CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 79/09 & 487/09

Dated this the 22nd day of January, 2010

C O R A M

HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE SMT. K. NOORJEHAN, ADMINISTRATIVE MEMBER

O.A NO. 79/09

N. Vamanan Nampoothiry
S/o Narayanan Namboothiry
Traffic Apprentaice, MT-III 1265,
Palghat Division
residing at Mankulam Illam
Nareekam Valley PO
Kannur Pin-670501 .. Applicant

By Advocate Mr. Shafik M.A.

Vs

1 Union of India represented by
the General Manager Southern Railway
Headquarters Office
Chennai-3

2 The Chief Personnel Officer
Southern Railway
Headquarters Office
Chennai-3

3 The Divisional Railway Manager
Palghat Division Southern Railway
Palghat

4 The Senior Divisional Operations Manager
Southern Railway, Palghat.

5 The Senior Divisional Personnel Officer
Palghat Division
Southern Railway Palghat

6 The Senior Divisional Personnel Officer
Selam Division
Southern Railway, Selam. Respondents

By Advocate Thomas Mathew Nellimoottil

O.A.NO. 487/09

S. Pradeep S/o P.K. Govindan Kutty
Traffic Apprentaice, J/T 4701,
Palghat Division
residing at Vinayaka,Thottakkara
Ottapalam, Palghat -679 102 Applicant

By Advocate Mr. Shafik M.A.

Vs

1 Union of India represented by
the General Manager Southern Railway
Headquarters Office
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2 The Chief Personnel Officer
Southern Railway
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4 The Senior Divisional Operations Manager
Southern Railway, Palghat.

5 The Senior Divisional Personnel Officer
Palghat Division
Southern Railway Palghat

6 The Senior Divisional Personnel Officer
Selam Division
Southern Railway, Selam. Respondents

By Advocate Thomas Mathew Nellimoottil

These Applications having been heard on 8.1.2010 the Tribunal delivered the following:

O R D E R

HON'BLE SMT. K. NOORJEHAN, ADMINISTRATIVE MEMBER

As identical facts and common legal points are involved in these two Applications, they were heard together and are being disposed of by this common order.

2 The applicants are aggrieved by refusal of the respondents to post them to Palghat Division on completion of training as Traffic Apprentices.

O.A. 79/09

3 The applicant was initially appointed as Assistant Station Master on 3.6.99 at Chennai Division and later promoted as Station Master Grade-III. He applied for a mutual transfer with one Shri Senthil Kumar ASM, Palghat Division which was accepted and he was transferred to Palghat Division on reversion as ASM which he joined in 2004 and was posted as ASM, Ingur. Thereafter he had also made a

request for transfer from Ingur to Shornur/Kanjikode/Mangalore (A-4) which was registered. While working at Ingur, in response to Annexure A-1 notification applicant volunteered for the selection for the post of Traffic Apprentice, he was selected being No.2 in the merit list, and is undergoing training. Now the applicant has understood that his request for transfer to Shornur/Kanjikode/Mangalore (A-4) which was already registered was cancelled consequent on his selection as Traffic Assistant. The training of the applicant is likely to be completed by September 2009, he is entitled to be posted as SM/Traffic Inspector-Grade-II in Palghat Division. While so the 5th respondent has issued A7 that he will be absorbed permanently in Salem Division only. Aggrieved by the order he has filed this O.A quash A-7 to the extent it specifies that he will be posted to Salem Division permanently and to declare that he is entitled to be absorbed in Palghat Division as SM/Traffic Inspector/Grade-II. He has raised the grounds that A-1 notification clearly indicated that the selection to the post of Traffic Apprentice was conducted on Divisional basis to fill up the vacancies of Palghat Division against 10% LDCE quota from amongst serving employees of Traffic Department and that the selected employees will be absorbed in the working post of SM/Traffic Inspector/Grade-II in Palghat Division itself, the applicant being No.2 in the panel is entitled to be absorbed in Palghat division itself in preference to his juniors in the panel, he joined Palghat Division on mutual transfer on reversion losing his seniority with the intention of remaining in Palghat Division, he had not opted for Salem Division, he was selected as Traffic Apprentice while working at Ingur Station cannot be the criterion to decide the Division and that the merit in the panel of Traffic Apprentices sould have been the criterion in deciding the division. The applicant is aggrieved by the

refusal of the respondents to post him to Palghat Division on completion of his training as Traffic Apprentice

