

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 340 of 2010

with

O.A. Nos. 343/10, 712/10 and 713/10

.....*Friday*..., this the 25th day of November, 2011

CORAM:

**HON'BLE JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. O.A. No. 340/10 :

S. Sathiyaseelan, S/o. Simon
Helper II (Tele)
Data Net Management Centre / Microwave
Southern Railway, Palakkad
Residing at Quarters No. 648 H
Old Railway Colony, Olavakot. -

... Applicant

(By Advocate Mr. T.A. Rajan)

versus

1. Union of India represented by
The General Manager
Southern Railway, Chennai.
2. The Senior Divisional Signal and
Telecommunication Engineer
Southern Railway, Palakkad.
3. The Senior Divisional Personnel Officer
Southern Railway, Palakkad.
4. The Additional Divisional Signal and
Telecommunication Engineer
Southern Railway, Calicut.
5. P.K. Selvam, Helper (Tele) Wireless
S&T Branch, Southern Railway
Palakkad.
6. S. Vinod, Helper (Tele) Test Room
S&T Branch, Southern Railway
Palakkad. ... Respondents

(By Advocate Mr. Thomas Mathew Nellimootttil for R1-4)

2. O.A. No. 343/10 :

S. Muthupandi
 S/o. Shanmugha Sundaram
 Helper II (Sig.),
 Special Revenue Maintenance
 Southern Railway, Palakkad
 Residing at Quarters No. 495 A
 Old Railway Colony, Olavakot.

... Applicant

(By Advocate Mr. T.A. Rajan)

versus

1. Union of India represented by
 The General Manager
 Southern Railway, Chennai.
2. The Senior Divisional Signal and
 Telecommunication Engineer
 Southern Railway, Palakkad.
3. The Senior Divisional Personnel Officer
 Southern Railway, Palakkad.
4. The Additional Divisional Signal and
 Telecommunication Engineer
 Southern Railway, Calicut.
5. G. Vineeth, Helper II (Sig.)
 S&T Branch, Southern Railway
 Ottapalam.
6. V.K. Shaji, Helper II (Sig)
 S&T Branch, Southern Railway, Tirur.

... Respondents

(By Advocate Mr.K.M. Anthru for R1-4)

3. O.A. No. 712/10 :

S. Muthupandi
 S/o. Shanmugha Sundaram
 Helper II (Sig.),
 Special Revenue Maintenance
 Southern Railway, Palakkad
 Residing at Quarters No. 495 A
 Old Railway Colony, Olavakot.

... Applicant

(By Advocate Mr. T.A. Rajan)

versus

1. Union of India represented by
The General Manager
Southern Railway, Chennai.

2. The Senior Divisional Signal and
Telecommunication Engineer
Southern Railway, Palakkad.

3. The Senior Divisional Personnel Officer
Southern Railway, Palakkad. Respondents

(By Advocate Mr.K.M. Anthru)

4. O.A. No. 713/10 :

S. Sathyaseelan, S/o. Simon
Helper II (Tele)
Data Net Management Centre / Microwave
Southern Railway, Palakkad
Residing at Quarters No. 648 H
Old Railway Colony, Olavakot. Applicant

(By Advocate Mr. T.A. Rajan)

versus

1. Union of India represented by
The General Manager
Southern Railway, Chennai.

2. The Senior Divisional Signal and
Telecommunication Engineer
Southern Railway, Palakkad.

3. The Senior Divisional Personnel Officer
Southern Railway, Palakkad. Respondents

(By Advocate Mr.Sunil Jacob Jose, SCGSC)

These applications having been heard on 16/11/11 & 21/11/11, the Tribunal
on 25-11-11 delivered the following:

ORDER

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

The O.A. Nos. 340/10 and O.A. No. 713/10 are filed by Shri S.
Sathyaseelan who is working as helper-II (Tele) in the Data Net Management

Centre/Microwave, Southern Railway, Palakkad. O.A. Nos. 343/10 and 712/10 are filed by Shri Muthupandi working as Helper-II (Sig), Special Revenue Maintenance, Southern Railway, Palakkad. O.A. Nos. 340/10 and 343/10 are filed by the applicants as they are aggrieved by the calling of their juniors for trade test for the post of Technician Grade-III to be conducted in the month of April, 2010 without calling them for the said test. O.A. Nos. 712/10 and 713/10 challenge the order dated 06.08.2010 relieving them from the Palakkad Division to join the Salem Division. O.A. Nos. 343/10 and 712/10 were heard on 16.11.2011. O.A. Nos. 340/10 and 713/10 were heard on 21.11.2011. The central issue in these O.A.s is whether the applicants are entitled to continue in the Palakkad Division or not, which being common, these O.A.s are disposed of by this common order.

