

CENTRAL ADMINISTRATIVE TRIBUNAL**ERNAKULAM BENCH**

Original Application No.180/00787/2014

Original Application No.180/00788/2014

Original Application No.180/00789/2014

Original Application No.180/00824/2014

Original Application No.180/00838/2014

Original Application No.180/00886/2014

Original Application No.180/01126/2014

Original Application No.180/01127/2014

Original Application No.180/01130/2014

Original Application No.180/00119/2015

Original Application No.180/00155/2015

Original Application No.180/00308/2015

Original Application No.180/00742/2015

Original Application No.180/00041/2016

Monday, this the 5th day of December, 2022

CORAM:

Hon'ble Mr. Justice Sunil Thomas, Judicial Member

Hon'ble Mr. K. V. Eapen, Administrative Member

O.A No. 180/00787/2014

1. Susheelan K., aged 51 years,
S/o. Late Karunakaran,
Nedumtharayil, Menampally,
Pathiyoor P.O., Alleppey.
Relieved as Helper Gatekeeper,
O/o. Senior Section Engineer (P.Way),
Gondia, Nagpur Division,
South East Central Railway.
2. Raman Kumar Paswan (under orders of transfer)
Aged 27 years,

S/o. Shiv Saran, Gate Keeper,
O/o. Senior Section Engineer (P.Way), Kollam,
Southern Railway, Trivandrum Division.

- **Applicants**

(By **Advocate:** Mrs. Shameena Salahudheen)

Versus

1. Union of India represented by the
Secretary to Government, Ministry of Railways,
Rail Bhavan, New Delhi – 110 001.
2. The Chairman,
Railway Board, Rail Bhavan,
New Delhi – 110 001.
3. The General Manager,
Southern Railway, Chennai – 600 003.
4. The Chief Personnel Officer,
Southern Railway, Chennai – 3.
5. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum – 14.
6. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum – 14.

- **Respondents**

(By **Advocate:** Mrs. O. M. Shalina, SCGSC)

O.A No. 180/00788/2014

1. Rajeev C.C., Aged 38 years,
S/o. Chami C.M.,
Onaparambil House, Kothachira P.O.,
Peringode (Via), Palakkad-679535
Relieved as Helper Grade-II,
O/o. Chief Works Manager,
Engineering Workshop, Sabamati,
Western Railway – 679 535.
2. Gabbu Singh Meena, (under orders of transfer) aged 28 years
S/o. Guman Singh Meena
Helper-II, C/o. Senior Section Engineer,
Carriage and Wagon Department, Kochuveli,
Southern Railway, Trivandrum Division Pin -695 007.

- **Applicants**

(By **Advocate:** Ms. Shameena Salahudheen)

Versus

1. Union of India represented by
The Secretary to Government,
Ministry of Railways, Rail Bhavan,
New Delhi-110001.
2. The Chairman, Railway Board,
Rail Bhavan, New Delhi – 110 001.
3. The General Manager,
Southern Railway, Chennai – 600 003.
4. The Chief Personnel Officer,
Southern Railway, Chennai – 3.
5. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum – 14.
6. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum – 14.

- **Respondents****(By Advocate: Ms. O.M. Shalina, SCGSC for R1 to 6)****O.A No. 180/789/2014**

1. S. Chandrahassan, aged 51 years,
S/o. Late K. Sankaran,
Mamblikudiyil House, Avoly P.O.,
Muvattupuzha, Ernakulam.
Relieved as Helper Grade-II
O/o. Senior Section Engineer,
Remote Control Center, Pratap Nagar,
Vadodara Division, Gujarat,
Western Railway.
2. Ballu Singh Bairwa (under orders of transfer)
Aged 28 years,
S/o. Prabhoo Dayal Bairwa, Helper – II,
O/o. Senior Section Engineer (Electrical),
Train Lighting, Southern Railway,
Trivandrum Division Pin – 695 007.

- **Applicants****(By Advocate: Mrs. Shameena Salahudheen)****Versus**

1. Union of India represented by the
Secretary to Government, Ministry of Railways,
Rail Bhavan, New Delhi – 110 001.

2. The Chairman,
Railway Board, Rail Bhavan,
New Delhi – 110 001.
3. The General Manager,
Southern Railway, Chennai – 600 003.
4. The Chief Personnel Officer,
Southern Railway, Chennai – 3.
5. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum – 14.
6. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum – 14.

- Respondents

(By **Advocate:** Mr. Aneesh. M., ACGSC)

O.A No. 180/00824/2014

1. C. S. Brijlal, aged 27 years,
S/o. Sri. Sahadevan,
Working as Assistant Loco Pilot,
CCRC Office,
Ernakulam, Trivandrum Division,
Southern Railway,
Residing at: Omsai, Nandanvilasam,
K. P. Nagar, Kollam.
2. S. Harish, aged 30 years, S/o. Sujathan,
Working as Assistant Loco Pilot, CCRC Office,
Ernakulam, Trivandrum Division, Southern Railway,
Residing at: Harisree, Pilappuzha,
Haripad P.O., Alappuzha

- Applicants

(By **Advocate:** M/s. Varkey & Martin)

Versus

1. The General Manager, South Railway,
Chennai – 600 003.
2. Divisional Personal Officer,
Southern Railway, Trivandrum – 695 014.
3. P. Krishna Raj, Assistant Loco Pilot, Office of the
Senior Section Engineer (Carriage & Wagon),
Southern Railway, Palakkad.

