

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.612/2005

Wednesday this the 2 nd day of August 2006.

CORAM:

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

1. G.Arun, Station Master Grade III,
Vijayanagaram Railway Station,
Vaypadi P.O., Erode District,
residing at Railway Qrs.,
Vijayanagaram R.S.
Vaypadi P.O., Erode District,
2. S.Sarath Chandran, Station Master Grade III,
Cheruvathur R.S. & P.O.,
Kasargode District, Residing at
Railway Quarters, Cheruvathur R.S. & P.O.,
Kasargode. Applicants

(By Advocate Shri T.C.Govindaswamy)

Vs.

1. Union of India represented by the
General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai-3.
2. The Chief Personnel Officer,
Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai-3.
3. The Divisional Railway Manager,
Southern Railway,
Trivandrum Division, Trivandrum -14.
4. The Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.
5. B.Girikumar, Station Master Grade III,
Sagarakatta Railway Station,
South Western Railway,
Mysore Division. Respondents

(By Advocate Ms. P.K.Nandini(R1-4))

(By Advocate Shri Martin G.Thottan(R5))

The Application having been heard on 2.8.2006
the Tribunal on the same day delivered the following

ORDER

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

The applicants are working as Station Masters Grade III in the scale of Rs.5000-8000/- in the Southern Railway, Palghat Division and they have registered their requests for appointment by transfer to the Trivandrum Division of Southern Railway and their priority number for such transfer is at Sl. No.12 and 10 respectively. The applicants are aggrieved by the illegal act on the part of the respondents in granting mutual transfers between SC/ST employees and the general category employees and vice versa. The applicants have sought the following relief:

“Declare that consideration of mutual inter-divisional/inter-railway transfers of Assistant Station Masters as between members of SC/ST community and General Community category and vice versa is arbitrary, discriminatory, contrary to law and hence unconstitutional and direct the respondents to refrain from granting mutual inter-divisional/inter-railway transfers as between members of Sc/ST and general category members in the cadre of Assistant Station Masters/Station Masters and vice versa.

2. It is observed that the application is not against any specific order passed by the respondents. The applicants are aggrieved by the policy of the Railways in granting inter-divisional transfers whereby the persons belonging to SC/ST communities got to be appointed against vacancies for general category community by a process of mutual exchange, thereby resulting in creation of a shortfall in that particular category which is subsequently made up when the next vacancy arise in the category. As a result of the adoption of this procedure, the applicants have apprehended that, the vacancy against general categories will be reduced thereby pushing down their prospects for consideration for mutual transfers against general vacancies. They have relied on the judgement of the Hon'ble High Court of Kerala in O.P. No.2159/2002(S) in which this issue came to be considered arising out of the judgment of this Tribunal in O.A.851/99 which was allowed in favour of the applicant, and was taken on challenge by the respondents before the Hon'ble High Court. The Tribunal in its judgment had accepted the claim of applicants as genuine, and held that, substantive rights of

the applicants have been violated.

3. The Railways had relied upon the orders regarding the grant of inter-divisional mutual transfers issued by order dated 5.1.99 (Ext.P1) which had been taken into account in arriving at a decision and that the basic document had not been challenged. However, the Hon'ble High Court of Kerala had held that, such an argument was not acceptable and prima facie the order mutilates the basic concept of reservation enunciated in R.K.Sabharwal's case and hence, the Tribunal's view was not totally improper. But, however, they declined to interfere as the applicants in the O.A. under challenge, were not directly affected at that point of time when the O.P. was filed. However, they made a declaration that the operation of the order as such without any modification, may not be legal.

4. The extract of order in O.P.No.2159/2002 in O.A.851/1999 is as follows:

"8. However, we see that this is only a self serving argument. We are not prepared to hold that the applicants had no cause of action. As rightly submitted by Sri.Govindaswamy, by the departure of the first petitioner, the southern Railway loses a Scheduled Tribe candidate as a Passenger Engine Driver. Such post at one point of time or another, without delay has to be filled up by a Schedule Tribe candidate alone and in fact whatever be the principles that are enunciated in Ext.P1, such position cannot be ignored. May be there is a surplus candidate belonging to Scheduled Tribe in in the Central Railways, but that is no solace for the other aspirants here in the southern Railway. The imbalance deliberately made, normally cannot be countenanced.

