

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 356 of 2003

Thursday, this the 12th day of January, 2006.

CORAM:

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

P.R.Vijayan Pillai,
Junior Stenographer(Works branch),
Southern Railway,
Divisional Office,
Trivandrum-14. - Applicant

By Advocate Mr TC Govindaswamy

VS

1. Union of India represented by the General Manager, Southern Railway, Headquarters Office, Park Town.P.O. Chennai-3.
2. The General Manager(Personnel), Diesel Component Works, (Ministry of Railway), Patiala.
3. The Chief Personnel Officer, Southern Railway, Headquarters Office, Park Town.P.O, Chennai-3.
4. The Senior Divisional Personnel Office, Southern Railway, Trivandrum Division, Trivandrum-14.
5. M.R.Radhakrishna Pillai, Junior Stenographer, O/o the Divisional Safety Officer, Southern Railway, Divisional Office, Trivandrum-14.
6. K.G.Renjini, Junior Stenographer, O/o Chief Medical Superintendent, Southern Railway, Trivandrum.

7. T.M.Girija,
Junior Stenographer,
O/o the Assistant Divisional Engineer,
Southern Railway,
Ernakulam Junction,
Ernakulam.
8. P.Surendran,
Junior Stenographer,
O/o the Senior Divisional Medical Engineer,
Southern Railway,
Trivandrum-14. - Respondents

By Advocate Mr P Haridas (for R.1 to 4)

By Advocate Mr M.P.Varkey (for R.5)

O R D E R

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. In this O.A., Shri P.R.Vijayan Pillai, Junior Stenographer, Southern Railway, Divisional Office, Trivandrum seeks the relief of declaration of seniority in the Trivandrum Divisional cadre from the date of joining i.e. 18.9.95.

2. The applicant joined service on 25.8.87 as Junior Stenographer in the Diesel Component Works(DCW) at Patiala, Ministry of Railways. He registered his request for transfer to Trivandrum Divisional Cadre during 1989 which was registered during 1990. While working at Patiala, he received two promotions – first to the pay scale Rs.1400-2300 of Senior Stenographer 1990 and second to the pay scale Rs.1640-2900 on ad hoc basis on transfer to Railway Board. His transfer to Trivandrum came through in 1995. As there was no post available in Trivandrum to accommodate him, a post of Senior Stenographer was temporarily transferred to the Member Secretary/RRB/TVC to TVC Division, the senior most junior steno working in Trivandrum at that time was promoted to the transferred post and the applicant was temporarily accommodated in the consequential vacancy vide A-2 order dated 22.9.95. Subsequently A-3 order dated 27.9.95 followed, which read as below:



"His inter-Rly request transfer (emphasis supplied) is ordered subject to the following terms and conditions:

- 1. His lien will continue to be maintained in DCW/Patiala.*
- 2. He is not eligible for any joining time, transfer grant, transfer passes, etc., as the transfer is ordered at his request.*
- 3. There are no Vig./SPE/DAR cases pending against him on the date of relief."*

This order makes also a specific mention that the applicant, working in the scale Rs.1640-2900 was being transferred on request on reversion in scale of Rs.1200-2040. A copy of this order is seen marked to CAO/R/DCW/Patiala. The non-official respondents R-5, R-6, R-7 and R-8, who, according to the applicant, registered much later than he for transfer, were also transferred and accommodated at Trivandrum Division.

3. While being so, vide A-4 letter dated 16.12.2002, from the Trivandrum Divisional Office, he was advised to take appropriate action to extinguish his lien at Patiala to enable suitable action to fix his seniority in the Trivandrum office. In A-5 representation dated 19.12.2002 in response to the A-4 letter, the applicant pointed out that the lien could not be retained (at his former station) beyond two years and in any case, the CPO(G)-Madras did not take any action to get the lien transferred, despite a D.O. Letter from the Senior DPO, TVC dated 20.9.95 on this subject. He had also pointed out in that representation about the inequity that persons who joined subsequently had all got their lien transferred to the Trivandrum Division. Failure of re-location of lien in Trivandrum resulted in the applicant not being included in the seniority list vide A-6 dated 19.12.2002. He made two representations against such non-inclusion vide A-7 (14.1.2003) and A-8 (20.1.2003). The Trivandrum office vide A-9 document dated 6.2.2003 informed him that a final reply on the issue was



awaited from the Headquarters. The applicant next heard about any development in his case only vide the impugned A-1 order, wherein he was asked to return to Patiala to join his cadre or arising out of his request transfer, to opt to come over to Divisional cadre on usual terms with prospective effect. Challenging this order, he has come before this Tribunal with the prayer seeking quashing of A-1 and a declaration that he is entitled to be assigned the seniority in the Trivandrum Divisional cadre of Junior Stenographers with effect from 18.9.95 with all consequential benefits.

