

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**ERNAKULAM BENCH**

**Original Application No. 586 of 2008**

*Tuesday, this the 6<sup>th</sup> day of October, 2009*

**CORAM:**

**Hon'ble Dr. K.B.S. Rajan, Judicial Member**  
**Hon'ble Mr. K. George Joseph, Administrative Member**

<ol style="list-style-type: none"> <li>1. S. Thilakan, S/o. late S. Srinivasan, aged 47, "Ramaramam", Vanniyur Street, Chittoor, Palakkad.</li> <li>2. M. Murali Madhavan, S/o T. Unnikrishnan Nair, aged 52, "Madhavam" Karingara Palli, Palakkad.</li> <li>3. P. Mohanan, S/o. Shankaran, Kadavathur Veedu, Dhoni P.O., Palakkad.</li> </ol>	<b>Applicants</b>
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**(By Advocate – Mr. C.S. Manilal)**

**V e r s u s**

1. The Union of India represented by the General Manager, Southern Railway, Chennai.
2. The Senior Divisional Personnel Officer, Southern Railway, Palakkad.
3. C. James John, aged 36 years, S/o. (Late) C.K. John, Loco Pilot (Goods)/ Southern Railway/Erode, Permanent Address: Cheeramban House, Velu Bazaar P.O., Trichur District.
4. N.K. Vinod Kumar, aged 34 years, S/o K. Krishnan Nair, Loco Pilot (Goods)/Southern Railway/Erode, Permanent Address : Njattuveettil House, Puthenchira P.O., Trichur District, Pin - 680 682.
5. Sivakumar C, aged 36 years, S/o. M. Raman Nair, Loco Pilot (Goods)/Southern Railway/Erode, Residing at : Latha Vihar, Surya Nagar, Maniserry East, Ottappalam, Palakkad Dt.

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6. M.S. Asokan, aged 37 years, S/o. P. Sankaran Nair, Loco Pilot (Goods)/Southern Railway/Erode, Residing at : Moolamkombil H.O., Nayathode P.O., Angamaly, Ernakulam Dt.
7. K.R. Sarath Kumar, aged 35 years, S/o K.R. Ramakrishnan, Loco Pilot (Goods)/Southern Railway/Erode, Residing at : Kovil Parambil House, Vallivattam P.O., Trichur dt.
8. K. Zainudheen, aged 38 years, S/o. K. Kunhimoammed, Loco Pilot (Goods)/southern Railway/Erode, Residing at : Kootteeri House, Vaniambalam P.O., Malappuram Dt.
9. V.T. Sivadasan, aged 48 years, S/o. V.T. Nayadi, Loco Pilot (Goods)/Southern Railway/Erode, Residing at : "Sreeragam", Aiswarya Colony, Malampuzha Road, Olavakkode, Palakkad Dt.
10. K.K. Kandamuthan, aged 47 years, S/o. K. Chathan, Loco Pilot (Goods)/Southern Railway/Erode, Residing at : Kolakkandam Potta H.O., Muttikulangara P.O., Palakkad Dt.
11. P.S. Gopalakrishnan, aged 49 years, S/o. P.S. Sekhara Mannadiar, Loco Pilot (Goods)/Southern Railway/Erode, Residing at : Puliyassar House, Near Railway Station, Ottara, Kollengode, Palakkad Dt.
12. K.G. Vasantha Kumar, aged 49 years, S/o. C.K. Gopalan Nair, Loco Pilot (Goods)/Southern Railway/Erode, Residing at : Chathappadi House, Cherussery, P.O. Thaikkattusseri, Trichur Dt.
13. Radhakrishnan Nair V, aged 37 years, S/o. Velappan Nair, Loco Pilot (Goods)/southern Railway/Erode, Residing at : Ambili Bhavan, Karippoor P.O., Nedumangad, Trivandrum Dt.
14. P. Unnikrishnan, aged 56 years, S/o. Narayanan Nair, Loco Pilot (Goods)/Southern Railway/Erode, Residing at : 'Saravana', Kunnumpuram, Chevayoor, Calicut - 673 017. .... Respondents

