

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

D. A. No. 956/90 &
XXXXXX 160/91 XXX

DATE OF DECISION 21.4.92

Shri John Joseph & 9 others (D.A.956/90)
Shri T.V. Mani & 7 others
(D.A.160/91) Applicant (s)

Shri P. Sivan Pillai Advocate for the Applicant (s) in both

Versus
Union of India (GM, SR, Madras)
& 11 others in both the OAs. Respondent (s)

Shri M.C. Cherian Advocate for the Respondent (s) in both
CORAM : the OAs.

The Hon'ble Mr. S.P. Mukerji - Vice Chairman

and

The Hon'ble Mr. A.V. Haridasan - Judicial Member

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

JUDGEMENT *1/5*

(Hon'ble Shri A.V. Haridasan, Judicial Member)

As identicall questions of law and similar facts arise for consideration in both these applications, they are being considered and disposed of together.

2. The Railway Board had on 31.3.1971 issued a letter introducing a system of registration in that those who apply for inter-divisional transfer first, should be transferred first. In another circular dated 17.12.1985, the Chief Personnel Officer, Southern Railway, Madras, had issued instructions that those who apply for inter-divisional

transfers will have preference over direct recruitment and should applications for transfers be considered in preference to direct recruitment in filling up vacancies in that category.

The applicants in both these applications are Assistant Station Masters working in Palakkad Division. The applicants in O.A.956/90 had applied for transfer to Trivandrum Division on different dates from the year 1981. In the year 1985, the Senior Divisional Personnel Officer, Southern Region, Palakkad, in his letter dated 30.9.85 directed the applicants to express whether they still continue to be willing to be transferred to Trivandrum Division on loss of seniority. As all the applicants expressed their willingness, the Senior Divisional Personnel Officer, Palakkad, forwarded their names to the Divisional Railway Manager, Trivandrum for registration and the request of the applicants were registered in the register at Sl Nos. 97,99,100 to 107 and 111 respectively. Thereafter, the Divisional Railway Manager, SR, Trivandrum, the third respondent, requested the second respondent by letter dated 21.11.1988 to relieve the applicants to join at Trivandrum. But the second respondent did not relieve them. In the meanwhile, the respondents 4 to 12 whose names were at Sl Nos. 162, 164, 167, 168, 169, 171 to 174 in the register maintained in the Trivandrum Division were transferred from Madurai Division and they joined in Trivandrum Division on different dates from 12.6.89 to 4.12.89. Therefore, the applicants submitted a representation to the Sr Divisional Operating Superintendent, Southern Railway, Palakkad, requesting to

relieve them forthwith. The Sr DOS informed the applicants by letters dated 15.1.1990 that as the critical position of ASMs vacancies in Palakkad Division did not permit the relief of ASMs from Palakkad, it was not possible to accede to their request. It was, however, mentioned that as 25 fresh hands were expected to join Palakkad Division in June, 1990, it would be possible to take up a fresh look on the case of inter-divisional transfer then. After this, 18 ASMs joined in Palakkad Division. The Railway Recruitment Board has issued employment notice 4/90 inviting applications for the post ASMs in Trivandrum and Palakkad Divisions. Apprehending that 15 vacant posts in Trivandrum Division in the cadre of ASMs would be filled by direct recruitment without considering the claim of the applicants for transfer, the applicants have filed this application under Section 19 of the Administrative Tribunals Act. The applicants content that as the respondents 4 to 12 rank below them in priority in the matter of registration for transfer, the applicants are entitled to be transferred to Trivandrum Division and to have their seniority in that Division fixed above the respondents 4 to 12. The applicants have, therefore, prayed that the respondents may be directed to transfer the applicants to Trivandrum Division forthwith to all existing vacancies or in future vacancies of ASMs in preference to all other modes of recruitment with the benefit of seniority in Trivandrum Division over respondents 4 to 12.