4. Dinil. V. Devan, Assistant Loco Pilot, CRC Crew Booking Office, Southern Railway, Shoranur.
5. Prasanth S. K., Assistant Loco Pilot, Office of the Senior Section Engineer (Carriage & Wagon), Southern Railway, Calicut.
6. Shibu S., Assistant Loco Pilot, Office of the Senior Section Engineer (Carriage & Wagon), Southern Railway, Palakkad.
7. V. Aneesh, Assistant Loco Pilot, Office of the Senior Section Engineer (Carriage & Wagon), Southern Railway, Shoranur.
8. B. S. Harikrishnan, Assistant Loco Pilot, Office of the Senior Section Engineer (Carriage & Wagon), Southern Railway, Palakkad.
9. Renjith, Assistant Loco Pilot, Office of the Senior Section Engineer (Carriage & Wagon), Southern Railway, Palakkad.
10. Vishnu Sidharth, Assistant Loco Pilot, Office of the Senior Section Engineer (Carriage & Wagon), Southern Railway, Palakkad.
11. P. Biju, Assistant Loco Pilot, Office of the Senior Section Engineer (Carriage & Wagon), Southern Railway, Palakkad.

- Respondents

(By **Advocates:** Mrs. O. M. Shalina, SCGSC for R1&2 and Mr. T. C. Govindaswamy for R3-11)

O.A No. 180/838/2014

1. Prakasan. C, aged 52 years,
S/o. K. Chakrapani,
Kayipurathu Puthuvel House,
Kathikappally (via), Mahadevikad P.O.,
Alleppey District, Relieved as Trackman,
O/o. Senior Section Engineer (P.Way),
Ongole, Vijayawada Division,
South Central Railway.
2. K. Chiranjeevi, (under orders of transfer), aged 30 years,
S/o. K. Narasaiah, Trackman,
O/o. Senior Section Engineer (P.Way),
Alleppey, Southern Railway, Trivandrum Division.

-Applicants

(By **Advocate:** Ms. Shameena Salahudheen)

Versus

1. Union of India represented by the
Secretary to Government, Ministry of Railways,
Rail Bhavan, New Delhi – 110 001.
2. The Chairman, Railway Board,
New Delhi – 110 001.
3. The General Manager, Southern Railway,
Chennai – 600 003.
4. The Chief Personnel Officer, Southern Railway,
Chennai – 3.
5. The Divisional Railway Manager,
Southern Railway,
Trivandrum Division, Trivandrum – 14.
6. The Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum Division, Trivandrum – 14.

- Respondents**(By Advocate: Mr. Aneesh M, ACGSC)****O.A No. 180/00886/2014**

1. Ashok Sarkar,
Junior Trackman, Permanent Way,
Mavelikkara, Southern Railway,
Trivandrum Division.
2. Simon Baby,
Junior Trackman, Permanent Way,
Kudoor Division, East Coast Railway,
Bhubaneswar.

- Applicants**(By Advocate: Mr. Siby J. Monippally)****Versus**

1. Union of India represented by Chief Personnel Officer,
Southern Railway, Chennai – 600 003.
2. Chief Personnel Officer,
East Coast Railway,
Bhubaneswar – 103.
3. Senior Divisional Personal Officer,
Southern Railway, Trivandrum Division,
Trivandrum – 14.

- Respondents

(By Advocate: Mr. Thomas Mathew Nellimoottil, SPC)

O.A No. 180/01126/2014

Balram Meena (under orders of transfer),
Aged 35 years, S/o. Jagan Lal Meena,
Gatekeeper, Chirayinkeezhu,
O/o. Senior Section Engineer,
Varkala, Southern Railway, Trivandrum Division.

- Applicant

(By Advocate: Mrs. Shameena Salahudheen)

Versus

1. Union of India represented by the
Secretary to Government,
Ministry of Railways, Rail Bhavan,
New Delhi – 110 001.
2. The Chairman,
Railway Board, Rail Bhavan, New Delhi – 110 001.
3. The General Manager,
Southern Railway, Chennai – 600 003.
4. The Chief Personnel Officer,
Southern Railway, Chennai – 3.
5. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum – 14.
6. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum – 14.

- Respondents

(By Advocate: Mrs. O. M. Shalina, SCGSC for R1-6)

O.A No.180/01127/2014

Rameshwar Lal Meena (under orders of transfer)
aged 35 years, S/o.Prabhu Dayal Meena
Gatekeeper, Chirayinkeezhu
O/o.Senior Section Engineer
Varkala, Southern Railway,
Trivandrum Division

-Applicant

(By Advocate: Mrs. Shameena Salahudheen)

Versus

1. Union of India represented by
The Secretary to Government,
Ministry of Railways
Rail Bhavan, New Delhi-110001.
2. The Chairman,
Railway Board
Rail Bhavan, New Delhi-110001.
3. The General Manager, Southern Railway,
Chennai-600003.
4. The Chief Personnel Officer, Southern Railway,
Chennai – 3
5. The Divisional Railway Manager,
Southern Railway
Trivandrum Division, Trivandrum-14.
6. The Senior Divisional Personnel Officer, Southern Railway,
Trivandrum Division, Trivandrum-14. **- Respondents**

(By Advocate: Mrs. O.M.Shalina, SCGSC for R 1-6)

O.A No.180/01130/2014

Uttam Kumar (under orders of transfer)
Aged 25 years
S/o.(Late) Saukhi Paswan
Helper-II, O/o.Senior Section Engineer
Nagercovil, Southern Railway
Trivandrum Division **- Applicant**

(By Advocate: Mrs.Shameena Salahudheen)

Versus

1. Union of India represented by
The Secretary to Government,
Ministry of Railways
Rail Bhavan, New Delhi-110001
2. The Chairman,
Railway Board
Rail Bhavan, New Delhi-110001.
3. The General Manager, Southern Railway,
Chennai-600003.
4. The Chief Personnel Officer, Southern Railway,
Chennai – 3

5. The Divisional Railway Manager,
Southern Railway
Trivandrum Division, Trivandrum-14.

6. The Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum Division, Trivandrum-14.

- Respondents

(By Advocate: Mr.Thomas Mathew Nellimoottil)

O.A No.180/00119/2015

Binsi.B (under orders of transfer) Aged 36 years
W/o Krishnan, Kuttikkara House,
P.O, Narath, Kannur District-670601,
Helper, Train Lighting,
Nagercoil, Trivandrum Division,
Southern Railway.

