

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 142 of 1991
T.A. No.

DATE OF DECISION 19-7-1991

N Rajeev & 5 others Applicant (s)

Mr P Sivan Pillai Advocate for the Applicant (s)

Versus

Union of India & 2 others Respondent (s)

Mrs Sumathi Dandapani Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? N
4. To be circulated to all Benches of the Tribunal? N

JUDGEMENT

AV Haridasan, Judicial Member

In In this application filed under Section 19 of the Administrative Tribunals Act, the applicants who are working as Station Masters Grade-III in Madurai Division of the Southern Railway have prayed for the following reliefs:

- "(a) To direct the respondents to transfer the applicants to Trivandrum Division forthwith in all the existing or future vacancies in accordance with their registration in preference to all other modes of recruitment with the benefit of seniority from the date of occurrence of the vacancies.
- (b) To issue such other orders or directions as deemed fit and necessary by this Hon'ble Tribunal in the facts and circumstances of this case."

2. The applicants had applied for transfer to Trivandrum Division on different dates in the year 1986. Their names were registered in the priority register of Madurai Divisional

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office and the registration numbers of applicants 1 to 6 are 4,2,5,14,17 & 21 respectively. After registration, the applicants made enquiries regarding the progress in the matter.

xxxxxx A representation made by the first applicant to D.P.O., Madurai on 28.10.1990 at Annexure-A3 was returned with the remarks that all transfer applications had been forwarded to DRM(P)/TVC and that so far no communication was from there.

received/ The Railway Board had issued a circular letter No. E(NG)11/71/TR/14 dated 1.10.1971 addressed to all General Managers(Annexure-A1) introducing a system of registration of request for inter Divisional transfers. In 1985, the Chief Personnel Officer, Southern Railway, Madras had by circular No.P(R)676/P dated 17.12.1985 instructed that those who applied for inter-Divisional transfers will have preference over direct recruits and that the applications for transfer should be considered in preference to direct recruit in filling up the vacancies. While the requests of the applicants for transfer to Trivandrum Division were pending consideration, the Railway Recruitment Board, Trivandrum by its notification No.4/90 dated 22.10.1990(Annexure-A4) had invited applications for the post of Assistant Station Masters in Trivandrum and Palghat Divisions. If direct recruitment is made to the vacancies of Assistant Station Masters of Trivandrum Division, the applicants would have no chance of coming to Trivandrum Division on transfer in the near future. Since the request of the applicants for transfer to Trivandrum Division is pending from 1986 onwards

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direct recruitment to the post of ASMs in Trivandrum and Palghat Divisions, without first considering those requests is against the instruction contained in the Annexure-A2 order dated 7.12.1985 of the Chief Personnel Officer, Madras. Therefore, the applicants have filed this application praying that the respondents may be directed to transfer the applicants to Trivandrum Division to all the existing vacancies and future vacancies that may arise before resorting to direct recruitment.

3. In the reply statement filed on behalf of the respondents 1 to 3, the following contentions have been raised: The request of applicants 1 to 4 for inter-Divisional transfer to Trivandrum have been registered at Sl.No.178, 176, 179 and 209 respectively. The request alleged to have been made by the applicants 5 and 6 have not been received in the office of the respondents. The priority number of the registration of the applicants in Madurai Division furnished in the application are of no consequence since the transfer request is for Trivandrum Division and hence, the registration made in the Trivandrum Division wherein applications from other Divisional employees are also received and registered have to be taken into account. The application submitted by applicants 1 to 4 are not yet ripe for consideration since there are 76 other employees from Mysore, Palghat and Madras Divisions who had registered earlier than applicants. Therefore without considering their request, the applicants cannot be considered

and transferred to Trivandrum Division. The employment notice at Annexure-A4 relates to 10 vacancies in Palghat Division and one vacancy in Trivandrum Division which would arise during the year 1992-93. The only one vacancy in Trivandrum Division is reserved for Scheduled Caste. Since 10 posts referred to above are in the Palghat Division in ~~without junction of concerned persons from Palghat Dvn,~~ the array of parties, /the applicants cannot get any relief ~~in~~ against them. As regards the 15 existing vacancies in Trivandrum Division, there is a stay order regarding filling up of 10 vacancies issued by this Tribunal in OA-956/90.

