

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00355/2014

Tuesday, this the 11th day of December, 2018

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

1. K. Retheesh, aged 32 years, S/o. K. Mohandas, Assistant Loco Pilot/Southern Railway/Palakkad R.S., Palakkad Division, Permanent Address : Thazhathedath Aramb, Okkunu, Kacherykkunnu PO, Kozhikode – 673 013.
2. E.K. Ajeesh, aged 33 years, S/o. Asokan E.K., Assistant Loco Pilot/Southern Railway/Palakkad R.S., Palakkad Division, Permanent Address : Twins House, Keezhal PO, Vatakara, Kozhikode-673104.
3. N. Hareesh, aged 35 years, S/o. Kunhan Nair T.T. Assistant Loco Pilot/Southern Railway/Palakkad R.S., Palakkad Division, Permanent Address : Kndlileri Jayanivas, Pantheerankave, Kozhikode – 673 019.
4. A. Subash, aged 29 years, S/o. Arjunan K.K. Assistant Loco Pilot/Southern Railway/Palakkad R.S., Palakkad Division, Permanent Address : Laxmi Nivas, Parall PO, Palakkad – 678 612.
5. Jijesh Babu T.N., aged 36 years, S/o. T.N. Chandran, Assistant Loco Pilot/Southern Railway/Palakkad R.S., Palakkad Division, Permanent Address : Chandini, Thachrakkal Nalukandathil, Chettikulam Elathur PO, Pin – 673 303.
6. B. Vijesh, aged 28 years, S/o. Vijayan, Assistant Loco Pilot/Southern Railway/Calicut RS, Permanent Address : V.S. Nivas, Near Edakkad Panchayat Office, Thottada, Kannur – 670 007.
7. P. Sujith, aged 36 years, S/o. Sahadevan P., Assistant Loco Pilot/Southern Railway/Palakkad R.S., Palakkad Division, Permanent Address : Parambalath House, Chevayur PO, Kozhikode – 673 017. **Applicants**

(By Advocate : Mr. T.C. Govindaswamy)

V e r s u s

1. Union of India, represented by the General Manager, Southern

Railway, Headquarters Office, Park Town PO, Chennai-600 003.

2. The Chief Personnel Officer, Southern Railway, Headquarters Office, Park Town PO, Chennai – 600 003.
3. The Additional Divisional Railway Manager, Southern Railway, Palghat Division, Palghat - 678 002.
4. The Sr. Divisional Personnel Officer, Southern Railway, Palghat Division, Palghat – 678 002.
5. The Divisional Personnel Officer, Southern Railway, Salem Division, Salem – 636 005.
6. Satheesh Gopi, the Senior Assistant Loco Pilot, Shoranur Junction, Southern Railway, Palghat Division, Palakkad.
7. Somkumar, the Senior Assistant Loco Pilot, Calicut Railway Station, Southern Railway, Palghat Division, Calicut.
8. Praveen Sai M.P., the Senior Assistant Loco Pilot, Calicut Railway Station, Southern Railway, Palghat Division, Calicut.
9. Arunlal M., the Senior Assistant Loco Pilot, Palakkad Junction, Southern Railway, Palghat Division, Palakkad.
10. Roy Mathew, the Senior Assistant Loco Pilot, Palakkad Junction, Southern Railway, Palghat Division, Palakkad.
11. Shijil Elayanchery, The Senior Assistant Loco Pilot, Calicut Railway Station, Southern Railway, Palghat Division, Calicut.
12. Vijith Kumar T K., The Senior Assistant Loco Pilot, Calicut Railway Station, -Southern Railway, Palghat Division, Calicut.
13. Rajendra Kumar Meena, The Loco Pilot(Goods), Mangalore Railway Station, Southern Railway, Palghat Division, Mangalore,
14. Anuraj K R., The Senior Assistant Loco Pilot, Shoranur Junction, Southern Railway, Palghat Division, Palakkad.
15. Krishnakumar V S
The Senior Assistant Loco Pilot,
Palakkad Junction, Southern Railway,
Palghat Division, Palakkad.

