

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 29 of 2010

FRIDAY, this the 26th day of August, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

<ol style="list-style-type: none"> 1. K.N. Shashikumar, Staff No. T.T. 3383, aged 39 years, S/o. K. Narayanan Nair, Station Master Grade-II, Southern Railway, Panambur, Palghat Division. 2. Promodh P. Shenoi, Staff No. M.T/III/1141, aged 39 years, S/o. Pandurenga, Station Master Grade-II, Southern Railway, Kumbla, Palghat Division. 3. A.N. Sudheer, Staff No. J.M. 5599, aged 37 years, S/o. V. Ayyappan Nair, Station Master Grade-II, Southern Railway, Nethravathi, Palghat Division. 4. Binu C., Staff No. J.M. 5963, aged 35 years, S/o. N. Chandra Babu, Station Master Grade-II, Southern Railway, Mangalore Central, Palghat Division. 	Applicants
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(By Advocate – Mr. P.K. Madhusoodhanan)

V e r s u s

<ol style="list-style-type: none"> 1. Union of India, represented through the General Manager, Southern Railway, Headquarters Office, Park Town (P.O.), Chennai-3. 2. The Senior Divisional Personnel Officer, Southern Railway, Divisional Office, Palghat Division, Palghat. 3. The Senior Divisional Operations Manager, Southern Railway, Palghat Division, Palghat. 4. The Divisional Personnel Officer, Southern Railway, Salem Division, Salem. 	Respondents
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(By Advocate – Mr. Thomas Mathew Nellimootttil)

This application having been heard on 02.08.2011, the Tribunal on



26/08/2011 delivered the following:

O R D E R

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

The applicants who belong to Palaghat Division of the Southern Railway while working as Assistant Station Master (in short ASM) were four among the 12 selected candidates to fill up the post of Station Master Grade-II against 10% limited departmental examination quota. The applicants were relieved to join the Zonal Railway Training Institute, Trichinappilly for traffic apprentice training for two years commencing from 17.9.2007. They completed their training successfully by 3.7.2009. While they were undergoing training at Trichi a new division called Salem Division was formed with effect from 1.11.2007. The Chief Personnel Officer, Southern Railway had issued the procedure order No. 1 on establishment matters on the formation of the new division along with his letter dated 19.11.2007. The applicants were not informed of the same. They were not asked to opt out of the Salem Division if they wanted as stipulated in 1.6.1 of Annexure A-2. The applicants 1 and 2 represented to the respondents 2 & 4 through proper channel for retention in the Palaghat Division. The request of the applicant No. 3 for transfer from Elamannur to Palaghat was already on record. Knowing these on completion of the training along with others on induction to SM Grade II the applicants were absorbed permanently in the Salem division in terms of paragraph 2 of Annexure A-9 order dated 3.7.2009. Aggrieved the applicants have filed this OA for the following reliefs:-

"(i) Set aside Annexure A9 only in so far as it holds in para 2



thereof in respect of the applicants that "they may be absorbed permanently in S A Division...." as highly arbitrary, illegal, unjust and harsh;

(ii) Issue necessary directions to the respondents to absorb the applicants permanently in Palghat Division as station Master Grade-II.

(iii) Declare that the applicants are eligible and entitled to be absorbed permanently in Palghat Division as Station Master/Traffic Inspector/Grade-II.

(iv) Issue necessary directions to the respondent not to absorb the applicants in Salem Division against their option/will as ordered in Annexure A9.

(v) Award costs of these proceedings

And

(vi) Grant such other and further reliefs as this Hon'ble Tribunal deems fit and proper."

2. The applicants contend that the respondents cannot insist and compel them to serve at Salem Division forgoing their lien, seniority and service benefits accrued to them in the Palaghat Division in contravention to their settled service conditions and principles of natural justice and their own undertaking that nobody will be sent out of Palaghat Division against his will. Before taking the decision to absorb the applicants permanently in the Salem Division behind their back arbitrarily, as per Annexure A-2 an opportunity ought to have been given to the applicants to opt as per principles of natural justice. All the applicants had subsequently given written request to retain them in the Palaghat Division. The respondents therefore should have considered their absorption and permanent retention in the Palaghat Division itself. The applicants have applied and selected for the Palaghat Division. They had undergone suitability test at the Palaghat Division and they have not opted for the Salem Division. There are



vacancies of SM-II and Traffic Inspectors-II in the Palaghat Division. Therefore, they are liable to be absorbed in the Palaghat Division. The absorption as stated in paragraph 3 of the impugned order dated 3.7.2009 in compliance to the decision of this Tribunal in OA No. 413 of 2008 cannot have been issued behind the back of the applicants without prior notice to them and contrary to stipulations in Annexure A-2 and the same is against the principles of natural justice and fair play.

