

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 183 of 2010

Tuesday, this the 08th day of February, 2011

CORAM:

Hon'ble Mr. K. George Joseph, Administrative Member

1. Rajimon C.N., aged 38 years, S/o. Narayan Unni C.K.,
Asst. Station Master/Southern Railway, Bommidi Railway Station,
Dharmapuri District, Tamil Nadu, Permanent Address : Nandanam,
Shanthi Nagar, Behind Railway Hospital, Kallekulangara,
Palghat District.
2. Syamkumar S, aged 37 years, S/o. Sivadasan Nair V,
Asst. Station Master/Southern Railway, Unjalur Railway Station,
Erode District, Tamil Nadu, Permanent address : Thushara,
Kulangara Bhagom, Chavara, Kollam District.
3. C. Balan, aged 50 years, S/o. R. Chamy (late), Asst. Station
Master/Southern Railway, Morappur Railway Station, Harur Taluk,
Dharmapuri District, Permanent Address: III/68, Uthram,
Anand Nagar, Kallekulangara P.O., Palghat-678 009.
4. P. Unnikrishnan, aged 59 years, S/o. C. Chinnan Nair (late),
Asst. Station Master/Southern Railway, Vijayamangalam Railway
Station, Vaipadi P.O., Erode Dist. Tamil Nadu, Permanent
Address : Palakkal House, Karakkad P.O., Kavalappara,
Shornur, Kerala State. **Applicants**

(By Advocate – Mr. T.C.G. Swamy)

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 Divisional Personnel Officer, Southern Railway,
Salem Division, Salem.
4. The Sr. Divisional Personnel Officer, Southern Railway,
Palghat Division, Palghat. **Respondents**

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(By Advocate – Mr. Sunil Jacob Jose)

This application having been heard on 03.2.2011, the Tribunal on
8-2-11 delivered the following:

ORDER

The applicants are Assistant Station Masters with their lien in the Palaghat Division of Southern Railway. When the Salem Division was formed on 1.11.2007 they were deemed to have automatically been transferred to the Salem Division as they were working in the territorial jurisdiction of the proposed Salem Division. Their request for a transfer to different stations registered in the Divisional Office Palaghat prior to formation of the Salem Division were treated as options to be transferred to the Palaghat Division by the official respondents. Having understood that transfers to Palaghat Division would take a long time and the impact it will have on the career of the applicants they had submitted representations for cancelling their registrations to the different stations falling within the territorial jurisdiction of the Palaghat Division. Though a number of representations were made thereafter no action has been taken by the fourth respondent to transfer the applicants' lien to Salem Division and to ensure grant of consequential benefits as if the applicants had continued in the Salem Division of Southern Railway. Failure on the part of the respondents results in substantial prejudice and irreparable injury as a number of applicants' juniors have been promoted as Station Masters Grade-III. There is also less likelihood of applicants being promoted as Traffic Apprentice against the vacancies falling within the territorial jurisdiction of Salem

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Division. Aggrieved the applicants have filed this Original Application for the following reliefs:-

“(a) Direct the respondents to accept the applicants' request for withdrawal of their registration for eventual transfer to different stations in PGT Division;

(b) Direct the respondents to deem the applicants to have continued in Salem Division right from the date of formation i.e. 1.11.2007 and direct further to grant all consequential benefits at par with their juniors in the Salem Division;

(c) Award costs of and incidental thereto;

(d) Pass such other orders or directions as deemed just and fit by this Hon'ble Tribunal.”

2. On the date of hearing the counsel for the applicants submitted that he is pressing the case of applicant No. 2 only. Therefore, only the case of second applicant is considered in this OA.
3. As per interim order dated 26.3.2010 the second applicant was allowed to appear in the written test for promotion to the post of Traffic Apprentice in the Salem Division.
4. It is submitted by the applicant that he has not opted for transfer for Palaghat Division nor were there any such willingness called for. In so far as his request has not been acted upon by transferring him to Palaghat Division, he has every right to withdraw his request for transfer to different stations in the Palaghat Division. In fact he had withdrawn his request for transfer to any stations in Palaghat Division. In such circumstances the respondents ought to have treated him as if he had continued in Salem



Division from the date of its inception and the respondents ought to have transferred his lien from the Palaghat Division to the Salem Division. Non-feasance on the part of the respondents to act upon the request of withdrawal is arbitrary, discriminatory, contrary to law and unconstitutional.

