

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 12 of 2013

Thursday, this the 13th day of August, 2013

CORAM :

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

HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. B. Manoj, aged 31 years, S/o. G. Bhaskaran Pillai, Assistant Loco Pilot, Office of the Senior Section Engineer (Carriage and Wagon), Southern Railway, Palakkad, Residing at Parayil Veedu, Maverkkal, Alamcode PO., Attingal, Thiruvananthapuram.
2. Sunil Kumar s., aged 29 years, S/o. Surendran M., Assistant Loco Pilot, Office of the Senior Section Engineer (Carriage and Wagon), Southern Railway, Palakkad, residing at Nainakonathu Veedu, Punnacadu, Perumpazhuthoor PO, Thiruvananthapuram.
3. Aby Peter George M.G., aged 30 years, S/o. George MP., Senior Assistant Loco Pilot, Office of the Senior Section Engineer, (Carriage and Wagon), Southern Railway, Palakkad, residing at Maliackal House, Lane No. 8, Paradise Road, Ponnurunni, Vyttila PO, Kochi-682 019.
4. P. Krishna Raj, aged 28 years, S/o. Prabhakumar, Assistant Loco Pilot, Office of the Senior Engineer (Carriage and Wagon), Southern Railway Palakkad, residing at Mooleparambil House, Kallara South PO, Kallara, Kottayam District, Pin : 686 611.
5. Dinil V. Devan, aged 27 years, S/o. M. Vasudevan, Assistant Loco Pilot, CRC Crew Booking Office, Southern Railway, Shoranur, residing at V.P. Nivas, Kumbalam, Pullupana PO, Kadakkal, Kollam, Pin 691 536.
6. Prasanth S.K., aged 29 years, S/o. A. Sasidharan Pillai, Assistant Loco Pilot, Office of the Senior Section Engineer (Carriage and Wagon), Southern Railway, Calicut, residing at Pranavam, Cheruvallikuzhi, Pazhakutty PO, Nedumangad, Thiruvananthapuram.
7. Shibu S, aged 29 years, S/o. R. Surendran, Assistant Loco Pilot, Office of the Senior Section Engineer (Carriage and Wagon), Southern Railway, Palakkad Division, residing at SS Bhavan, TC 18/419(1), Aramada PO, Punnakkamugal, Thiruvananthapuram, Pin - 695 032.
8. V. Aneesh, aged 35 years, S/o. Viswambharan,

Assistant Loco Pilot, Office of the Senior Section Engineer,
(Carriage and Wagon), Southern Railway, Shoranur,
residing at V.S. Mandiram, Karamcode PO, Kollam, Kerala.

9. B.S. Harikrishnan, aged 28 years, S/o. T. Balachandran Pillai, Assistant Loco Pilot, Office of the Senior Section Engineer (Carriage and Wagon), Southern Railway, Palakkad, residing at Madhava Vilasom, Vellimon (W) PO, Vellikon, Kundara, Kollam-691511.
10. Renjith S., aged 32 years, S/o. K. Sukumara Pillai, Assistant Loco Pilot, Office of the Senior Section Engineer (Carriage and Wagon), Southern Railway, Palakkad, residing at Karoor, Sreerangam, Cheravally, Kayamkulam PO, Alappuzha District, Pin 690 502.
11. Vishnu Sidharth, aged 29 years, S/o. P. Sidharthan, Assistant Loco Pilot, Office of the Senior Section Engineer (Carriage and Wagon), Southern Railway, Palakkad, residing at Vadakkey Punnackal, Parayakad PO, Cherthala, Alappuzha, Kerala.
12. P. Biju, aged 36 years, S/o. K. Peethambaran, Assistant Loco Pilot, Office of the Senior Section Engineer (Carriage and Wagon), Southern Railway, Palakkad, residing at Pournami, T.C. 33/1517, GRA-C-262, Guruji Road, Nambavankavu, Vattiyoorkkavu PO, Thiruvananthapuram Dist. Pin - 695 013.
13. Vipin A.V., aged 32 years, S/o. A.P. Vasu, Assistant Loco Pilot, Office of the Senior Section Engineer (Carriage and Wagon), Southern Railway, Palakkad, residing at Anakutthiyil House, Mekkadampu PO, Muvattupuzha, Ernakulam Dist., Pin - 682 316.

