

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 398 of 2003

Friday, this the 9th day of January, 2004

CORAM

HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. Jipson Raj George,
S/o George,
Diesel Assistant, Southern Railway,
Palghat Division,
Residing at: Arakkal House,
Moolamattom PO, Idukki District.
2. V.P. Rajesh,
S/o Vasudevan,
Diesel Assistant, Southern Railway,
Palghat Division,
Residing at: Padmavilasom, Avanavanchery PO,
Attingal, Thiruvananthapuram District.
3. K.K. Suresh Kumar,
S/o Krishnan,
Diesel Assistant, Southern Railway,
Palghat Division,
Residing at: Kadaliplakkal House,
Karippalangadu PO, Kulamavu (via),
Idukki District.
4. K.S. Baiju,
S/o P. Kamalasanan,
Diesel Assistant, Southern Railway,
Palghat Division,
Residing at: "Revathy", Near High School,
Cherunniyoor PO, Varkala,
Trivandrum District.
5. K.C. Biju,
S/o Chathan,
Diesel Assistant, Southern Railway,
Palghat Division,
Residing at: C/o N.P. Sudhakaran,
Nikathuthara House, Puthuvyppe PO,
Ernakulam.
6. Sajeevlal O. Sankar,
S/o Sankaran,
Diesel Assistant, Southern Railway,
Palghat Division,
Residing at: Ozhakkanat House, Valluvally,
PO Koonammavu, Ernakulam.
7. K.K. Suresh,
S/o Kamalasanan K.D,
Diesel Assistant, Southern Railway,
Palghat Division,

Residing at: Kandazhathu Kalathil,
Andikkadavu PO, Puthenthode,
Kochi District.

....Applicants

[By Advocate Mr. T.C. Govindaswamy]

Versus

1. Union of India, represented by the
General Manager, Southern Railway,
Head Quarters Office, Park Town PO,
Chennai-3
2. The Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.
3. The Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum.
4. The Chief Personnel Officer,
Southern Railway, Headquarters Office,
Park Town PO, Chennai-3

....Respondents

[By Advocate Mr. Thomas Mathew Nellimoottil]

The application having been heard on 9-1-2004, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

Applicants, seven in number, are Diesel Assistants in Palghat Division of Southern Railway. They belong to SC/ST category. They had sought inter-divisional one way transfer on bottom seniority basis to the Trivandrum Division. Since the respondents refused to consider them for transfer and appointment as Diesel Assistants in Trivandrum Division and since steps were taken to fill up the vacancies by direct recruitment, the applicants had filed OA.No.123/2003. The said OA was disposed of by this Tribunal vide order dated 20-2-2003 permitting the applicants to make a detailed and consolidated representation to the 4th respondent and directing the 4th respondent to consider the same in the light of the rules and instructions on the subject and to give an appropriate reply to the applicants within a time frame. Annexure A9 order dated 8-4-2003 is the apparent result of the remission of the matter

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to the 4th respondent. By a fairly long and speaking order, disposing of the representation, the 4th respondent has observed as under:-

"... However, to the extent possible, to mitigate the hardship of registrants, Railway administration has been considering the request of inter-divisional transfers and now a decision has been taken to consider the request of inter-division transfer of Dsl Asst of PGT Division to TVC Division to extent 73 (as per TVC Division registration seniority) by allotting the 100 RRB papers now received to PGT Division to enable PGT Division to relieve the registrant to TVC. This will materialise in a year time, when the RRB candidates complete their training and vacancies also arise in TVC Division. In this process the applicants will be considered without jumping the priority and thereby no seniority problem/dispute would arise. ..."

2. Now the applicants challenge Annexure A9 order on the ground that they, being SC/ST candidates, have a right to be considered for inter-divisional one way transfer to Trivandrum Division as requested by them, since, admittedly, the respondents have already recruited 10 SC/ST candidates as Trainee Diesel Assistants as per Annexure A3 dated 13-9-2002 and 2 ST candidates as Trainee Diesel Assistants as per Annexure A3(a) dated 20-9-2002. The applicants' simple case is that since sufficient number of SC/ST direct recruits have been selected for Trivandrum Division and are undergoing training, the applicants, who also belong to SC/ST category and who are the seniormost in the said category as per the priority register, should have been considered for inter-divisional transfer in accordance with Rule 229 of Indian Railway Establishment Code Vol.I read with Annexures A-10, A-11 and A-12. The applicants also rely on the order of the 4th respondent dated 30-4-1997 (Annexure A-13) in pursuance of the order of this Tribunal in OA.No.395/97 filed by one Emmanuel M George and 8 others against the inter-divisional transfer of another person, wherein it is clearly stated that if direct recruitment is taken recourse to for the purpose of meeting the

