

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION No. 316/2013

FRIDAY....., this the 29th day of January, 2016

CORAM:

HON'BLE MR.U.SARATHCHANDRAN, JUDICIAL MEMBER

1. Roopesh Raju, aged 31 years, s/o K.M.Raju, Senior Assistant Loco Pilot, Southern Railway/ Shornur, Office of the Chief Crew Controller, Shornur Railway Station, Permanent Address: "Ambalayam House", Poothakuzhy P.O., Pampady, Kottayam -686521.
2. Binoy Kumar D.B., aged 34 years, s/o D.K. Balan, Senior Assistant Loco Pilot/ Southern Railway /Shornur , Office of the Chief Crew Controller, Shornur, Railway Station, Permanent Address : "Devaswom Parambil", Pizhala P.O., South Chittoor, Cochin -682 027, Ernakulam District. - Applicants

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India, represented by the General Manager, Southern Railway, Headquarters Office, Park Town P.O., Chennai -600 003.
2. The Senior Divisional Personnel Officer, Southern Railway, Palghat Division, Palghat -678 002.
3. The Senior Divisional Personnel Officer, Southern Railway, Salem Division, Salem -636 001.
4. The Divisional Personnel Officer, Southern Railway, Trivandrum Division, Trivandrum -695 014.
5. The Chief Personnel Officer, Southern Railway, Headquarters Office, Park Town P.O., Chennai -600 003. - Respondents

(By Advocate Ms.P.K.Radhika)

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This Original Application having been heard on 07.01.2016, this Tribunal on 29.01.2016 delivered the following:

ORDER

Per HON'BLE MR.U.SARATHCHANDRAN, JUDICIAL MEMBER

MA No.394/13 for joining together of the applicants is allowed.

2. The short question in this OA is whether applicants who are working as Senior Assistant Loco Pilots in the Palghat Division of Southern Railway are entitled to have their priority in the matter of inter-divisional transfer to Trivandrum Division with reference to the dates of submission of their applications for registration of such transfer i.e. 04.05.2007 and 24.05.2007 respectively and to get appropriate position in the priority list maintained in the Trivandrum Division based on the date of registration of the applications at their parent division or not?
3. The issue has already been decided by Annexure A/10 order dt 19.06.2008 of this Tribunal in OA No. 781/2007.
4. The respondent Railway contested the matter stating that the applications of the applicants for transfer to Trivandrum were sent to that division by their parent division i.e Palghat Division as per letter dt 31.5.2011 and the same were received by the Trivandrum Division only on 20.6.2011. According to respondents, application of the applicants were registered on 20.6.2011 in the light of R/1 administrative instructions issued by Chief Personnel Officer, Madras wherein it is instructed that the priority of registration in the new Unit of the applications received from other units will be based on the date of the covering letter forwarding such applications. According to respondents the new unit would

not in any way be having the knowledge that their requests from other units or from a particular seniority unit has been transferred to the new unit. Only after receipt of such requests in the new unit it can be ascertained how much and from which unit the requests have been received.

5. A rejoinder was filed by the applicants and an additional reply statement was filed by the Railway. According to the Railway there was no wilful delay on the part of Palghat Division in forwarding the transfer applications to the Trivandrum Division. The only delay they attribute is that the applications of the applicants forwarded by the Chief Crew Controller of Erode did not reach the Palghat Division. They further state that only when the Employees' Union took up the matter vide Annexure A/6 communication the matter was examined and on the basis of the copies of transfer applications furnished along with the communication of the Union action was taken to forward the applications to Trivandrum Division.

6. The issue involved in this case has already been decided vide order dt 19.6.2008 of this Tribunal in OA 781/2007 a copy of which is marked as Annexure A/10. It is pertinent to extract the relevant portion of the Annexure A/10 order of this Tribunal:

"8. Various Divisions forward the request transfer applications to the concerned Division which maintain a register and separate pages are allocated for each Division and likewise, separate page is allotted in respect of requests from other Railways. Certainly, the list forwarded by each Division would contain the requests in chronological order. But the forwarding of such request transfer would be on different dates by various divisions. Thus, an individual applying for transfer to a particular Division at a particular date has no control over the date of despatch of the list by the Division to the concerned division. If in another Division, the administration acts fast in sending the transfer applications, and if that be taken as the priority list for effecting transfer, the individual who had applied fast but whose Division acts slow in forwarding the applications to the



concerned Division, would be a great loser in as much as, he may not perhaps get his transfer and even if he gets his transfer, his seniority in the new Division would be reckoned from a later date. This is purely illegal. The Apex Court in a recent case of Union of India vs. Smt.Sadhana Khanna, 2008(1) SCC 720, has held that mistake of Department cannot recoil on employees.

