

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

....

O.A. 402/93

Tuesday, this the 1st day of February, 1994

Shri N.Dharmadan, Judicial Member

Shri S.Kasipandian, Administrative Member

Applicant:

Shri C.K.Ravindran Nair,
Junior Clerk, Personnel Branch,
Southern Railway,
Trivandrum.

By Advocate Shri P.Sivan Pillai.

Versus

Respondents:

1. Union of India through
The General Manager,
Southern Railway,
Madras-3.
2. The Divisional Personnel Officer,
Southern Railway,
Trivandrum-14.
3. Berniditta Iyline Fernandez, Junior Clerk,
Divisional Office, Personnel
Branch, S. Railway,
Trivandrum-14.
4. Subhadra G -do-
5. Lee Philip -do-
6. Mary George -do-
7. Lal Sebastian -do-
8. Anil Kumar -do-
9. Mariamma Thomas -do-
10. K.Saramma -do-
11. Koshy Tharakan -do-
12. B.Syamala -do-
13. Vasanthakumari -do-

By Advocate Shri P.A.Mohammed (R1&2)

Shri P.V.Mohanan (R4)

O R D E R

N.Dharmadan, JM

Applicant is a handicapped Junior Clerk now working in
Trivandrum Division of the Southern Railway. He is claiming

seniority over respondents 3 to 14. He has challenged seniority list of Personnel Branch staff as on 31.10.90, Annex.A7 and A9, which is a reply given to the applicant considering his representation.

2. The facts are not in dispute. Applicant was initially appointed as Junior Clerk on 8.8.86 and posted in Madras against a vacancy earmarked for handicapped employees. He submitted his request Annex.A1 dated 13.11.86 for inter-divisional transfer to Trivandrum. Annexure-A2 is a reminder. Considering Ann.A1 and A2 a direction Ann.A3 dated 24.2.87 was issued to register the claim of the applicant in the register for considering his case for inter divisional transfer, based on the date of registration. Accordingly his name was registered. Ann.A4 is the copy of the register in which the applicant is at Sl.No.23. Subsequently as per Ann.A5 dated 10.3.89 he was granted inter divisional transfer. According to the applicant, respondents 3 to 14 have joined in the Trivandrum Division after the registration of the applicant for getting inter divisional transfer and hence they are juniors to him. They cannot be given precedence over the applicant for getting seniority above him. In other words, reckoning the date of registration as the crucial date for getting seniority, the applicant would be senior to respondents 3 to 14. The applicant also relied on the decisions of this Tribunal in TAK 271/86, OA 142/91, OA 956/90 and OA 160/91 in support of his contentions.

3. When the case was admitted on 18.3.93 this Tribunal made it clear that the applicant has no case against the 3rd respondent who was admittedly appointed on compassionate ground. Therefore the OA was admitted only against respondents 4 to 14. Applying the same principle, without going to the merits, we hold that the applicant has no case against R4 and R14 who were also appointed on compassionate ground.

Admittedly, respondents 6 & 7 are at Sl.No.8 and 12 in Ann.A4. Thus they are above the applicant, who is at Sl.No.23. Since they have registered their name for inter-divisional transfer before the registration of the applicant and got transfer to Trivandrum, ^{the applicant} ~~he~~ cannot have any grievance against them also. The learned counsel for the 5th respondent submitted that though she was originally appointed as a Commercial Clerk and later transferred to the post of Office Clerk w.e.f. 26.4.88, she was offered an appointment as Office Clerk on 3.7.85 long before the registration in Ann.A4. The 5th respondent accepted the same but on account of administrative delay a posting was given to her as Commercial Clerk on 19.12.85. While continuing in that post a vacancy of Office Clerk arose and considering her option she was posted as Office Clerk on 24.5.88. According to the 5th respondent, if a posting as office Clerk was given to her on 30.4.85 when she accepted the offer she would have been working in a vacancy of Office Clerk which arose even before the registration of the applicant, and in which case the claim of the applicant cannot succeed. The applicant did not deny these facts by filing rejoinder. Hence we accept the case of the 5th respondent and hold that the appointment of the 5th respondent was in the year 1985, much before the registration of the applicant for inter-divisional transfer and hence he has no case against 5th respondent also.

4. Thus the case of the applicant for seniority over other contesting respondents viz. respondents 8 to 13 alone need be examined. Even here he has no strong case against 9th respondent, for it is averred by the respondents 1&2 that 9th respondent was appointed in a vacancy which really arose before 24.6.87. If it is correct the applicant's case against him cannot be sustained without proper verification as to whether the vacancy in which the 9th respondent was posted ~~was~~ really arose before the date 24.6.87 or not. The respondents 1 & 2 submitted that the 9th respondent had been

appointed on his selection through RRB against a vacancy which arose in the previous years. If as a matter of fact the vacancy in which the 9th respondent was appointed was actually arisen after 24.4.87, the applicant has a case for getting seniority over 9th respondent. As indicated above, this is a matter to be verified and decided by the competent authority.