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requirement of making good the shortfall in SC/ST or OBC categories, registrants belonging to those appropriate groups should be given necessary preference. The applicants would draw support from the order of this Tribunal in OA.No.741/99 dated 28-3-2000 (Annexure A-14), wherein this Tribunal has upheld the inter-divisional transfer of SC/ST candidates of Palghat Division against the SC/ST posts of Trivandrum Division on the ground that the action of the respondents was perfectly in order and was in consonance with Annexure R4(a) therein which, it may be noted, is filed in this OA as Annexure A-13. Accordingly, the applicants seek the following reliefs:-

- "(a) Declare that the nonfeasance on the part of the respondents in considering the applicants for inter-Divisional transfer and appointment as Diesel Assistants in Trivandrum Division of Southern Railway in preference to those who are included in Annexures A3 and A3(a) is arbitrary, discriminatory and unconstitutional.
- (b) Call for the records leading to the issue of Annexure A9 and quash the same.
- (c) Direct the respondents to consider the applicants for transfer and appointment in the Trivandrum Division of Southern Railway in preference to those who are included in Annexure A3 & A3(a) and direct further to grant all the consequential benefits emanating therefrom;
- (d) Award costs of and incidental to this Application; and
- (e) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

3. Respondents have filed reply statement opposing the OA and defending the impugned Annexure A9 order on the ground that since the priority positions of the applicants as per the register maintained at Trivandrum Division are 38, 21, 37, 64, 65, 44 & 43 respectively, the applicants could not expect to be accommodated on inter-divisional transfer in preference to those who occupy higher priority positions as per the register. It is also submitted that neither Rule 229 of the Indian

Railway Establishment Code Vol.I nor other related instructions confer on the registrants any right for transfer under the said circumstances. Expressing the view that there is no rule to provide for out of turn transfer to SC/ST employees, the respondents would state that the requests for inter-divisional transfer registered by the Division are considered as per priority subject to administrative exigencies and operational requirement. It is also stated that it would not always be possible to maintain a balance between the inter-divisional transfer requests and direct recruitment. However, according to the respondents, 100 direct recruitment cases are being processed for appointment and the case of the applicants for inter-divisional transfer to Trivandrum Division would be considered on a phased manner. According to the respondents, the observations in Annexure A-13 cannot be invariably applied in all cases as the cases are dealt on a case by case basis on merits. Annexure A-13 order was based on the cadre position prevailing at that time in the category of Station Master in Trivandrum Division and other Divisions of the Railway taking into account the overall operational requirements and feasibility of relieving Station Masters from one Division to another Division and, therefore, those observations could not be applied in the case of the applicants, it is stated.

4. Applicants have filed rejoinder reiterating their claim and pleadings in the OA.

5. I have heard Shri T.C.Govindaswamy, learned counsel for the applicants and Shri Thomas Mathew Nellimoottil, learned counsel for the respondents. It is contended by the learned counsel for the applicants that as per the existing rules and instructions, the applicants, who have registered themselves for inter-divisional one way transfer to Trivandrum Division,

ought to have been considered against the SC/ST vacancies of Diesel Assistant posts for which already the respondents have made appointment by direct recruitment. These direct recruit Diesel Assistants are now undergoing training. If they are posted on a regular basis at Trivandrum Division, the applicants would not get a chance to have the benefit of inter-divisional transfer for which they have been waiting for a long time, particularly in view of the argument of the respondents to the effect that such transfers can be considered only on the basis of the running seniority position in the priority register. It is necessary to appreciate that the respondents have taken recourse to direct recruitment of SC/ST candidates in Trivandrum Division with a view to make up the deficiency there. The applicants, who are also SC/ST candidates, are waiting in Palghat Division after having registered their names for inter-divisional transfers long back. It is accepted even by the respondents that when there is a deficiency of SC/ST candidates for manning the relevant posts in a Division, such posts can be filled by giving preference to the candidates of the compatible categories appearing in the priority register. This is clear from Annexure A-13, according to the learned counsel for the applicant. It is also pointed out by the learned counsel for the applicant that by accommodating the applicants on inter-divisional transfer at Trivandrum Division, the interests of the SC/ST direct recruit candidates waiting to be posted in Trivandrum Division would not be affected, since they could be accommodated at Palghat Division against the vacancies arising as a result of the applicants' inter-divisional transfers to Trivandrum Division. According to the learned counsel for the applicant, this procedure has been followed in Annexure A1 and A2 inter-divisional transfer orders also. In short, the argument of the learned counsel for applicants is that the

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applicants being SC/ST candidates seeking inter-divisional transfer to Trivandrum Division, have a right to be considered for such transfer in view of the requirement of SC/ST Diesel Assistants at Trivandrum Division which is borne out by the two direct recruitments made.