4. He rests his case on the following grounds:

-Right from the date of his joining Trivandrum Division he was treated as an incumbent therein, as evidenced by A-10 document which is a letter from the G.M., Southern Railway Headquarters office to the G.M., DCW, Patiala asking for transfer of service register and leave chart.

-The concept of lien is inoperative in as much as he was transferred to Trivandrum Division in the lower grade as in the case of inter-Divisional transfers against the direct recruitment quota vacancy which amounts to a deemed acquisition of lien and deemed permanency of transfer.

-The non-official respondents all sought for registration much later and hence he is entitled to be assigned seniority above them.

5. Both the official respondents and non-official respondents oppose this application. The former would say that the applicant was only temporarily posted vide order dated 16.8.95(R-1), such temporariness continued throughout, his lien was maintained all along at Patiala and in fact, he was given retrospective promotion there vide order dated 2.5.2002 (R-2), his re-location was not under conditions of inter-Railway transfer,



the retention of his lien at DCW Patiala reinforcing the above arrangement, this OA is on a trial basis because, in his A-5 application before the authorities, he had asked for two alternative remedies of seniority from the date of joining at Trivandrum or grant of deputation allowance till he is permanently absorbed in Trivandrum whereas this O.A is concerned only with the former and without transfer of lien and substantive appointment to the post, claim for seniority therein is not maintainable.

6. The non-official respondents would contend that as evident from R-5 (1), the date of his registration was after 14.7.94 and not during 1990 as claimed by the applicant, he was not transferred to Trivandrum under the provisions of inter-Railway transfer norms but temporarily accommodated, such temporary accommodation was extended indefinitely till he became due for permanent transfer based upon his turn in the register for inter Railway transfer.

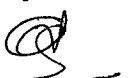
7. We heard the learned counsel for the applicant and respondents and perused the documents which included the Priority Register on transfer requests maintained in the Divisional office, Trivandrum, orders of this Tribunal in O.A.589/2001, O.A.1393/96, O.A.691/99 and Indian Railway Establishment Manual(IREM) and Indian Railway Establishment Code (IREC).

8. The following points arise for consideration:

1. What is the status of re-location of the applicant from Patiala to Trivandrum.
2. If it is transfer, did the applicant fulfil all the preconditions therefor.
3. If his claim is admissible as having been transferred, what are the reliefs he is entitled to with specific reference to the seniority vis-a-vis the respondents herein and possible others.



9. As regards the question of the status of re-location of the applicant from Patiala to Trivandrum, it is seen that it has been differently described in the various documents submitted without any textual consistency. To quote a few cases in point, the R-1 transfer sanction order dated 16.8.95 issued by the Southern Railway headquarters refers to the subject as request transfer to the applicant, but his posting is termed temporary to Trivandrum with the conditions already referred to in para 2 above. The A-2 document issued by headquarters office on 22.9.95 talks of the applicant on transfer to Trivandrum and a temporary accommodation. It does not however, say that the transfer itself is temporary. An office order dated 27.9.95 (A-3) deals with the subject of the applicant on inter-Railway transfer to Trivandrum Division. In the body of this letter, it is said that his inter-Railway request transfer is ordered subject to certain specified conditions. No doubt, he is temporarily accommodated by transfer of a post. Here, the accommodation is temporary and not the transfer. Copies of these letters originating from Southern Railway headquarters are seen marked to the Patiala office but R-2 document dated 2.5.2002 and R-3 dated 7.9.95 issued from DCW, Patiala refer to this re-location as deputation. However, these deputations have reference to the posting of the applicant to the RRB and not to Trivandrum Division. These various documents therefore illustrate the textual inconsistency. To resolve the same, a perusal was made of the relevant provisions in the IREC and IREM. At the outset, it must be said that no mention is available anywhere about temporary transfers and conditions lying thereunder in either these authoritative documents. All orders from the Railway authorities being made under the provisions of these official documents, anything at variance and inconsistency with these should be, to the extent of such variance and inconsistency, inoperable. Lastly, a reference to the Priority



Register also confirms, if any confirmation was needed, that no temporary transfer was envisaged in the entry relating to the applicant. It is inconceivable that anyone would agree to a temporary transfer, with attendant uncertainty about the tenure, giving up the transfer benefits like the allowances, or agree to the bottom seniority. In fact, the last mentioned aspect is totally irrelevant in the context of an eventual return to the originating station. It can be safely inferred at this stage that no temporary transfer is provided for in the IREC or IREM.