5. The respondents in their reply statement submitted that the applicant is now working in the Salem Division which comes under the territorial jurisdiction of the CAT, Chennai Bench and hence, the OA is liable to be dismissed for want of jurisdiction. It was further submitted that the applicant is Assistant Station Master working in Salem Division and his lien is maintained at Palaghat Division. He is borne on the cadre and seniority list of Palaghat Division. When the Salem Division was formed on 1.11.2007 the applicant was a registrant for intra-divisional transfer on request basis to be considered while ordering periodical transfer to stations falling under the present jurisdiction of Palaghat. Therefore, it was decided that he might be provided lien before the cadre closure on 31.5.2008 in the Division to which he was seeking transfer. Vide letter dated 15/17.7.2008 it was advised that employees who were not willing to continue their request transfer registered to the Palaghat Division where extended opportunity to express their unwillingness in writing and advised to forward the same to their Supervisors on or before 30.7.2008 in order to have lien in Salem Division on cadre closure. The applicant never expressed his willingness or otherwise in time. Keeping silent on the issue the applicant had submitted representations on various dates much after the cut off date, after issuing



promotion to the employees of Salem Division. As applicant is having his lien in the Palaghat Division his name is included in the Annexure R-2 seniority list published by the Palaghat Division. In the Annexure R-3 seniority list published as on 5.5.2010 by the Salem Division it has been clearly mentioned against the name of the applicant that his lien is maintained in the Palaghat Division. Incorporating the applicant in the cadre of Salem Division by providing him seniority or deleting the name from the seniority of Palaghat Division will certainly unsettle the settled issue of seniority especially in the Salem Division. As the employees who are affected in the Salem Division have not been impleaded as respondents, this OA is liable to be dismissed for non-joinder of appropriate parties also. The applicant could not be relieved to join the Palaghat Division immediately after formation of the Salem Division owing to huge number of vacancies in the Salem Division and transfers are regulated on 1:1 basis duly abiding the orders of this Tribunal in OA No. 413 of 2008. The respondents further submitted that though the applicant is working in the Salem Division he is entitled for all promotional benefits available as and when considered by Palaghat Division along with other employees based on vacancies and seniority. After the formation of the Salem Division and before the cadre closure the request of the applicant along with the corresponding priority was issued vide letter No. J/P353/VIII/SM/YM/TI/P1/2007-2008, dated 5.2.2008. The applicant never represented about his cancellation of registration after publication of the above list and before the closure of cadre on 31.5.2008. The employees including the applicant were notified vide Annexure R-1 letter dated

15/17.7.2008 to express their unwillingness or otherwise to continue their request for transfer to the Palaghat Division. The applicant wanted his lien to be maintained at the Palaghat Division at the time of formation of Salem Division. Now he is asking for a chance to join the Salem Division indirectly. He cannot deny that he was not aware of the issuance of Annexure R-1 notification. Hence, it is a clear case of estoppel and the OA is liable to be dismissed on this score also.

6. In the rejoinder it was submitted by the applicant that his lien is maintained at Palaghat Division and the case of the applicant falls within the jurisdiction of this Tribunal. He is borne in the cadre and seniority list of Palaghat Division. Annexure A-2 is the representation dated 24.6.2008 submitted by the applicant. He had represented to the respondents before the cut off date of 30.7.2008 as early as 24.1.2008. The applicant never represented for a transfer in terms of Annexure A-1 procedure orders dated 19.11.2007. No option was called for from the applicants either to be retained in the Salem Division or to be transferred to the Palaghat Division. The respondents ought to have cancelled the applicant's deemed lien in Palaghat Division and deemed the applicant to continue in the Salem Division itself by transferring the lien from the Palaghat Division. The respondents have taken no action to settle the issue of the applicant who remains in uncertainty without good prospects. It is up to the official respondents alone to assign seniority of the applicant. The applicant does not need to implead others working in the Salem Division. The applicant has never been transferred to the Palaghat Division and is still functioning

at the Salem Division, but for the lien of the applicant maintained at the Palaghat Division he would have been considered for the post of Traffic Apprentice. It is incorrect to say that the applicant has not represented about the cancellation of registration before 31.5.2008. Annexure A-2 and similar representations disprove the same. Annexure R-1 is dated 17.7.2008. Annexure A-2 was submitted by the applicant much before the above date and was followed by further representations.

7. In the additional reply statement the respondents submitted that at the time of cadre closure the applicant had not submitted any representation against Annexure R-1/1 notification. After the formation of the Salem Division and closure of cadre with effect from 30.6.2008 there is no provision to consider his application to cancel his lien at Palaghat. If the lien of the applicant is transferred to the Salem Division it will affect the seniority position of Station Masters pertaining to the relevant grade.

