

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.3.2008

Coram:

The Honourable Mr.Justice P.K. MISRA  
and  
The Honourable Mr.Justice K.CHANDRU

W. P. No. 8131 of 2007  
and  
M.P. No. 1 of 2007

1. Union of India  
Rep. by the Chief Personnel Officer  
Southern Railway  
Headquarters Office  
Chennai
  2. The Divisional Personnel Officer  
Thiruchirapalli Division  
Southern Railway  
Tiruchirapalli
- ... Petitioners

vs.

1. The Registrar  
Central Administrative Tribunal  
Chennai - 104
2. S. Kannan
3. D. Rajkumar
4. S. Raj Ganesh
5. R. Chandrasekaran
6. B. Vaidooriam
7. M. Ulaganathan
8. D. Baburajendran
9. S. Karunanidhi
10. G. Murugesan
11. V. Keerthimohan
12. P. Dakshinamurthy
13. T. Perumalraj
14. S. Janakiraman
15. K. Manivannan
16. T. Rajagopal
17. M. Abdul Rahiman
18. K. Rozario
19. P. Manivelu
20. Manojkumaramarkam
21. Jagabandhuswain

22. Ompal Singh  
23. Deep Narayan Deogan  
24. Gorelal Neetam  
25. Proful Bnenedict Kullu  
26. Viswanath Malick  
27. Dagratt Barla  
[RR17 to 27 given up vide  
order dated 25.01.2008]

... Respondents

Petition under Article 226 of the Constitution of India praying to issue a writ of Certiorari calling for the records on the file of the Tribunal pertaining to the order dated 17.11.2006 passed in O.A. No. 832 of 2005 and quash the same.

For Petitioner : Mr. Su. Srinivasan  
For RR 2-12, 14 & 15 : Mr. A. Thirumurthy  
For R16 : No appearance  
RR17 to 27 : given up as per endorsement  
dated 25.01.2008

ORDER

(Order of the Court was made by K. CHANDRU, J.)

Heard the arguments of Mr. Su. Srinivasan, learned counsel appearing for the petitioners and Mr. A. Thirumurthy, learned counsel appearing for the respondents 2 to 12, 14 and 15 and perused the records.

2. Challenging the order of the Central Administrative Tribunal [for short, 'CAT'] dated 17.11.2006 passed in O.A. No. 832 of 2005, the Union of India represented by the Chief Personnel Officer and the Divisional Personnel Officer, Tiruchirapalli Division, Southern Railway have filed the present writ petition.

3. The writ petition was admitted on 06.3.2007 and interim stay was granted on the same day. Subsequently, when the matter came up on 25.01.2008, Mr. Su. Srinivasan, learned Additional Central Government Standing Counsel informed this Court that as they are not seeking any relief against the respondents 17 to 27 and as they were only proforma parties and since service on them is not completed, he is giving up respondents 17 to 27 as being parties to the writ petition. In respect of Respondent No.16, they have taken out service privately and through the Department.

4. The respondents 2 to 16, who were working as Diesel Assistants in the Diesel Locoshed, Golden Rock, Tiruchirappalli Division filed Original Application being O.A. No. 832 of 2005 seeking to challenge the provisional seniority list dated 19.12.2003 prepared by the petitioner Railways. They also sought for a further

direction to reassign the seniority of the contesting respondents by reckoning the date of issue of the transfer orders, viz., 07.12.2002 and 20.11.2002, as the crucial dates instead of the actual date of joining at the Tiruchirappalli Division.

5. The contesting respondents joined as Kalasis in the Tiruchirappalli Division of the Railways during the period 1980 and 1989. They were working as Technician Grade III / Kalasi Helpers. They went through the process of selection to the post of Diesel Assistants in the year 1998 and they were selected and empanelled for the said post. In the order of preference, they gave the Tiruchirappalli Division as their first choice. But contrary to their preference, the contesting respondents 2 to 6 were posted to Chennai Division and the other contesting respondents were posted to Palakkad Division. When they protested against the said posting, they were given the assurance that as soon as vacancies arise in Tiruchirappalli Division, they will be retransferred to the place of their original preference. Accordingly, these respondents joined Chennai and Palakkad during May and October 1999. They were also continuously petitioning to the petitioner Railways and got their names registered for request transfer to the Tiruchirappalli Division as such transfers are permissible in terms of Rule 226 of the Indian Railway Establishment Manual (IREM). In such cases, the seniority of the Railway servants who were transferred on their requests, will be kept below the last person holding the post in the confirmed, temporary or officiating capacity. The requests of the contesting respondents were considered by the first petitioner and altogether 30 Diesel Assistants were retransferred to Tiruchirappalli on request by an order dated 07.11.2002.

6. By another order dated 20.11.2002, the second petitioner transferred six employees including three contesting respondents to the Tiruchirappalli Division. While employees, who were transferred from Bengaluru Division, were relieved immediately from the Divisional Headquarters and they were able to report for duty at Tiruchirappalli at once, the respondents 2 to 6 from Chennai Division were relieved from duty only on 19.01.2003 due to administrative delay and they joined only on 20.01.2003 at Tiruchirappalli Division. Likewise, respondents 2 to 16 were relieved from Palakkad Division on 13.4.2003 due to administrative delay. It is noted that one Bangaru Gupta from Bengaluru, who was relieved on 18.12.2002 itself, joined Tiruchirappalli on 19.12.2002. Further, during the intervening period, three employees were promoted as Diesel Assistants under the promotional quota, had also joined the post on 18.01.2003 at Tiruchirappalli. A further batch of eight candidates recruited from the open market by the Railway Recruitment Board had also joined their posts between 19.01.2003 and 21.01.2003.