- Applicant

(By Advocate: Mrs. Shameena Salahudheen)

versus

1. Union of India represented by The Secretary to Government,
Ministry of Railways, Rail Bhavan, New Delhi-110001

2. The Chairman, Railway Board, New Delhi-110001.

3. The General Manager, Southern Railway,
Chennai – 600 003.

4. The Chief Personnel Officer, Southern Railway,
Chennai – 600 003.

5. The Divisional Railway Manager, Southern Railway,
Trivandrum Division, Trivandrum-14.

6. The Divisional Personnel Officer, Southern Railway,
Trivandrum Division, Trivandrum-14.

-Respondents

(By Advocate: O.M. Shalina, SCGSC)

O.A No. 180/00155/2015

Doma Praveen Kumar, (under orders of transfer)Aged 28 years
S/o Doma.Jayapaul Helper -II, O/o. Senior Section Engineer
Train Lighting, Southern Railway,
Trivandrum Division.

- Applicant

(By Advocate: Mrs. Shameena Salahudheen)

versus

1. Union of India represented by
The Secretary to Government,
Ministry of Railways
Rail Bhavan, New Delhi-110001,
2. The Chairman, Railway Board,
New Delhi-110001.
3. The General Manager, Southern Railway,
Chennai - 600 003.
4. The Chief Personnel Officer, Southern Railway,
Chennai – 3.
5. The Divisional Railway Manager, Southern Railway,
Trivandrum Division, Trivandrum-14.
6. The Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum Division, Trivandrum-14.

- Respondents

(By Advocate: Mrs. O.M. Shalina, SCGSC)

O.A No. 180/00308/2015

Kartik Ram, aged 30 years, S/o Ghuru Ram R.G
Gatekeeper, O/o. Senior Section Engineer
Chalakudy, Southern Railway,
Trivandrum Division.

- Applicant

(By Advocate: Mrs. Shameena Salahudheen)

versus

1. Union of India represented by the
Secretary to Government,
Ministry of Railways, Rail Bhavan,
New Delhi-110001.
2. The Chairman, Railway Board, Rail Bhavan,
New Delhi-110001.
3. The General Manager, Southern Railway,
Chennai-600003.
4. The Chief Personnel Officer, Southern Railway,
Chennai-3
5. The Divisional Railway Manager,
Southern Railway, Trivandrum

Division, Trivandrum-14.

6. The Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum Division, Trivandrum-14.

- Respondents

(By **Advocate:** Mrs. O.M. Shalina, SCGSC)

O.A No. 180/00742/2015

Harbhajan Munda, aged 33 years,
S/o. Mahendra Singh Munda,
Gate Keeper, Thanky,
O/o. Section Engineer,
Permanent Way/Alleppey,
Southern Railway, Trivandrum Division,
Residing at Railway Qtrs No. 5 B,
P.O Cherthala, Alleppey – 688 524.

- Applicant

(By **Advocate:** Ms. Shameena Salahudheen)

Versus

1. Union of India represented by the
Secretary to Government,
Ministry of Railways, Rail Bhavan,
New Delhi-110001.
2. The Chairman, Railway Board,
Rail Bhavan, New Delhi -110 001.
3. The General Manager, Southern Railway,
Park Town P.O., Chennai – 600 003.
4. The Chief Personnel Officer, Southern Railway,
Park Town P.O., Chennai – 3.
5. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum – 14.
6. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum – 14.
7. The Chief Personnel Officer,
South East Central Railway,
Bilaspur Division, Bilaspur – 495 001.

- Respondents

(By **Advocate:** Mr. M.K. Padmanabhan Nair, ACGSC)

O.A No. 180/00041/2016

Manoj Kumar, aged 26 years,
 S/o Dudheswar Singh
 Track man, O/o. Senior Section Engineer
 Permanent Way, Alleppey, Southern Railway,
 Trivandrum Division,
 Residing at Railway Quarter 4 B,
 Thuravoor, Alleppey – 688 532.

- Applicant**(By Advocate: Mrs. Shameena Salahudheen)****versus**

1. Union of India represented by the
 Secretary to Government,
 Ministry of Railways, Rail Bhavan,
 New Delhi-110001.
2. The Chairman, Railway Board, Rail Bhavan,
 New Delhi-110001.
3. The General Manager, Southern Railway,
 Chennai-600003.
4. The Chief Personnel Officer,
 Southern Railway, Chennai – 3.
5. The Divisional Railway Manager,
 Southern Railway, Trivandrum Division,
 Trivandrum-14.
6. The Senior Divisional Personnel Officer,
 Southern Railway,
 Trivandrum Division, Trivandrum-14.
7. THE GENERAL MANAGER, Northern Railway,
 Baroda House,
 New Delhi-110001.
8. The Divisional Railway Manager, Northern Railway,
 New Delhi-110001.