... Applicants

(By Advocate : Mr. T.C. Govindaswamy)

V e r s u s

1. Union of India, represented by the Secretary to the Government of India, Ministry of Railways, Rail Bhavan, New Delhi - 110 001.
2. The General Manager, Southern Railway, Headquarters Office, Park Town PO, Chennai-3.
3. The Chief Personnel Officer, Southern Railway, Headquarters Office, Opark Town PO, Chennai-3.
4. The Divisional Railway Manager, Southern Railway, Palakkad Division, Palakkad-9.
5. The Divisional Railway Manager, Southern Railway, Thiruvananthapuram Division, Thiruvananthapuram-14.

6. Sri C. Jayaraj, S/o. Chandran, aged 26 years, Assistant Loco Pilot, Southern Railway, Palakkad Division, Residing at Jaya Bhavan, Nalanda Nagar 156, Ayyathil PO, Kollam – 691 017.
 7. Sri D.S. Ajith, S/o. D. Devarajan, aged 29 years, Assistant Loco Pilot, Southern Railway, Palakkad Division, Residing at Ajith Bhavan, Kottakkakom, Perinad PO, Kollam – 691 501.
 8. Sri Jyothidas A., Assistant Loco Pilot, Southern Railway, Trivandrum Central, Trivandrum.
 9. Sri Krishnaprasad P.T., Assistant Loco Pilot, Trivandrum Central, Trivandrum.
 10. Sri Abhilash C. Nair, Assistant Loco Pilot, Ernakulam Junction R.S., Ernakulam.
 11. Sri Suresh Kumar, Assistant Loco Pilot, Southern Railway, Madurai Division, Madurai-10.
 12. The Divisional Personnel Officer, Southern Railway, Madurai Division, Madurai – 10.
- ... Respondents

[By Advocates : Mr. Thomas Mathew Nellimoottil, (R1-5) & Mr. Pirappancode V.S. Sudheer (R6&7)]

This O.A having been heard on 05.08.2013, the Tribunal on

13.8.13 delivered the following:

ORDER

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

The applicants in this OA are functioning as assistant Loco pilots in the Palakkad Division and had registered their names for inter divisional transfer to Trivandrum Division sometimes in 2006/07/08. The transfer is as per the provisions of Paragraphs 102A, 310 and 312 of the Indian Railway Establishment Manual Vol. I, under which there are two kinds of transfers -


- (a) on bottom seniority in grades having direct recruitment against vacant direct recruitment quota posts subject to the condition that the employee requesting transfer fulfills the qualification prescribed for direct recruitment to the post; and

(b) on mutual exchange basis in any grade on own seniority of the employee with whom the exchange takes place, whichever of the two is lower.

2. The request of the applicants falls under category (a) above. Thus the applicants are sanguinely hoping that their application for transfer would materialize to enable them to move to TVC Division.

3. Earlier, in OA No. 851 of 1999, decided on 31st December, 2001 the Tribunal observed that mutual transfer especially Inter-Railways if at all permissible can be granted only between employees of the same status and category otherwise such transfer would result in an anomalous situation. This was on account of the fact that the erstwhile vacancy based system for working out the reservation quota was substituted w.e.f. 02-07-1997 by what was called the Post Based Roster, which compelled the ratio of reservation is always kept in tact by filling up vacancies of one particular category by the same category. Challenge against the above order of the Tribunal vide OP No. 2150 of 2002 was not that successful and the High Court directed that the mutual transfer should be allowed between staff belonging to the same category (i.e. General with General, SC with SC and ST with ST). As such transfer on mutual basis continued and a like OA No. 612 of 2005 was filed by some affected employee, the Tribunal was informed that the matter had been referred to the Railway Board. The said OA, hence, was decided vide order dated 2nd August, 2006, directing the respondents to take the decision in this regard. Accordingly, the Railway Board had issued Annexure A-1 R.B.E. No. 107 of 2007 which referred to the above mentioned decisions of the Tribunal as well as the High Court, wherein para 3 reads as under:-

"3. In the light of the above, the matter has been considered carefully by the Ministry of Railways, it has been decided that in order to maintain the balance in the post-based rosters with reference to reservations prescribed



for SC and ST staff and to avoid hardship to staff in the feeder grade in the matter of their promotion, transfers on mutual exchange basis should be allowed between employees belongs to the same category (i.e. General with General, SC with SC and ST with ST).

