

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO.545/2008

Dated this the 13th day of July, 2010

C O R A M

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

- 1 Anil Kumar T.T. S/o Thankappan
working as Assistant Loco Pilot, O
O/o the Senior Section Engineer,
C&W/O/PGT Railway Station, Southern Railway
Palakkad Jn.
Residing at Thuruthiparambil,
Pannimattam PO, Thodupuzha
- 2 D. Ajay S/o R.K. Dinesan
working as Assistant Loco Pilot, O
O/o the Senior Section Engineer,
C&W/O/PGT Railway Station, Southern Railway
Palakkad Jn.
Residing at Anamika Bhavan, Karikkakom Beach PO,
Thiruvananthapuram.
- 3 A. Ajay S/o G. Anandan Nair
working as Assistant Loco Pilot, O
O/o the Senior Section Engineer,
C&W/O/PGT Railway Station, Southern Railway
Palakkad Jn.
Residing at Santha Mandiram, Kulathoor Konam
Puthenkulam PO, Kollam
- 4 K.M. Sudheesh S/o Krishnan Nair
working as Assistant Loco Pilot, O
O/o the Senior Section Engineer,
C&W/O/PGT Railway Station, Southern Railway
Palakkad Jn.
Residing at Ananda Bhavan, TC 15/758
Sasthamangalam PO, Thiruvananthapuram-10

- 5 M. Rajesh S/o Murukesan M.
working as Assistant Loco Pilot, O
O/o the Senior Section Engineer,
C&W/O/PGT Railway Station, Southern Railway
Palakkad Jn.
Residing at Sivakripa, TGRA-104, Pathirippally
Kudappanakunnu, Thiruvananthapuram-43

..Applicants.

By Advocate Mr. K.A. Abraham

Vs

- 1 Union of India represented by the Secretary
Railway Board, Rail Bhavan, New Delhi.
- 2 The General Manager,
Southern Railway, Chennai-3
- 3 The Chief Personnel Officer
Southern Railway Headquarters
Chennai-3
- 4 The Senior Divisional Personnel Officer
Southern Railway, Palakkad
- 5 The Senior Divisional Personnel Officer
Southern Railway,
Thiruvananthapuram.
- 6 Shri M. Sukumaran Assistant Loco Pilot
SSE Office, Southern Railway,
Mangalapuram.
- 7 K. A. Nishad, Assistant Loco Pilot
Chief Crew Control Office
Southern Railway, Ernakulam Jn
Ernakulam.
- 8 M.S. Nirmalkumar, Assistant Loco Pilot
Chief Crew Control Office
Southern Railway, Ernakulam Jn.
Ernakulam.

Respondents.

By Advocate Mr. Sunil Jose for R 1-5
Advocate Mr. T.C. Govindaswamy for R-8
Advocate Mr. K. A. Rasheed for R 6 & 7

The Application having been heard on 18.6.2010 the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

Applicants are working as regular Assistant Loco Pilots in the Palakkad Division of the Southern Railway. They registered their names for inter-Divisional transfer to Trivandrum Division (A-1). According to them, requests for transfer get preference in filling up the vacancies over Casual labourers/ELR waiting for absorption or other modes of recruitment. They apprehend that a batch of persons selected directly for training as Assistant Loco Pilots from departmental quota are completing training and are likely to be appointed in the existing vacancies and that the applicants will lose their chance to get transfers. Hence, they have filed this O.A to quash and set aside Annexure A-4, to consider their cases before new appointments are made and for a direction to the respondents not to fill up the vacancies of Assistant Loco Pilots in Trivandrum Division without considering their requests for inter-divisional transfer. They are relying on Annexure A-2 PB circular, by which the action of the respondents to appoint fresh recruits who had been selected is illegal and against the rules governing inter-divisional transfers. The Tribunal had directed to consider identical cases before effecting any new appointment (O.A. 754/07) if the direct recruits are appointed overlooking their claims they will lose their seniority, in accordance with Rule 312 of IREM Vol. I.



2 The respondents Railways filed reply statement opposing the O.A. They at the outset submitted that as per Paragraph 226 of IREC, transfer cannot be claimed as a matter of right. The applicants have not impleaded the other employees who are stated to be undergoing training for eventual absorption as Assistant Loco Pilot and the senior registrants.