9. Equality in matters of employment is guaranteed under the provisions of Art.14 read with Art.16 of the Constitution. Appointment and seniority are included in the term, 'matter of employment'. This is trite law. Under such a circumstance, when inter divisional transfer is against vacancies in the direct recruitment quota, the said transfer amounts to direct recruitment. So is the case of fixation of seniority on the basis of the date of their joining the new division. As such, if the transfer is not on the basis of the date of their registration, the same directly infringes the fundamental right under Art. 14 and 16 of the Constitution of India.

10. Thus, the sequence in which the transfer on inter-divisional/ inter-zonal basis is to be effected and the sequence in which the seniority of the individuals is to be allotted in the transferred division should be based on the date of application. The same can well be followed adopting the existing system of maintaining separate pages for each division/ other zonal Railways. While asking for willingness, offer should be made strictly on the basis of the date of registration of application in the respective parent division/ railway and orders of transfer should, on receipt of willingness should be again in the order of the respective initial date of registration. Time limit for joining the new Division should be uniform to all and in the event of joining within the stipulated date, the date of seniority shall be on the basis of the order of transfer. In case there be any delay in relieving the individual due to administrative reasons/ service exigencies, then the marginal delay in joining shall not affect the seniority of the individuals, as held by the Tribunal in the case of R.Syama Kumar & 11 others vs. Union of India & Ors (OA 899/2004 decided on 7.11.06), which has been upheld by Hon'ble High Court of Kerala vide judgment dated 22.03.2007 in WP(C) No. 9773/2007.

11. The OA is thus allowed to the following extent :-

- (a) It is declared that date of registration for inter-divisional transfer shall be the criterion for issuing letter seeking willingness for transfer and to issue

transfer order. Consequently, order at Annexure A-9 which declares that the date of communication by the parent Division Railway shall dictate aspect of issuing transfer order and consequent seniority in the transferred Division is held to be invalid and hence, Annexure A-9 is quashed and set aside.

(b) As a consequence, Annexure A-8 is also quashed and set aside.

(c) Respondents are directed to reschedule the order of transfer of various individuals on the basis of their initial date of registration in the parent division railways and also fix the seniority, on their joining, in the same order of their date of registration.

12. Under the above circumstances, there shall be no order as to costs. "

7. Annexure A/10 decision was followed by this Tribunal in yet another case i.e. OA No.474/11 also where the subject matter is akin to that of the present OA. It was contended by the Respondents in their reply statement that Annexure A/10 order of this Tribunal was stayed by the Hon'ble High Court in WP(C) No.31/443 of 2008. However when the case came up for hearing it was stated by the counsel for the applicants that the aforesaid Writ Petition was dismissed by the High Court vide judgment dt. 16.2.2012 and that thereby Annexure A/10 order of this Tribunal has attained finality. Since the subject matter and the issue involved in the case on hand and those in Annexure A/10 case and OA No.474/11 are identical in nature, this Tribunal is inclined to follow the aforesaid decisions. Since the decision in Annexure A/10 order is on the ground that the impugned action is arbitrary and violative of Art. 14 of the Constitution, that decision is binding on everyone, not merely on the parties to that case and hence it is a judgment *in rem*. This position has been made clear by a full Bench of this Tribunal constituted at the Bangalore Bench in OA No.57/1990 in *C.R. Rangadhamaiyah & 717 others v. Chairman Railway Board and 8 others* and the connected cases.

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8. In view of the foregoing discussion Annexure R/1 order is quashed and set aside. As there was no fault on the part of the applicants for the delay occurred to the Palakkad Division in transmitting their requests for inter-divisional transfer to Trivandrum, it is hereby declared that applicants are entitled to be assigned appropriate positions in the priority list maintained in the Trivandrum Division for inter divisional transfer for Senior Assistant Loco Pilots with reference to the date of submitting their applications for registration viz. 04.05.2007 and 24.05.2007 respectively at Palakkad Division. Respondents are directed to assign seniority to the applicants from the date of submitting their applications for registration and to grant all the consequential benefits within a period of two months from the date of receipt of this order. The O.A. is allowed as above. Parties shall suffer their own costs.



(U.SARATHCHANDRAN)
JUDICIAL MEMBER

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