3.1. However, transfers on bottom seniority in recruitment grades need not be restricted with reference to points in the post based rosters. The procedure being followed generally in this regard to adjust shortfall/excess in future may continue. But such transfers should be allowed only repeat only against vacant direct recruitment quota posts and not against promotion quota posts."

4. As the above instruction, while referring to General, S.C. and S.T. categories, did not refer to the OBC, a clarification was issued vide R.B.E. 134 of 2007 dated 22-10-2007 stating that there being no reservation in posts filled by promotion for OBCs, the term 'General' should include OBCs also. In other words, staff belonging to General/OBC categories may contract mutual transfers with staff belonging to General/OBC.

5. The respondent Railways had issued Annexure A-8, A-9 and A-10 orders, which relate to mutual transfer of Asst. Loco Pilots (a) from Madurai to TVC (Annexure A-8), Palghat to TVC.(Annexure A-9 and A-10) The details of such mutual transfer between General candidates and S.C. candidates are as under:-

- (a) Mutual Transfer of one Shri S. Suresh Kumar (SC) ALP/ NCJ (of TVE Division) with one Shri Abbhilash C. Nair ALP/MDU (General)
- (b) Mutual transfer of one Shri Jayaraj ALP/PGT (General) with Shri Jyothidas.A (SC) ALP/TVC.
- (c) One Shri Ajith D.S. (General), ALP/PGT with Shri Krishnaprasad P.T. (SC) ALP/TVC.

6. The applicants found that the above mutual transfers have taken place amongst those who had been inducted into the Railway Service in 2010 and thus felt that the provisions of para 3.1 of R.B.E. No. 107 of 2007 (Annexure A-1) gives a latitude to the Railways to have the transfer on the above lines and hence, have

challenged the provisions of paras 3.1 as also the aforesaid Annexure A-8, A-9 and A-10 transfer orders and sought the following reliefs:-

- "(i) Call for the records leading to the issue of Annexure A8 to A10 and quash the same in so far as they relate to the respondents 6 to 11.
- (ii) Declare that paragraph 3.1 of Annexure A1 to the extent it provides for mutual transfer between members of the general category and members of the reserved category namely SC/ST is arbitrary, discriminatory, contrary to Article 14 and 16 of the Constitution of India and hence unconstitutional.
- (iii) Call for the records leading to the issue of Annexure A1 and quash paragraph 3.1 of the same, duly declaring that mutual transfer as between members of the general category and members of the SC/ST vacancies is unconstitutional and illegal;
- (iv) Award costs and incidental thereto;
- (v) Pass such other orders or directions as deemed just and fit by this Hon'ble Tribunal."

7. S/Shri Jayaraj and D.S. Ajith, the two ALPs whose mutual transfers as above materialized, have filed an impleading application and the same having been allowed, both the railways as well as the private respondents contested the OA. Official respondents contended that remedies ought to have been sought at the time when Annexure A-1 read with Annexure A-7 was issued and not now. Again, the transfer under challenge is based on the provisions of para 310 of the Indian Railways Establishment Manual, which reads as under:-

"310. MUTUAL EXCHANGE- Railway servants transferred on mutual exchange from one cadre of a division, office or railway to the corresponding cadre in another division, office or railway shall retain their seniority on the basis of the date of promotion to the grade or take the seniority of the railway servants with whom they have exchanged, whichever of the two may be lower."

8. The private respondents contended that there is no violation of any roster point as contended by the applicants.

9. The official respondents have also filed an M.A. 321 of 2013, for a direction to delete the first respondent from the array of respondents, but the said MA had

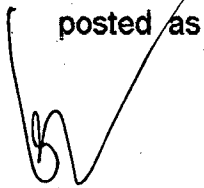
99

been directed to be listed for consideration at the time of hearing the main O.A., vide order dated 25-03-2013.

10. The applicants have filed an amendment application vide MA No. 356 of 2013 whereby the rest of the persons whose transfers have been challenged, and the same having been allowed vide order dated 03-04-2013, notice was issued to the private respondents. However, non one of them was represented. They have therefore been set ex-parte.