Regarding the 5 remaining vacancies, intimations have been given to the candidates and one of them had already been sent for training on 4.2.1991, while the remaining 4 candidates have been sent for medical examination and if found fit they will be sent for training. Therefore, as there is no further vacancies in Trivandrum Division and as there are large number of other persons with prior claims awaiting their turn for transfer, the applicants have no legitimate claim. As the Railway Recruitment Board has initiated steps ~~xxxxxxxxxxxx~~ for direct recruitment, the application is bad. without junction of the Railway Recruitment Board/for non- joint of necessary parties. As written test for filling up of the vacancies have already been held on 19.2.1991, any direction not to fill up the vacancy by direct recruitment of would affect the aspirations / thousands of candidates who have taken the written test. Though the request of applicants

1 to 4 would be treated as valid against all the vacancies which occur in Trivandrum Division in direct recruitment quota, the same cannot be agreed to at present, in view of the fact that recruitment process is in progress. Therefore, the application may be dismissed.

4. The applicants have filed a rejoinder. It has been averred in the rejoinder that as the applicants 5 and 6 have already applied for transfer and as their applications have been registered in the Madurai Division, the contention that their applications have not been received is without any merit. If the Madurai Division has not forwarded their applications, the applicants 5 and 6 cannot be put to a disadvantage. It has been contended that the contention in the reply statement that the Railway Recruitment Board is a necessary party in this application is devoid of any merit. The applicants have further reiterated that as it is admitted that in terms of Annexure-A2, the applicants claim for transfer to Trivandrum Division against all existing and future vacancies is valid, the respondents have gone wrong in resorting to direct recruitment to those vacancies against the instructions of the Railway Board and that of the Chief Personnel Officer, Madras.

5. We have heard the arguments of the learned counsel on either side and have also carefully gone through the documents produced. As the function of the Railway Recruitment Board

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is only to select candidates for the vacancies, the Board is not a necessary party as contended by the respondents because the challenge in this application is not against the method adopted by the Railway Recruitment but only against the action of the Railway Administration in resorting to fill up the vacancies by direct recruitment while persons who had registered their requests for transfer to Trivandrum Division are awaiting transfers.

6. The respondents have raised a contention that the applicants 5&6 have no legitimate claims because their request for transfer to Trivandrum Division have not been received in the Divisional Office, Trivandrum. This contention is unsustainable because they have registered their request for transfer with the Madurai Divisional Office. It is for the Madurai Divisional Office to forward their requests to Trivandrum Division for registration. If that was not done by the Madurai Divisional Office, the applicants are not to be blamed. The applicants are entitled to have their requests registered in the Trivandrum Division on the basis of their request registered at Madurai Division.

7. It is admitted that the Railway Administration have taken steps for direct recruitment to the existing vacancies at Trivandrum Division. According to the instructions contained in CPO/MAS' letter No.P(R)676/P dated 17.12.1985(P.B. Circular No.164) to all concerned, those who registered their request for transfer are entitled to preference for absorption

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against open market recruitment. It is worthwhile to extract the relevant portion of the above circular letter which reads as follows:

"The general policy of the Administration on the subject of Inter-Divisional/Inter-Railway transfers of staff is, keeping in view the spirit of extant instructions/Orders as amended from time to time, that whenever employees working on 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&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 spirit of the rules in force. Employees who have a regular status naturally get preference in filling up of vacancies in the recruitment categories over Casual Labourers/ELR awaiting absorption of other modes of recruitment. All such requests for transfers should, therefore, generally be considered in preference to absorption of CL/Open market recruitment. This is, however, subject to the condition that they fulfil the requisite qualifications, age, etc., and the prescribed medical standards of the category to which transfer is sought. Cases may please be processed accordingly. This however, will not naturally apply to posts specifically created for decasualisation."

✓ In view of the above instruction, the action of the respondents application for in inviting/the vacancies which arose in Trivandrum Division to be filled by direct recruitment is against the spirit of the instructions and is not permissible. Unless and until the requests for transfers ^{for} ~~not~~ to Trivandrum Division from other Divisions are considered and disposed of, it is not open for the Railway Administration to make direct recruitment to the post in Trivandrum Division blocking the chances of those who have registered for transfer to Trivandrum Division for such transfer. Therefore, we are of the view that the respondents have to be directed to consider the request of the applicants for transfer to Trivandrum and to transfer them to Trivandrum

Division to the existing vacancies and the vacancies which may arise in future according to their turn, if they are not otherwise unsuitable for such transfer before they resort to filling up of the vacancies in Trivandrum Division by direct recruitment.

8. In view of what is stated in the foregoing paragraph, we allow the application to the extent of directing the respondents to consider the request of the applicants for transfer to Trivandrum Division, according to their turn, having regard to the dates on which they have registered their request with requests of Madurai Division, ignoring the fact that the applicants 5&6 have not been forwarded from Madurai Division to Trivandrum Division and that preference should be given for transfer of the applicants in their turn in filling up of the existing vacancies and to the vacancies which would arise in future to direct recruitment. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


SP MUKERJI / 19.7.91
(SP MUKERJI)
VICE CHAIRMAN

19-7-1991

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