8. I have heard the learned counsel appearing for the applicant Mr. Mohana Kumar representing Mr. T.C.G. Swamy and learned counsel for the respondents Mrs. Jisha representing Mr. Sunil Jacob Jose and perused the records.

9. As the respondents have admitted that the lien of the applicant is maintained at Palaghat Division, this Tribunal has jurisdiction over the case of the applicant.

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10. Annexure A-1 notification pertains to the formation of the new Salem Division. Paragraphs 1.6.1 and 1.7.1 of the aforesaid procedure read as under:-

“1.6.1. Field Staff”

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

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1.7.1 To go out of SA Division

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

11. The applicant was not given an opportunity by calling for his willingness to opt for transfer to the Palaghat Division or to remain in the Salem Division. He was automatically transferred to the Salem Division as he was working in the territorial jurisdiction of the proposed Salem Division. It is also true that the applicant did not opt to join the Salem Division but then he had registered for transfer to three stations in the Palaghat Division earlier to the formation of Salem Division. On 24.1.2008 vide Annexure A-2 letter he had requested to cancel his registration for the 3 stations in the Palaghat Division. On 24.1.2008 the cadre was not closed. The date of closure of the cadre was on 31.5.2008. The applicant had made many representations subsequent to his letter on 24.1.2008 reiterating that he had cancelled his registration to various stations in the Palaghat Division. He had shown his willingness to work in the Salem Division maintaining his present seniority. It appears that the respondents have not

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acted upon his representations which was made well in time before the closure of the cadre and further representations thereafter. The non-feasance on the part of the respondents to act upon the request of the applicant for withdrawal of his registration to various stations in Palaghat Division which was made in time was arbitrary, discriminatory and resulting in substantial injury and irreparable damages to the applicant.

12. The respondents submitted that the applicant could not be relieved from Salem Division to join Palaghat Division immediately after the formation of Palaghat Division owing to huge number of vacancies in the Salem Division. As the Salem Division is having number of vacancies it would have been appropriate if the respondents acted upon the request of the applicant to cancel his registration for transfer to various stations in the Palaghat Division and allow him to remain in the Salem Division maintaining his seniority. The respondents have not shown what should have happened had it been done so. The submission of the respondents that the applicant has not represented about his cancellation of the registration before 31.5.2008 is not correct as he had applied on 24.1.2008 and followed it by a number of representations.

13. The applicant continues to be in an unsettled position even after more than 3 years have passed since the formation of the Salem Division on 1.11.2007. It is necessary to settle his case to end the uncertainty. His juniors have been promoted although on ad hoc basis in the Salem Division but for his lien at the Palaghat Division he could have been considered for

the post of Traffic Apprentice. Allowing the applicant to continue in the Salem Division maintaining his seniority does not unsettle the settled position of seniority in the Salem Division. In the provisional seniority list of Assistant Station Masters as on 5.5.2010 in Salem Division the position of the applicant is as under:-

Sl No	Staff No.	NAME/S/Shri/ Smt.	PF NO.	Com-munity	Stat-ion	Date of birth	Date of Appt.	Date of entry to grade	Remarks
16	JT4490	Syamkumar S**	00152286	OBC	URL	26.05.73	11/12/98/ 08/04/03	05.09.03	Lien at PGT

In the aforesaid seniority list it is shown against the applicant in the remarks column that his lien is at Palaghat. The applicant has already asked for transfer of his lien to the Salem Division. He had already cancelled his registration for transfer to Palaghat Division as early as on 24.1.2008 well in time and before the closure of the cadre. Maintaining him at serial No. 16 as shown in the provisional seniority list of ASM none of his juniors is likely to be effected. If any of his juniors raises any grievance on account of retaining the applicant at serial No. 16 the respondents can take appropriate action to settle the grievance.

14. In my considered opinion in the facts and circumstances of this OA it is only fair and just if the applicant is deemed to have continued in the Salem Division right from the date of his formation on 1.11.2007.



15. In view of the above the OA is allowed. The respondents are directed to accept the applicant's request for withdrawal of his registration for transfer to different stations in the Palaghat Division. The respondents are further directed to deem the applicant to have continued in the Salem Division from 1.11.2007 and to grant all consequential benefits including appointment as Traffic Apprentice if he is found eligible at par with his juniors in the Salem Division within a period of two months from the date of receipt of a copy of this order. No order as to costs.


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

“SA”