11. Counsel for the applicant invited the reference of the Tribunal to its earlier two orders referred to above and the High Court's order and also the impugned order, which provided that there shall be mutual transfers only within the same category (General/OBC to general/OBC; SC to SC; ST to ST). He has also compared the above provisions with the transfer orders and stated that the transfer orders impugned are in complete disregard of the Railway Board's instructions. The counsel submitted that the same may be by way of bringing in the case of the applicants under the bottom seniority transfer vide par 3.1 of the R.B.E. Circular 102/2007, where there is no such restriction of transfer within the same category. It was for this reason that the said para has been assailed. He has further submitted that if by proper interpretation, the said para 3.1 does not in any way affect the vested rights of the applicants, he would not be pressing for quashing of the same.

12. Counsel for the official respondents stated that the order being of 2007 vintage, challenge against the same at this juncture is not permissible. In so far as the other orders of transfer are concerned, the counsel submitted that the ALPs transferred have all been recent recruits and their inter divisional transfer on mutual basis was permitted since all have been inducted simultaneously and had they been posted as per their choice, necessity for inter divisional transfer would not have



arison.

13. Counsel for the private respondents submitted that para 3.1 does not clamp any fetter to restrict mutual transfer only with the same category of persons. The respondents being junior most, are already in the bottom seniority.

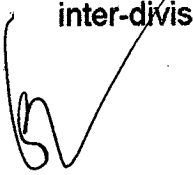
14. Arguments were heard and documents perused. First as to the M.A. for deletion of first respondent. Since the G.M. enjoys full powers, M.A. No. 321/2013 for deleting Secretary, Railway Board, deserves to be allowed and accordingly, it is ordered.

15. Now on merits. After the Post Based Roster had come into force w.e.f. 02-07-1997, filling up of the vacancies is only with reference to the particular category, (in particular, where the cadre strength is more than 13). Thus, be it by way of normal filling up of the post, or by way of mutual transfer, the vacancy belonging to a particular quota ought to be filled up by the very same quota. Thus, in mutual transfers, it is only an exchange amongst General/OBC with General/OBC, SC with SC and ST with ST that should be permitted. That is the reason for issue of R.B.E. Circular No. 107 of 2007, which accordingly prescribed the mode of transfer within same category, vide para 3 thereof. In so far as para 3.1 is concerned, the same relates to what can be called 'one sided' transfer, i.e. where mutual transfer is not involved. Such transfer is against direct recruit vacancies. In such a kind of transfer, if a general candidate is transferred from one Division to another, against vacancies under the Direct Recruitment quota, out of such vacancies in the General category to be filled up by Direct Recruitment, one vacancy would be reduced and direct recruitment would be resorted to only in respect of the remaining number of vacancies in that category. So is the case when the transfer of a reserved category candidate takes place. Hence, the possibility of



imbalance in the quota surfacing does not arise in such a case. The main purpose of issue of R.B.E. 107 of 2007 (on the basis or direction of the earlier orders of the Tribunal) being that as a consequence of inter-divisional transfer, there should be no imbalance or distortion of the Post Based system, such restrictions have been placed. This restriction is in respect of only that kind of transfers where such an anomalous situation would emerge. In mutual transfer the same emerging, the aforesaid restriction was clamped. The same not being there in respect of bottom seniority transfers, such a restriction is not there. Thus, in no way existence of para 3.1 would adversely affect case of the applicants in respect of their transfer on inter-divisional basis. There is as such no need to consider quashing of para 3.1 of Annexure A-1. However, the interpretation by the counsel for the private respondents that the private respondents are already in the bottom position of their seniority (as they have been recently only recruited) and thus their case does fall under 3.1 of the R.B.E. Circular 107/2007 cannot be accepted. The cases of those transferred under orders vide Annexure A-8 to A-10 do fall under mutual transfer category as has been clearly spelt out in the respective order itself and thus, para 3 of the R.B.E. Circular 107 of 2007 which has the restriction of transfers within the same category would apply in their case. Telescoping the provisions of para 3 upon the transfer orders impugned herein, it would be amply clear that the three transfer orders are totally in violation of the stipulations made in para 3 of the said R.B.E. Circular 107 of 2007. And if the impugned transfer orders are permitted to subsist, the same would result in an imbalance in the quota for reservation. The said transfer orders are therefore liable to be quashed and set aside.

