

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.361/95

Thursday, this the 18th day of July, 1996.

C O R A M

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

....

P Mohammed Nazeerkhan,
J/C 282, CCC III/TVC,
(Chief Commercial Clerk,
Trivandrum Central),
Southern Railway, Trivandrum Division,
Trivandrum.

....Applicant

By Advocate Shri Majnu Komath.

vs

1. Union of India represented by
the Chairman, Railway Board,
Rail Bhawan, New Delhi.
2. The Divisional Railway Manager,
Southern Railway, Trivandrum.
3. The Divisional Personnel Officer,
Southern Railway, Trivandrum.
4. The Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.
5. The Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.

....Respondents

By Advocate Shri PA Mohammed.

The application having been heard on 16th July, 1996,
the Tribunal delivered the following on 18th July, 96:

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant was appointed as a Trainee Commercial Clerk and sent for training with effect from 15.6.79 and after completion of training, posting orders were issued on 17.9.79. (These dates have been shown differently in different places, both by applicant and

contd.

by respondents. Here, we have shown the dates mentioned in the impugned order A-1). In the meanwhile, a new Division (Trivandrum Division) was formed with effect from 2.10.79. Options were called for from employees to state before 1.8.79 whether they would opt for the new Division. Applicant states that he had opted for Trivandrum Division and that his name was not found in the list of optees issued on 15.8.79. He then sent a letter A-2 dated 22.8.79 requesting inclusion of his name in the supplementary list of optees. Thereafter, applicant was transferred to Trivandrum Division, where he joined on 28.7.80. His grievance is that he was not transferred to Trivandrum Division on the basis of his option, but was transferred with loss of seniority. He prays that his seniority should be fixed from the date of his appointment on the basis of his option to Trivandrum Division and that he should be given proper place in the A-3 seniority list of Commercial Clerks Grade III.

2. Respondents contend that the notification A-1 calling for options clearly stated that staff belonging to Olavakode Divisional Seniority Unit are to exercise their option. Applicant was not a person belonging to the Divisional Seniority Unit, as he was only a trainee and was yet to be posted to any Division. Respondents also state that applicant was transferred on the basis of his request and it was clearly indicated in the transfer order that he will rank junior to all permanent and temporary employees on his joining Trivandrum Division. Respondents also strongly contend that the claim of seniority from 1979 onwards is highly belated and is barred by limitation.

3. The notification A-1 calling for options clearly refers to options by staff borne on the Divisional Seniority List. Applicant, who was only a trainee at that time, clearly would not be entitled

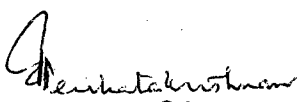
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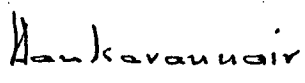
to exercise any option. The contention of applicant that persons who joined the newly formed Trivandrum Division within one year from the date of formation would be accommodated without loss of seniority is not supported by any rules or provisions therefor. On the other hand, A-1 states that the option would be valid for only one year for transfer with seniority and the currency of the remaining list of optees would be kept for another two years, but with a condition that the transfer from the list will be only in the recruitment grade with bottom seniority. This shows that even persons who had exercised valid options would not necessarily have a right to be considered for transfer without loss of seniority. Only those optees who could be accommodated in the newly formed Trivandrum Division within one year would have the benefit of transfer with full seniority. Applicant not being a valid optee, therefore, cannot claim the benefit of transfer with full seniority. Though applicant has produced A-2 letter in which he has stated that he had opted for Trivandrum Division on 1.8.79, there is nothing to show that he had exercised such an option and admittedly the list of optees did not contain his name. We do not see any merit in the contentions advanced by applicant.

4. That apart, the relief sought for, for seniority from 1979 onwards, cannot be entertained at this distance of time and any relief granted would upset the settled state of affairs, against which the Supreme Court has cautioned in several decisions (see Bhoop Singh vs Union of India and Others, AIR 1992 SC 1414).

5. We accordingly dismiss the application. No costs.

Dated the 18th July, 1996.


PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN

LIST OF ANNEXURES

1. Annexure-A1: True copy of the order No.J/P-23/2 dated 10.7.79 inviting the optees issued by the 5th respondent (Divisional Personnel Officer of then Olavakkot Division)
2. Annexure-A2: True copy of the representation dated 22.8.1979 sent by the applicant to the Divisional Personnel Officer Olavakod On.
3. Annexure-A3: True copy of the Provisional Seniority List No.V/P-612/III/CC dated 29.10.1990 issued by the 3rd respondent.