16. Sreejesh Kumar N, The Senior Assistant Loco Pilot, Mangalore Railway Station, Southern Railway, Palghat Division, Mangalore.
17. Anoop Kumar K, The Senior Assistant Loco Pilot, Shoranur Junction, Southern Railway, Palghat Division, Palakkad.
18. Akif Muhammed, The Senior Assistant Loco Pilot, Shoranur Junction, Southern Railway, Palghat Division, Palakkad.
19. Kishor B, The Senior Assistant Loco Pilot, Calicut Railway Station, Southern Railway, Palghat Division, Calicut.
20. Rajeev C, The Senior Assistant Loco Pilot, Palakkad Junction, Southern Railway, Palghat Division, Palakkad.
21. Sreejith Kumar K S, The Senior Assistant Loco Pilot, Palakkad Junction, Southern Railway, Palghat Division, Palakkad.
22. Ajith S, The Senior Assistant Loco Pilot, Calicut Railway Station, Southern Railway, Palghat Division, Calicut.
23. Vineesh V, The Senior Assistant Loco Pilot, Palakkad Junction, Southern Railway, Palghat Division, Palakkad.
24. Sreekuttan A K, The Senior Assistant Loco Pilot, Calicut Railway Station, Southern Railway, Palghat Division, Calicut.
25. Praveen K G, The Senior Assistant Loco Pilot, Shoranur Junction, Southern Railway, Palghat Division, Palakkad.
26. Amrith T J, The Senior Assistant Loco Pilot, Calicut Railway Station, Southern Railway, Palghat Division, Calicut.
27. Muhammed Rafi A, The Senior Assistant Loco Pilot, Palakkad Junction, Southern Railway, Palghat Division, Palakkad.
28. Vivek A C, The Senior Assistant Loco Pilot,

Calicut Railway Station, Southern Railway,
Palghat Division, Calicut.

29. Roshan Xavier P A, The Senior Assistant Loco Pilot,
Shoranur Junction, Southern Railway,
Palghat Division, Palakkad.
30. Shibin B K, The Senior Assistant Loco Pilot,
Calicut Railway Station, Southern Railway,
Palghat Division, Calicut.
31. Dibuchandran, The Senior Assistant Loco Pilot,
Shoranur Junction, Southern Railway,
Palghat Division, Palakkad.
32. Arun Sangeeth T S, The Senior Assistant Loco Pilot,
Calicut Railway Station, Southern Railway,
Palghat Division, Calicut.
33. Vimod Kumar V, The Senior Assistant Loco Pilot,
Palakkad Junction, Southern Railway,
Palghat Division, Palakkad.
34. Biji S, The Senior Assistant Loco Pilot,
Palakkad Junction, Southern Railway,
Palghat Division, Palakkad.
35. Pramod G, The Senior Assistant Loco Pilot,
Shoranur Junction, Southern Railway,
Palghat Division, Palakkad.
36. Saju E S, The Senior Assistant Loco Pilot,
Palakkad Junction, Southern Railway,
Palghat Division, Palakkad.
37. Deepu Das D, The Senior Assistant Loco Pilot,
Shoranur Junction, Southern Railway,
Palghat Division, Palakkad,
38. Praveen M, The Senior Assistant Loco Pilot,
Shoranur Junction, Southern Railway,
Palghat Division, Palakkad.
39. Ajith D S, The Senior Assistant Loco Pilot,
Palakkad Junction, Southern Railway,
Palghat Division, Palakkad.
40. Harisanker M S, The Senior Assistant Loco Pilot,
Calicut Railway Station, Southern Railway,

Palghat Division, Calicut.

41. Dibin M D, The Senior Assistant Loco Pilot, Shoranur Junction, Southern Railway, Palghat Division, Palakkad.
42. Sujin A S, The Senior Assistant Loco Pilot, Calicut Railway Station, Southern Railway, Palghat Division, Calicut.
43. Manoj M N, The Senior Assistant Loco Pilot, Palakkad Junction, Southern Railway, Palghat Division, Palakkad.
44. Aswin M V, The Senior Assistant Loco Pilot, Calicut Railway Station, Southern Railway, Palghat Division, Calicut.
45. Scaria Joseph, The Senior Assistant Loco Pilot, Palakkad Junction, Southern Railway, Palghat Division, Palakkad.
46. Jyothidas, The Senior Assistant Loco Pilot, Palakkad Junction, Southern Railway, Palghat Division, Palakkad.
47. Syam M, The Senior Assistant Loco Pilot, Shoranur Junction, Southern Railway, Palghat Division, Palakkad.
48. Vipin V M, The Senior Assistant Loco Pilot, Palakkad Junction, Southern Railway, Palghat Division, Palakkad.
49. Sreejith E G, The Senior Assistant Loco Pilot, Palakkad Junction, Southern Railway, Palghat Division, Palakkad.
50. Rejeesh N T, The Senior Assistant Loco Pilot, Palakkad Junction, Southern Railway, Palghat Division, Palakkad.
51. Vishnu Das M G, The Senior Assistant Loco Pilot, Palakkad Junction, Southern Railway, Palghat Division, Palakkad.
52. Desh Raj Meena, The Loco Pilot(Shunting), Mangalore Railway Station, Southern Railway, Palghat Division, Mangalore.