On merits they submitted that the appointment of employees which the applicants apprehend in the O.A, is against the promotees' quota as provided under RB letter No. E(NG)I-90/MPM-7/34/Vol.II dated 2.9.98, 5 persons including SC/ST communities have been allotted to the Division having been selected through General Departmental Competitive Examination and they are waiting to be absorbed. They further submitted that the employees working in the feeder category of promotional quota have also approached the Tribunal earlier through O.A.240/2004 They distinguished the order of the Tribunal in O.A. 754/2007 which is a case of transfer between the newly formed Salem division and the truncated Palakkad Division.

3 The applicants filed rejoinder reiterating that they have a right to get inter-divisional transfer as per rules in force. They also stated that there is no promotional quota . The 50% of the vacancies are to be filled up by direct recruitment quota and 50% by transfer.

4 The applicants amended the O.A by impleading the the persons who completed training and also added one more ground to the effect that transfer on request is regulated by Rule 312 of IREM Vol. I extract of which is produced as Annexur A-6.



5 The additional respondents 6 & 7 filed common reply statement. They stated that the 5th respondent invited application from volunteers as per direction of the Tribunal in O.A. 240/2004 50% against promotional quota, against the vacancies of 2003 and 2004. They further submitted that they have received full pay of Technician -II till they were appointed as Asst. Loco Pilots. Therefore, they contended that they are entitled to get seniority over the inter-divisional transferees.

6 The 8th additional respondent entered appearance and filed reply statement stating that he was appointed in terms of safety related retirement scheme introduced by the Railway Board vide order dated 2.1.2004 (R-8(a) which was further modified. He further submitted that Annexure A-2 is only a circular issued by the CPO and the same cannot over ride the provisions of the Railway Board orders contained in Annexure R (a) to (d).

7 The respondents 1-5 filed additional reply statement They have produced the order of the Tribunal rejecting the prayer for inter-divisional transfer in identical case in O.A. 774/2009. The order was appealed before the High Court of Madras in WP NO. 20592/2009 but it was dismissed.

8 The Tribunal by its order dated 12.11.2008 granted stay of filling up of the existing vacancies of Assistant Loco Pilots in Trivandrum Division before applications for inter divisional transfer of the applicants are considered till the disposal of the case.



9 I have heard the learned counsel appearing on both sides and carefully gone through the documents produced before us.

10 The main ground raised by the applicants is that they would get preference over the casual labourers/ELR awaiting absorption or other modes of recruitment. The respondents stated that the inter-divisional transfer is only against 50% direct recruitment quota. They drew attention to Rule 312 which is extracted below:

312 Transfer on request - The seniority of railway servants transferred at 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 (Rly Bd.No.E(NG)I-85 SR 6/14 of 21.1.1986)

(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 intermediate 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-69SR 6/15 dated 24.6.1969)

11 The applicant has produced PB Circular NO. 164/85 Annexure A-2 dated 16.12.1985 in their support. That circular is extracted below:

The general policy of the Administration on the subject if inter-divisional/inter-railway transfers of staff is, keeping in view of the spirit of extant instructions/orders as amended from

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time to time that whenever employees working in other Divisions/Railways apply for such transfers on the usual conditions the requests are considered, based on merits, against direct recruitment quota only (both for Group-C and D)

Cases have come to notice where Divisions/Units have refused to entertain such request for transfers stating that empanelment of Casual Labourers/Open market recruitment is under progress. This is not in keeping with the rules in force. Employees who have a regular status naturally get preference in filling up vacancies in the recruitment categories over Casual Labourers/ELR, awaiting absorption or other modes of recruitment. As such, requests for transfers should therefore generally be considered in preference to absorption of Casual Labourers/Open market recruitment. This is however, subject to the condition that they fulfill the requisite qualifications, age, etc where prescribed and the medical standards of the category where transfer is sought. Cases may please be processed accordingly. This however will not naturally apply to transfers specifically created for de-casualisation. (No. P(R)676/P dated 17th December, 1985)

The applicants raised yet another ground that there is an element of direct recruitment in the mode of recruitment of the category of Diesel Asstt. /Elect. Asstt. in the running cadre issued on 25.4.1997. The relevant portion is extracted below:

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(a) 50% of the vacancies by lateral induction from amongst First Fireman who are at least 8thk Class Pass and are below 45years of age- Shortfall if any, by promotion by usual selection procedure from amongst the Second Fireman who are 8th Class Pass and are below 45 years of age

(b) Balance 50% of the vacancies by lateral induction of Matriculate First Fireman with minimum three years continuous service-Shortfall if any by promotion from amongst Matriculate Second Fireman through Departmental Examination.