[By Advocate – Mr. K.M. Anthru (R1&2) &  
Mr. T.C. Govindaswamy (R3-14)]

The application having been heard on 29.9.2009, the Tribunal on

6/10/09 delivered the following:

## O R D E R

By Hon'ble Dr. K.B.S. Rajan, Judicial Member -

Facts as stated in the OA as regards the position of the applicant, as to the impleadment of the respondents, regarding the state of bifurcation of the Railway Division etc., being not denied, the same obviate debates. The only point to be considered in this case is whether their request vide Annexure A-8 of the OA which is stated to have not been considered has to be considered by the respondents. The said Annexure A-8 reads as under:-

*"We were the senior Asst. Loco Pilots in the erstwhile Palakkad Division. After the formation of new SA division and new PGT division, goods loco pilots from ED depot were transferred to the present PGT Division, filling up the vacancies of the PGT Division. In the meantime, vacancies at ED depot, SA Division were not filled up either from promotion or from option from staff side. The effect was the available vacancies were filled up by transferring the loco pilots from the present SA Division duly keeping the vacancies of ED depot vacant and also the vacancies of the already transferred goods loco pilots not filled up. Had the vacancies already available were filled up and the vacancies arising out of the transfer were filled up, simultaneously, the promotion prospects as in the present PGT Division would not have affected.*

*In the case of guards of the erstwhile PGT division, the promotion prospect of the guards in the erstwhile PGT division was safeguarded by promoting and posting them on ad hoc basis thereby filling up vacancies in the divisions. This was not done in the case of Loco Pilots and Asst. Loco Pilots.*

*We are of the feeling that the only way to safeguard the genuine and vital interest on the promotion of Senior Asst. Loco Pilots of the present PGT Division are either to freeze the alleged transfer of loco pilots of SA Division to PGT division totally or to consider the senior of Sr. Asst. Loco Pilots of the erstwhile PGT division while filling up the vacancies is of the SA division, during the next selection giving as a chance to get promotion on vacancies in SA division."*

2. Now a vignette of the facts of the case: The applicants are Assistant

Loco Pilots at the erstwhile Palakkad Division. According to them, they are the senior most amongst the Asst. Loco Pilots at the present Palakkad Division. When Palakkad Division was bifurcated as Palakkad and Salem Divisions, opportunity was afforded to all the employees to exercise their options either to remain in Palakkad Division or to switch over to Salem Division. The applicants chose to remain in Palakkad Division only. With a view to ensure smooth functioning of the two divisions, it was decided to keep the lien of those employees in the respective divisions they have opted, though they may be functioning as on that date in the other division. And Loco Pilots working in Salem area who have registered their names for transfer to Palakkad Division area are to be considered on 1:1 basis in accordance with the procedure prescribed by the Headquarters. The applicants have felt that by the above arrangement, their promotion prospects would be depleted. It was under these circumstances that the applicants had moved the above representation vide Annexure A-8 and since there was no response, this application, praying for a direction to the respondents to consider the applicants for promotion to the post of Loco Pilots (Goods) in the available vacancies under the Palakkad Division and for a declaration that filling up of the post of Loco Pilots (Goods) in Palakkad Division by transferring officials from Salem Division is illegal and violative of Art. 14 and 16(1) of the Constitution.

3. A few of the Loco Pilot (Goods) of Salem Division, who have requested for transfer to Palakkad Division (and whose lien is still in Palakkad Division) filed a miscellaneous application seeking impleadment

in the present OA as any decision in the present OA may affect their prospects of being transferred from Salem Division to Palakkad Division. This M.A. was, after notice to all concerned, allowed.

4. Official respondents have contested the O.A. They have stated that as on date there are only excess postings of Loco Pilots in the present Palakkad Division and apart from the same 104 employees now working in Salem Division in different grades of Loco Pilots have registered their names for transfer to Palakkad Division and these requests for transfer are not considered due to non availability of vacancies at Palakkad Division. It has been contended by the respondents that the applicants are not senior most Asst. Loco Pilots, as they claim. The seniority list annexed by the applicants would show, contend the respondents, that their position is far below (Serial No. 75, 96 and 97). As such, the OA is liable to be dismissed.