- Respondents**(By Advocate: O.M. Shalina, SCGSC)**

These Original Applications having been heard on 1st November 2022, the
 Tribunal on 05.12.2022 delivered the following :

ORDER

Per: Hon'ble Mr. Justice Sunil Thomas, Judicial Member

The first applicant in O.A No. 824/2014 was posted in Madurai Division and the 2nd applicant in Trichy Division of Southern Railway as Assistant Loco Pilots. They sought inter divisional mutual transfer to Trivandrum Division from the respective divisions. It was allowed and by Annexure A1 and A2 orders dated 19.06.2014 and 20.06.2014 respectively, they were relieved from the respective stations. They joined the Trivandrum Division. Subsequently by Annexure A3 Order dated 02.10.2014, the inter-divisional mutual transfer was cancelled and they were directed to report back to their original parent stations forthwith. In Annexure A3 it was stated that in terms of O.A No. 12/2013 of this Tribunal filed against mutual transfers between different communities and of the common judgment of the High Court of Kerala in OP(CAT) 5/2014 and OP(CAT) 3559/2013 and in view of the pending CP No. 53/2014 and in terms of order in O.A 12/2013, the transfer orders issued to the applicants herein stands withdrawn, subject to the outcome of the SLP to be filed before the Hon'ble Supreme Court and revision petition proposed to be filed before the Hon'ble High Court in those cases. Aggrieved by the above order, the applicants have approached this Tribunal.

2. Initially no stay was granted by this Tribunal. That order was challenged in OP(CAT) 151/2014 and an interim stay was granted by the Hon'ble High Court. This Tribunal was directed to dispose of the O.A at the earliest. It is reported that pursuant to the interim stay the applicants have been continuing in the Trivandrum Division.

3. In all other connected cases, respective applicants were granted inter Divisional transfers. By separate orders similar to Annexure A3, the inter-divisional transfers were cancelled. All of them have approached this Tribunal challenging orders of cancellation.

4. Since common questions relating to mutual transfer in various divisions in the Railways have come up in all the above O.As, all are clubbed together, heard and disposed of by this common order. According to the learned Counsel for the applicants in all the above cases, Annexure A3 and similar orders have been issued on a misreading of the entire provision of Law and Annexure A4 issued by the Railway Board No. 134/2007 dated 22.10.2007.

5. The respondent Railways filed separate reply statement wherein it was contended that mutual transfers were initially not objected to by the Board since transfer on mutual basis facilitated transfer of employees immediately, and the problem of finding replacement of employees was resolved. It was stated that in arranging mutual transfers in recruitment grades, the communities of employees concerned were not a question at all and initially such arrangements were going on smoothly without any complaint. However, issues arose regarding mutual transfers between employees not belonging to identical communities. On the basis of the judgment of Hon'ble Supreme Court in ***R. K. Sabarwal and Ors v State of Punjab and Ors*** [AIR 1995 SCC 1371], O.A 851/1999 was filed before this Tribunal. Though this Tribunal by its order set aside the mutual transfer, there was no direction to the Railways not to allow mutual transfer between the employees belonging to different communities. In OP(CAT) 2159/2012 which was filed challenging the order in that OA, the Hon'ble High Court did not also refer to this

issue. Subsequently O.A 612/2005 was filed in which Tribunal directed Railway Board to take a policy decision in matters of mutual transfer between different communities. Accordingly Railway Board issued RBE 107/2007 dated 14.08.2007. It was stated therein that transfers on mutual exchange basis would be allowed between employees belonging to the same category. It was advised that transfers on bottom seniority on recruitment grades need not be restricted with reference to posts in post-based rosters. Thereafter RBE 134/2007 dated 22.10.2007 was issued since doubts were raised whether mutual transfers in the recruitment grades will also be allowed without restrictions provided that the Posts in the grade were entirely filled up by direct recruitment from open market and in cases where post in the grade were partly allowed by promotion and partly by direct recruitment, both the employees seeking mutual transfer should have to be recruited directly from the open market. The intention was that both of them should belong to post based rosters maintained for direct recruitment. A reference to para 3.1 of the RBE 107/07 discloses that transfers in bottom seniority recruitment grade need not be restricted with reference to points in post-based roster and RBE No. 134/2007 provided mutual transfers in recruitment grade according to the community. However, both these orders were not discussed and distributed for enforcement.

6. In this background O.A 12/2013 was filed by some Assistant Loco Pilots who have requested their names for one way transfers to Trivandrum Division on their own request. They had sought for quashing para 3.1 of RBE 107/2007 and for quashing the Annexure A8 to A10 orders therein, so far as it related to respondents 6 to 10 therein. The contention therein was that 3.1 of RBE 107/2007 did not relate to mutual transfers at all and hence the prayer to quash the said paragraph as though it provided for mutual transfers between employees of different categories was

totally not maintainable. The Tribunal taking note of this, did not upset para 3.1 of RBE 107/2007, but opined that impugned mutual transfers were in violation of Para 3 of RBE 107/2007. Though RBE 134/2007 was produced in the O.A, there was no discussion by the Tribunal and hence the fact that mutual transfers like in Annexure A8 to A10 were permissible as per RBE 134/2007, was not at all taken note of. Though mutual transfers were not quashed, it was observed that *mutual transfer applications shall be considered against same category of persons*. Though this was challenged before Hon'ble High Court in OP(CAT) 5/2014 and OP(CAT) 3559/2017, the permissibility of mutual transfers in the light of RBE 134/2007 was not at all analysed. This was challenged in SLP (C) No. 33221/2014.

7. Thereafter a Contempt Petition No. 53/2014 was filed by some of the applicants in O.A 12/2013 challenging the Transfer orders issued to the applicants herein which are the subject matter of this O.A. The mutual transfer orders were O.O. No. 30/2014/Elec(OP) dated 12.06.2014 and O.O. No. 22/2014/Elec(OP) dated 28.04.2014. It was alleged in the Contempt Petition that those orders were passed subsequent to order in O.A 12/2013 and were in violation of the order of O.A. It was in this background that Annexure A3 herein was issued cancelling the earlier mutual transfers. It is evident that the transfer orders in the present O.A were issued after the order in O.A 12/2013. The allegation of the applicants in O.A 12/2013 in the application for proceeding against the Railway Authorities was that they have contumaciously violated the order in O.A 12/2013. The Railway Authorities were directed to appear in contempt by the order of this Tribunal. That was challenged in OP(CAT) 165/2014, a copy of which was produced as Annexure R3(c). It emerges that in the meanwhile, Annexure A3 order cancelling the transfer order in favour of the applicants herein was issued and considering the apology

tendered by the Railway Authority, the contempt was closed.