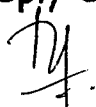
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© Shortfall, if any, against (a) and (b) above is to be made good by Departmental Examination from among Matriculate Cleaners with five years continuous service.

(d) Shortfall, if any, against © above should be made good by 9) lateral induction of Skilled Artisans (Diesel/Electric Fitters) and (ii) Matriculate Diesel/Electric Cleaners/Khalasis having Course Completed Act Apprenticeship/ITI qualification in appropriate trade and a minimum of 3 years continuous service in Diesel/Electric Loco Sheds, subject to a maximum; of 20% of the vacancies

(e) If still there is some shortfall, the same should be made good by direct recruitment through RRB.

12 The respondents have emphatically stated that the employees like the party respondents have been selected to the post of Assistant Loco Pilot against the 50% promotional quota vacancies for the years 2003 and 2004 and are undergoing training and they are liable to be appointed on successful completion of the training. Therefore, the posts have no connection with the 50% direct recruitment quota earmarked for the applicants' transfer. Moreover, the employees working in the feeder categories approached the Tribunal through O.A. 240/2004 for filling up the vacancies meant for them. Pursuant to the directions of the Tribunal in that O.A the party respondents were posted. As regards the third additional respondent is concerned, he was appointed under the Safety Related Retirement Scheme consequent on voluntary retirement of his father (R-1). Therefore, he is entitled to be considered for appointment. Therefore, we do not find any force in the contention of the applicants, in requesting for transfer against posts in the promotional quota or demanding all the direct recruitment quota vacancies to be reserved for them. As rightly pointed out by the respondents in their additional reply statement, if all the vacancies of



Trivandrum Division in direct recruitment quota are filled up by transfer, then deserving candidates in Trivandrum area or Kerala State will be deprived of getting an appointment in places under Trivandrum Division. This is violative of Article 309 of the Constitution, which prescribes an equal opportunity for all to compete for the posts under direct recruitment quota. Also, the respondents contended that there was no direct recruitment for Assistant Loco Pilots in Trivandrum Division for the past 10 years. This has naturally deprived the Division of getting young people to work in the post of Assistant Loco Pilots where work is of an arduous nature and the job demands vigilance and presence of mind.

13 The applicants are relying on the orders of the Tribunal in O.A. 754/07. The contention of the respondents is that it is a case of newly formed Salem Division carved out of erstwhile Palghat Division which is not a transfer registered as in the case of the applicants in the present case. The applicants in O.A.754/07 who were working in Erode Depot under the Palghat Division requested for transfer to various other depots in Palghat Division. During the pendency of the Application, Salem Division was formed and their transfer became inter-divisional transfer. Therefore, the facts and circumstances in that O.A. are different from the present O.A.

14 However, having registered a request for transfer, it is just and fair to consider the transfer in accordance with the extant rules/guidelines governing such inter-divisional transfer strictly on the basis of the date of registration. The relevant portion from P.B. Circular No. 90/96 dated 30.10.1996 regarding procedure for

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registration of application received from other units is extracted below:

2.8.3 It may not be feasible to deal with transfer request as and when received in all categories. In such a situation on assessment of the availability of the vacancies against direct recruitment quota, the unit concerned can make a periodical review for liquidating the pending applications. For this purpose, at least once in a year, the transfer request registered and wait-listed for want of vacancies in the unit concerned to which transfer is sought is listed and published, copies sent to the units concerned from which transfer requests have been sought. This will enable the personnels seeking transfer to know their priority position and also the position obtaining in the various units from which transfer is sought. It will also enable the applicants to withdraw the transfer request due to his personal reasons on subsequent developments that may arise...."

15 In view of what is stated above, I am of the opinion that the Application is liable to be dismissed. However, I make it clear that as and when vacancies arise in Trivandrum Division, the transfer requests of the applicants shall be considered as per the instructions in force, in their turn. Accordingly, the O.A is dismissed and the interim order granted by this Tribunal on 12.11.2008 and extended till disposed of the O.A is vacated. There shall be no order as to costs.

Dated 13th July, 2010



K. NOORJEHAN

ADMINISTRATIVE MEMBER

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