3. Per contra, the respondents submitted that while the applicants along with 8 others were undergoing training, the cadre between Salem and Palaghat Divisions were closed with effect from 31.5.2008. By virtue of their place of work at the time of relieving for training, all the four applicants were working in the territorial jurisdiction of Salem Division. As per procedure order No. P(R) 676/SA Division/Formation, dated 19.11.2007 the field staff working in the jurisdiction of Salem division will be deemed to have automatically been transferred to Salem division unless those staff opt out of the Salem division and choose to go back to their parent division. As per the procedure order for employees to go out of the Salem Division their priority will be continued to be maintained at the relevant unit to which such request has been made and registered. Lien to the staff in the division to which they have sought transfer and to transfer the employees to Palaghat and Salem Division in the ration of 1:1 where provided in the letter dated 3.3.2008. The applicants 2, 3 & 4 prior to their training as Traffic Apprentice had registered for transfer to stations in the erstwhile Palaghat division. Consequent upon their induction to the higher post of Traffic

Apprentice their request registered under the lower grade became null and void and were treated as canceled as per procedures in vogue. As per Annexure R-2 it was clearly stated that the employees working under all the supervisory officials be made aware of the letter. As an opportunity was given to the employees in the Salem Division to revise their stand in regard to their lien during the pendency of OA No. 413 of 2008. A decision was taken by the CPO Madras vide letter No. P(S) 676/II/SMs/SA dated 6.10.2008 that all the 9 SMs undergoing training as Traffic Apprentice have to be posted in Salem division on completion of training of two years to facilitate the transfer of optees of Salem Division to Palaghat Division, which was accepted by this Tribunal also and accordingly disposed of the said OA vide order dated 14.10.2008. The applicants are among 9 SMs referred to above. The 6th Pay Commission have merged the grades of SM-II and SM-III to the pay band of Rs. 9300-34800/- with grade pay of Rs. 4200/-. The mode of filling up of the same is yet to be received from the Railway Board. The respondents submitted that the selection of the applicants was to fill up vacancies earmarked against 10% LDCE quota in SM-II cadre of erstwhile Palaghat division and not for the bifurcated Palaghat Division. If at all the PGT division was not bifurcated the applicants could have been considered for posting in the stations which are now in the territorial jurisdiction of the Salem division.

4. In the rejoinder statement the applicants submitted that they are entitled to be posted in the Palaghat Division as rightly held in the orders of OA No. 79 of 2009 and 487 of 2009 dated 22.1.2010 in the case of similarly

situated employees. The applicants were unaware of R-1 and R-2 orders and also of the cancellation of their request for posting in various stations in the Palaghat division. Least the administration could have done is to intimate the applicants when their request for transfer to various stations in the Palaghat Division registered was cancelled for exercising option for retention in Palaghat division once again in consonance with Annexures R-1 and R-2. The cancellation of the applicants' request to retain them in the Palaghat Division itself without notice to them is not at sustainable either in law or on facts.

5. In the reply to the rejoinder the respondents submitted that if the names of the applicants were not seen in the list of staff who are working in the Salem Division to be transferred to Palaghat Division based on their transfer registration, they should have represented their case before the cut off date on 30.7.2008. In the exigency of service the Railway administration has every right to order posting of employees to any Railway establishment as per Rule 226 of IREC Volume I.

6. We have heard the learned counsel for the applicant Mr. P.K. Madhusoodhanan and learned counsel Mr. Thomas Mathew Nellimoottil for the respondents and perused the records.

7. 1.6.1 of Procedure order No. 1 Establishment matters issued on the formation of the Salem Division reads 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 those staff opt out of SA Division and choose to go back to their parent Division to be exercised in writing."

8. In OA No. 79/2009 which dealt with the same issue as in this OA this Tribunal held as under:-

"From the above it is clear that no staff will be transferred against their willingness. The applicant is not willing to be transferred to Salem Division. The priority of registration for transfer will continue to be maintained.

In the circumstances, we are of the opinion that the Trainee Traffic Apprentices have a legal right to be posted at the place of their choice depending on their rank in the select list and the availability of vacancy."