9. Mr. Govindaswamy points out that the first petitioner got out of turn promotion by virtue of his being a Scheduled Caste candidate. He was junior in the category of Diesel Assistant and got promotion overreaching his seniors. It is submitted that of late practice of this type is rampant and he submits that most of the cases are not bonafide, since such persons wait for promotion and before long fly away and are even compensated.

10. According to the counsel, this could not have been permissible at all especially in view of the judgment of the Supreme court in R.K.Sabharwal v. State of Punjab (AIR 1995 SC 1371), sine the rosters cannot operate as respect vacancies and posts available alone are to be the guiding factor. To a post which is vacant, appointment could be made from persons in the respective category alone so that prescribed percentage of reservation is maintained. No extra advantage at another's expense therefore should have been conferred.

11. Learned counsel had also referred to Rules 123 and 124 of the

Railway Establishment Code, Volume I. Power is there for the Railway Board as also the General Manager to issue orders, which are statutory in nature. It appears that the Railway Administration had been very much concerned about the requirement of appropriately taking notice of the roster points/principles of reservation. Evidently while passing Ext.P1, it has not been taken notice by the officer concerned that the basic guidelines given by Annexure A-3 are to be borne in mind. There are orders governing inter railway transfers, and its presence is not to be scuttled.

12. Although the applicants have been conferred with the benefit of promotion, apprehensions which are voiced by them were genuine. The question is whether it was called upon by the Tribunal to unsettle the matters, although it was found that in the application of the norms, an error had been committed by the Administration. We find that proceedings had been issued on the basis of the principles of Ext.P1 and even now, though improper they are remaining in tact. Only by a scrutiny it has come out to the notice of the Tribunal that this may operate against the basic concepts of reservation to the unreserved group and the judgment of the Supreme Court in R.K.Sabharwal's case (cited supra).

5. The applicants have now come before this Tribunal on the same arguments that, Railways should be refrained from granting inter-divisional transfers between the members of SC/ST and general category members. As there has been no further action from the part of the respondents in pursuance of the order of the Hon'ble High Court, at the time of admission the counsel for applicants submitted that, the Railway Board is likely to face the same problem in granting inter-divisional transfers. It was the contention of the respondents that, since there is no particular cause of action as no impugned order has been passed, there is no merit in the O.A. However, considering the issue involved, this Tribunal on 22.8.05 had given an interim direction which reads as follows:

“In the meantime, in the interest of justice, we direct that the respondents while making such mutual transfers as between Scheduled Caste/Scheduled Tribe employees and General category employees and vice versa shall adhere to the dictum laid down in the judgement of the Hon'ble High court in O.P.No.2159/02.”

6. A reply statement has been filed by the Respondents 1-4 contesting all the averments in the O.A. stating that inter-divisional transfers can be granted according to the need of each division and no person has an indefensible right for such transfer. Mutual transfer between employees belonging to reserved

communities and between those belonging to reserved communities and unreserved communities, are carried out vide Chief Personnel Officer, Southern Railway, Madras letter dated 5.1.99 which reads as follows:

“ In such situation, the SC or ST point as the case may be treated as backlog and cleared in the next recruitment/promotion made. In certain circumstances, it may be vice versa i.e. “excess SC/ST” due to mutual transfers between reserved communities and in such cases “excess” may be adjusted against future requirements. In these situations, the name of “general candidate SC/ST candidates, should be temporarily indicated in pencil against the SC or ST point. When a vacancy arises in the respective pool, the general or SC or ST candidate should be shown against that point and the SC/ST point occupied by them should be restored to the respective category.

7. It is also submitted that inter-divisional transfers are being processed according to the above orders and no such orders have been passed in the cadre of Station Masters, to Trivandrum Division from Palghat Division. It is further submitted that the policy regarding transfer of SC/ST candidates with unreserved categories on mutual basis has been referred to for consideration by the Railway Board and a reply is awaited.