5. Counsel for the applicant submitted that the respondents have not considered the representation of the applicants, vide Annexure A-8 and a direction to them to consider the same would meet the ends of justice.

6. Counsel for the party respondents has submitted that uniform procedure having been prescribed in respect of transfer of those working at present at Salem Division to Palakkad Division (and vice versa), the same cannot be disturbed.

 7. Official respondents have contended that the applicants not being the

senior most amongst the present Asst. Loco Pilots, they would not be considered for promotion against any of the vacancies. In fact there are no vacancies in the grade of Loco Pilots at Palakkad Division at present, as explained in the counter. Again, the policy decision of transfer of 1:1 as contained in the Headquarters letter cannot be violated.

8. Arguments were heard and documents perused. The applicants, for their own convenience chose to be at Palakkad as Asst. Loco Pilots. Their seniority, after the bifurcation would be rescheduled and in respect of vacancies arising at Palakkad Division the same would be posted in accordance with the prescribed procedure and decision arrived at the time of bifurcation of Palakkad Division as Palakkad and Salem Division.

9. The oral prayer made by the applicant for a direction to the respondents to consider the pending representation cannot be considered in view of the decision of the Apex Court in the case of *A.P. SRTC v. G. Srinivas Reddy*, (2006) 3 SCC 674, which is as under:-

*19. There are also several instances where unscrupulous petitioners with the connivance of "pliable" authorities have misused the direction "to consider" issued by court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to "consider" and dispose of the representation. When the court disposes of the petition with a direction to "consider", the authority grants the relief, taking shelter under the order of the court directing him to "consider" the grant of relief. Instances are also not wanting where authorities, unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order "to consider" as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting*

undeserving relief, in pursuance of orders to "consider", may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of the court's direction to "consider" the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily-wagers seeking regularisation/absorption into regular service is a species of cases, where there has been a large-scale misuse of the orders "to consider".

20. Therefore, while disposing of the writ petitions with a direction to "consider", there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The court should also normally fix a time-frame for consideration and decision. If no time-frame is fixed and if the authority does not decide the matter, the direction of the court becomes virtually infructuous as the aggrieved petitioner will have to come again to court with a fresh writ petition or file an application for fixing time for deciding the matter.

10. The above decision was referred to and reiterated in a subsequent decision in *C. Jacob v. Director of Geology and Mining*, (2008) 10 SCC 115, wherein the Apex Court has held as under:-

11. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do so may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of "acknowledgment of a jural relationship" to give rise to a fresh cause of action.

The above would go to show that the direction as sought for by the counsel for the applicant cannot be issued.

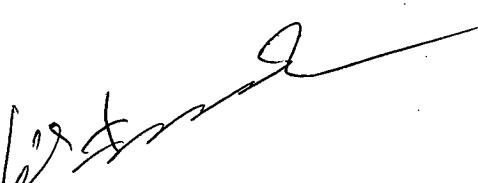
11. Now on merit as to the relief sought for by the applicants in their O.A. The claim of the applicants is that they should be considered for promotion, without permitting Loco Pilots of Salem Division by way of transfer. Those Loco Pilots who are at Salem Division, but who have sought to be posted in Palakkad Division, could not be posted to Palakkad

Division due to service exigencies and absence of vacancies at Palakkad Division. Again, they are the persons already holding the post of Loco Pilots and retaining their lien at Palakkad and as such, their claim for transfer to Palakkad Division is on a higher footing than the claim of the applicants for promotion to the post of Loco Pilots against the vacancies that may arise. In fact, the applicants are even otherwise not senior enough to be considered for promotion. As such, their prayer cannot be acceded to.

12. In view of the above, the OA fails and is therefore, dismissed.



(K. GEORGE JOSEPH)  
ADMINISTRATIVE MEMBER



(K.B.S. RAJAN)  
JUDICIAL MEMBER

“SA”