

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 92 of 2005

Tuesday...., this the 3rd day of April, 2007

C O R A M :

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

1. C.R. Gopinathan,
S/o. C. N. Raghavan,
Assistant Station Master,
Southern Railway, Karukkutty,
Residing at Cherala House,
Ashtamichira P.O., Trichur District
2. C. Jayaraj,
S/o. P.N. Velayudhan Nair,
Assistant Station Master,
Soutehrн Railway, Mulangunnath Kavu,
Residing at Railway Quarters,
Mulangunnath Kavu, Trichur District
3. A.S. Natarajan,
S/o. A.K. Sankaran,
Assistant Station Master,
Southern Railway, Poonkunnam,
Residing at Apparadath House,
P.O. Kanjani, Trichur District
4. James A. George,
S/o. George Varghese,
Assistant Station Master,
Southern Railway, Kayamkulam,
Residing at : Anakuzhikkal Tadathil,
Vayalathara P.O., Pathanamthitta District ... , **Applicants.**

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India, represented by the General Manager, Southern Railway, Headquarters Office, Park Town P.O., Chennai – 3
2. The Divisional Railway manager, Southern Railway, Madurai Division, Madurai.
3. The Divisional Railway Manager, Southern Railway, Trivandrum Division, Trivandrum - 14
4. The Senior Divisional Personnel Officer, Southern Railway, Trivandrum Division, Trivandrum – 14

... Respondents.

(By Advocate Ms. P.K. Nandini)

This Original Application having been heard on 22.03.07, this Tribunal on 27.07.07 delivered the following :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

Inter-Divisional Transfer on request is a concession available to the Railway employees since 1971 and the price they pay for this concession is loss of seniority of the parent-Division. A set procedure has been prescribed for this purpose, according to which, those who applied for Inter-Divisional transfers will have preference over direct recruits and so far as those who apply from various divisions for transfer to a particular division, that particular division would register the names of such transfer applicants would be considered against Direct Recruitment quota and they would be ordered to be transferred to the new Division on the basis of the seniority maintained in the said Register. Of course, if in any case, permission for such transfer could not, on the ground of



service exigencies, be granted, no vested right of the railway employees would get hampered.

2. The four applicants in this OA had joined the Madurai Division of the Southern Railways as Assistant Station Masters and for their own personal reasons, they had registered their names for transfer to Trivandrum Division.

The details are as under:-

Sl No	Name	Date of Appointment	Date of Registration	Dt. of Inter-Divi. Transfer
1	C.R. Gopinathan	16-08-1982	November,1987	26-06-1997
2	C. Jayaraj	26-04-1983	13-11-1987	29-06-1997
3	A.S. Natarajan	08/07/82	16-12-1987	August 1997
4	James A George	06/07/87	13-01-1988	18-06-1997

3. While their applications were pending since 1987/1988, the respondents had, as late as on 19-05-1997 by Annexure A-4 communication, asked for their willingness to accept the bottom seniority in the Division where they sought transfer and on giving their option for the same, the applicants were by Annexure A-5 order dated 13-06-1997 transferred to Trivandrum Division "on temporary basis" in the scale of Rs 1400 - 2300 i.e. as of Station Master. The applicants joined the Trivandrum Division on the dates mentioned as above. However, the applicants were not given the posting on regular basis and meanwhile others who had registered their names later than the applicants were being transferred on regular basis. The applicants, therefore, were forced to move the Tribunal in OA No. 281/99 which came to be disposed of by order