10. A perusal of the O.As referred to above only confirms the position in O.A 589/2001, the facts were similar, if not identical. The applicant therein, was supposed to have been given a temporary transfer, which aspect was highlighted by the official respondents to establish further the fact that the lien would be maintained at the originating station. The transfer order given to the applicant in that O.A contains the same conditions of non-eligibility for transfer benefits and of lien maintenance as in the present case. This Tribunal observed in their order *"....we do not see any provision for treating the Railway employees transfer a temporary although there is a clear provision stating that the lien of permanent staff transferred to another Railway will be retained by the transferring Railway till he is finally absorbed."*

11. The concept of temporary transfer was rejected in that order on grounds of lack of evidence regarding the request of the applicant for a temporary transfer. It may be mentioned that in this OA, the applicant has submitted A-13 to A-18 documents, which were sent during 1989 to 1990, all dealing with registration of his request. None of them has any mention about request for a temporary transfer. Lastly it is normal to assume that any transfer order making temporary transfer order would mention the duration of such transfer. Nothing is mentioned on these lines. If it is a



temporary transfer, the authorities should be normally pursuing the same to send the officer back on expiry of the tenure of such temporary transfer. No duration of such temporary transfer has been mentioned, nor any action was taken in this case for a quite a long time. In sum, it is found that temporary transfer is not provided for in IREM or IREC, there is no textual consistency relating to the re-location of the applicant, his order of relocation contains certain attributes of normal transfer, and the covering case of a similar application dismissed the concept of temporary transfer. Consequently, we find that the relocation of the applicant was in the nature of inter railway transfer.

12. The next question arises is whether the applicant fulfilled all the preconditions for granting him transfer. It was already mentioned that the applicant has submitted all papers necessary for registration. A perusal of the Priority Register also shows his name having been registered on 11.1.90 at serial No.21 towards the bottom of the page 112. Unfortunately, most of the bottom right corner of the page 113 is seen torn, which has resulted in entries under the column 'remarks' in respect of the applicant not available for perusal. It is also relevant to note that the date of application of the 5th respondent is seen as 23.3.94 at Sl.No of 35, making him junior to the applicant in terms of date of application. Hence, we find that the applicant had made proper application for transfer which has been duly registered on 11-1-90.

13. Next question is whether the applicant is entitled to the relief of seniority from the date of joining the Trivandrum Division. As is already found above, the applicant was transferred to Trivandrum as per inter-Railway transfer norms and such transfer was not temporary. Though he was temporarily accommodated, the temporary nature of such accommodation lies in the arrangements made by the Railways in shifting



a post of Senior Stenographer to Trivandrum, posting the senior most junior Stenographer thereto and accommodating the applicant therein. It is relevant to note that when such accommodation was made vide A-2 document, it was also stipulated,".... *As and when any vacancy in Steno cadre arises in TVC Division, the same may be advised to this office for a review.*" Presumably, the idea was to make the accommodation permanent. No information, however, is available whether such review was conducted, and, if so, with what result. On the question of lien, it is provided in the IREC under Chapter 2, Rule 228, "*The lien of a permanent staff transferred to another Railway will be retained by the transferring Railway till he is finally absorbed on the other Railway.*" The applicant contends that it was for the Administration to take action relating to transfer of his lien. He had vide A-5 representation dated 19.12.2002 pointed out that a letter from the Senior DPO, TVC dated 20.9.95 addressed to CPO, MAS on this question elicited no response from the latter. He quotes another instance to provide evidence about the permanency of his posting in Trivandrum. The Railway headquarters vide A-10 dated 28.4.97, (within a period of two years of his joining Trivandrum), asked the G.M, DCW, Patiala to send the service register and leave chart of the applicant. It is significant to note that the subject of the above letter is given as "*Transfer of Stenographers to TVC Division*". If the transfer was only temporary, the temporariness of such transfer would have been reflected in that letter. The respondents have not countered the contention of the applicant relating to this document except saying this Annexure has nothing to do as regards transfer of lien of the applicant. It is therefore apparent that the action for transfer of lien should lie with the administration. In any case, it is they, vide the impugned order dated 16.4.2003, after about 8 years of his joining Trivandrum directed him to get



the lien in Patiala extinguished. It is not known whether all the other party respondents were similarly asked to take action for the extinguishing the lien in their original units. Nothing is known regarding the history of acquisition of lien by other transferees like the party respondents.