53. Anoop K A, The Senior Assistant Loco Pilot,
Calicut Railway Station, Southern Railway,
Palghat Division, Calicut.

54. Sreekumar K, The Senior Assistant Loco Pilot,
Calicut Railway Station, Southern Railway,
Palghat Division, Calicut.

55. Kana Ram Meena, The Senior Assistant Loco Pilot,
Niagalore Railway Station, Southern Railway,
Palghat Division, Mangalore.

56. Roop Singh Meena, The Senior Assistant Loco Pilot,
Mangalore Railway Station, Southern Railway,
Palghat Division, Mangalore.

57. Ram Khiladi Pareva, The Loco Pilot(Shunting),
Mangalore Railway Station, Southern Railway,
Palghat Division, Mangalore.

58. Lavkeshkumar Meena, The Senior Assistant Loco Pilot,
Mangalore Railway Station, Southern Railway,
Palghat Division, Mangalore.

59. Jadunath Mandal, The Senior Assistant Loco Pilot,
Mangalore Railway Station, Southern Railway,
Palghat Division, Mangalore.

60. Anoop Kumar K, The Senior Assistant Loco Pilot,
Mangalore Railway Station, Southern Railway,
Palghat Division, Mangalore.

61. Aneesh A O, The Senior Assistant Loco Pilot,
Calicut Railway Station, Southern Railway,
Palghat Division, Calicut.

62. Harkesh Meena, The Senior Assistant Loco Pilot,
Mangalore Railway Station, Southern Railway,
Palghat Division, Mangalore. **Respondents**

(By Advocate : Mr. Thomas Mathew Nellimoottil)

This application having been heard on 30.11.2018 the Tribunal on 11.12.2018 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The applicants 1 to 4 were initially appointed as Assistant Loco Pilot in Salem Division of Southern Railway and after training they have been posted to Salem Division. Applicants 5 & 6 were also posted at Salem Division. The 7th applicant joined Sholapur Division of Central Railway in the year 2000 and he was transferred to Salem Division on mutual transfer basis. All the applicants submitted their request for inter-divisional transfer from Salem Division to Palakkad Division and their names were registered for Palakkad Division. As per Railway Board's orders a person requesting for inter-divisional transfer is to be appointed against the direct recruitment quota vacancies and in preference to such recruitment. The respondents attempted to appoint number of direct recruits through General Departmental Competitive Examination. The applicants have approached this Tribunal by filing OA No. 772 of 2011. This Tribunal while considering OA No. 772 of 2011 along with connected cases passed the following order on 17.2.2012:

“19. Under the above circumstances, ends of justice would be met if a direction is given to the effect that before the next recruitment takes place to the post of ASM/ALP, either from the open market or from GDCE, the case of the applicants shall be considered on priority basis and where concurrence has been given, such individuals should be relieved in a phased manner so that all those who are to be transferred would be accommodated before the next recruitment takes place. Likewise, those who have applied for transfer and in whose case, the Trivandrum Division has not so far communicated its concurrence, shall be considered for transfer before the next recruitment takes place in case these are sufficiently senior in the register of transfer on inter divisional basis. Ordered accordingly.”

The grievance of the applicants are that the respondents have determined their seniority without taking into considering the orders passed by this

Tribunal in Original Application No. 902 of 2010 and connected cases. The 4th respondent has posted some of the persons to Palakkad division who had completed the training. As per the order at Annexure A6 the Assistant Loco Pilots recruited newly has been absorbed with effect from 21st March, 2012. Ultimately all applicants were also transferred and joined Palakkad Division on 10.7.2013 (applicants Nos. 1-4 &7), 21.9.2013 (applicants Nos. 5&6). Now the grievance of the applicants are that they should be given interdivisional transfer as per order passed by this Tribunal in OA No. 902 of 2010 and connected cases. Thereafter a clarification is also sought by filing Miscellaneous Applications Nos. 1065 of 2012 & connected cases and this Tribunal vide order dated 11th March, 2013 clarified as under:

“6. Insofar as clarification required is concerned, the term "recruitment" obviously would mean positioning of the individuals in respective place of posting as the training imparted may be treated as a part of pre-recruitment procedure. As such, clarification as sought for vide (a) above is accordingly given.

7. Insofar as clarification at (b) above is concerned, the direction given in paragraph 19 of the order certainly cannot be interpreted in a way which will affect or impair the reservation policy. In fact, interdivisional transfers ought to be carried out against corresponding posts (UR employees to be adjusted against UR vacancies and Reserved employees to be adjusted against Reserved vacancies).

