

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00069/2015

Tuesday, this the 5th day of February, 2019

CORAM:

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

1. Johny Thomas aged 39 years
S/o K.V. Thomas, Sr. Assistant Loco pilot,
Office of the Chief Crew Controller, Southern Railway,
Ernakulam Junction, Residing at: Kuttuppally House,
Muttom Bazaar, CMC 27, Cherthala PO
Alleppey Dist. 688 529.
2. S. Sunil Kumar, aged 40 years
S/o Sivaraman Nair, Sr. Assistant Loco pilot
Office of the Chief Crew Controller, Southern Railway,
Ernakulam Junction, Residing at: Kalathurettu House,
Ettumanoor P.O, Kottayam Dist,-686 631
3. K.S. Ajithkumar, aged 50 years,
S/o Sugathan K.K, Sr. Assistant Loco Pilot,
Office of the Chief Crew Controller, Southern Railway,
Ernakulam Junction, Residing at: Mannali House
Pooppani Road, Perumbavoor P.O
Ernakulam District. Pin-683 542
4. M.M. Anilkumar, aged 38 years
S/o Mani A.M, Sr. Assistant Loco Pilot,
Office of the Chief Crew Controller, Southern Railway,
Ernakulam Junction, residing at: Madhava Nivas
Karippadom P.O, Varikkamkunnu
Thalayolaparambu, Kottayam – 686 605
5. K.B Venugopalan, aged 35 years,
S/o Bhaskaran K.V, Sr. Assistant Loco Pilot
Office of the Chief Crew Controller, Southern Railway,
Ernakulam Junction, Residing at: Kunjirathingal House,
Near South Nada, Bhagavathy Temple,
Cheranallore P.O, Ernakulam Dist – Pin – 682 034.

6. N.V. Girishkumar, aged 38 years,
S/o Viswanathan Nair, Sr. Assistant Loco pilot,
Office of the Chief Crew Controller, Southern Railway,
Ernakulam Junction, Residing at: Nirapath House,
Kizhakkekara, Muvattupuzha P.O
Ernakulam Dist. Pin-686 661
7. R Ravikumar, aged 41 years,
S/o Raman Nair, Sr. Assistant Loco Pilot
Office of the Chief Crew Controller, Southern Railway,
Kollam, Residing at : Chembakam
Malyaneezh PO, Trivandrum
8. J. Jayaprakash, aged 39 years
S/o S Jayadevan, Sr. Assistant Loco Pilot
Office of the Chief Crew Controller, Southern Railway,
Kollam, Residing at : Puthen Madom
Avanavanchery P.O, Attingal, Trivandrum Dist. Pin- 695 103
9. T.A.Safeer, aged 40 years
S/o Ali, Sr. Assistant Loco pilot
Office of the Chief Crew Controller, Southern Railway,
Ernakulam Junction, Residing at: Thadiyekada House
Eloor North, Udyogamandal P.O, Ernakulam Dist, Pin-683 501
10. S Ramesh kumar, aged 45 years
S/o Sukumaran Nair V, Assistant Loco pilot
Office of the Chief Crew Controller, Southern Railway,
Trivandrum, Residing at: TC 53/2253(1), Nemom
Trivandrum – 695 020
11. G. Sathish Kumar, aged 42 years
S/o Gopala Pillai R, Sr. Assistant Loco Pilot
Office of the Chief Crew Controller, Southern Railway,
Kollam, residing at: Karuva Kizhakkathil,
Kannimmel, Kilikolloor, Kollam
12. Jayaprakash Rajan, aged 44 years
S/o Rajan, Sr. Assistant Loco pilot
Office of the Chief Crew Controller, Southern Railway,
Kollam, Residing at : Prakash Bhavan
Nedumparana P.O, Kollam-691 580
13. T.S. Jacob John, aged 42 years,
S/o John Y, Assistant Loco Pilot
Office of the Chief Crew Controller, Southern Railway,
Kollam, Residing at: Mulavila Pradise
Kureeppally, Nedumpana P.O, Kollam

14. B. Suresh Kumar, aged 38 years,
 S/o Balakrishna Pillai, Sr.Assistant Loco Pilot
 Office of the Chief Crew Controller, Southern Railway,
 Kollam, Residing at: Suresh Bhavanam
 Sooranad South, Thrikkunnappuzha North
 Kakkakkunnu P.O, Kollam

15. J. Baiju, aged 41 years
 S/o Janardhanan Pillai M, Sr. Assistant Loco Pilot
 Office of the Chief Crew Controller, Southern Railway,
 Kollam, Residing at: Thengilezhikom
 Ackolil, Valathungal P.O, Kollam-691 018.

