

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO.391/08

&

O.A.No.480/08

Friday this, the 5th day of February, 2010

CORAM:

HON'BLE DR.K.B.S.RAJAN, MEMBER(J)
HON'BLE SRI K.GEORGE JOSEPH, MEMBER(A)

O.A.No.391/2008

1. E.Sathyanatha Shenoy, Assistant Loco Pilot,
Crew Controllers Office, Southern railway,
Ernakulam South, Ernakulam.
2. K.Rajeev, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Kollam Junction, Kollam.
3. G.Binu, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Ernakulam South, Ernakulam.
4. P.K.Harish, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Ernakulam South, Ernakulam.

.. Applicants

By Advocate :Mr.Martin G.Thottan

vs.

1. Union of India represented by
The General Manager, Southern Railway,
Headquarters Office, Chennai-3.
2. The Chief Personnel Officer, Southern Railway,
Park Town P.O., Chennai.
3. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum.
4. K.R.Jayamohan, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,

Kollam Junction, Kollam.

5. P.A.Ashokan, Shunting Loco Pilot,
Crew Controllers Office, Southern Railway,
Alleppey.
6. R.Shyamkumar, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Kollam Junction, Kollam.
7. N.N.Gireeshkumar, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Ernakulam South, Ernakulam.
8. Biju Kumar, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Kollam Junction, Kollam.
9. K.H. Asharaf, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Kollam Junction, Kollam.
10. George Joseph, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Kollam Junction, Kollam.
11. Jameson P. Issac, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Ernakulam South, Ernakulam.
12. P.Pradeep, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Kollam Junction, Kollam.
13. Saji V Mathew, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Kollam Junction, Kollam.
14. S.J.Sreekanth, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Kollam Junction, Kollam.
15. S.Binu, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Kollam Junction, Kollam.
16. A.Anwar Hussain, Assistant Loco Pilot,

Crew Controllers Office, Southern Railway,
Kollam Junction, Kollam.

17. Biju George, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Kollam Junction, Kollam.

18. E. Shinil Babu, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Kollam Junction, Kollam.

19. M. C. Girish, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Kollam Junction, Kollam.

20. V. I. Rajesh, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Nagercoil Junction, Nagercoil.

.. Respondents

By Advocate : Mr. K. M. Anthru (R1-3)
Mr. T. A. Rajan (R7, 11, 15 and 18)

O. A. No. 480/08

1. Biju V. Nair, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Ernakulam South, Ernakulam.

2. K. Rajeev, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Kollam Junction, Kollam.

3. P. V. Sunil Kumar, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Ernakulam South, Ernakulam.

.. Applicants

By Advocate: Mr. Martin G. Thottan

vs.

1. Union of India represented by
The General Manager, Southern Railway,
Headquarters Office, Chennai-3.

2. The Chief Personnel Officer, Southern Railway,
Park Town P.O., Chennai.

3. The Senior Divisional Personnel Officer,

Southern Railway, Trivandrum Division,
Trivandrum.

4. K.R.Jayamohan, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Kollam Junction, Kollam.
5. P.A.Ashokan, Shunting Loco Pilot,
Crew Controllers Office, Southern Railway,
Alleppey.
6. R.Shyamkumar, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Kollam Junction, Kollam.
7. N.N.Gireeshkumar, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Ernakulam South, Ernakulam.
8. Biju Kumar, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Kollam Junction, Kollam.
9. K.H.Asharaf, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Kollam Junction, Kollam.
10. George Joseph, Assistant Loco Pilot
Crew Controllers Office, Southern Railway,
Kollam Junction, Kollam.
11. Jameson P.Issac, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Ernakulam South, Ernakulam.
12. P.Pradeep, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Kollam Junction, Kollam.
13. Saji V.Mathew, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Kollam Junction, Kollam.
14. S.J.Sreekanth, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Kollam Junction, Kollam.

15.S.Binu, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Kollam Junction, Kollam.

16.A.Anwar Hussain, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Kollam Junction, Kollam.

17.Biju George, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Kollam Junction, Kollam.

18.E.Shinil Babu, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Ernakulam Junction, Ernakulam.

19.M.C.Girish, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Kollam Junction, Kollam.

20.V.I.Rajesh, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Nagercoil Junction, Nagercoil.

21.K.G.Santhoshkumar, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Kollam Junction, Kollam.

22.G.S.Bijukumar, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Nagercoil Junction, Nagercoil.

23.Dinichen Joseph, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Ernakulam Junction, Ernakulam.

24.Manoj Kumar, Assistant Loco Pilot,
Crew Controllers Office, Southern Railway,
Kollam Junction, Kollam.

.. Respondents.

By Advocate: Mr.Thomas Mathew Nellimoottil(R1-3)
Mr. T.A.Rajan(R7,11,15, 18 and 21)

The application having been heard on 21.01.2010,the Tribunal on
delivered the following:-

ORDER

HON'BLE MR.K.GEORGE JOSEPH, MEMBER(A):

Having common facts and common grounds both these O.As were heard together.

