kerala vide judgement dated 22.03.2007 in WP(C) No. 9773/2007.

11. The OA is thus allowed to the following extent:-

(a) It is declared that date of registration for inter-

divisional transfer shall be the criterion for issuing letter seeking willingness for transfer and to issue transfer order. Consequently, order at Annexure A-9 which declares that the date of communication by the parent Division/Railway shall dictate aspect of issuing transfer order and consequent seniority in the transferred Division is held to be invalid and hence, Annexure A-9 is quashed and set aside.

(b) As a consequence, Annexure A-8 is also quashed and set aside.

(c) Respondents are directed to reschedule the order of transfer of various individuals on the basis of their initial date of registration in the parent division/railways and also fix the seniority, on their joining, in the same order of their date of registration.

12. Under the above circumstances, there shall be no order as to costs."

7. The applicants in this O.A. are similarly placed as the applicants in O.A. No. 781/2007. Similarly placed persons are to be treated similarly. The contention of the respondents that they cannot lay any claim on the order of this Tribunal in O.A. No. 781/2007 as they are not parties therein is, therefore, untenable. The next contention of the respondents that as the order of this Tribunal in O.A. No. 781/2007 is stayed by the Hon'ble High Court of Kerala in Writ Petition No. W.P.(C) 31443/2008, the applicants cannot claim the benefit of that order. In **Roshan Jagdish Lal Duggal and Others vs. The Punjab State Electricity Board, Patiala and Others**, 1984 (2) SLR731, Hon'ble Punjab and Haryana High Court has held that "The admission of an appeal against the order of the High Court and the suspension of its operation during the pendency of the appeal does not have the effect of rendering it non-est till the disposal of the appeal". The Hon'ble High Court of Kerala has stayed the operation of the order in O.A. No. 781/2007. The order of this Tribunal has not been set aside. Therefore, we are bound to follow the decision of

this Tribunal in O.A. No. 781/2007, as held by the Hon'ble Punjab and Haryana High Court in R.J. Lal's case (supra). If the date of registration in the parent division is taken as the basis for fixation of seniority in the transferred division, the delay in forwarding the registration will not recoil on the employees who had registered their requests for inter divisional transfer before others. Those who stand first in the queue should be served first. For the above reasons, the O.A. is liable to succeed.

8. Annexure A-11 order dated 09.11.2009 is set aside. We declare that the applicants are entitled to seniority in the cadre of Assistant Loco Pilot of Trivandrum Division over those who had registered their requests for transfer and appointment later than them, but transferred and appointed earlier than the applicants, overlooking their priority. The respondents are directed to assign the applicants' seniority in the light of this declaration and grant all consequential benefits emanating therefrom within a period of sixty days from the date of receipt of a copy of this order.

9. The O.A. is allowed as above with no order as to costs.

(Dated, the 18th November, 2011)



K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R.RAMAN
JUDICIAL MEMBER

cvr.