4 The respondents filed reply statement opposing the O.A. They submitted that the applicant volunteered to be appointed as Traffic Apprentice against 10% LDCE quota while he was working as ASM,Ingur and that he registered his name for transfer to Shornur /Kanjikode / Mangalore. He stood second in the select list and that he was selected and is undergoing training. After the formation of the SA division the registration for transfer to PGT Division has been maintained. The applicant's request to PGT Division was cancelled consequent on his selection as Traffic Apprentice. The applicant's name does not find a place in the list of employees of SA Division whose lien is maintained in Palghat Division. The applicant who was working in the territorial jurisdiction of the Salem Division will be deemed to have automatically transferred to Salem Division unless the staff opt out of Salem Division and choose to go back to their parent division. Moreover as per order of the Tribunal in O.A.413/2008 dated 14.10.20089 SMs undergoing training against LDCE quota of SA Division on completion of two years are to be taken on PGT Division. If the applicant had remained as ASM without joining the training course his case would have been considered for transfer to PGT Division based on his earlier registration for transfer.

4 The applicant has filed rejoinder stating that as per para 1.6 of Annexure R-1 no staff will be transferred against his/her willingness on a permanent basis in line with the assurance given by the Hon'ble Minister. He further submitted that in case the applicant ceases to be

Station Master, his working in Ingur which is part of the present Salem Division cannot be of any consequence to apply the provision contained in Annexure R-1. The applicant being recruited for Palghat Division is entitled to be posted in Palghat Division only.

O.A. 487/09

5 The applicant while working as ASM in Waltair Division of East Coast Railway has requested for a posting to his home division due to his family problems. Finally he was fortunate to get a mutual transfer to Palghat Division in the lower cadre ofASM . He joined the Palghat Division as ASM on 1.10.2004 and was posted to Lalapet. He has submitted a representation for a transfer to Chullimad/ Kottekadu / Lakkidi, his choice stations which was registered. While so he qualified in the examination for promotion as Traffic Apprentice and was directed to undergo 2 years training. In the mean time the new Salem Division was formed. It is understood that the request of the applicant was cancelled consequent on his selection for the training and appointment as Traffic Apprentice. Since the station at which he was working at the time of selection is now in the newly formed Salem division he would be posted in Salem Division permanently without getting any options from him and against his will. The applicant has foregone his seniority and joined a lower post for being posted to Palghat Division. He, aggrieved by the refusal of the respondents to post him to Palghat division on completion of his training as Traffic Apprentice has filed this application on more or lesss similar grounds as in the case of O.A. 79/09.

6 The respondents filed identical reply statement as in O.A. 79/09 opposing the O.A.

7 We have heard learned counsel for the parties and have gone through the pleadings.

8 The crux of the submission of respondents is that the applicants who were working as ASMs Ingur and Lalapet within the territorial jurisdiction of the present Salem division will be deemed to have automatically transferred to Salem Division unless such of those staff opt out of Salem Division and choose to go back and that the Tribunal in O.A. 413/2008 directed 9 SMs of SA Division, to be taken to PGT Division as per priority. The applicants on the other hand submitted that their requests for transfer to Palghat Division have been cancelled consequent on their selection as Trainee Traffic Apprentice and they being at rank No. 2 & 5 in the select list of Traffic Apprentices, on completion of the training, they have a right to be posted to the Division of their choice.