6. Shri Thomas Mathew Nellimoottil, learned counsel for the respondents strongly relying on the pleadings in the reply statement would contend that inter-divisional transfer of the applicants could be considered only after all the registrants above them in the priority register are considered for such transfer. If they are allowed inter-divisional transfer by overlooking the priority position of the seniors, the latter's interests would be prejudicially affected. In other words, the gist of the argument put across by the learned counsel for respondents is that once a priority list is maintained, it has to be implemented in serial order depending upon the direct recruitment vacancies arising in any Division, in this case the Trivandrum Division. Learned counsel has also expressed the circumstances under which Annexure A-13 instructions were issued by the 4th respondent in relation to the Assistant Station Masters and would maintain that the observations made therein cannot be applied as far as the applicants are concerned.

7. I have gone through the pleadings and other material on record and considered the arguments put forward by the rival counsel.

8. It is not denied that the applicants have put in their requests for inter-divisional transfer prior to 1999. It is also a fact that the applicants belong to SC/ST category. There is no dispute with regard to the direct recruitment of as

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many as 12 SC/ST Trainee Diesel Assistants by the Trivandrum Division as is reflected in Annexure A3 and A3(a). There is nothing to show that as per the priority register, any SC/ST candidate is occupying a priority position above anyone of the applicants. The respondents have not made any averment to the contrary. Therefore, the only question that to be considered is whether it is strictly necessary to follow the priority list without reference to the particular categories to which an applicant belongs or whether there can be any objection if an applicant belonging to SC/ST community is considered for inter-divisional transfer, if correspondingly a SC/ST vacancy is sought to be filled by direct recruitment in the said Division without prejudice to any of his/her seniors in the same category, i.e SC or ST. It appears to me that the answer is that there can be no objection. As per Annexure A-13 order dated 30-4-1997 of the 4th respondent, SC/ST registrants should be given preference for being posted on inter-divisional transfer, if there is a case of shortfall of SC/ST candidates and if direct recruitment is taken recourse to with a view to make up such deficiency. The following observation at paragraph 10 of Annexure A-13 makes this matter clear:-

"... If the requirement of TVC Division is SC or ST or OBC candidates to make good the shortfall in recruitment in these categories, registrants belonging to these appropriate groups, should be given necessary preference."

9. Although in Annexure A-13 the case considered was that of Assistant Station Master, as far as the point at issue is concerned, it would make little different, since the principle is that when there is deficiency of SC/ST candidates in a particular Division and when that Division takes steps to make up the deficiency by way of direct recruitment, SC/ST registrants seeking inter-divisional transfer to that particular Division should necessarily be given preference.

This is exactly the situation in this case. The 7 Diesel Assistants belonging to SC/ST category, who are applicants herein, seek inter-divisional transfer to Trivandrum Division. Trivandrum Division has selected and appointed direct recruit Diesel Assistants belonging to SC/ST communities with a clear intention of making up the deficiency there. It is seen that they are already undergoing training. That being the situation, the applicants, who have registered themselves for inter-divisional transfer long back, ought to have been considered for filling those vacancies as, admittedly, preference has to be given to them. The argument that is now put across to the effect that inter-divisional transfers cannot always be considered in preference to direct recruitment is, therefore, not sustainable. The argument with regard to the administrative exigencies and operational requirements also does not stand scrutiny, since it is only an inter-divisional accommodation. I notice that most of the SC/ST appointees on direct recruitment as per Annexure A3 and A3(a) are from States outside Kerala, like Maharashtra, Uttar Pradesh, Madhya Pradesh, Rajasthan, Chattisgarh, etc. Their interests would in the least be affected, if they are posted to Palghat and if the applicants herein are posted to Trivandrum in deference to their long pending requests for inter-divisional transfer to Trivandrum.

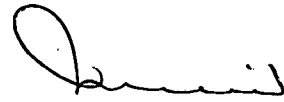
10. In view of the above discussion, I hold that the applicants' case for inter-divisional transfer to Trivandrum Division in preference to the SC/ST candidates who have been directly recruited as per Annexure A3 and A3(a) needs consideration. The impugned Annexure A9 order, albeit the observation that the applicants' case will be considered in due course, deserves to be set aside and it is set aside. Respondents are directed to process and consider the

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applicants' requests for inter-divisional one way transfer to Trivandrum Division in preference to those who are included in Annexure A3 and A3(a). Consequential orders shall be issued with copies to the applicants herein within a period of three months from the date of receipt of a copy of this order.

11. The Original Application is disposed of as above. No order as to costs.

Friday, this the 9th day of January, 2004



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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