14. Coming back to the question of fixation of seniority, the IREM lays down the following Rule:

"312 TRANSFER ON REQUEST – The seniority of Railway servants transferred at their own request from one railway to another should be allotted below that of the existing confirmed, temporary and officiating Railway servants in the relevant grade in the promotion group in the new establishment irrespective of the date of confirmation or length of officiating or temporary service of the transferred railway servants."

In terms of the clarificatory order of the Railway Board issued in 1995, seniority on request transfer to another seniority unit should be assigned with reference to the date the employee physically joined the new unit. It is noted that in comparison to the date of joining of duty at Trivandrum by the applicant on 18.9.95, the dates in respect of party respondents are as follows (Cf A-6 seniority list):

Name	Date
R-5 Mr Radhakrishna Pillai	28.7.94
R-6 Renjini	31.5.99
R-7 Girija	11/06/99
R-8 Surendran	02/08/99

Incidentally, the applicant asserts, without any evidence that the date of R-5 is actually 28.7.97. In any case, at least in respect of the remaining three, the applicant has decidedly joined much earlier and hence deserves due consideration of seniority etc. as from that date.

15. The O.As referred to above throw some light on the way to resolve



the seniority issue in again similar and not necessarily identical cases. In O.A 589/2001 in which the applicant was agitating the question of seniority on inter-departmental request transfer, this Tribunal ordered that he was entitled to count his seniority as on the date of his joining the new station with all consequential benefits. In O.A 691/99, the official respondents were directed to prepare seniority lists in terms of para 312 of the IREM giving due notice to all incumbents likely to be affected. In O.A 1395/96, it was ordered that the date of joining the new station on request transfer would be the determinant in fixing seniority. The applicant has asked for the relief inter alia, to quash the A1 document in which he was asked to choose between two options of prospective inter-Railway transfer or reversion to his parent unit. In view of the fact that he joined his post in 1995 in terms of inter-Railway transfer, that the impugned order was served on him after a long lapse of about 7 years and persons having joined later than he were accommodated in the seniority list the impugned order deserves to be quashed. If he is going to be assigned seniority with effect from 18.9.95, it can be done only after giving an opportunity to all likely affected parties including the party respondents. We find therefore, a valid case exists for consideration of his request for seniority with effect from the date of his joining viz, 18.9.95.

16. In sum, it is found that

- the relocation of the applicant was in the nature of inter railway transfer
- the applicant had made proper application for transfer which has been duly registered on 11-1-90
- a valid case exists for consideration of his request for seniority with effect from the date of his joining viz, 18.9.95.

17. In view of the above finding, we order that



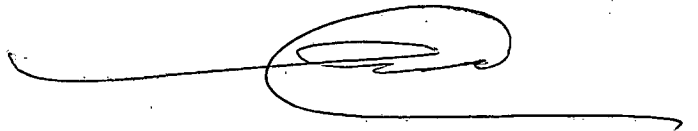
- i) the impugned order is quashed.
- ii) the applicant shall make a self contained representation relating to fixation of seniority with supporting grounds and underlying provisions from the IREC, IREM & other orders.
- iii) the representation shall be made within two months from the date of receipt of copy of this order.
- iv) the railway administration shall consider and pass an order within three months of receipt of such representation.
- v) such an order shall be a speaking order meeting each of the contentions and record their findings specifying the underlying provisions.

18. The O.A is disposed of as above. No costs.

Dated, the 12th January, 2006.



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

R.A. 4/2006 in O.A.NO. 356/2003

Wednesday, this the 12th day of July, 2006.

CORAM:

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER

**M.R.Radhakrishna Pillai,
S/o Narayana Pillai,
Junior Stenographer,
DSO's Office,
Southern Railway,
Trivandrum.**

- Review Applicant

By Advocate Mr M.P. Varkey

v.

- 1. P.R.Vijayan Pillai,
Junior Stenographer,
(Works Branch),
Southern Railway,
Divisional Office,
Trivandrum-695 014.**
- 2. Union of India represented by
General Manager,
Southern Railway,
Chennai-600 003.**
- 3. The General Manager,
(Personnel),
Diesel Component Works,
Ministry of Railways,
Patiala.**
- 4. The Chief Personnel Officer,
Southern Railway,
Chennai - 600 003.**
- 5. Senior Divisional Personnel Officer,
Southern Railway,
Divisional Office,
Trivandrum - 695 014.**

- Respondents

By Advocate Mr TC Govindaswamy (for Respondent-1)

By Advocate Mr P Haridas (for respondents 2 to 5)