7 We find that the applicants ASMs working in Chennai/Waltair Division of East Cost Railway Division, sought a transfer to Palghat Division on mutual grounds and were accordingly transferred to Palghat Division and posted at Ingur/Lalapet Stations. We further notice that selection to the post of Traffic Apprentices was conducted for Palghat Division before Salem Division Division was formed. Salem Division was established during the training period of the Traffic Apprentices. The respondents have taken a decision that the field staff presently working in the territorial jurisdiction of the proposed

Salem Division will be deemed to have automatically been transferred to Salem Division unless such of those staff opt out of Salem Division and choose to go back to their parent Division. The request registered by the applicants for transfer to PGT Division has been cancelled due to their selection as Traffic Apprentice. The respondents should have obtained option from the trainees. The applicants have not been given an opportunity to make option. Neither were they aware of the cancellation of their requests for various stations in Kerala State of Palghat Division. They pointed out that on formation of Salem Division Procedure order No.1 Establishment matters (Annexure R-4) was issued. The relevant portions are extracted below:

"1.60 **Transfer of staff**

No staff will be transferred against his/her willingness on a permanent basis in line with the assurance given by Hon'ble MOSR

1.6.1 Field Staff

The Field Staff presently working in the territorial jurisdiction of the proposed SA division will be deemed to have automatically been transferred to SA Division, unless such of those staff opt out of SA Division and choose to go back to their parent Division to be exercised in writing

1.7.0 **Pending Transfer requests**

The transfer requests already registered are to be dealt with as under:

1.7.1 To go out of SA Division

The priority in respect of staff of the erstwhile PGT/TLPJ/MDU Division will continue to be maintained at the relevant unit to which such request has been made and registered.

1.8.0 Cadres

All the Cadres of the new Division will be kept open till 31.10.2008 or such other date as may be decided by the competent authority to facilitate inward and outward movement as per the

options. The cadre will be closed on 31.10.2008. The seniority of staff within the grades of various cadres will be fixed taking into account the length of service in the relevant grade in respect of optees. For others, who joined on IRT/IDT at request, the seniority will be governed by relevant rules in this regard."

From the above it is clear that no staff will be transferred against their willingness. The applicant is not willing to be transferred to Salem Division. The priority of registration for transfer will continue to be maintained.

In the circumstances, we are of the opinion that the Trainee Traffic Apprentices have a legal right to be posted at the place of their choice depending on their rank in the select list and the availability of vacancy.

8. Moreover, the Tribunal has occasion to consider identical case in O.A. 396/2009. The Tribunal in that case held as follows:

11 The applicant like every employee, had an option to opt out of SA Division to be exercised in writing. That opportunity was not exercised by the applicant because according to her she has already registered a request for transfer to Palghat in 2004 itself. The least the administration could have done is, to intimate the applicant when her request for transfer to Palghat Dn registered in 2004 was cancelled, to exercise an option, if necessary for Palghat Dn once again. Moreover, we feel that being No. 1 in the select list of Apprentice Trainees, the applicant has accrued a legal right for an option to choose the Division depending upon the availability of vacancy,especially in the context of her juniors in the select list being allotted Palghat Dn. itself. Consequent on recommendation of VI CPC, the two grades of Station Masters Grade -II and III are grouped into one grade pay w.e.f. 1.1.2006. If the request of the applicant for transfer to Palghat had not been cancelled, she should have got transfer to Palghat Division under Para 1.7.1 quoted above.

12 Based on the foregoing discussion, we are of the view that the O.A. succeeds. Accordingly, we quash and set aside Annexure A-10 and declare that the applicant is entitled to be posted in Palghat Division after completion of the Traffic Apprentice training in preference to others in the select list.

9 In this view of the matter, we are of the opinion that these O.As. can be allowed with identical direction to the respondents quashing the impugned orders. Accordingly we allow the O.A.s and quash Annexure A-7 in O.A. 79/09 and A-1 in O.A. 487/09 and declare that the applicants are entitled to be posted to Palghat Division. We direct the respondents to declare the posts of Traffic Apprentices earmarked for Palghat Division and obtain the choice of Division of the trainee Traffic Apprentices and post them in Palghat Division on the basis of their rank in the select list. There shall be no order as to costs.

Dated 22nd January, 2010

K. NOORJEHAN
ADMINISTRATIVE MEMBER

K.B.S. RAJAN
JUDICIAL MEMBER

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