2. The applicants submit that ever since their initial appointment as substitute helpers, they are working in the Palakkad Division. They were screened and absorbed in the Palakkad Division. They were sent for induction course alongwith the employees of the Palakkad Division. As per order dated 06.08.2010 they have been ordered to join the Salem Division stating that their lien is in the Salem Division and that the transfer is at their request. They have not so far been informed that their lien is maintained in the Salem Division. They have not opted for the Salem Division after they became a regular employee of the Palakkad Division. The earlier option made by them while they were working as substitute helpers was not accepted by the respondents. The applications submitted by them were not for an inter divisional transfer but for transfer to a station in the same seniority unit. The applicants are senior to the respondents No. 5 and 6 in O.A. Nos. 340/10 and

343/10 respectively. Hence they are to be called for trade test for promotion to the post of Technician Grade-III in preference to their juniors. Non calling of them for the trade test is therefore, arbitrary and illegal. Non consideration of the applicants for the trade test is discriminatory.

3. The respondents in their reply statement submitted that the applicant had registered their names for transfer to the territorial jurisdiction of the Salem Division. They have not cancelled their registration. Their lien is being maintained at the Salem Division. Therefore, they are not assigned seniority in the Palakkad Division. Due to the formation of the Salem Division with effect from 01.11.2007, the cadre between Palakkad and Salem Divisions was closed on 31.05.2008. The cadre is being handled independently by the Palakkad and the Salem Divisions with effect from 01.06.2008. The list of employees who are working in the Palakkad Division, but had registered for transfer to the Salem Division was published vide letter No. J/P 676/Salem Division/Formation dated 01.07.2008 and they are provided with lien at the Salem Division. 9 employees including the applicants have registered their names from the Signal and Telecommunication Department to the stations in the territorial jurisdiction of the Salem Division on 14.05.2008. In the letter dated 01.07.2008, it was also instructed that the employees who are not willing to continue their request transfer registration to Salem Division may give in writing their unwillingness duly forwarded by the Supervisors on or before 14.07.2008. It was also made clear that unwillingness letter received after 14.07.2008 will never be considered. The final list of employees who are working in the Palakkad Division but registered for transfer to the Salem Division was issued vide letter No. J/P 676/Salem Division/Formation dated

01.09.2008. In this list, the name of S/Shri S. Sathiyaseelan is at Sl. No. 5 and S. Muthupandi is at Sl. No. 6 under the head 'Signal and Telecommunication Department'. If the applicants were not willing to join the Salem Division, they could have made their submissions to the appropriate authority or should have sought legal remedy immediately or latest by September, 2009. The applicants have filed OAs in August, 2010, after a lapse of 11 months. The contention of the applicant that their options were not accepted is far from truth. If the options of the applicants were not accepted, their names would not have been figured at Sl. Nos. 57 and 58 respectively in the list enclosed with the letter dated 01.07.2008. Out of 9 employees whose lien is maintained at the Salem Division and working in the Palakkad Division, 4 employees have already been relieved to join the Salem Division. There is nothing arbitrary, unjust or illegal in transferring the applicants to the Salem Division. The 3rd respondent has issued the order of transfer with the approval of the 2nd respondent. If the juniors to the applicants have already been promoted in the Salem Division, the applicants can be considered for proforma promotion as their relieving has been delayed for administrative reasons. As per the seniority maintained at the Salem Division, the applicants are entitled to advance in their career at the Salem Division only. Only the employees whose lien is maintained at the Palakkad Division are considered for promotion in the Palakkad Division. There is nothing arbitrary, unjust or illegal in excluding the applicants from the trade test. For the above facts and reasons, the interim order already granted may be vacated and O.As are liable to be dismissed.