16. The irrationality in upholding the impugned transfer orders may now be explained in another way, which relates to the seniority of the applicants in TVC Division, on their transfer materializing. The applicants, who have registered for inter-divisional transfer in 2006 or 2007 or 2008 are still waiting for their turn for



transfer, whereas, those who have joined Palghat Division only in 2010 had been permitted the inter-divisional transfer on mutual basis. If the impugned orders are upheld, it would result in such a paradoxical and irrational situation that the applicants who are rank seniors at Palghat would, on their transfer materializing at a later point of time, would take only the bottom seniority at that point of time, and the private respondents who have been transferred to TVC would steal a march over the applicants. This kind of a situation can never be permitted.

17. In view of the above, the O.A. Deserves to be allowed. At the same time since the private respondents would have already moved to the transferred place, where they would have even admitted their children in schools, it may not be appropriate to dislodge the private respondents from their present place of posting. However, with a view to ensuring seniority to the applicants, as and when they join their seniority would be notionally antedated at a date anterior to the date of seniority of the private respondents. Mutual transfer applications shall be considered against the same category of persons. In that event also, the possibility of requests of persons already having registered should be considered. Respondents are directed to pass suitable orders. O.A. is disposed of on the above terms. This order be complied with, within a period of two months.

(Dated, the 13th August, 2013)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



DR. K.B.S. RAJAN
JUDICIAL MEMBER

SA

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

C.P. No. 180/00053/2014 in O.A.No.12/2013

FRIDAY,..... the 14th day of November, 2014

CORAM:

**HON'BLE MR. U. SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE MR. P.K.PRADHAN, ADMINISTRATIVE MEMBER**

- 1 P. Krishna Raj, aged 28 years, s/o Prabhakumar,
Assistant Loco Pilot, Office of the Senior
Section Engineer (Carriage and Wagon),
Southern Railway, Palakkad,
residing at Mooleparambil House, Kallara South P.O.,
Kallara, Kottayam District,
Pin -686 611.

- 2 Dinil V.Devan, aged 27 years, s/o M.Vasudevan,
Assistant Loco Pilot, CRC Crew Booking Office,
Southern Railway Shoranur,
residing at V.P.Nivas, Kumbalam, Pullupana P.O.,
Kadakkal, Kollam, Pin -691 536.

- 3 prasanth S.K., aged 29 years, s/o A.Sasidharan Pillai,
Assistant Loco Pilot, Office of the Senior
Section Engineer (Carriage and Wagon),
Southern Railway, Calicut,
residing at "Pranavam", Cheruvallikuzhi,
Pazhakutty P.O., Nedumangad,
Thiruvananthapuram.

- 4 Shibu S., aged 29 years, s/o R.Surendran,
Assistant Loco Pilot, Office of the Senior Section
Engineer (Carriage and Wagon), Southern Railway,
Palakkad division,
residing at SS Bhavan, TC 18/419(1),
Aramada P.O., Punnakkamugal,
Thiruvananthapuram, Pin -695 032.

- 5 V.Aneesh, aged 35 years, s/o Viswambharan,
Assistant Loco Pilot, Office of the Senior
Section Engineer (Carriage and Wagon),
Southern Railway, Shoranur,
residing at V.S.Mandiram,
Karamcode P.O. Kollam, Kerala.

- 6 B.S. Harikrishnan, aged 28 years,
s/o T.Balachandran Pillai,
Assistant Loco Pilot, Office of the Senior Section
Engineer (Carriage and Wagon),
Southern Railway, Palakkad,
residing at Madhava Vilasom,
Vellimon (W) P.O.,
Vellikon, Kundara, Kollam -691511.