8. With the above clarification, the M.As are disposed of.”

Non-complying with the above orders the applicants have approached this Tribunal with the present OA praying for the following reliefs:

- “(i) Call for the records leading to the issue of Annexure A1 and Annexure A1(a) quash the same;
- (ii) Declare that the applicants are entitled to be transferred and appointed against DR quota vacancies in the Palakkad Division of Southern Railway in preference to those who are included in A5, A6 and A7 as declared in A3 and A4 which have become final and conclusive, and direct the respondents accordingly;
- (iii) Direct the respondents to assign the applicants seniority in preference to those who are included in A5, A6 and A7 in the matter of absorption

against DR quota vacancies of ALPs in the Palakkad Division of Southern Railway and direct the respondents to grant all the consequential benefits arising there from;

- (iv) Award costs of and incidental to this application;
- (v) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.”

2. Notices were issued to the respondents. They entered appearance through Shri Thomas Mathew Nellimoottil (R1-5) who contended that though the main prayer in the OA is assignment of seniority to the applicants above those posted vide Annexures A5, A6 and A7, none of those employees covered under A5, A6 and A7 have been impleaded as party respondents. Hence, OA is liable to be dismissed on account of non-joinder of necessary parties. It is further submitted that earlier the applicants have filed MA No. 328 of 2012 in OA No. 772 of 2011 seeking a similar relief that they have a preferential right to be considered for appointment in Palghat Division as Assistant Loco Pilot over the 48 persons who were posted in Palghat Division. However, this Tribunal not inclined to pass any order to the similar relief sought by the applicants in the above MA. It is also submitted that determination and assignment of seniority to those who come on inter-divisional/railway transfer on own request is governed by Paragraph 312 of Indian Railway Establishment Manual, Volume-I. Paragraph 312 reads as such:

“Seniority of railway servants transferred at their own request from railway to another should be assigned below that of the existing/confirmed temporary and official railway servants in the relevant grades in the new establishment, irrespective of the date of confirmation or length of officiating or temporary service of the transferred railway servant.”

Respondents also submit that this Tribunal, vide paragraph 18 of its order dated 17.2.2012 in OA No. No. 902 of 2010 and connected cases held as under:

“....if other direct recruitment including selection through GDCE takes place such persons crystallize their rights to seniority in the Division in which they have been posted. If the applicants are to be transferred with any direction to the respondents to push down the seniority of such GDCE candidates, that would not only be illogical but illegal as well.....”

As far as 46 Assistant Loco Pilots posted vide Annexures A5 & A6 are concerned, all of them were selected by RRB, Trivandrum and all of them were appointed and directed for mandatory initial training with effect from 3.10.2011 i.e. much prior to the order dated 17.2.2012 in OA No. 902 of 2010 and connected cases. Further a batch of 19 employees at Annexure A7 were also allotted to Palghat Division as they were all appointed in Palghat Division and sent for mandatory training w.e.f. 28.2.2013. Thus, applicants cannot claim seniority above these employees as their rights have already been crystallized even prior to the transfer of the applicants herein to the Palghat Division in terms of paragraph 312 of IREM Volume-I, as held by the Tribunal in order dated 17.2.2012. The applicants were transferred and posted to Palghat Division vide order dated 10.7.2013 wherein in condition No. 3 it was specifically stated that the employees so transferred will take seniority in the seniority unit to which they are transferred as per extant orders applicable for such one way transfer on bottom seniority on bottom grade. Having agreed to the said terms and conditions and carried out the transfer, the applicants are now estopped from claiming seniority above those who were appointed prior to their posting at Palghat Division dehors the provision of Para 312 of IREM-I. Further at the time of applicants'

transfer to Palghat Division, their priority of registration for inter-divisional transfer to Palghat was from serial No. 24 onwards. Even now employees at serial No. 1 to 21 of the priority list are yet to be transferred to Palghat Division. As such if any relief sought by the applicants is granted inconsistent with Paragraph 312 of IREM Volume-I it will unsettle the settled matter and will lead to plethora of litigations as inter-divisional/railway transfers which are pending depending upon number of factors, such as adequacy of staff, reservation policy, etc. both at relieving unit/division/railway and at accepting unit/division and Railway. Paragraph 303(a) of IREM-I specifies as under:

“Candidates who are sent for initial training to Training Schools will rank in Seniority in the relevant Grade in the order of merit obtained in the examination held at the end of the training period before being posted against working post. Those who join the subsequent courses and those who pass the examination in subsequent chances will rank junior to those who had passed the examination. In case, however, persons belonging to the same RRB panel are sent for initial training in batches due to administrative reasons and not because of reasons attributable to the candidates, the inter-se seniority will be regulated batchwise provided persons higher up in the panel of RRB not sent for training in the appropriate batch (as per seniority) due to administrative reasons shall be clubbed along with the candidates who took the training in the appropriate batch for the purpose of regulating the inter-se seniority provided such persons pass the examination at the end of the training in the first attempt.”