8. Though the contesting respondent Nos. 3 to 11 have filed separate reply statements, that will be discussed in the course of discussion of facts and analysis of the issue, to avoid the repetition of discussion of facts.

9. Heard Mr. Martin G. Thottan, the learned counsel for the applicants, Ms. Shameena Salahudheen, the learned counsel for the applicants in O.A 787/2014, and connected cases, Mrs. O. M. Shalina learned SCGSC and Mr. T. C. Govindaswamy the learned Counsel for the respondent Nos. 3 to 11, in extenso.

10. Assailing Annexure A3 impugned Order, the learned counsel for the applicant raised preliminary contention that Annexure A3 order is bad for the reason that no show cause notice was issued to the applicants preceeding the notice. Such notice ought to have been issued, since cancellation of transfer order violated the valuable rights of the applicant. The second contention set up was that the inter-divisional transfer was cancelled by Annexure A3, which was ordered by the Assistant Personnel Officer, on behalf of the Divisional Personnel Officer. He had no authority to issue such an order on behalf of the Trivandrum Division alone. According to the counsel, since it governed transfer between two divisions, Divisional Personnel Officer of Trivandrum could not have issued such a cancellation order.

11. We are not inclined to accept both the preliminary contentions. Essentially being an order of transfer which is within the domain of the employer and which forms part of and an incidence of service, the cancellation of a transfer order is not required to be preceded by a show cause notice. Since the applicants ordered to be transferred had taken charge, the Divisional Personnel Officer Trivandrum had the authority to issue cancellation orders with concurrence of the corresponding authority. Absolutely no material was placed before us to show that he was not competent to issue such an order. Apart from the above, the learned SCGSC has placed before us the comprehensive policy on mutual transfer of non-gazetted staff of Zonal Railways dated 11.01.2019, which though a subsequent one, details the process of granting inter-divisional transfer and further consequential orders. It prescribed the process of dealing with inter Divisional transfers at one Division with the concurrence of the counterpart Division. Even Annexure A1 and A2 transfer orders were issued from the Division Office. By virtue of relevant provisions it emerges that the competent officer of one Division was competent to issue orders of this nature.

12. The basic premise on which the learned Counsel for the applicant assailed Annexure A3 was based on RBE 107/2007 dated 14.08.2007, supplemented by Annexure A4 No. 134/2007. A copy of RBE 107/2007 was produced as Annexure R3(d) by contesting respondents 3 to 11 along with their reply statement. Clause 3.1 therein is as follows: *“However transfers on bottom seniority in recruitment grades need not be restricted with reference to points in the point-based rosters. The procedure being followed generally in this regard to adjust shortfalls/excess in future may continue. But such transfers should be allowed only, repeat only, against vacant direct recruitment quota posts and not against promotional quota*

posts”. According to the counsel, Annexure A4 was issued only as a clarification to circular dated 14.08.2007 (RBE 107/2007). The contention of the learned counsel for the applicant was that Annexure A4 specifically provided for mutual inter-divisional transfers at bottom seniority. The learned counsel for the applicant pointed out that Annexure A4 was only a clarification of the earlier orders clarifying that since there was no reservation in posts filled by promotion for OBCs, they would also fall within the definition of General. Accordingly clause 2(i) clarified that there being no reservation in posts filled by promotions for OBC the term 'General' should include OBC also. In other words, staff belonging to the General/OBC categories could contract mutual transfers with staff belonging to General/OBC, it was contended.

13. The learned Counsel laid special emphasis on clause 2(ii), which read as follows : *“In view of the fact that instructions do not impose any restriction on transfer request on bottom seniority in recruitment grades, mutual transfers in recruitment grades will also be allowed without restriction”* provided clauses (a) & (b) therein are satisfied. Clause (b) provided that in cases where post in the grade were partly filled by promotion and partly by direct recruitment, both the employees seeking mutual transfer should have been recruited directly from the open market; the intention being that both of them should be borne in the post-based rosters maintained for direct recruitment. It was clarified that if one or both of the employees were borne in post-based rosters maintained for promotion, the restriction on mutual transfers as per instructions dated 14.08.2007 would apply. According to the learned counsel for the Applicant, the cumulative effect of the above provisions was that there was no restriction on mutual transfer request on bottom seniority recruitment grades level and mutual transfers in recruitment

grades will also be allowed without restriction.

14. Learned counsel for the applicant contended that though in O.A No. 12/2013 the mutual transfer orders were held to be void, it did not declare that mutual transfer on bottom seniority in recruitment grades was not possible and also did not strike down RBE 107/2007. It was further contended that OA 12/2013 and connected matters were subject matter of challenge in OP(CAT) 5/2014 and OP(CAT) 3559/2013. Though High Court declined to interfere with the Order of this Tribunal in O.A 12/2013, the Division Bench also did not hold that mutual transfers were not permissible. It was further pointed out that para 2 of the judgment in the OP(CAT) indicated that Annexure A4 herein was placed before the Division Bench and it was considered. However, according to the counsel, the purport of Annexure A4 was not fully appreciated by the Division Bench. In paragraph 2, the Division Bench held that transfer on mutual exchange basis should be allowed between the employees belonging the same category i.e., General with General, SC with SC and ST with ST. Proceeding further, it was clarified that OBCs have also to be treated as part of the General Category, since they do not fall within the SC, ST category eligible for particular reservation in promotion. Evidently Annexure A4 was noted by the learned Division Bench. However, the Division Bench considered it for the limited purpose of assuming that it only clarified that OBCs would fall within the scope of General Category as mentioned in RBE 107/2007 and to that extent understood Annexure A4 only of a limited extend. The learned counsel for the applicant contended that principle of *sub silentio* can be attributed herein, since the learned Division Bench though had occasion to refer to Annexure A4, failed to take note of clause 2 which specifically permitted transfer on request on bottom seniority in recruitment grades. To that

extent the Division Bench in decision in OP(CAT) 5/2014 and 3559/2013 will not stand in the way of Annexure A3, it was contended.