5. Under these circumstances we only propose to examine applicant's claim for seniority over the remaining respondents viz. 8, 10 to 13 considering the contentions raised by the parties in this case.

6. The contention of the applicant, who had registered his request for inter divisional transfer in the year 1987, is that he is an "employee on inter Rly. transfer" and such an employee should get precedence over others, who have not been appointed in the service on the date of his registration to be treated as employees of Railway and hence he should get precedence over such persons who come to the Railway as employees after the date of registration. In other words persons in service as Rly. employees who opt for inter Rly. transfer are eligible for precedence over new comers in the Rly. after the exercise of such option for inter Rly. transfer and registration thereof and all vacancies which arise in the Division in which transfer is sought, after the registration should be treated as eligible vacancies to be occupied by the person opting transfer and getting registration.

According to the applicant the crucial date for getting seniority in the case of inter divisional transfer is the date of registration and not the date of actual joining. In support of his contention he pressed into Ann.AB (circular No.164 dt. 17.12.85) and A10 Railway Board's letter dated 1.10.71. He has also placed reliance on Ann.A11, a letter

issued by the additional CPD on 9.7.82

7. Annexure A8 is a letter of CPD/MAS dated 17.12.85. It is extracted below:

"The general policy of the Administration on the subject of Inter-Divisional/Inter-Railway transfer of staff is, keeping in view the spirit of extant instructions/orders as amended from time to time, that whenever employees working on other Divisional Railway apply for such transfers on the usual conditions, the requests are considered, based on merits, against direct recruitment quota only (both for Group C&D).

Cases have come to notice where Divisions/Units have refused to entertain such request for transfers stating that empanelment of Casual Labourers/Open market recruitment is under progress. This is not in keeping with the spirit of the rules in force. Employees who have a regular status naturally get preference in filling up of vacancies in the recruitment categories over casual labours/ELR awaiting absorption or other mode of recruitment. All such requests for Transfers should, therefore, generally be considered in preference to absorption of CL/Open market recruitment. This is, however, subject to the condition that they fulfil the requisite qualifications, age etc. and the prescribed medical standards of the category to which transfer is sought. Cases may please be processed accordingly. This however will not naturally apply to posts specifically created for discasualisation."

8. Annexure A10 is Board's letter dated 1.10.71. It reads as follows:

"Copy of Board's letter No.E(NG)11/71/TR/14 dated 1.10.71 addressed to the General Managers, All Indian Railways,etc.

REGISTRATION OF REQUESTS FOR TRANSFER OF NON-GAZETTED RAILWAY SERVANTS

Attention is invited to Railway Board's letter No. E.(NG)11/71/TRI dated 31.3.71 in which a system of Registration of requests of non-gazetted railway servants desiring transfer from one division to another or from one Railway to another Railway at their own request was introduced.

2. There are always some employees who may be desirous of transfer within the same seniority unit but at a particular station of their choice, having regard to their family convenience or educational facilities etc. To mitigate hardship of such staff, a system of registration or requests in some form, presumably, exists on the Railways already. The Board desire that, in Railways where such a system does not exist, a system of registration of requests for eventual transfer of such employees to the station of their choice within the seniority unit may also be introduced; this will satisfy a large number of employees/organised labour. Where there are certain unpopular stations, it is necessary to ensure that such stations will be manned to the authorised strength by laying down a period

of service in such places as a pre-requisite to transfer to more popular places by registration.

3. The Board desire that mid-session transfers should be kept down to the minimum required in the interest of administration.

4. The Board also desire that, while transferring employees from one station to another the fact that the employee's spouse is posted at a particular station may also be kept in view. Similarly requests for transfer to a station where an employee's spouse is working may be considered sympathetically, as far as possible having regard to the administrative convenience and the merits of each case."

9. Annexure-11 is another letter issued by Addl.CPO. It is also extracted below:

"Sub: Inter Railway Transfers.

A case has come to me wherein a person who has come on Inter Railway transfer was not taken on the plea that candidates are waiting for appointment on compassionate grounds, RSE papers and shortfall of SC/ST. This is not in order. An employee on Inter Railway transfer is already an employee and is coming on transfer as accepted by us. As he/she has locus standi of being an employee, he/she gets precedence over others. This is for the information of the Division."

10. A careful and combined reading of these documents produced by the applicant gives the impression that the system of inter Rly. transfers was regulated by a procedure of registration and the date of registration is a crucial factor for determining the seniority among the officers opting for such transfers. But in regard to compassionate appointment and absorption in shortfall vacancies earmarked for SC/ST candidate, these are to be treated separately on account of the special considerations involved in such appointments and absorptions. This Tribunal had taken such a view in this very same case at the admission stage.. The learned counsel for the applicant also agreed to such a view. The order passed by the Tribunal on 8.3.93 is extracted below:

"We admit this application in so far as it challenges the seniority of R@-14. As regards R3, since admittedly she was appointed on compassionate grounds, the application cannot be admitted against her. The learned counsel for the applicant agreed that the application can be admitted without the challenge to the seniority of R-3, whose name be deleted from the array of respondents. Accordingly, on these lines we admit the application in so far as R4-14 are concerned and direct that the name of R-3 shall be deleted from the array of respondents."