3. Heard Shri T.C. Govindaswamy learned counsel appearing for the

applicants and Mr. Thomas Mathew Nellimoottil learned counsel appearing

for the respondents Nos. 1-5. Perused the records.

4. This Tribunal vide order dated 17.2.2012 in OA No. 902 of 2010 and

connected cases held that before the next recruitment takes place to the post

of ASM/ALP, either from the open market or from GDCE, the case of the

applicants shall be considered on priority basis and where concurrence has

been given, such individuals should be relieved in a phased manner so that all those who are to be transferred would be accommodated before the next recruitment takes place. On an MA filed by the parties the above order has been clarified by this Tribunal elaborately. However, vide the impugned order the respondents have simply negated the claim by a one line submission that on interdivisional transfer of the applicants as held by the Tribunal they are not entitled for assignment of seniority above those employees who were existing/confirmed temporary and officiating in the cadre of ALP prior to joining in Palakkad Division. This Tribunal while disposing of OA No. 902 of 2010 and connected cases has observed that the applicants shall be considered on priority basis and where concurrence has been given, such individuals should be relieved in a phased manner so that all those who are to be transferred would be accommodated before the next recruitment takes place. Not complying with this order amounts to showing disregard to the order passed by this Tribunal and respondents took the order of this Tribunal very lightly. As regards the objection raised in the reply by the respondents regarding non-joinder of parties the applicants have amended the OA and impleaded the necessary persons as party respondents. Notices were issued to them. However, there was no response on their behalf on the merit of the case. The other argument also will not hold much water for the simple reason that had the order of the Tribunal has been complied with in the letter and spirit the applicants could have got their seniority. Under these circumstances we feel that there is merit on the side of the applicants who have approached this Tribunal for the second time.

5. Considering facts, circumstances and legal position of the case in hand we hold that the applicants are entitled to be transferred against direct recruitment quota vacancies in Palakkad Division of Southern Railway in preference to those who are included in Annexures A5, A6 and A7 and assign them seniority in preference to the party respondents. Ordered accordingly. The applicants are entitled for all consequential benefits arising therefrom. The above exercise shall be completed within a period of 60 days from the date of receipt of a copy of this order.

6. The Original Application is allowed as above. There shall be no order as to costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

**(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

“SA”

Original Application No. 180/00355/2014**APPLICANTS' ANNEXURES**

Annexure A1 - True copy of letter bearing No. J/P.612/V/PR/Vol.VI dated 30.10.2013 issued by the 4th respondent.

Annexure A1(a) - letter bearing No. J/P.676/V/PR/IDT/Vol.XXII dated 29.4.2014 issued by the 3rd respondent.

Annexure A2 - True copy of order dated 26.11.2010 in OA No. 317/2010 rendered by this Hon'ble Tribunal.

Annexure A3 - True copy of common order in MA Nos. 1065/2010 and connected cases dated 17 Feb 2012 rendered by this Hon'ble Tribunal.

Annexure A4 - True copy of common order in MA Nos. 1065/2012 in OA No. 902/2010 and connected cases dated 11 Mar 2013 rendered by this Hon'ble Tribunal.

Annexure A5 - True copy of office order bearing No. JPR.6/2012 dated 8.2.2012 issued by the 4th respondent.

Annexure A6 - True copy of office order bearing No. J/PR.22/2012 dated 21.3.2012 issued by the 4th respondent.

Annexure A7 - True copy of order bearing No. JPR/18/2013 dated 2.7.2013 issued by the 4th respondent.

Annexure A8 - True copy of office order bearing No. SA/82/2013 dated 10.7.2013 issued by the 5th respondent.

Annexure A9 - True copy of order in file No. J/P.676/V/PR/IDT/Vol.XXII dated 17.7.2013, issued by the 4th respondent.

Annexure A10 series- True copies of representations addressed to the 4th respondent dated 3.10.2013.

Annexure A11 series- True copies of appeals to the 3rd respondent

Additional Divisional Railway Manager dated
nil.

RESPONDENTS' ANNEXURES

Nil

-X-X-X-X-X-X-X-