4. We have heard Mr. T.A. Rajan, learned counsel for the applicants and

Mr. Sunil Jacob Jose, learned SCGSC, Mr. Thomas Mathew Nellimootttil and Mr. K.M. Anthru, learned counsel for the respondents in respective O.As.

5. As per Annexure R/2 (in both OAs No. 340/10 and 713/10) Shri S. Sathiaseelan had registered his name for request transfer from Palakkad to Salem or Erode or Karoor on 14.05.2008. Similarly, as per Annexure R-2 (in both O.As No. 343/10 and 712/10) Shri S. Muthupandi had registered his name for request transfer from Palakkad to Palayam or Erode or Karoor on 14.05.2008. There were 9 such applicants for transfer on request including the applicants. Clause (2) of the agreement incorporated in the proforma for registration of request transfer reads "Once a transfer is ordered based on this application unless the request is meanwhile withdrawn it will be binding on me." Both the applicants are signatories to this undertaking. In preparation for the formation of the Salem Division with effect from 01.11.2007, the cadre between Palakkad and the Salem Divisions was closed on 31.05.2008, very close to the date of registering the request transfer. There is nothing to show that the applicants were unaware of the impending formation of the Salem Division. As the applicants had registered for transfer to a place falling within the territorial jurisdiction of the Salem Division, they were provided with the lien at the Salem Division by the respondents as per the letter dated 01.07.2008. It is hyper technical to argue that the applicants never sought a transfer to the Salem Division, but only to a place which later became part of the Salem Division and, therefore, they cannot be transferred to the Salem Division. The respondents had given reasonable opportunities to those employees who were working in the Palakkad Division but had registered for request transfer to the proposed Salem Division to opt out of the transfer

registration to Salem Division. It cannot be imagined that the applicants alone were unaware of what was happening in preparation to the formation of the Salem Division. Out of 9 employees who had registered their names for request transfer to a place falling within the territorial jurisdiction of the Salem Division, 4 have already been transferred. The remaining 5 employees have been transferred by the impugned orders at Annexure A-1 in both O.A. Nos. 712/10 and 713/10 which includes the names of the applicants. The applicants have not cancelled their requests for transfer from Palakkad to any place of their choice as per their requests dated 14.05.2008. As per the agreement, now they cannot turn back and argue that they have not opted for Salem Division or inter divisional transfer. It so happens that the place to which they sought transfer falls within the jurisdiction of the Salem Division. Formation of Salem Division after registration of their names for request transfer to any of the place now falling within the Salem Division cannot be a matter of dispute. As far as the applicants are concerned, the formation of Salem Division is immaterial to the posting of their place of choice. Moreover, they have not challenged the formation of Salem Division, if it is prejudicial to their interests. As rightly stated by the respondents, the applicants are entitled to advance in their career in Salem Division only as their seniority is maintained there. When, only the employees whose lien is maintained in the Palakkad Division are considered for promotion in the Palakkad Division, the applicants have no cause to complain, if they have not been called for the trade test for promotion to the post of Technician Grade-III. The respondents are fair enough to inform the applicants vide impugned orders in O.A. Nos. 712/10 and 713/10 that if their junior have already been promoted in the Salem Division, they may be considered for proforma promotion in the Salem

Division as their transfer has been delayed due to administrative reasons. We do not find in the impugned orders anything which is arbitrary, unjust or illegal. Therefore, the O.As fail.

6. However, before parting with this order, we would observe that it would have been better if a copy of the lists at Annexure R-1 dated 01.07.2008 and Annexure R-3 dated 01.09.2008 were given to each of the employees whose name appears in the lists. Further, as for the interim orders, the applicants have appeared for the trade test conducted in the month of April, 2010. The result of the test may be announced and the authority concerned in the Salem Division may consider the applicants for promotion as Technician Grade-III as per rules in the Salem Division, if they have passed the trade test. As the applicants are being relieved from the Palakkad Division on the basis of their requests for transfer to a place of their choice, the authority concerned in the Salem Division is bound to honour their request transfer registration with the Palakkad Division on 14.05.2008 by posting them to any of the places indicated by them in the transfer registration.

7. With the above observations, the O.As are dismissed with no order as to costs.

(Dated, the 25th November, 2011)

(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

cvr.