- 7 Renjith S., aged 32 years, s/o K.Sukumara Pillai,
Assistant Loco Pilot, Office of the Senior
Section Engineer (Carriage and Wagon),
Southern Railway, Palakkad,
residing at Karoor, Sreerangam,
Cheravally, Kayamkulam P.O.
Alappuzha District,
Pin - 690 502.
- 8 Vishnu Sidharth, aged 29 years,
s/o P.Sidharthan,
Assistant Loco Pilot, Office of the Senior
Section Engineer (Carriage and Wagon),
Southern Railway, Palakkad,
residing at Vadakkey Punnackal,
Parayakad P.O.,
Cherthala, Alappuzha, Kerala.
- 9 P.Biju, aged 36 years, s/o K.Pethambaran,
Assistant Loco Pilot, Office of the Senior
Section Engineer (Carriage and Wagon),
Southern Railway, Palakkad,
residing at 'Pournami, T.C.33/1517, GRA-C-262,
Guruji Road, Nambavankavu,
Vattiyoorkkavu P.O.
Thiruvananthapuram Dist.
Pin -695 013.

.... Applicants

(By Advocate Mr.T.C.Govindaswamy)

versus

- 1 Shri Arunendra Kumar,
Chairman, Railway Board &
Secretary to the Govt of India,
Ministry of Railways,
Rail Bhavan, New Delhi -110 001.
- 2 Shri Rakesh Mishra, General Manager,
Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai -600 003.
- 3 Shri Swaminathan, Chief Personnel Officer,
Southern Railway Headquarters Office,
Park Town P.O., Chennai -600 003.
- 4 Shri Sunil Bajpai, Divisional Railway Manager,
Southern Railway,
Thiruvananthapuram -695 014.

.... Respondents

(By Advocates Mrs. Sumathi Dandapani, Sr.
Mr. Thomas Mathew Nellimoottil)

The application having been heard on 10.11.2014, this Tribunal
on14.11.2014...delivered the following:



ORDER**HON'BLE MR. P.K.PRADHAN, ADMINISTRATIVE MEMBER**

This Contempt Petition was filed alleging willful disobedience of the order passed by this Tribunal on 13.08.2013 in O.A.No. 12/2013. This matter was heard in detail on 30.10.2014 and after hearing both sides and considering the issue in detail, the Tribunal was of the view that the action on the part of the respondents in issuing the mutual transfer orders listed at Annexure A3 &A4 appears to be a clear case of willful disobedience of the order passed by this Tribunal in OA No.12/2013 and therefore attracts the provisions of Section 17 of the Administrative Tribunals Act, 1985 read with Section 12 of the Contempt of Courts Act, 1971. Therefore, respondents no.2 to 4 were directed to appear before this Tribunal personally on 10.11.2014 for framing of charges.

2 After the hearing took place on 30.09.2014, the respondents filed a second additional affidavit on 7 October, 2014 enclosing order relating to cancellation of inter divisional mutual transfer referred to at A3 & A4 of the Contempt Petition and also an Office Order No. 61/2014 /Ele. (OP) keeping in abeyance the Inter Divisional/ Inter Railway Mutual Transfer requests of employees registered between SC/ST with UR including OBC in all grades of ALP cadre pertaining to TVC Division and awaiting for orders including such of those whom orders have already been issued with immediate effect until further advice. When this affidavit was submitted before the Single Bench on 8th October 2014, it was held that since CPC has already been heard by a division bench and the matter has been reserved for orders, filing an additional affidavit was not appropriate and hence the same was returned to the learned

x

counsel. Thereafter MA No.180/1155/2014 was filed on 10.10.2014 for acceptance of the additional affidavit. Respondents thereafter moved the Hon'ble High Court of Kerala in OP (CAT) No. 165/14. Hon'ble High Court of Kerala by order dated 30 October, 2014 directed as follows:

"9 Therefore, we dispose of this Original Petition directing that the Tribunal shall consider M.A.No.1155/2014 in C.P.No.53/2014 in O.A.12/13 on the next date of posting, provided, in the meanwhile, an unconditional apology is filed by the petitioners, as undertaken before this Court. If an apology is so filed, until M.A.No.1155/2014 is considered and orders are passed, the Tribunal shall not proceed further with Exhibit P 10 and depending upon its order in M.A. 1155/2014, it would be open to the Tribunal to pass further orders on Exhibit P10.