3. The applicants in O.A. 160/91 applied for transfer to Trivandrum Division on different dates from the year 1984 to

1986. Their names were entered at Sl Nos. 112 to 127 in the priority register maintained by the third respondent. Though the third respondent in his letter dated 21.11.1988 requested the second respondent to relieve the applicants for joining at Trivandrum Division, the second respondent did not relieve them. In the meanwhile, respondents 4 to 12 who are the respondents 4 to 12 in O.A. 956/90 were transferred from Madurai Division and they joined at Trivandrum on different dates from 12.6.89 to 4.12.89. Respondents 4 to 12 are below the applicants in their ranking in the priority register. While the applicants made a representation to Sr DOS requesting that they may be relieved, they were informed that on account of the vacancy position, it was not possible to relieve them immediately and that the position would improve by June, 1990. Thereafter, 18 ASMs joined at Palakkad. Apprehending that the vacancies in Trivandrum will be filled up by direct recruitment seeing an employment notice issued by the Railway Recruitment Board, the applicants have filed this application praying that the respondents may be directed to transfer the applicants immediately to the existing and future vacancies at Trivandrum in preference to all other modes of recruitment assigning them seniority over respondents 4 to 12.

4. The common respondents 4 to 12 in both these cases, though were served with notices, did not appear. The respondents 1 to 3 have filed counter affidavit. The contentions in both these applications are similar. The respondents' contentions are that though the Railway Board has issued guidelines in

regard to inter-divisional transfers, the applicants have no legal right to claim transfer from one division to the other, that inter-divisional transfer is dependent on the vacancy position in the transferring division and the transferee division that as there is acute shortage of ASMs in Palakkad Division, it was not possible to transfer the applicants to Trivandrum Division, that the applicants have no right to contend that the vacancies in Trivandrum Division cannot be filled by direct recruitment and that there is no basis for the claim of the applicants that they are entitled to seniority over the respondents 4 to 12 as those who are transferred to another division on request are bound to take the bottom-most position in seniority as on the date which they joined that division.

5. We have heard the counsel on either side and have also carefully gone through the pleadings and documents. The grievance of the applicants in both these cases is that while their requests for inter-divisional transfer from Palakkad Division to Trivandrum Division were registered earlier than the requests for such transfer of the respondents 4 to 12 to Trivandrum Division from Madurai Division on the ground that vacancy position in Palakkad did not permit their relief, they were retained in Palakkad while the respondents 4 to 12 were relieved from Madurai to join at Trivandrum. They are further aggrieved by the steps taken by the respondents to fill the vacancies in the cadre of ASMs at Trivandrum Division by direct recruitment through Railway Recruitment Board. They claim that in view of the Railway Board's

Boards circulars at Annexure A1 & A2 in both these applications, they are entitled to be transferred and posted in Trivandrum Division in preference to any other mode of recruitment and that as they are higher in the register of priority for such transfer they are entitled to be placed above the respondents 4 to 12 in the seniority list of ASMs in Trivandrum Division. The respondents have no case that the applicants did not request for a transfer to Trivandrum Division or that they are not ~~earlier~~ in point of time in registering their request to the request of the respondents 4 to 12. The case of the respondents is that as there is acute shortage of ASMs in Palakkad Division, the applicants could not be transferred and that merely because the Railway Board issued a circular enabling inter-divisional transfers of ASMs applicants have no legal right to claim such a transfer. It is also contended by the respondents that there is no right for the applicants to say that the posts of ASMs in Trivandrum Division cannot be filled by direct recruitment while their request for transfer to Trivandrum Division has not been acceded to. The contention of the respondents that the applicants do not have any right to claim that the vacancies in the Trivandrum Division should not be filled up by any other mode of recruitment before considering their transfer and that the Railway Administration is entitled to fill the vacancies by direct recruitment as is attempted to be done by them admittedly by issuing an employment notice cannot be sustained in view of the RB circular No.164 at Annexure A2 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 or 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 qualification, 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 de-casualisation."

In identical circumstances, in O.A.142/91 a case filed by the Station Masters of Madurai Division, this very Bench of the Tribunal had held that in view of the RB circular cited above, the action of the respondents in inviting applications for the vacancies which arose in Trivandrum Division to be filled by direct recruitment was against the spirit of the instructions and was not permissible. We do not find any reason to disagree with this view. Since the applicants in both these cases had registered their requests for transfer to Trivandrum Division so many years ago, the action on the part of the respondents 1 to 3 in not giving effect to the transfer cannot be justified. If the Palakkad Division was experiencing a shortage of the ~~post~~ of ASMs, steps should have been taken for recruitment and the applicants who had registered their names for transfer to Trivandrum Division and ~~were in~~ ^{fact} transferred should have been allowed to join there. It is an admitted case that even

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after the applicants in both these cases have registered their requests for transfer, more number of ASMs than the number of applicants in both these cases put together had joined at Palakkad. But inspite of that, the applicants were not relieved from Palakkad to join at Trivandrum. It is further admitted that employment notice has been issued for recruitment to the cadre of ASMs through Railway Recruitment Board to fill up the vacancies at Palakkad as well as Trivandrum Divisions, The Railway Administration should have filled the vacancies at Palakkad by direct recruitment and filled the vacancies at Trivandrum by transferring the applicants who have registered their names for transfer to Trivandrum. In O.A.142/91, in identical circumstances, this Bench of the Tribunal had directed the respondents to consider the request of the applicants therein for transfer to Trivandrum Division according to their turn having regard to the dates on which they have registered their request with Madurai Division for transfer to Trivandrum Division and that preference should be given to the transfer of the applicants for filling up of the existing vacancies and the vacancies which would arise in future to direct recruitment. In the facts and circumstances of the case, we are of the view that the applicants in this case are also entitled to the same relief that before they are absorbed in Trivandrum Division, recruitment to the cadre of ASMs at Trivandrum Division should not be made.

6. Now, there is a question of seniority between the applicants in these two cases and the respondents 4 to 12.

The applicants in both these cases have registered their requests for transfer to Trivandrum Division earlier than the respondents 4 to 12. As per the averments in the application, in the priority register, the applicants in both these cases are placed above the respondents 4 to 12. It is also not disputed that the Trivandrum Division had cleared the case for transfer of all the applicants and that the applicants could not give effect to the transfer as they were not relieved from Palakkad. Had the applicants been relieved from Palakkad Division pursuant to letter dated 21.11.88 of the third respondent, the applicants in both these cases could have joined at Trivandrum Division in 1988 itself, and therefore, they should in the normal course be placed above the respondents 4 to 12 in the seniority list of ASMs of Trivandrum Division who joined at Trivandrum on transfer from Madurai Division between 12.6.89 and 4.12.89. Though the transfer of the applicants from Palakkad Division to Trivandrum Division was actually accepted and cleared as early as in 1988, it was for administrative reasons that the relief of the applicants was put off and it was under these circumstances that the respondents 4 to 12 could join in Trivandrum Division. If the respondents 4 to 12 are transferred alone and the dates of their joining at the new station are to be taken as the criterion for fixing the seniority in the cadre of ASMs in Trivandrum Division, the applicants ~~will~~ ^{have to} be placed below the respondents 4 to 12. Since the applicants could not join at Trivandrum in the year 1988 solely because they were not relieved and were retained at Palakkad Division for administrative exigencies, it is unfair to say that on transfer to Trivandrum Division, they will have to take the bottom seniority

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whatever be the date on which they will be transferred. The persons who will be affected in seniority if the applicants on transfer are given seniority with effect from the date from which they were transferred are respondents 4 to 12. But the respondents 4 to 12 in both these cases, have chosen not to contest. Therefore, it has to be taken that they have no contest in the matter. At any rate, going by the guidelines in the matter, the applicants who had registered their requests for transfer to Trivandrum Division and as their request was accepted are entitled to be placed in the seniority list of ASMs in Trivandrum Division earlier. According to the circulars and orders regarding transfers, the principle is that a person who joined at a place on such transfer should take the bottom position in the seniority as on the date of his joining. That is a sound principle because the transfer is on that person's own request for his own convenience and with full knowledge that he will get seniority in the station only from the date of his joining. But if the request for transfer of a person has been accepted on an earlier date than that of another and if for any administrative reason, the former was not relieved but in the meanwhile the latter had already joined there, then in such cases, the respective dates on which the transfers were allowed and accepted should govern the question of fixing their inter se seniority. The Delhi High Court in R.N.Dhawan V. Union of India and others (1981) 2 SLJ, 398, held that in such cases the respective dates on which the transfer applications were accepted should determine the question of seniority.

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We are in full agreement with this view of the Hon'ble High Court of Delhi. Therefore, on merit and under law, the applicants are entitled to such relief.

7. In the result, in the light of the foregoing discussion, we allow these applications O.A. 956/90 and O.A. 160/91 and direct the respondents 1 to 3 to transfer the applicants in both these cases to all the existing vacancies as also for the future vacancies of Assistant Station Masters in preference to all other modes of recruitment with benefit of seniority in the Trivandrum Division over respondents 4 to 12 irrespective of the date on which the applicants join at Trivandrum Division. Copies of this order may be placed in both the files.

8. There is no order as to costs.

(A.V. HARIDASAN)
JUDICIAL MEMBER

(S.P. MUKERJI)
VICE CHAIRMAN

21.4.92