16. B.S. Ajith Kumar, aged 38 years
 S/o Balakrishna pillai V, Sr. Assistant loco pilot
 Office of the Chief Crew Controller, Southern Railway,
 Kollam, residing at: B.S.Bhavan
 Edanadu P.O, Karamcode, Kollam

17. G. Madhusudanan Nair, Aged 44 years
 S/o Gopalakrishnan Nair T.K, Sr. Assistant Loco Pilot
 Office of the Chief Crew Controller, Southern Railway,
 Kollam, Residing at : Kavinte Padeettathil
 Pallarimangalam P.O, Mavelikkara-690 107

18. S. Manoj Kumar, Aged 42 years,
 S/o K. Sivadasan Pillai, Sr. Assistant Loco pilot
 Office of the Chief Crew Controller, Southern Railway,
 Kollam, Residing at: Mani Bhavan House
 Ambalathum Bhagam, Puruvazhi P.O, Kollam-696 520.

19. D. Biju, aged 42 years
 S/o Dhamodaran N.S, Sr, Assistant Loco Pilot
 Office of the Chief Crew Controller, Southern Railway,
 Ernakulam Junction, Residing at: Kurumthodathu House
 Kairali Road, Eroor(S) P.O, Tripunithura, Ernakulam – 682 306.

20. T. Manoj, aged 43 years
 S/o Thankappan P.G, Sr. Assistant Loco Pilot
 Office of the Chief Crew Controller, Southern Railway,
 Ernakulam Junction, Residing at: Rama Nilayam
 Near Railway Station, Cherthala-688524

21. V.V. Gagarin, aged 41 years
 S/o Vijayan N, Sr. Assistant Loco Pilot
 Office of the Chief Crew Controller, Southern Railway,
 Kollam, Residing at:Galaxy No.258
 Sree Krishna Nagar, Asramam, Kollam. **Applicants**
(By Advocate – Mr.T.C.G Swamy)

V e r s u s

1. Union India represented by the General manager, Southern railway, Headquarters Office, Park Town P.O Chennai – 600 003.
2. The Divisional Personnel Officer Southern Railway, Trivandrum Division Thiruvananthapuram – 695 014 **Respondents**

(By Advocate – Mr.Sunil Jacob Jose)

This application having been heard on 23.01.2019 the Tribunal on 5.2.2019 delivered the following:

O R D E R

Hon'ble Mr. Ashish Kalia, Judicial Member –

Original Application No.180/00069/2015 is filed by Shri.Johny Thomas, Senior Assistant Loco Pilot and others against Annexure A-1 Memorandum No.V/P.612/VI/Seniority/RG/Vol.II dated 07.11.2014 and Annexure A-6 Memorandum No.V/P.612/VI/Seniority/RG/Vol.II dated 04.04.2014 issued by the 2nd respondent. They seek the following reliefs: -

“ i. Call for the records leading to the issue of A1 and A6 and quash the same to the extent they relate to the applicants;

ii. Declare that the failure on the part of the respondents to publish the seniority list of Assistant Loco Pilots/Senior Assistant Loco Pilots of Southern Railway, Trivandrum Division as on 1st January of every year on and after 2003 is arbitrary, discriminatory, contrary to law and hence, unconstitutional;

iii. Direct the respondents to assign the applicants' seniority extending the principles decided in Annexure A4 and A5 orders of this Hon'ble Tribunal; and,

iv. Direct the respondents to publish and finalise the seniority list of Assistant Loco Pilots/Senior Assistant Loco Pilots of Southern Railway, Trivandrum Division at least as on 01.01.2004, within a time limit as may be found just and proper by this Hon'ble Tribunal;

v. Direct the respondents to grant the applicants the consequential benefits of the declarations and directions as above;

vi. Award costs of and incidental to this application.

vii. Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case; ”

2. The applicants were earlier appointed in the Chennai Division of Southern Railway. They had registered their names for Inter-Divisional Transfer and appointment in the Trivandrum Division of Southern Railway, as provided for in the various orders of the respondent organisation. The details of registration for eventual transfer and appointment in the Trivandrum Division and also the date on which the applicants were finally transferred and joined the Trivandrum Division of Southern Railway are shown in Annexure A-2. The applicant no.1,2,5,6,7 and 18 had earlier approached this Tribunal by filing O.A No.1037/2013 and the other applicants had also approached this Tribunal by filing O.A No.823/2012. In both these Original Applications, the applicants had prayed for a direction to publish a seniority list of Assistant Loco Pilots/Senior Assistant Loco Pilots of Southern Railway, Trivandrum Division for the last 12 years. The Original Applications are disposed of by common order dated 24.10.2013, directing the respondents to publish a provisional seniority list in accordance with the rules governing the field, inviting objections from the

employees concerned, consider those objections after affording an opportunity to the objectors and final seniority list be published thereafter, in terms of the rules governing the field. It was further clarified that final seniority list should be subject to the outcome of OP(CAT) pending before the Hon'ble High Court of Kerala in respect of seniority dispute of Senior Assistant Loco Pilots/Assistant Loco Pilots.