The review application having been heard on 29.6.2006, the Tribunal on 12.7.2006 delivered the following:

O R D E R

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

This R.A has been filed by the 5th respondent in the O.A to review the order in O.A.356/2003 dated 12.1.2006. In the said order, the following order had been made:

"16. In sum, it is found that


- the relocation of the applicant was in the nature of inter railway transfer**
- the applicant had made proper application for transfer which has been duly registered on 11.1.90**
- a valid case exists for consideration of his request for seniority with effect from the date of his joining viz, 18.9.95.**

17. In view of the above finding, we order that

- i) The impugned order is quashed.**
- ii) the applicant shall make a self contained representation relating to fixation of seniority with supporting grounds and underlying provisions from the IREC & other orders.**
- lii) the representation shall be made within two months from the date of receipt of copy of this order.**
- iv) the railway administration shall consider and pass an order within three months of receipt of such representation.**
- v) such an order shall be a speaking order meeting each of the contentions and record their findings specifying the underlying provisions.**

18. The O.A is disposed of as above. No costs."

The case was taken up for hearing on 10.6.2006 with the respondents. Both the official and party respondents initially had wanted to file replies. During the hearings that followed on subsequent dates, no replies were filed and ultimately,



the respondents in the R.A. Informed that no replies were being filed and they would present their respective stand during the hearing.

2. The case was heard on 29.6.2006. The review applicant took us through the pleadings made in the application and essentially rested his case on the grounds made therein. Learned counsel for R-1 (the applicant in the O.A 356/2003) alone made his presentation.

3. The first point made by the review applicant is that the re-location of applicant in the O.A from Patiala to Trivandrum was not in the nature of inter-Railway transfer but was a temporary posting or transfer on deputation. This point had been already considered in the order in the said O.A, while answering the question as to what was the status of re-location of the applicant in that O.A. Repeated references had been made to the fact about the textual inconsistencies that were found in different documents which were part of the material papers. In that OA references also had been made particularly to R-1 transfer sanction order, A-2 document issued by the headquarters on 22.9.95 and the subject referred to in the office order dated 27.9.95 (A-3 order). It was to resolve the textual inconsistencies that a perusal was made of the IREC and IREM, which showed that no concept of temporary transfer had been envisaged in terms of any these two authoritative documents. This was also fortified by the order of this Tribunal in an earlier O.A.589/2001 which had rejected the concept of temporary order. It was on account of a combined effect of the textual inconsistencies, of the perusal of the IREM and IREC and of the findings of this Tribunal in an earlier O.A that the finding was so recorded in respect of the question referred to above on the question of status of re-location.

4. The second point relating to the status of application of the applicant in that O.A had been also considered in the order while answering the question whether the applicant had fulfilled all the preconditions for transfer. While answering this question, it had been noted that he had submitted the applications which had contained certain incomplete fields. The clinching point was the fact of the priority register in which the applicant was shown as having



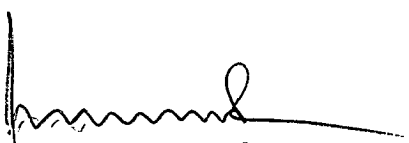
been registered on 11.1.90 at Sl.No.21. It had been also significantly noted that the date of registration of the 5th respondent therein and review applicant here was shown at Sl.No.35 as on 23.3.1994. The review applicant would say that no proper application had been filed by the applicant in the O.A and the register itself was not in the proper format. According to us, what matters is the fact of register having been maintained. It might not have been maintained as per the format prescribed but what lends weight thereto is the fact of contemporaneousness. At this point of time, it would be futile and impractical to reject this register as worthless as it would lead to unsettle many a settled positions. Such unsettling, if at all should be undertaken only in an appeal and not in a review petition.

5. The next point that he assails is the observation in that Order that a valid case exist for consideration of the applicant's request for seniority. We must hasten to add that the intention is not to adjudicate upon the fact of seniority, but it is for a consideration of his request. Such consideration, obviously should be done in the light of existing laws, circulars and instructions.

6. In reply, the learned counsel for the respondents in the review application and applicant in the O.A submitted that the pleadings of the review applicant were virtually an appeal against the order made in the O.A and not to review the same. In this connection, he cited certain rulings, the gist of which could be summarised into the dictum that the review cannot be treated an appeal in disguise.

7. Under these circumstances, we find that there is no case made out for a review and hence the review application is rejected. No costs.

Dated, the 12th July, 2006.


GEORGE PARACKEN
 JUDICIAL MEMBER


N.RAMAKRISHNAN
 ADMINISTRATIVE MEMBER