dated 09-03-1999 (Annexure A-6) whereby the respondents were directed to dispose of the representations preferred by the applicants before the Respondents in this regard. Applicants' joint representation dated 12-03-1999 vide Annexure A-7 was thus to be considered and decided by the respondents. It was by communication dated 01-06-1999 (Annexure A9) that the applicants were posted on regular basis, with the seniority of 1999 as Assistant Station Master. This meant that though they were transferred out of Madurai Division as early as in 1997, their seniority in the Trivandrum Division was to reckon only from 1999. Aggrieved by the abovesaid order, the applicants penned a representation to the General Manager vide Annexure 10(a) to (c) and as feared by the applicants, those who had registered their names in the Trivandrum Division posterior to the date of registration of the applicants were all having higher seniority than the applicants, though such individuals' dates of joining the Trivandrum Division were posterior to the date of joining the Trivandrum Division of the applicants. This situation forced the applicants to move OA No. 707/2000 praying *Inter alia* for a declaration to the effect that the applicants' seniority in the Trivandrum Division would reckon from the dates of their joining the Trivandrum Division as per the Annexure A-5 order dated 13-05-1997. The said OA was, however, rejected by Annexure A-11 order dated 27-06-2000. The applicants had preferred CWP No. 30022/2000 before the Hon'ble High Court of Kerala for quashing of the order of the Tribunal and for allowing the reliefs claimed in OA No. 707/2000. The said petition was, however, disposed of with a direction to the respondents to dispose of the representation of the applicant, untrammelled by the findings rendered in the

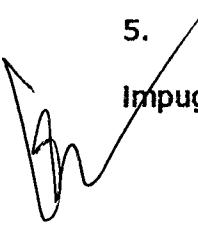


Tribunal's order, vide order dated 27-10-2000 at Annexure A-12. It was when a contempt petition was filed that the respondents had passed the impugned order dated 20-03-2002, vide Annexure A-1. By the said order, the respondents had rejected the claim of the applicants on the following grounds:-

- (a) Their initial transfer was on temporary basis and in the post of Station Master
- (b) Prior to them, there were 30 individuals whose transfer was to be effected.
- (c) Those Juniors who were transferred prior to the applicants did not belong to Madurai Division but other Divisions.
- (d) As per the provisions of Para 312 of IREM seniority shall be only from the date of joining as Assistant Station Master in Trivandrum Division in the scale of Rs 1200 - 2040.

4. Provisional seniority list of Assistant Station Master of the Trivandrum Division was issued in February, 2003 vide Annexure A-15 against which the applicants had filed representations vide Annexure A-16 series. This was substituted by an integrated seniority list of Asst. Station Masters/Asst. Yard Masters and the said provisional seniority, which reflects the dates of seniority of the applicants as of 1999 only has not so far been finalized. The applicants have, through this OA challenged the legal validity of Annexure A-1 order and prayed for a direction to the respondents to advance the seniority of the applicants, taking into account their service rendered in pursuance of order dated 13-06-1997.

5. Respondents have contested the OA. Whatever had been stated in the impugned order had been reiterated in the counter with greater emphasis and



absence of vested rights in matters of transfer has also been highlighted in the counter. That there are 30 persons above the applicant from Madurai Division had also been highlighted in the additional reply filed by the respondents.

6. Counsel for the applicants submitted that the purpose of maintaining the register is to accommodate against direct recruit vacancies the individuals who had registered their names for transfer on inter divisional/inter railway basis, strictly on the basis of the seniority maintained in the register and on posting, to accord seniority strictly according to the same. This has not been followed. Seniority in the Trivandrum Division is based on the date of transfer of the individuals and the very transfer should correspond to the seniority as in the register. There cannot be any distinction between Madurai Division applicants and other Division Applicants. Counsel for the applicant had also earlier prayed for summoning of the register which was produced by the respondents. On perusal of the same, the applicant submitted that the names of the applicants figured in serial No. 47, 51, 53 and 57. Against their names had been written in red ink "**Approval sent on 10-06-1997**". It was pointed out by the counsel by analyzing the Register that at least three persons much junior as per the Register had been transferred much earlier than the applicants and these have stolen a march over the applicants in seniority in the TVC Division. Thus, the counsel contended that once the approval had been accorded and close to the heels of such approval, transfer order had been made, though in the post of Station Master, the same should be construed to be as one on the strength of the approval accorded on 10-06-1997. Thus, the applicants are entitled to

AB

count their seniority in the grade of Asst. Station Master from the date they had taken over in pursuance to the Annexure A-5 transfer order.