3. It is further submitted that the applicants were appointed by transfer in the Trivandrum Division of Southern Railway, but the respondents had not published the seniority list of Assistant Loco Pilots, despite repeated representations. Promotions were being ordered by the respondents by adopting a pick and choose policy without transparency. The applicants joined the Trivandrum Division as on 1.1.2003, 1.1.2004, 01.01.2005 etc. The applicants' seniority in the Trivandrum Division cannot be assessed and many of the applicants' juniors had moved to the higher grades. Hence they approached this Tribunal for redressal of their grievances by filing this Original Application.

4. Notices were issued to the respondents and they entered appearance through Mr.Sunil Jacob Jose and filed reply statement. Respondents opposed the Original Application mainly on the ground that there are no discrepancies in the seniority list except in the case of Sri.B.Manoj, and as such the published seniority list was treated as final and also as the matter become final and the orders passed by this Tribunal attained finality. Hence the Original Application is liable to be dismissed as it is hit by constructive

res judicata. Respondents relied upon the judgment of the Hon'ble Supreme Court in **Satyadhyan Ghosal & Ors. v. Deorajin Debi (Smt) & another (2)**, in the case of **K.S.Vora & Ors. v. State of Gujarat and others (8)** 1987 AIR 2348 and in the case of **Tamil Nadu Education Department Ministerial and General Subordinate Services Association and others v. State of Tamil Nadu and others (3)**. It is further submitted that this Tribunal had directed the respondents to publish provisional seniority list and same was complied by the respondents and now the applicants agitate the same issue with prayer to issue year-wise seniority. Respondents pray for dismissal of the Original Application.

5. Heard Mr.T.C.G Swamy, learned counsel for the applicants and Mr.Sunil Jacob Jose, learned standing counsel for the respondents. Perused the records.

6. During the course of the argument Mr.T.C.G Swamy has cited this Tribunal's order in O.A No.180/00355/2014 dated 11.12.2018, K.Retheesh and others v. Union of India and others, wherein this Tribunal had directed the respondents to fix their seniority on their joining, on the basis of their initial date of registration for inter-divisional transfer. This Tribunal had earlier directed the respondents to consider the claim of the applicants therein for inter-divisional transfer on priority basis before the next recruitment takes place. But the respondents have determined their seniority without taking into account the orders passed by this Tribunal and they have become junior to the directly recruited persons because of the

inaction on the part of the respondents.

7. Ratio of the said decision is not applicable to this present case. The present case is hit by the principle of *res judicata* as this matter has been considered by the Tribunal vide its order dated 19.6.2008 whereby this Tribunal directed to reschedule the order of transfer of various individuals on the basis of their initial date of registration in the parent railways and also fix the seniority on their joining in the same order of their date of registration which was set aside by the Hon'ble Kerala High Court on appeal WP(C) No.31443/08 dated 7.3.2018 filed by the respondent and directed transfer of the applicants shall not be disturbed by the Railways.

8. Thus order passed by the Hon'ble High Court became final and binding on the parties concerned. Thus in the present application the question of re-agitation of claim of seniority is barred by principle of *res judicata*. There is another aspect of this matter is applicants are seeking seniority against person who are senior to them. That cannot be done without hearing the persons who are senior to the applicants. Rule of the natural justice has come into play. Nobody should be condemned unheard. In the present case applicants have not arrayed them as party respondents which is mandatory. Thus, in this count also present application fails.

9. Hence the present Original Application is liable to be dismissed. Ordered accordingly. The Original Application is dismissed. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures

Annexure A1 - Memorandum bearing No.V/P.612/VI/Seniority/RG/Vol.II dated 7.11.2014, issued by the 2nd respondent

Annexure A2 - True copy of Chart showing the details of registration for eventual transfer and appointment in the Trivandrum Division and also the date on which the applicants were finally transferred and joined the Trivandrum Division of Southern Railway

Annexure A-3 - True copy of common order in OA No.823/12 and O.A No.1037/13 dated 24.10.2013 rendered by this Hon'ble Tribunal.

Annexure A-4 - True copy of order of this Tribunal in O.ANo.781/07 dated 19 Jun 08

Annexure A-5 - True copy of order of this Tribunal in O.A No.474/2011 dated 18 Nov 2011

Annexure A-6 - Memorandum bearing No.V/P.612/VI/Seniority/RG/Vol.II dated 07.11.2014, issued by the 2nd respondent

Annexure A-7 - True copy of representation submitted to the 2nd respondent dated 06 May 2014 by the 3rd applicant.