8. The 5th respondent (private respondent) has also filed a reply. This respondent is a Station Master Grade-III working in the Mysore Division, South Western Railway and is a native of Kollam District which falls within the Trivandrum Division of Southern Railway. He has submitted an application for inter-railway mutual transfer along with one D.Chandranna who is presently working as an Assistant Station Master in the Trivandrum Division. According to him, the applicants have no valid cause of action to be redressed by this Hon'ble Tribunal and there is no reason for them to be aggrieved in considering the mutual Inter-divisional transfer sought by this respondent. By considering this respondent's mutual transfer application along with D.Chandranna, the same will not infringe any of the applicants' rights. Annexure A-1 judgement of the Hon'ble High Court and the observations made therein will not stand in the way of the mutual transfer sought by this respondent. The applicants are not entitled to get such a sweeping declaration as sought in the O.A. on the basis of the Annexure A1 judgement of the Hon'ble High Court. In O.A.851/99 the challenge was against the Mutual Transfer of two persons one belonging to Scheduled Caste

Community and other General Category, who were working as Passenger Drivers, on their request. In that, particular employee belonging to the Scheduled Caste Community had got accelerated promotions at the time of transfer when he was working as a Passenger Driver. The said O.A. was filed contesting that the mutual transfer granted will adversely affect their promotional chances. The Hon'ble Tribunal after finding that the same would delay the promotional prospects of persons waiting in the queue had allowed the O.A. In the case of this respondent, by the mutual transfer no promotional prospects are adversely affected and in that matter applicants are not entitled for a blanket declaration as sought in the O.A.

9. When the matter came up before the Bench, I have heard the counsel on both sides and gone through the entire pleadings in the O.A. and the reply filed by the respondents. As mentioned above, this application has not been filed against any particular order and the entire case is based on the observations regarding illegality and impropriety of the order of the CPO, 2nd respondent regarding inter-divisional transfer dated 5.1.1999, along with the observations of the Hon'ble High Court in O.P.2159/02 and W.P.(C)4330 of 2005-S as extracted above. The above-mentioned order had not been challenged before the Hon'ble High Court or in the O.A now before me. The observations of the Hon'ble High Court as extracted above merely indicate that the Court had taken into account the policy of reservations and the spirit of the policy that has been enshrined in Sabharwal's case and made the observations that the process of adjustment of the vacancies of general candidates against the SC vacancies and vice versa was giving rise to a situation where the SC/ST candidates would be getting undue advantage and that the respondents shall apply their mind to this situation so that the basic concept of reservation and the rights of the unreserved candidates are balanced by formulating new rules. Therefore, this is an indication to the respondents to reconsider the matter keeping in view all possible circumstances and also the spirit of the judgement in Sabharwal's case. The respondents have now stated in their reply statement that they have duly taken notice of these observations of the Hon'ble High Court and referred the matter to the Railway Board, which is the highest authority to take a decision and the matter is now under their consideration. Therefore, at this point of time, I feel that it would be just and proper to wait for a decision on this issue from the Railway Board and it will not be proper

for this Court to give any directions as sought for by the applicants in this O.A.

10. It is submitted by the 5th respondent that this respondent may also be permitted to make a representation before the Railway Board so that his point of view may also be available to that body for taking a decision. I think this is a genuine request made by him.

11. In the result, the O.A. is disposed of with a direction to the respondent that since the matter has already been referred to the Railway Board as submitted by the respondents in their reply statement at para 15, a decision shall be taken on the policy aspect, as expeditiously as possible and in any case, not later than four months from the date of receipt of this order. The applicant as well as R-5 are permitted to make representations to R-1, the appropriate authority and on receipt of these representations, the same shall be considered in the light of the policy decision to be taken by the Railway Board in the matter and decision communicated to them.

12. The interim order granted on 22.8.05 shall continue till such a decision is taken and communicated to the applicants and R-5. No costs.

Dated the 2nd day of August, 2006.


SATHI NAIR
VICE CHAIRMAN