2. Aggrieved by the arbitrary fixation of their seniority vis-a-vis the respondents, on their interdivisional transfer to the Trivandrum Division from the Madras Division, overlooking the date of initial appointment and the date of registration for such interdivisional transfer, the applicants have filed the O.As.

3. Facts in brief. The applicants were working as Diesel Assistants in the Madras Division of the Southern Railway. They had registered for inter divisional transfer to the Trivandrum Division. They were transferred to the Trivandrum Division vide the order dated 24.4.2001 along with the respondents who were working as Diesel Assistants in the Palghat Division. In the provisional seniority list of Diesel Assistants/ Assistant Loco Pilots as on 1.10.2001 published in the Trivandrum Division showed that the applicants were assigned a higher position than the respondents. However vide memorandum dated 22.11.2007 the seniority list was modified placing the applicants as juniors to the private respondents.

4. The applicants contend that the fixation of their seniority below the private respondents is highly arbitrary, unjust and discriminatory. The applicants who had registered their names much before the private respondents for inter divisional transfer are entitled for seniority in preference to them. Viewed from the date of regular appointment, date of submitting applications, for inter divisional transfer to the Trivandrum Division, the date of registration of such requests and even the date of joining the new division, the applicants are entitled to seniority above the private respondents. Even applying the principle laid down by this Tribunal in O.A. No.899/04 and other connected cases the applicants are entitled to higher seniority. They were not given an opportunity of being heard before their seniority was revised downwards.

5. Respondent No.1 to 3 contested the O.As. They have submitted that the seniority

of the employees in the category of Assistant Loco Pilot is maintained divisionwise. The seniority in the new division on their inter divisional transfer is to be maintained on the basis of the date of joining on such transfer as per para 312 of the IREM. The seniority list was revised in pursuance of the order of this Tribunal in O.A.No.899/04 and the judgment of the Hon'ble High Court in W.P.(C) No.9773/2007 in respect of the respondent-employees herein. In O.A.No.899/04 this Tribunal had directed the respondents to place the applicants therein in the order of their inter se seniority in the Palghat Division in the grade of Diesel Assistant irrespective of the date of their joining the Trivandrum Division. In the case of the applicants in the present O.As there is no order to modify their seniority in whatsoever manner as they were not parties in the earlier O.As. Their seniority continued to be on the basis of para 312 of IREM.

6. Respondents 7,11,15 and 18 in O.A. No.391/08 and respondents 7,11,15,18 and 21 in O.A. No.480/08 contended that there is nothing wrong or illegal in the impugned order revising the seniority of the applicants to a lower position. The said respondents were assigned seniority duly protecting their inter se seniority in Palghat Division. The applicants were assigned seniority based on their date of joining the Trivandrum Division. There is nothing wrong or illegal in the seniority assigned to the applicants and the party respondents.

7. In the rejoinder the applicants submitted that para 312 of IREM will apply only in reckoning seniority between inter divisional transferees and the existing employees in that division. In assigning the seniority between those who were transferred in inter divisional basis in a common order the date of registration will be the criteria for assigning seniority.

8. Arguments were heard and documents perused.

9. Para 312 of the Indian Railway Establishment Manual, Vol.1 reads as under:-

"312. TRANSFER ON REQUEST- The seniority of railway servants transferred on their own request from one railway to another should be allotted below that of the existing confirmed, temporary and officiating

railway servants in the relevant grade in the promotion group in the new establishment irrespective of the date of confirmation or length of officiating or temporary service of the transferred railway servants.

- NOTE:-(i) This applies also to cases of transfer on request from one cadre/division to another cadre/division on the same railway.
- (ii) The expression "relevant grade" applies to grade where there is an element of direct recruitment. Transfers on request from Railway employees working in such grades may be accepted in such grades. No such transfers should be allowed in the intermediates grades in which all the posts are filled entirely by promotion of staff from the lower grade(s) and there is no element of direct recruitment.
- (No.E(NG)I-69 SR 6/15, dated 24.6.1969)ACS-14)"

This para talks of seniority of those who are transferred from one division to another division vis-a-vis the seniority of the existing persons in the transferred division.

10. O.A.No.899/04 dealt with the question "what should be the order of inter se seniority of those transferred from one division to another of the railways under request transfer". The O.A. was decided as under:-

"11. In view of the discussions contained above(save the penultimate paragraph), the O.A. is allowed. It is declared that the seniority afforded to the applicants under Annexure A-6 is not in conformity with the practice (in the absence of rules to cover this specific type of cases) being followed in various Divisions and consequently, the seniority list in so far as the applicants and the private respondents are concerned, are liable to be quashed and set aside. We order so. The respondents are directed to consider placing the applicants and the private respondents in the order of their inter se seniority in the Palghat Division in the grade of Diesel Assistant irrespective of the date of their joining the Trivandrum Division. However, if any promotion had been effected on the basis of the impugned Annexure A-6 seniority, the same shall not be disturbed.

12. The rescheduling of the seniority on the above lines shall be completed within a period of four months from the date of

communication of this order.

13. It is for the respondents to consider the preparation of common list for transfer duly arranged on the basis of the date of joining and effect transfer in the same order as suggested in para 10 above."