11. This Tribunal also considered the rights and right of seniority of inter-divisional transferees in the cases referred

to above and held that the date of registration is to be considered as a crucial date for determining the seniority of persons coming on inter-divisional transfer vis-a-vis persons who are directly appointed in the Division. In N.Aravindakshan V. Union of India & others, TAK 271/86, this Tribunal observed as follows:

"Since the applicant had represented for transfer to the Southern Railway on 8.7.1969 it was incumbent on the part of the respondents to decide upon his representation within a reasonable time. They did it only after 13 years in 1982 and three years after Trivandrum Division was formed in the Southern Railway. There is therefore considerable force in the petitioner's argument that if the favourable decision had been taken on his representation within a reasonable time instead of in 1982 he would have been in the Southern Railway before 1979 when Trivandrum Division had been formed and he would have had a fair chance of successfully opting for transfer to Trivandrum Division. By transferring the petitioner to S.Railway 13 years after his option the respondents have done an avoidable disservice and damage to the petitioner.

xxx

x xx

xxx

He has sustained substantial damage in his seniority for no fault of his but only because the respondents took 13 years to decide on his representation dated 8.7.69. In equity therefore he cannot be allowed to remain permanently damaged in seniority for reasons not his creation. We, therefore allow the petition to the extent of directing the respondents that the petitioner's seniority in Madurai Division should count not from the date of his posting on 1.4.82 but from 8.7.69 when he had represented for transfer."

In OA 142/91, TV Mani & 7 others Vs. Union of India & others, the very same issue was considered and held as follows:

"xxxxx the action of the respondents in inviting application for the vacancies which arose in Trivandrum Division to be filled by direct recruitment is against the spirit of the instructions and is not permissible. Unless and until the requests for transfers to Tvm. Division from other Divisions are considered and disposed of, it is not open for the Rly. administration to make direct recruitment to the post in Tvm. Division blocking the chances of those who have registered for transfer to Tvm. Division for such transfer.

xxxx

xxxx

xxx

In view of what is stated in the foregoing paragraph, we allow the application to the extent of directing the respondents to consider the request of the applicants for transfer to Tvm. Division, according to their turn, having regard to the dates on which they have registered their request with Madurai Division, ignoring the fact that requests of applicants have not been forwarded from Madurai Division to Tvm. Division and that preference should be given for the transfer of the applicants in their turn in filling up of the existing vacancies and to the vacancies which would arise in future to direct recruitment."

In Joseph & 9 others V. Union of India (OA 956/90) and in TV Mani & 7 others Vs. Union of India & others (OA 160/91) this Bench of the Tribunal held as follows:

"Now there is a question of seniority between the applicants in these two cases and the respondents 4 to 12. The applicants in both these cases have registered their requests for transfer to Thiruvananthapuram Division earlier than the respondents 4 to 12. As per the averments in the application in the priority register the applicants in both these cases are placed above the respondents 4 to 12. It is also not disputed that the Thiruvananthapuram Division had cleared the case for transfer of all the applicants and that the applicants could not give effect to the transfer as they were not relieved from Palakkad. Had the applicants been relieved from Palakkad Division pursuant to letter dated 21.11.88 of the third respondent, the applicants in both these cases could have joined at Thiruvananthapuram Division in 1988 itself, and therefore, they should in the normal course be placed above the respondents 4 to 12 in the seniority list of ASMs of Thiruvananthapuram Division who joined on transfer from Madurai Division between 12.6.89 and 4.12.89.

xxx

xxx

In the result, in the light of the foregoing discussion, we allow these applications and direct the respondents 1 to 3 to transfer the applicants in both these cases to the existing vacancies as also for the future vacancies of ASM in preference to the other modes of recruitment with benefit of seniority in the Thiruvananthapuram Division over respondents 4 to 12 irrespective of the date on which the applicants join at Thiruvananthapuram Division."

12. Considering Ann.A8, A10 and A11 and the previous judgements, we are of the view that the case of the applicant for seniority over the remaining respondents 8, 10 to 13 is to be determined by the competent authority, namely, the second respondent, bearing in mind the above observations. Accordingly, we direct the 2nd respondent to consider the claim of the applicant for seniority over respondents 8 and 10 to 13 and take a decision in this behalf bearing in mind the above observations uninfluenced by the position of the applicant in Ann.A7 provisional seniority and A9 proceeding to the extent it stands in the way of implementation of the above directions. The applicant shall be included in the regular seniority in appropriate

place in terms of the above direction with all consequential benefits legally due to him. This shall be done within a period of 4 months from the date of receipt of a copy of this order.

13. The OA is allowed as above. No costs.

S. Kasipandian

(S. Kasipandian)
Member (A)

N. Dharmadan
(N. Dharmadan) .. 1.2.94
Member (J)

vm