15. The learned SCGSC, relying on Annexure A4, specifically clause 2(ii), supported Annexure A4. It was contended that virtually Annexure A4 permitted transfer on request, on bottom seniority in recruitment grades without any restrictions. It was also provided that in the case of posts where grades were partly filled by promotion and partly by direct recruitment, mutual transfer would be possible in relation to employees recruited directly from open market. These provisions which enabled mutual transfers on request on bottom seniority on recruitment grades was omitted to be noticed by the Administrative Tribunal and by the Division Bench, it was contended. It emerges that there is substantial ground in the contentions set up by the learned counsel for the applicant as well as the learned SCGSC to this extent that mutual transfers on request on bottom seniority recruitment grade is permissible and the Annexure A4 was not considered in detail by this Bench in O.A 12/2013, and by the Division Bench in OP(CAT).

16. The learned counsel for the applicant advanced a further argument that Annexure A4 was not challenged in O.A No. 12/2013. However, this was answered by the learned counsel for the contesting respondents that, the parent order of Annexure A4, which was RBE 107/2007 was the subject matter of challenge in O.A 12/2013. Hence Annexure A4, which was only clarificatory in nature need not be challenged. We are inclined to accept this argument, though Annexure A4 itself is not confined to a clarification of RBE 107/2007, but it proceeds to a further extent. However Annexure A4 sprouts from RBE 107/2007 and does not exceed it. The learned counsel for the respondents contended that even though Annexure A4 was

placed before the Division Bench as an Annexure, it was taken note of by the Division Bench and the order was passed still affirming the Order of the Tribunal. To that extent it cannot be said that Division Bench Judgment was *sub silentio* of Annexure A4 and it was only after noticing the contents of Annexure A4 that the judgment was pronounced.

17. The scope of circular 107/2007 was explained by the Division Bench in OP(CAT) by holding that Clause 3 of the above circular deals with transfer on mutual exchange basis, whereas, clause 3.1 deals with transfer on bottom seniority in recruitment grades. Clause 3.1 was utilised at that position, only to explain that the category principle required to be applied in mutual transfer need not be applied in transfer on bottom seniority. It was held that therefore the transfers on bottom seniority in recruitment grades from one Division to another Division should be allowed only against vacant direct recruitment quota posts and not against promotion quota posts. O.A 12/2013 was allowed on ground that impugned transfer order violated clause 3.

18. However, it is important to note that the Judgment of the Division Bench virtually affirmed the order in O.A 12/2013 by which mutual transfers were set aside. It emerges that the above judgment was challenged in SLP No. 33221/2014 and a copy of the interim order was produced in the present OA as Annexure A5. However, a copy of the final judgment in SLP 33221/2014 arising from OP(CAT) 5/2014 was placed before us which shows that the SLP was dismissed on 05.07.2019. Hence, the Order in O.A 12/2013 has become final. The learned counsel for the contesting respondents have a specific case that the applicants belong to the General/OBC Category and the persons with whom they had mutual

transfer from Trivandrum Division were members of SC Community, recruited against SC vacancies and hence the Original applicants have no right to be transferred at all on mutual basis. It seems that by RBE 107/2007, it was clarified in para 3 that the Ministry after considering the contention regarding maintaining balance in post-based rosters with reference to reservations prescribed for SC and ST Staff felt that to avoid hardship to staff in the feeder grade in the matter of their promotion, transfers on mutual exchange base should be allowed between employees belonging to same category, i.e., General with General, SC with SC and ST with ST. However, in clause 3.1 it was clarified that however transfers on bottom seniority in recruitment grades need not be restricted with reference to points in the post-based rosters. Present transfer being one by mutual transfer, as evident from Annexures A1 to A3, is governed by clause 3 of Circular 107/2007, which is reiterated in the opening sentence of clause 4. In the above sentence, it was reiterated that mutual transfer have been restricted between employees of the same community. Distinction between operation of clause 3 and clause 3.1 of circular 107/2007 has been affirmed by the Division Bench in OP(CAT) 3559/2015 which has become final. Realising that Annexure A1 and A2 may invite contempt of court proceedings, Annexure A3 order was issued. It was accepted by this Bench and Contempt proceedings closed. Cumulative impact of it is that Annexure A3 is unassailable now. Having considered this we are satisfied that Annexure A3 order cannot assailed and is liable to be affirmed.

19. Consequently O.A 824/2014 has to be dismissed. Since the applicants have been continuing at the present place, the order in this O.A will not stand in the way of them being routinely transferred, if they have become due for such transfer in accordance with the Rules.

20. The applicants in O.A No. 787/2014, 788/2014, 789/2014 and 838/2014 through their counsel submitted that pursuant to mutual transfer orders all of them got relieved from their respective stations and they took charge at the respective stations by virtue of the interim orders of Tribunal/Court, one month after the appointed date for taking charge. That one month period of each of the above applicant is yet to be regularised. Regarding applicant in O.A No. 838/2014, the learned counsel further submitted that that applicant has since retired. An M.A was filed for getting his terminal benefits. This Tribunal had passed an interim order on 15.07.2022. It was pointed out that in O.A 838/2014, the first applicant was transferred on 05.09.2014. He was relieved on 30.09.2014, but he was not permitted to join. However, he joined on 27.10.2014 by virtue of an interim order. The period between 13.09.2014 to 27.10.2014 needs to be regularised. He retired in the year 2022. Regarding the remaining applicants mentioned above also, same situation has arisen. In the light of the order that is passed now and noting that though the applicants were ready and willing to join, since they were not permitted to join, definitely the interregnum period needs to be regularised, treating it as on duty or as eligible leave, without disturbing their service benefits. Appropriate orders shall be passed by the respondents within two months from the date of receipt of a copy of this order regularising the interregnum period in the case of applicants in O.A No. 838/2013, 787/2014, 788/2014 and 789/2014.