11. The said order of this Tribunal regulated inter se seniority of Diesel Assistants in the Palghat Division on their joining the Trivandrum Division. The official respondents followed the order literally limiting its application to Diesel Assistants in the Palghat Division who were transferred to the Trivandrum Division, without appreciating the principle of maintaining inter se seniority when a group of employees are transferred from one division to another. The aforesaid order of the Tribunal has become final.

12. In the O.As under consideration the applicants belonging to Madras Division and the respondents belonging to Palghat Division form two distinct groups, from two divisions being transferred to a third division. As stated by the respondents the common transfer order dated 24.4.2001 was issued by respondent No.2, the Chief Personnel Officer, Southern Railway, Chennai as the subject matter of inter divisional transfers of Assistant Loco Pilot was processed at the headquarters level then, on the basis of the registration list for such transfers. The employees covered in the order joined Trivandrum Division on different dates on being relieved by the respective parent divisions. It is not possible for the Trivandrum Division to take into account the reasons in the parent divisions for relieving the transferees late. Therefore the employees were assigned seniority purely based on the dates of joining in accordance with the instructions in para 312 of IREM. When this Tribunal directed the official respondents in O.A. No.899/04 to place the applicants and private respondents therein in the order of their inter se seniority in the Palghat Division irrespective of the date of their joining Trivandrum Division, the respondents implemented it. To be fair to the Trivandrum Division the directions of this Tribunal was concerning the employees transferred from Palghat Division. As it did not to refer employees in Madras Division the respondents could not make it applicable to them. It is submitted that inter se seniority can be enforced within a particular group and not between different groups. It would be much easier if para 312 of IREM is held sacrosanct

and blindly followed. But such a course of action will not be fair and just as analyzed in O.A. No.899/04. It was noticed in the aforesaid O.A. that in Madras, Madurai and Palghat Divisions "seniority, in the transferred division of the individuals transferred was based on their seniority position in the previous division. This being the practice in the absence of any specific rule it is only appropriate that the same order is followed".

13. Para 312 of IREM governs fixation of seniority of transferee employees vis-a-vis the existing individuals in the transferred division. The ratio of the decision in O.A. No.899/04 should govern fixation of seniority among a group of employees transferred from one division to another division. The issue to be decided in this O.A. is what should be the principle to be followed when groups of employees are transferred from more than one division to another division. There is no problem if the employees are joining the new division on the same date. But when a number of persons are involved and the distance to be covered for joining the new post varies it may not be practical for all the transferees to join the new post on the same date. There can be delay in relieving employees on account of administrative exigencies and not on account of any reasons attributable to them. The respondents who were working in Palghat Division and transferred along with the applicants were relieved in time and they joined Trivandrum Division prior to the applicants. The respondents who were appointed in the Railways subsequent to the applicants appointment and registered their names for inter divisional transfer later were able to join the Trivandrum Division earlier, on account of the administrative exigencies which caused delay in relieving the applicants earlier. Therefore, their case for higher seniority over the respondents merits fair consideration. The applicants were appointed on a regular basis earlier to the respondents. They had even registered their names for inter divisional transfer prior to the regular appointment of the respondents. The inter divisional transfer order dated 24.4.2001 shows that the applicants are listed above the respondents. This order must be based on seniority/ date of registration. If the inter se seniority as evident from the said inter divisional transfer order of 24.4.01 is followed in the Trivandrum Division irrespective of the date of joining, the grievance of the applicants can be redressed and the respondents have no cause to complain about. As the entire group of people covered in the transfer order are to be

placed below the existing Railway servants in the relevant grade, the spirit of para 312 of IREM is followed in implementation. As inter se seniority is maintained, the ratio of the order of this Tribunal in O.A. No.899/04 as well as the good practice followed in certain other divisions, like the Madras, Madurai and Palghat are also followed in implementation. As the transfer order itself respects seniority and date of registration maintaining of inter se seniority is fair and just to all concerned.

14. In our considered view, para 312 of IREM is inadequate to provide justice to employees like the applicants herein, when there is a delay in their joining the new division on account of reasons not attributable to them. Even a delay of one day means a lot to the affected employees in terms of their career progression. In the interest of justice, whenever interdivisional transfers are made by a common order, inter se seniority as evident from the common order in the order the names are listed, which is based on the date of joining/date of registration, should be protected. This protection may be limited to those transferees who join the new division within a reasonable time decided by the authority issuing the transfer order. The reasonable time limit for joining may be counted from the date of relieving the employees from the division in which are serving. Such an arrangement would meet exigencies of administration and ensure justice to all the transferred employees.

15. In the light of the above, the O.As. succeed. Accordingly it is ordered as under:-

16. The revision of seniority vide memorandum No.V/P.612/VI/Seniority/RG dated 22.11.2007 is quashed and set aside. The respondents are directed to place the applicants and the private respondents in the order of their inter se seniority as evident from the inter divisional transfer order dated 24.4.2001 irrespective of the date of their joining the Trivandrum Division within a period of two months from the date of communication of this order. No order as to costs.

(K. GEORGE JOSEPH)
MEMBER(A)

/njj/

(DR.K.B.S.RAJAN)
MEMBER(J)