10 It is made clear that this Court has not expressed anything on the merits of the proceedings in C.P.No.53/2014 and that is a matter to be gone into by the Tribunal, in case it chooses to do so, after M.A.1155/2014 is disposed of. "

3 Thereafter, the respondents filed M.A.No. 180/1198/2014 on 5/11/14 for acceptance of additional affidavit tendering unconditional apology by the respondents. Separate affidavits have been filed by respondents no. 3, 4 & 5 making more or less similar contentions. All the three respondents submitted that the mutual transfer orders impugned in the CPC have been cancelled. The same were initially issued without realising that orders are deviating from the directions of the Tribunal and would amount to contempt. This was unintentional. The respondents therefore tendered their contrite, unconditional apology for the said action. They prayed that remedial measures having been

taken, contempt petition may be closed. They have submitted that in the past there was no iota of incidence to brand them as contemnor as all the orders of the Tribunal have been religiously complied with. This lone case was inadvertently done and they have tendered their unconditional apology. They prayed for acceptance of the unconditional, contrite apology offered by the respondents and close the contempt proceedings.

4 Learned counsels of the respondents also reiterated the submissions made in the affidavit and prayed for dropping of the contempt proceedings.

5 Learned counsel for the petitioners referred to the mention in the affidavit that an SLP has been filed by the respondent authorities against the High Court OP (CAT) No.5/2014 vide Dy. No. 35973/14 saying that till the outcome of the SLP which is pending consideration of the Hon'ble Apex Court and till then no mutual transfer order involving reserved employees and unreserved employees shall be taken up. Therefore it is submitted that the Contempt Petition may be kept pending till the disposal of the SLP.

6 Learned counsel for the petitioners also referred to the affidavits filed by respondents and submitted that they have not offered the unconditional apology in true spirit. He also referred to the following judgments and submitted that the affidavit tendering apology does not appear bona fide and have simply been filed to escape punishment.

- 1 C.C.C.No.1641 of 2001 dated 11.2.2002 : 2002(2) KLT SN 35 (C.No.42).
- 2 C.C.C.No.513 of 2001 dated 14th March, 2002 - 2002 (1) KLT 940.


✓

- 3 CP(C) Nos.260-261 in CA Nos. 2906-2907 of 2001,
D/-8-3-2002 – AIR SUPREME COURT 1405
- 4 Crl.Appeal No.666 with Cri Appeal 665 of 1993,
D/-13-12-2002 – AIR SUPREME COURT 557.

7 We have carefully considered the order of the Hon'ble High Court of Kerala dt.30.10.2014 in OP(CAT) No. 165/14 and the submissions made by the parties. Subsequent to the earlier affidavit filed on 7th August, 2014 in which the respondents tried to justify the action in issuing mutual transfer orders in violation of the order passed by the Tribunal during hearing on 30.9.14 and before delivery of the judgment dt. 21 October, 2014, the respondents seem to have acknowledged the wrongful action on their part and tried to remedy the same by cancellation of transfer orders referred to in the CPC petition and keeping in abeyance of all such mutual transfer orders. They did file a second additional affidavit to that effect. But since the matter had already been adjudicated by the Division Bench, it was not accepted by the Single Bench. Pursuant to the order passed by the Hon'ble High Court, each of the respondents 2 to 4 have filed additional affidavits tendering unconditional apology for the action on their part.


8 The learned counsel of the petitioners referred to the SLP filed by the respondent authorities. The respondents have a right to approach the Higher Courts against any order. The same need not be linked to the instant contempt petition.

9 We take note of the action taken by the respondent authorities in cancelling the transfer orders which was in violation of the order passed by the Tribunal on 13.08.2013 and also an office order keeping in abeyance of further

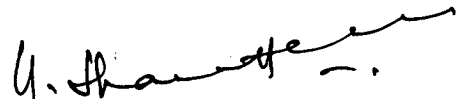


action in respect of inter divisional mutual transfer requests between reserved and unreserved employees and awaiting for orders as well as for whom such orders have already been issued. We have also taken note of the additional affidavits filed by the three respondents separately offering unconditional contrite apology and accepted the same. Therefore, after considering the entire matter, we are inclined to drop the CPC proceedings against the respondents. Hence the contempt proceedings against the respondents stands closed. Notices are discharged.

(Dated, this the 14th day of November, 2014)



(P.K.PRADHAN)
ADMINISTRATIVE MEMBER



(U.SARATHCHANDRAN)
JUDICIAL MEMBER

jm