21. O.As are dismissed, however with above directions.

(Dated this the 5th day of December 2022)

K.V.EAPEN
ADMINISTRATIVE MEMBER
bp

JUSTICE SUNIL THOMAS
JUDICIAL MEMBER

List of Annexures

O.A No. 180/00787/2014

Annexure A1-	True copy of the transfer order No. NPB/678/2014 dated 25.08.14.
Annexure A2-	True copy of the relieving order dated 03.09.14.
Annexure A3-	True copy of the joint application submitted by the applicants.
Annexure A4-	True copy of the Railway Board order RBE No. 134 of 2007.
Annexure A5- 28.03.2008.	True copy of the communication No. E(NG)1/2004/TR/16 pt dated
Annexure A6-	True copy of the Railway Board order RBE No. 156 of 2007.
Annexure A7- 11.09.14.	True copy of the order No. V/P 676/VIII/Elec/AC/IRMT/IDMT dated
Annexure R-1-	True copy of RBE No. 107/2007 dated 14.08.2007.
Annexure R-2-	True copy of RBE No. 134/2007 dated 22.10.2007.
Annexure R-3-	True copy of RBE No. 8/2019 dated 11.01.2019.

O.A No. 180/00788/2014

Annexure A1-	True copy of the transfer order No.52/MCW/2014 dated 04.07.2014.
Annexure A2-	True copy of the relieving order dated 27.08.2014.
Annexure A3-	True copy of the transfer application submitted by the applicants.
Annexure A4-	True copy of the Railway Board order RBE No. 134 of 2007.
Annexure A5- 28.3.2008.	True copy of the communication No. E(NG)1/2004/TR/16/pt dated
Annexure A6-	True copy of the Railway Board order RBE No. 156 of 2007.
Annexure A7- 11.09.14.	True copy of the order No.V/P676/VIII/Elec/AC/IRMT/IDMT dated

O.A No. 180/00789/2014

Annexure A1-	True copy of the transfer order No. EL/33/2014 dated 24.03.2014.
Annexure A2-	True copy of the relieving order dated 27.08.14.
Annexure A3- applicants.	True copy of the joint application dated 25.12.12 submitted by the
Annexure A4-	True copy of the Railway Board order RBE No. 134 of 2007.
Annexure A5- 28.03.2008.	True copy of the communication No. E(NG)1/2004/TR/16 pt dated
Annexure A6-	True copy of the Railway Board order RBE No. 156 of 2007.
Annexure A7- 11.09.14.	True copy of the order No. V/P 676/VIII/Elec/AC/IRMT/IDMT dated

O.A No. 180/00824/2014

Annexure A1- applicant.	True copy of the letter No. 51/PRO dated 19.06.2014 issued to the 1 st
Annexure A2- applicant.	True copy of the letter No. 41/VM dated 20.06.2014 issued to the 2 nd
Annexure A3- second respondent.	True copy of the Office Order No. 61/2014/Ele(OP) issued on behalf of the
Annexure A4-	True copy of the railway board bearing No. RBE 134 of 2007.

- Annexure A5-** True copy of the interim order dated 28.11.2014 passed by the Hon'ble Supreme Court.
- Annexure R3(a)-** A true copy of order dated 13th August 2013 in O.A No. 12 of 2013, rendered by this Tribunal.
- Annexure R3(b)-** A true copy of common judgment dated 06.03.2014 in OP(CAT) No. 5/2014 and OP(CAT) No. 3559/2013 rendered by the Hon'ble High Court of Kerala.
- Annexure R3(c)-** A true copy of judgment dated 30.10.2014 in OP(CAT) No. 165/2014 rendered by the Hon'ble High Court of Kerala.
- Annexure R3(d)-** A true copy of O.A No. 12 of 2013 with all its annexures filed before this Tribunal.

O.A No. 180/00838/2014

- Annexure A1-** True copy of the transfer order dated 05.09.2014.
- Annexure A2-** True copy of the relieving order dated 30.09.2014.
- Annexure A3-** True copy of the joint application submitted by the applicants.
- Annexure A4-** True copy of the Railway Board order RBE No. 134 of 2007.
- Annexure A5-** True copy of the communication No. E(NG)1/2004/TR/16/Pt dated 28.03.2008.
- Annexure A6-** True copy of the Railway Board order RBE No. 156 of 2007.
- Annexure A7-** True copy of the order No. V/P676/VIII/Elec/AC/IRMT/IDMT dated 11.09.2014.

O.A No. 180/00886/2014

- Annexure A1-** A photostat copy of the order dated 12.08.2014 issued by Chief Personnel Officer, Southern Railway, Madras.
- Annexure A2-** A photostat copy of the order dated 29.05.2014 issued by Chief Personnel Officer, East Coast Railway, Bhuvanesar.

O.A No. 180/01126/2014

- Annexure A1-** True copy of the transfer order dated 28.4.2014.
- Annexure A2-** True copy of the letter No. E/E/1140/Mutual Transfer/Gr. D/RTM Vol. VI dated 20.06.2014.
- Annexure A3-** True copy of the combined application from for mutual transfer.
- Annexure A4-** True copy of the Railway Board's order RBE No. 134 of 2007 dated 22.10.2007.
- Annexure A5-** True copy of the Railway Board order No. E(NG) 1/2004/TR/16 pt dated 28.03.2008.
- Annexure A6-** True copy of the Railway Board order RBE No. 156 of 2007.
- Annexure A7-** True copy of the judgment dated 21.10.2014 in OP(CAT) 156/2014.

