

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO.343/2005

Tuesday, this the 8th day of November, 2005.

CORAM:

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

A.K.Leena,
Commercial Clerk,
Southern Railway,
Ponkunnam Railway Station,
Ponkunnam. - Applicant

By Advocate Mr K.A.Abraham

vs

1. Union of India represented by the Secretary, Ministry of Railways, Rail Bhavan, New Delhi.
2. The Divisional Railway Manager, Southern Railway, Palghat.
3. The Senior Divisional Personnel Officer, Southern Railway, Trivandrum Division, Trivandrum. - Respondents

By Advocate Mr KM Anthru

ORDER

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Smt.A.K.Leena Commercial Clerk, Southern Railway, Ponkunnam R.S. has filed this O.A. to secure parity in seniority in the cadre of Commercial Clerk, vis-a-vis Smt.C.S. Aysha, presently working as Commercial Clerk, TVC Division who, like the applicant, got an inter-Divisional transfer from Palghat Division to Trivandrum Division.

2. The applicant was appointed as Commercial Clerk in Palghat Division on regular basis with effect from 19.8.86. She had opted for Trivandrum Division as first choice followed by Palghat Division. But, she was posted only to Palghat, her second choice. After joining at Palghat, she registered herself during July 1986 for inter-Divisional transfer to Trivandrum and had been representing for transfer. Once Trivandrum Division was willing to accommodate her during December 1988, but Palghat division was unwilling to relieve her perhaps on reasons of staff shortage. The applicant moved this Tribunal vide O.A.No.254/1999 and secured an order to the effect that *".the applicant is permitted to submit a representation to the first respondent through proper channel within two weeks from today. If such a representation is received, the first respondent shall consider the same and pass appropriate orders in accordance with law within three months from the date of receipt of the representation."*

3. Ultimately, she got the desired transfer on 16-8-01. But her grievance is that Smt.Aysha who was her junior in the select list got transfer to the Trivandrum Division earlier than she vide A3 dated 6-11-91. Hence, she seeks a direction to the 3rd respondent to assign her seniority in the cadre of Commercial Clerk in Trivandrum Division with effect from 19.8.1986, the date of her joining in Palghat Division or on par with the seniority assigned to her junior C.S.Aysha in Trivandrum Division with effect from 6.11.1991. She rests her claim on the following grounds:

- a) Initially recruited to the Trivandrum Division, she was provisionally appointed to Palghat Division with effect 18.8.1986. Despite many requests and even concurrence from the Trivandrum Division to accommodate her there, she could not get the transfer which came through ultimately after she obtained directions from this Tribunal in O.A.254/1999.



b) Smt.C.S.Aysha, her junior in the select list and assigned to Palghat Division could get transfer to Trivandrum Division earlier than she, on 6.11.1991.

4. Respondents oppose the application on the following grounds:

a) No rule has been quoted by the applicant to fix her seniority in the Trivandrum Division with effect from the date of her joining the first posting in Palghat Division.

b) The present provisions envisage fixation of seniority of transferred candidates from the date of physical joining at the new posting at the bottom-most position (vide para 3.1.2 of IREM, Vol.I., a stand endorsed by this Tribunal in O.A.691/1999.

c) Smt. Aysha, by virtue of her having joined the Trivandrum Division earlier than the applicant got the bottom most seniority based upon the date of her joining in Trivandrum, viz, 7.11.1991.

d) Rule 226 of IREC, Vol.I specify that the staff transferred at their request from one Railway to another shall be placed in the relevant grade in the promotion group in the new establishment, irrespective of the date of confirmation or length of officiating service of the transferred employees. Rule 229 of the IREC, Vol.I further says that if request transfers are inter-divisional or outside the seniority group, the Railway Ministry's decision below Rule 226 for inter-railway transfers shall apply. Thus it is clear that the Railway Ministry's decision under Rule 226 of the IREC, Vol.I is applicable in deciding the seniority of the applicant and Smt.C.S.Aysha in Trivandrum Division.

e) Subsequent to the joining of Smt. Aysha several seniority lists have been published with no challenge from the applicant.

f) The applicant has no grievance against the earlier relief of Smt.Aysha which is apparent from the fact that she has not challenged



this issue either in O.A.254/1999 or in the present O.A. A-3 order dated 6.11.91.

g) The concept of on-par seniority sought by the applicant is unknown-seniority is either above or below a particular position.

h) If such seniority is adjudicated, it would unsettle the settled position.

i) In any case, no parties who could be possibly affected by such adjudication, have been impleaded.

j) There is no vested right of appointment in the division of her first choice. Acquiescing in her appointment in Palghat and having got promotion there for good measure based upon her seniority therein, she cannot be heard to go over to Trivandrum carrying the seniority with her.

k) Having joined Trivandrum, she has not challenged fixation of her seniority there with effect from 27.9.2001.

l) Her appointment in Palghat was not provisional as contended by her, it was regular.