9. In OA No. 396/2009 which is also identical this Tribunal held as under:-

"11. The applicant like every employee, had an option to opt out of SA Division to be exercised in writing. That opportunity was not exercised by the applicant because according to her she has already registered a request for transfer to Palghat in 2004 itself. The least the administration could have done is, to intimate the applicant when her request for transfer to Palghat Dn registered in 2004 was cancelled, to exercise an option, if necessary for Palghat Dn once again. Moreover, we feel that being No. 1 in the select list of Apprentice Trainees, the applicant has accrued a legal right for an option to choose the Division depending upon the availability of vacancy, especially in the context of her juniors in the select list being allotted Palghat Dn. itself. Consequent on recommendation of VI CPC, the two grades of Station Masters Grade -II and III are grouped into one grade pay w.e.f. 1.1.2006. If the request of the applicant for transfer to Palghat had not been cancelled, she should have got transfer to Palghat Division under Para 1.7.1 quoted above.

12. Based on the foregoing discussion, we are of the view that the O.A. succeeds. Accordingly, we quash and set aside Annexure A-10 and declare that the applicant is entitled to be posted in Palghat Division after completion of the Traffic Apprentice training in preference to others in the select list."

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10. As per the provisions of the procedure order No. 1 and as per the finding of this Tribunal in the above cited OAs, the applicants in this OA cannot be transferred to Salem division against their will. The applicants were not informed by their supervisory staff about the option they have to exercise before the closure date of 31.5.2008. In the absence of communication the applicants could not exercise their option. The failure on the part of the supervisory staff cannot deprive the applicants of their right to be retained in the Palaghat Division. Non communication of relevant orders to the affected parties like the applicants is against the principles of natural justice and good administration. In OA No. 413 of 2008 this Tribunal did not lay down any law. It only accepted a suggestion made by the respondents therein in respect of the applicants therein. The applicants in this OA were not parties to OA No. 413 of 2008. This Tribunal did not give any finding as to the right of the applicants herein for their retention in Palaghat Division in OA No. 413 of 2008.

11. The stand of the respondents that the request of the applicants for transfer to various stations in Palaghat got automatically cancelled is too narrow and technical. The respondents should have taken care to inform the applicants about the automatic cancellation of their registration well in time. The stand of the respondents that the applicants should have exercised their option without fail before the stipulated date by making representation without serving the relevant communications on them is incomprehensible. The approach of the respondents towards solving issues and problems relating to the management and the deployment of human resources is

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highly insensitive and mechanical. The merger of cadres and the formation of the new division had created a number of problems for the respondents and it would appear that they were ill-equipped and untrained to manage the complex situation. Had the administration intimated the applicants about the cancellation of the registration for transfer to Palaghat and also of their right to exercise an option to be retained in Palaghat division in time, it would have been fair and just and would have helped to ease the situation for all concerned. Unwillingly, the respondents themselves have violated clause 1.6.1 of Procedure Order No. 1 on Establishment matters at Annexure A-2.

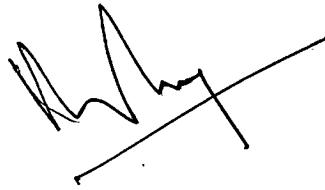
12. In the light of the above discussion and following the decision in the earlier O.A Nos.79/2009 and 487/09, 396 of 2009, the applicants are entitled to succeed in this O.A. Annexure A-9 order is set aside to the extent it holds the applicants as permanently absorbed in the Salem Division. We declare that the applicants are eligible and entitled to be absorbed permanently in the Palghat Division as Station Master/Traffic Inspector Grade-II in their turn. But we can not declare that the applicants should be retained in the Palghat Division for the reason that areas now included in the Salem Division were once under the Palghat Division. Many who are working now in the Salem Division though belong to the Palghat Division earlier had opted to come back to the Palghat Division and registered their names and are waiting for their turn to come. The applicants can not be given a better relief than others who are at present serving in the Salem Division and are anxiously waiting to come back to their respective posts in the Palghat Division. Thus the applicants' posting in Palghat



Division will be subject to the preferential claim of their seniors now working in Salem Division and who have opted to come back to Palghat Division by registering their names for such transfer. However, we direct that after accommodating the existing employees working in the same cadre in the Salem Division who opted to come to the Palghat Division against present and future vacancies, the applicants' case will also be considered alike, but their retention at Palghat Division as of now will prejudiciously affect others who are seniors to the applicants in the list of optees to come to Palghat Division. They are not parties here and even otherwise they will get preferential claim as they would have exercised other option to come to Palghat Division much earlier than that of the applicants. In the result, we declare that the applicants also are to be treated alike and their names will be included in the register for being transferred to Palghat Division eventually in accordance with their seniority and subject to availability of vacancy.

13. No order as to costs.


 (K. GEORGE JOSEPH)
 ADMINISTRATIVE MEMBER


 (JUSTICE P.R. RAMAN)
 JUDICIAL MEMBER

“SA”