O.A No.180/01127/2014

- Annexure A1-** True copy of the transfer order dated 28.4.2014.
- Annexure A2-** True copy of the letter No.E/E/1140/Mutual Transfer/Gr.D/RTM Vol.VI dated 20.6.2014.
- Annexure A3-** True copy of the combined application for mutual transfer dated nil.
- Annexure A4-** True copy of the Railway Board's order R.B.E No.134/2007 dated 22.10.2007.
- Annexure A5-** True copy of the Railway Board order no.E(NG)1/2004/TR/16pt dated

28.3.2008.

Annexure A6- True copy of the Railway Board order R.B.E No.156/2007 dated.

Annexure A7- True copy of the judgment dated 21st October, 2014 in O.P(CAT)156/2014.

O.A No.180/01130/2014

Annexure A1- True copy of the office order No.EL/71/2014 dated 9.7.2014.

Annexure A2- True copy of the letter No.P/Elect(G)/IRMT/Helper/2014 dated 18.11.2014.

Annexure A3- True copy of the combined application form for mutual transfer dated nil.

Annexure A4- True copy of the Railway Board's order R.B.E No.134/2007 dated 22.10.2007.

Annexure A5- True copy of the Railway Board order no.E(NG)1/2004/TR/16 pt dated 28.3.2008.

Annexure A6- True copy of the Railway Board order R.B.E No.156/2007 dated.

Annexure A7- True copy of the judgment dated 21st October, 2014 in O.P(CAT) 156/2014

O.A No.180/00119/2015

Annexure A1- A true copy of the Combined Application form.

Annexure A2- A true copy of the Order No J/P676/III/MES/IDT/IRT/Vol-XI dated 8/12/2014.

Annexure A3- A true copy of the RBE No. 134/2007.

Annexure A4- True copy of the Judgment in O.P. (CAT) 156/2014.

Annexure-R1- True copy of Office Order No.14/2015/EL/GS issued under No.V/P677/VIII/EL/GS dt. 20/03/2015.

O.A No. 180/00155/2015

Annexure A1- True copy of the transfer order dated 15.12.2014.

Annexure A2- True copy of the letter no. SCR/P-BZA/221/2-Elec (TRS) dated 05.02.2015.

Annexure A3- True copy of the combined application form for mutual transfer.

Annexure A4- True copy of the Railway Board's order R..E. No. 134/2009 dated 22.10.2007.

Annexure A5- True copy of the letter No. E(NG)1/2004/TR/16/Pt dated 28.3.2008.

Annexure A6- True copy of the Railway Board's Order R.B.E No.156/2007 dated 04.12.07.

Annexure A7- True copy of the Judgment in O.P.(CAT) 156/2014 and connected cases.

Annexure R1- True extract of Office order No.17/2015/EL/GS issued under No.V/P.677/VIII/EL/GS dt. 10/04/2015.

O.A No. 180/00308/2015

Annexure A1- True copy of the combined application form for mutual transfer of the applicant and another person.

Annexure A2- True copy of the Order No.P.-HQ/NGC/502E/IRMT/VG/2721 dated 22/07/2014.

Annexure A3- True copy of the Railway Board's order R.B.E. No.134/2009 dated 22.10.2007.

Annexure A4- True copy of the communication No.E(NG)1/2004/TR/16/Pt dated

28.3.2008.

Annexure A5- True copy of the Railway Board's Order R.B.E No.156/2007 dated 04.12.2007.

Annexure A6- True copy of the judgment of Hon'ble High Court of Kerala Dated 21.10.2014 in O.P (CAT) 156/2014 and connected cases.

Annexure A7- True copy of the Interim order in O/180/00119/2015 dated 10.03.15.

Annexure R1- True Copy of O.O.No.63/2015/WP Dt:04.05.2015.

O.A No. 180/00742/2015

Annexure A1- True copy of the combined application form dated 16.2.2012 for mutual transfer of the applicant.

Annexure A2- True copy of the communication No.V/P 677/1/IRMT/IDMT/ Vol-V dated 3/1/2013.

Annexure A3- True copy of the communication No.P-HQ/NGC/502/E/GSK/ 2270 dated 3.6.2013.

Annexure A4- True copy of the information received under order No. P(Coord)/RTIA/2015/5876 dated 23.06.2015.

Annexure A5- True copy of the Railway Board's order R.B.E No. 134/2007 dated 22.10.2007.

Annexure A6- True copy of the Railway Board's order R.BE. No.156/2007 dated 04.12.2007.

Annexure A7- True copy of the Judgment in OP(CAT) 156/2014 and connected cases dated 21.10.2014 passed by the Hon'ble High Court of Kerala.

O.A No. 180/00041/2016

Annexure A1- True copy of the combined application from for mutual transfer of the applicant and another dated 21.6.2012.

Annexure A2- True copy of order No.L. No.726/E/16/26088/P-4 dated 18/12/2013.

Annexure A3- True copy of the communication issued by the General Manager, Northern Railway.

Annexure A4- True copy of the RBE No. 134/2007 dated 22.10.2007.

Annexure A5- True copy of the Judgment in OP(CAT) 156/2014 and connected cases dated 21.10.2014 passed by the Hon'ble High Court of Kerala.

Annexure A6- True copy of the Interim order in O.A 119/2015 dated 10.03.15.

Annexure R1- True copy of PBC No.164/2014 issued under No.P(R)676/P/Vol.IV dated 13-10-2014.

Annexure R2- True copy of the Office Order No.31/2016/WP Dt:25.02.2016.