7. Finally, when during December 2003, when the provisional seniority list of Diesel Assistants in Tiruchirappalli Division was

published, the aforesaid Bangaru Gupta, the three promotional quota employees as well as eight direct recruits were placed above the name of the contesting respondents as serial Nos. 146 to 157. Those who came with the delayed relief, were shown in the seniority list in a lower position in Serial Nos. 158 to 172. The contesting respondents sent individual representations dated 19.01.2004 to the petitioners to rectify the anomaly. They pleaded that once the Headquarters orders transfers, the said date must be taken into account for reckoning the date of seniority and not the date of joining which may vary from Division to Division depending upon the relieving orders given by the different Divisional Officers. In the absence of any Rules, the proper construction should be the date of order and not the date of relief. Any other construction of the rule of seniority will result in juniors becoming seniors due to fortuitous circumstances.

8. A reply statement dated September 2006 was filed by the petitioner Railways justifying their action.

9. While it is the case of the contesting respondents that they have no objection in becoming juniors to the existing confirmed, temporary and officiating Railway servants in the relevant grade in terms of Rule 312 of the IREM, but on no account, there should not lose their seniority among the retransferred Diesel Assistants. The CAT, on considering the entire issue, allowed the O.A. by its order dated 17.11.2006. In paragraphs 12 and 13, it had observed as follows:-

"12. From the above it is evident that the seniority on requests transfer has to be with reference to the date of the order in which the transfer is issued and not with reference to the date of joining, which is bound to be different for different persons in the same order. Thus the meaning of the word "existing" railway servants in para 312 of the IREM has to be as those existing on the date on which the order is issued and not as on the different dates in which the applicants could actually join in keeping with the administrative interest they had to take care of. Also the respondents cannot cite different communications at various levels to deny the applicants the benefit of approval of their transfers as on 7.11.2002 and 20.11.2002 and those two dates on which the first order got issued should be taken as the relevant date to reckon with reference to the condition 'existing' staff in seniority list.

13. Therefore, the respondents plea that 'existing' refers to date of joining and not date of the issue of the order, is not sustainable being illogical, and unjust and hence the provisional seniority list dated



19.12.2003 issued on the above interpretation is set aside in so far as the applicants are concerned. The respondents are directed to recast the seniority by placing the applicants in the seniority list as on the date of the issue of their order namely 7.11.2002 and 20.11.2002 and complete this exercise within a period of two months from the date of receipt of a copy of this order."

While doing so, the CAT also relied upon the practice in the Postal and Telegraph Department wherein the date of the transfer order was reckoned as the basis for fixing seniority.

10. However, Mr. Su. Srinivasan, learned ACGSC contended that it was wrong to rely upon the rules relating to the P&T service. He also submitted that a ruling of the Railway Ministry had been given under Rule 226 of IREM which alone is binding. He further submitted that once a person joins at the transferred place, he will be one, who will be an existing confirmed, temporary or officiating railway servant in terms of Rule 312 and, therefore, he submitted that the decision of the CAT must be interfered with.

11. Having given our anxious consideration to the rival submissions made by the learned counsel for the parties, we are of the view that all the retransferred Diesel Assistants will form part of the same class. Merely because the station in which they were posted which delayed the relieving should not determine their relative seniority. As can be seen in the present case, while the Bengalaru Division has no difficulty in relieving one Bangaru Gupta whereas the Palakkad and Chennai Divisions have retained the contesting respondents without giving them relief inspite of the Headquarters' ordering their retransfer on the same day. If the contention raised by the learned counsel for the Railways is accepted, then the seniority will vary for each person depending upon the date of relief given by each Division. Instead of implementing the Headquarters' orders of retransfer on its letter and spirit, it is regrettable that the Railways should decide the fate of seniority of the individuals depending upon the whims and fancies of the Divisional Officers granting relieving orders to individuals. We do not think that the CAT has committed any grave error in coming to the conclusion as disclosed in the order under challenge. The CAT relying upon, as a guideline, the rule position in the Postal and Telegraph Department also held that no exception can be made.

12. Further, we are also constrained to observe that in the matter of *inter se* seniority, when no private individuals aggrieved by the order have come before this Court, the Railways should take upon itself the task of challenging the order of the CAT. In the reasoning laid down by the CAT, there is no principle of law involved which may affect the Railways in its future action. On the contrary, the CAT had only expressed an equitable principle which can

operate for all seasons without leaving it to the vagaries of individual Divisional Officers in determining the seniority of individuals who were given the benefit of retransfer by a single order of the Headquarters issued on the same day.

13. In the light of the above, the writ petition is misconceived and devoid of merits. Accordingly, it stands dismissed. However, there will be no order as to costs. Connected Miscellaneous Petition is closed.

Sd/-

Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Registrar  
Central Administrative Tribunal  
Chennai - 104
  2. The Chief Personnel Office,  
Southern Railway Headquarters Office,  
Chennai.
  3. The Divisional Personnel Officer  
Tiruchirappalli Division,  
Southern Railway, Tiruchirappalli
- + 1 CC To Mr.A.Thirumurthy, Advocate SR NO.17988
- + 1 CC To Mr.Su. Srinivasan, Advocate SR NO.18996

W. P. No. 8131 of 2007

BV(CO)  
SRA(13/06/2008)

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