7. Counsel for the respondents, however, stressed that since there were 30 individual above the applicants, there is no question of ante-dating the date of regular transfer at the TVC Division. Again, justification was sought to be given in respect of those whose transfer was effected in 1998 etc., though such individuals are admittedly junior to the applicants as per the Register.

8. Arguments were heard and documents, including the register brought for scrutiny, perused. The seniority of the applicants in the Register had been, as shown in the additional reply, i.e. 47, 51, 53 and 54. Against their names there appears in red ink, "**Approval sent on 10-06-1997**". There are entries of transfer against serial No. 59 (joined on 27-07-1998), 61 (joined on 3-8-98), 60 (joined on 30-07-98), 70 and 71 (joined on 15-03-1998). Entries in the Register also reflect that in all such cases, approval was sent only on 29.01.1998, whereas approval in respect of the applicants was sent as early as on 10-09-1997. The name of at least one such persons in the seniority list is shown at serial No. 1 (serial No. 71 in the register) while the applicants have all been shown junior to this individual.

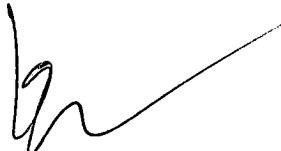
9. From the above, it is clear that when the applicants were relieved from Madurai Division and joined TVC Division, their transfer, though in the grade of Station Master, should have been treated as one of Inter Divisional Transfer at

request and accordingly their date of entry in the Transferred Division should have reckoned w.e.f. the date of their joining in pursuance of Annexure A-5 order dated 13-06-1997. This was not done. The very purpose of maintaining the Register is to ensure that those who applied first are entertained subject to their willingness/option and there is no deviation from the seniority list in so far as posting to the transferred Division is concerned. For it is only when the transfers are effected in the order of seniority in the Register that would ensure corresponding position in the seniority in the grade in which such individuals are transferred and it is this seniority that has to decide the promotion prospects of the transferred individuals. If the chain is broken, then there would be violation of the Constitutional Guarantee of Equality under the provisions of Art. 16 of the Constitution and it is exactly the same that has occurred in this case. This is impermissible. We are fortified in this regard by the decision of the Apex Court in the case of **Bal Kishan v. Delhi Admn., 1989 Supp (2) SCC 351**, wherein the Apex Court has observed:

9. In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralising effect in service apart from being contrary to Article 16(1) of the Constitution.

The justifications given by the respondents in not following the seniority list as per the register are the least convincing.

10. The applicants having joined the TVC Division in 1997, albeit as Station Masters, they should be deemed to have been inducted as



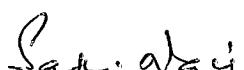
Assistant Station Masters but asked to officiate as Station Masters and in that event provisions of Rule 312 of IREM also get fully complied with.

11. In view of the above, the O.A. succeeds. The impugned order dated 20.03.2002 is hereby quashed and set aside. It is declared that the applicants' seniority shall reckon from the date they had joined the Madurai Division in pursuance of Annexure A-5 order dated 13-06-1997 notwithstanding the fact that they were at that time posted in the grade of Rs. 1400 - 2300. Consequently, their seniority position in the grade of Assistant Station Master vide Annexure A-17 order shall be revised and interpolated as per the date of their joining in 1997. If the seniority of any individual gets affected on account of this revision of seniority, the individuals shall be put to notice in accordance with the procedure if any existing, before effecting the revision. This could be possible as the provisional seniority has not so far been finalized. Promotion to the post of Station Master shall be based on the revised seniority. The revision of seniority as directed above shall be made within a period of four months from the date of communication of this order.

12. Under the above circumstances, there shall be no orders as to costs.

(Dated, the 3rd April, 2007)


Dr. K B S RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN