

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 183 OF 2009

Thursday, this the 21st day of January, 2010

CORAM:

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

P.B. Siamlal,
S/o. P.K. Bahuleyan,
Station Master, Southern Railway,
Mavelippalayam,
Permanent Address: Padath House (Poomalil),
Thurthipuram, Moothakunnam P.O.,
Ernakulam District : 683 516

... Applicant.

(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 Chief Personnel Officer,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3
3. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.
4. The Senior Divisional Personnel Officer,
Southern Railway, Salem Division, Salem.

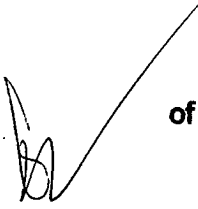
... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

The Original Application having been heard on 14.01.2010, this
Tribunal on 21-01-10 delivered the following :

O R D E R
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The impugned order is the same as the one in another O.A. No. 300
of 2009 decided on 12-01-2010.



2. The applicant was appointed on 13-08-1990 as Assistant Station Master, Central Railway and was transferred to Palghat Division of the Southern Railway on request during 1999. The applicant, immediately requested for transfer to the specific station Shoranur. The place of duty of the applicant at Palghat Division fell under the recently created Salem Division. Thus, during the bifurcation of Palghat Division w.e.f. 01-11-2007, the transfer request of the applicant for intra-divisional transfer was subsisting. After formation of Salem Division, the 3rd respondent published a list of names of those who had registered their names to various stations within the territorial jurisdiction of Palghat Division vide order dated 05-02-2008 at Annexure A-1 and the name of the applicant is at Serial No. 191 for Mannanur (MNUR), 223 for Shornur (SRR) and 332 for Thirunavaya (TUA). As the transfer of the applicant could not be effected he moved OA No. 413/2008 inter alia praying for a declaration that the applicant is entitled to be considered for transfer against the existing vacancy of Station Master at the Palghat Division. The said OA was disposed of recording the submission of the official respondents and passing consequential directions thereon. Annexure A-2 order dated 14-10-2008 refers. In pursuance of the above order so far only three transfers from Salem to Palghat Division was effected by the respondents. Annexure A-3 refers. According to the applicant, there are about four vacancies at Shornur that are likely to arise and orders for the general transfer are likely to be passed. However, by an order dated 3rd April, 2009 vide Annexure A-4, the Palghat Division authorities have scrapped the earlier priority list for transfer. Likewise, the Salem Division Authorities have issued a letter cancelling such transfer requests vide Annexure A-5. The legal validity of the aforesaid orders has been questioned by the applicant in this O.A.

3. Respondents have contested the O.A. According to them, the applicant has been posted as Asst. Station Master Grade II and not Grade III, vide Annexure R-3. They have added to their counter to the amended OA

certain Railway Board letter, as also letter from CPO Southern Railway which was issued after certain deliberations made in OA No. 413/2008. Annexures R-6 to R-8 refer.

4. Counsel for the applicant submitted that an identical case was decided in OA No. 300/2009 wherein also the order impugned was dated 03-04-2009(as in Annexure A-4 herein this O.A.). As such, it was prayed that similar orders be passed.

5. Counsel for the respondents submitted that the fact that the transfer of the applicant to Palghat Division as ASM Grade II be kept in view. To this, counsel for the applicant submitted that now that there is no such difference the pay scale and grade pay having been brought to the same level, it makes no difference whether the transfer of the applicant effected is as ASM Gr. III or Gr. II.

6. Arguments were heard and documents perused. The earlier OA No. 300/2009 was decided as under:-

" The applicant, a native of Kerala State entered the services in the Palghat Division of Southern Railway in 1980 and in September, 2003, he was promoted as Station Master Gr. III at Mavelipalayam, Tamil Nadu (sandwiched between Erode and Salem). Having all along been posted only in Tamil Nadu, the applicant had registered a request on 24-09-2003 for posting at (a) Shornur (b) Karakkad or (c) Pattambi.

2. *Salem Division was constituted in November, 2007, carving out some part of Palghat Division, Madurai Division and Trichy Division,. Administrative Instructions as to maintenance of lien etc., have been provided for vide Annexure A-3. Para 1.6 and 1.7 of the instructions read as under:-*

"1.6.0. Transfer of staff:

No staff will be transferred against his/her willingness on a permanent basis in line with the assurance given by Hon'ble MOSR.



1.6.1. Field staff:

The field staff working in the territorial jurisdiction of the proposed SA Division will be deemed to have automatically been transferred to SA Division unless such of those staff opt out of SA Division and choose to go back to their parent Division, to be exercised in writing.

1.7.0. Pending transfer requests.

The transfer requests already registered are to be dealt as under :

1.7.1. To go out of SA Division:

The priority in respect of staff of the erstwhile PGT/TPJ/MDU Division will continue to be maintained at the relevant unit to which such request has been made and registered.

1.7.2. For inter Railway transfer to SA Division:

The registrants for transfer from other Railways for transfer to PGT Division will be given another choice for considering their registration for Salem Division. In such case, their names will be registered at Salem Division and deleted at PGT Division."

3. While initially, the transfer request of the applicant was only an Intra Divisional Transfer, consequent to the constitution of Salem Division, Mavelipalayam Railway Station having fallen under the Salem Division, his request for transfer attained the character as one of Inter Divisional Transfer. And, as per the above provision, apart from the transfer request of the the applicant being maintained intact, the applicant was also entitled to be afforded priority as per para 1.7.1. The respondent did keep the transfer request alive, as could be seen vide Annexure A-4 dated 05-02-2008, vide serial Nos. 221 (for Shornur), 261 (for Karakkad) and 278 (for Pattambi). Apart from the same, the name of the applicant for such a transfer request figured in the Inter Divisional Transfer as well, vide Annexure A-5 at Serial No. 3, with date of registration as 24th September, 2003. As there were some apprehension amongst those who had applied for transfer prior to bifurcation of the Palghat Division, that after bifurcation, their cases would not be considered, some such individuals who had applied for transfer (including the applicant) filed O.A. No. 413/2008. This OA was disposed of after consulting the senior officers of the two Divisions and the decision by the Respondents included that with regard to the request transfer registered by the staff for transfer from Palghat to Salem and vice versa, transfer orders be issued on 1:1 basis so that the number of pending requests will come down and that after taking such action, for the left over employees who have registered for transfer, llen may be provided before the cadre closure in the divisions to which the employees are seeking transfer. In purported compliance of order in OA No. 413/2007, the applicant was transferred from Mavelipalayam

(Salem Division) to Panambur (Palghat Division) on 16-02-2009 (or 27th February, as contended by the respondents in their counter). Thus, the request of the applicant for transfer to Shornur/Karakkad/Pattambi has now become one of intra Divisional Transfer. His request, even after his transfer to Panambur, has been kept alive vide Annexure A-8 extract dated 17-03-2009.

4. Vide Annexure A-9, the respondents have issued one consolidated transfer order, whereby, inter alia, the applicant stood transferred to Shornur (Serial No. 48 of Annexure A-9 refers). Before, however, the applicant could carry out the transfer order, vide Annexure A-2, the earlier list of transfer request as contained in Annexure A-8 dated 17-03-2009 was cancelled and thus, the applicant's transfer based on the said Annexure A-8 priority, was also cancelled, vide annexure A-1 order dated 27-04-2009. The applicant has challenged the aforesaid Annexure A-1 and A-2 on various grounds as contained in para 5 of the O.A.

5. Respondents have contested the O.A. According to them, priority of the SMs registered for transfer to Palghat Division is taken based on their registration made as on 31-05-2008 in Palghat Division, and as such the question of priority to each unit or depot of Palghat division does not arise. Maintaining the priority to various stations cannot be materialized as there can be chances of persons registered later getting priority when compared to senior SMs, but standing lower in the priority to some other stations. Thus, priority is to the division and not to the units/depot. (Para 13 of the counter refers).

6. In the rejoinder the applicant contended that there can be no discrimination between employees of Palghat Division who have to function at Salem Division in the interest of Railways with those who are functioning in the Palghat Division for the purpose of transfer on request. Additional reply had been filed by the respondents, reiterating the earlier contentions and also emphasizing that the impugned orders at Annexure A-1 and A-2 are fully just and justified.

7. Counsel for the applicant argued that the question is confined to the priority for transfer as per initial request of 2003. The counsel has laid emphasis to the Railway Board circular No. E/(NG)/II-71TR/14 dated 01.10.1971, which relates to intra divisional transfer which read as under:-

"Sub: Registration of requests for transfer of non-gazetted
Railwa Servants.

Attention is invited to Railway Board's letter No. E(NG)II-71TR1 dated 31.03.1971 (See Appendix 20) in which a system of registration of requests of non-gazetted Railway servants desiring transfer from one division to another or from one Railway to another Railway at their own request was introduced.


2. There are always some employees who may be desirous of transfer within the same seniority unit but at a particular station of their choice, having regard to their family convenience or educational facilities etc. To mitigate hardship of such staff, a system of registration of requests in some form, presumably exists on the Railways already. The Board desire that, on Railways where such a system does not exist, a system of registration of requests for eventual transfer of such employees to the station of their choice within the seniority unit may also be introduced; this will satisfy a large number of employees/organised labour. Where there are certain unpopular stations, it is necessary to ensure that such stations will be manned to the authorised strength by laying down a period of service in such places as a prerequisite to transfer to more popular places by registration.

3. The Board desire that mid-session transfers should be kept down to the minimum required in the interest of administration.

4. The Board also desire that, while transferring employees from one station to another the fact that the employee's spouse is posted at a particular station may also be kept in view. Similarly, requests for transfer to a station where an employee's spouse is working may be considered sympathetically, as far as possible having regard to the administrative convenience and the merits of each case."

8. Counsel for the respondents reiterated the contentions as raised in the reply as well as additional reply.


9. Arguments were heard and documents perused. In so far as the request of the applicant for transfer made in September, 2003, it is to be noted that at that time, it was an intra divisional transfer. However, after formation of Salem Division, the same had become inter-divisional transfer, but compared to other cases of inter divisional transfer, the case of the applicant as well as similarly situated cases was to be given priority, as per para 1.7.1 of the administrative instructions issued at the time of formation of Salem Division (Annexure A-3) read with order dated 3rd March 2008 vide enclosure to Annexure A-6 (extract of which has been made in para 3 above). Based on the date of registration, the applicant was first transferred to Palghat Division, though not to the desired choice station and the applicant had accepted the same. Of course, his request for transfer to choice station still remains as could be seen from Annexure A-8 communication. However, according to the respondents, since there are others in the Salem Division for transfer to Palghat Division, their lien being maintained at Palghat division, their cases for transfer would be deferred if the request of the applicant and similarly situated persons is given priority. It was for this reason that the transfer request as contained in the list of 17-03-2009 was held to be cancelled, vide order dated 3rd April, 2009 (Annexure A-2). This contention of the respondents lacks merit, for the simple reason that when a vacancy arises at a particular unit or



station in Palghat Division, if on the basis of the priority list of 17-03-2009, transfer within Palghat Division is effected, the intra divisional transfer as provided for in the Railway Board's circular dated 01-10-1971 would be thoroughly fulfilled and simultaneously, in the vacancy so caused in that unit or station (from where an individual is so transferred) the senior most in the list of persons at Salem Division seeking transfer to Palghat Division could be accommodated. In fact, the applicant's move from Salem Division to Palghat Division is one such transfer when he was posted to Panambur, though this was not his choice station. Thus, the system would smoothly work without any clash between inter-divisional and intra divisional transfer. By acceding to the request of the applicant for transfer to Shornur, vested rights of none other individual get hampered and his move is in conformity with the Railway Board's circular dated 01-10-1971.

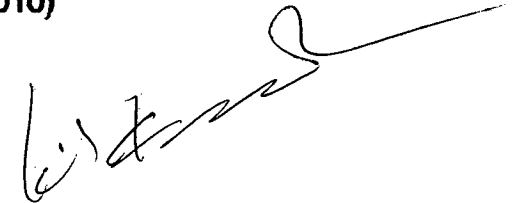
10. In view of the above, the OA is allowed. Order at Annexure A-2 and Annexure A-1 in so far as it relates to the applicant are quashed and set aside. The applicant shall be posted to Shornur in accordance with the initial order of transfer vide Annexure A-9. As the vacancy at Shornur has been directed to be kept unfilled, vide order dated 19th May 2009 of this Tribunal, respondents are directed to effect the transfer of the applicant as per Annexure A-9 order."

7. The case of the applicant is slightly different. Even if we ignore the fact that the transfer of the applicant was at the grade of ASM II, then again, his transfer is from Central Railways to erstwhile Palghat Division and as per his posting, he is covered under the Salem Division. Today he is under the Salem Division and not Palghat Division, whereas the applicant in OA 300 of 09 had been posted from Salem Division to Palghat Division and his claim is for intra Divisional Transfer, while that of the applicant is still Inter Divisional Transfer, i.e. from Salem Division to Palghat Division. Nevertheless, the respondents shall act on the basis of the orders passed in OA No. 413/2008 on 1:1 basis and in the order of seniority for transfer maintained by them and if the applicant is covered within the priority, he should be first posted to Palghat Division and within Palghat Division the authorities shall maintain the priority position of the applicant's transfer to Mannanur (MNUR), or Shornur (SRR) or Thirunavaya (TUA) as the case may be where vacancy arises first.



8. The OA is disposed of accordingly. No costs.

(Dated, the 21st January, 2010)



Dr. K B S RAJAN
JUDICIAL MEMBER

cvr.