5. The applicant rebutting some of the points above in her rejoinder points out that her case is one of discrimination vis-a-vis Aisha who was granted an earlier shift. By parity of seniority with Smt.Aysha, what the applicant requires is the assignment of identical dates of joining, the inter se seniority to be assigned as per extant rules.

6. We heard the learned counsel for both sides and perused the documents.

The points to be decided are the following:

- Does she have a vested right of transfer to Trivandrum.
- what are the provisions relating to transfer and whether the applicant can carry her seniority in Palghat Division to the new Division of posting, viz, Trivandrum.
- Does she have an enforceable remedy.



7. On the question whether she has a vested right of transfer to Trivandrum, the respondents have answered in the negative. This appears to be a fair proposition as the employer has every right to post the employees subject to the administrative exigencies, taking care to see that there is no discrimination in such posting. To be fair to them, they had asked for choices from the candidates of the stations preferred. The applicant had indicated her choices for Trivandrum followed by Palghat. Perhaps unable to accommodate her first choice, the respondents have given her the second choice. As rightly pointed out by the respondents, the applicant has acquiesced in her posting at Palghat where she got a promotion as well. Hence, the question raised above should be answered in the negative that the applicant does not have any vested right of posting in Trivandrum.

8. As to the question, what are the provisions relating to transfer and whether the applicant can carry her seniority in Palghat Division to the new Division of posting, viz, Trivandrum, the learned counsel for the respondents have brought to our notice the provisions in the IREC, viz, Rule 226 and 229 governing such transfers. Besides, it is seen that both in A-3 order giving transfer to Smt. Aysha and A-2 order giving transfer to the applicant, the very first condition lays down that the seniority on reversion will be the bottom most seniority. If the applicant had felt any of her legal rights had been violated she should have sought enforcement thereof in the appropriate forum at the appropriate time. She joined the new post in 2001 without any demur and has kept quite all these days till she moved this application. This itself dilutes her argument of carrying the seniority in Palghat Division to Trivandrum Division. According to her claim, she registered for a transfer way back in July 1986. She herself admits that such registration was done as per the rules regarding inter-divisional transfers. In the same breath, she claims that she was eligible to be shifted to Trivandrum Division whenever vacancies in the Division without any



reference to the norms of inter-divisional transfer. Smt C.S.Aysha, who is junior to the applicant and allotted to Palghat Division along with her got her transfer earlier viz, 6.11.1991, over looking the seniority in the request roster. It is surprising that despite such transfer taking place almost ten years back, she has not moved the appropriate authorities for rectifying the discrimination. Even in the present O.A no claim is made to set aside the discriminatory treatment given to Smt.Aysha. In sum, the applicant seems to have been sleeping over her rights all these years.

9. As to the question whether she has sought an enforceable remedy, it is seen that she has sought two alternate remedies, of giving her seniority in Trivandrum Division with effect from the date of her service in Palghat Division or a seniority on par with Smt.Aysha. For reasons explained above, it is evident that she cannot carry her seniority from Palghat to Trivandrum. As regards the second alternate remedy, respondents contend that parity in seniority with Smt.Aysha with effect from 6.11.91 demanded by the applicant is untenable because seniority should be either above or below Smt.Aysha. The applicant explained that the request is to give the same date of seniority as the other, leaving the question of inter se seniority to be decided by the extant rules. This again, is an incomplete relief. If upon adjudication she happens to be conferred a position above Smt Aysha, such conferment cannot be done without giving an opportunity to the latter to present her case. In the array of respondents, Smt Aysha has not been included. Actually, a wide time span of ten years separates the dates of joining of the applicant and Smt Aysha in the Trivandrum Division. During this period, it is likely that accretion to the relevant grade must have taken place in Trivandrum Division. Placing the applicant above all of them would certainly cause prejudice to them and all of them should have been impleaded in this O.A. Not doing this is a serious omission on the part of the applicant. For



this reason also this O.A. is defective.

10. Under these circumstances, the O.A. must fail. It is, hence dismissed. No costs.

Dated, the 8th November, 2005.

N.R.K.

N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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