

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.423/92

Friday, this the 5th day of November, 1993.

HON'BLE SHRI. N DHARMADAN, JUDICIAL MEMBER  
AND

HON'BLE SHRI S KASIPANDIAN, ADMINISTRATIVE MEMBER

R Somarajan Nair,  
C&W Khalasi, O/o the C&W Supervisor,  
Southern Railway, Quilon. - Applicant

By Advocate Shri P Sivan Pillai

Vs.

1. Union of India through  
the General Manager,  
Southern Railway, Madras-3.
2. The Divisional Personnel Officer,  
Southern Railway, Trivandrum-14.
3. S Sambasivan,  
O/o the C&W Supervisor,  
Southern Railway, Quilon. - Respondents

Respondents 1&2 by Advocate Smt Sumathi Dandapani

O R D E R

N DHARMADAN, JUDICIAL MEMBER

The applicant is at present working as Carriage and Wagon Khalasi in the Railway under the second respondent. He is aggrieved by the impugned orders at Annexure-A4 and A6 rejecting his request for fixation of seniority based on his attainment of temporary status.

2. According to the applicant, he was originally appointed on 1.7.1978 as a substitute. He was granted temporary status on 1.12.1978. The third respondent was similarly appointed who was granted temporary status with effect from 24.5.1978. The applicant was empanelled as per Annexue-A2 with effect from 31.12.1980. In the provisional seniority list, Annexure-A3(Annexure-R1) dated 19.7.1985, the applicant was placed at Sl.No.91 while the third respondent was at Sl.No.52. Third respondent is senior to the

applicant. This seniority list, according to applicant, was fixed on the basis of the date of attainment of temporary status and the continuous service in the Railways. Thereafter, three other seniority lists have been issued on 20.8.1990, 27.5.1991 and 15.1.1992 varying the basic principles for fixation of the seniority of C&W Khalasis. In these seniority list also, applicant was not given the proper place vis-a-vis the third respondent.

3. The learned counsel for applicant relied on two judgements of this Tribunal and submitted that it is the settled proposition of law that the seniority of Khalasis should be fixed considering the attainment of temporary status. The Railway is consistently following this principle. They have no authority to deviate from that principle or fix the seniority of Khalasis in accordance with any other principle or formula unless they are permitted to do so under extant orders. The two judgements referred to above are produced along with the rejoinder as Annexure-A9 and A10. In judgement in OA-1226/90(Annexure-A9) this Tribunal <sup>held</sup> / as follows:

"In the conspectus of facts and circumstances, we allow the application, set aside the seniority list at Annexure-A6 and direct the respondents to fix the seniority of the applicants in the Diesel Mechanical cadre on the basis of their dates of attainment of temporary status as substitute followed by regularisation and that of respondents 4 to 30 strictly in accordance with the office order No.19/32 dated 13.3.1992 at Annex.IV. There will be no order as to costs."

This judgement was also followed in another judgement in OA-812/91 after considering the relevant rules and after considering paragraph 2315 and 2318 of Indian Railway Establishment Manual(IREM) and relevant orders. The Tribunal observed as follows:

"In the result, we allow the application to the extent of directing the respondents 1 to 3 to consider the applicant also for promotion as Keyman from the date of his substitute service as shown in Annexure-A4, i.e. 21.5.74. If he is found suitable for promotion, he may be given promotion above respondents 4 to 9 and grant him all consequential benefits notionally from the date of promotion."

4. The respondents have ~~also~~ filed a detailed reply, denying the averments and the allegations in the O.A. The applicant controverted those statements by filing rejoinder.

5. Having heard the learned counsel on both sides, we are of the view that the issue arising in this case can be settled in the light of the dictum laid down by this Tribunal in Annexure-A9 and A10. This Tribunal has clearly held that seniority of Khalasis is to be fixed on the basis of the date of their attainment of temporary status i.e. after completion of six months continuous service. The respondents have deviated from this settled principle and adopted different criteria when they issued subsequent seniority lists. But they have not relied on any order or instruction nor did they produce any such order or other provision of the IREM to satisfy us that they have the legal authority to take a different view from the above principle that has already been laid down by this Tribunal in Annexure-A9 and A10 judgement.

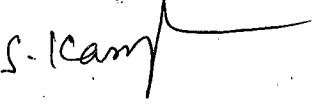
6. Having considered the matter in detail, we are of the view that the above settled position applies to this case. In this view we are unable to sustain the two impugned orders, which were passed by the DPO, Trivandrum considering the representations filed by the applicant challenging the seniority list at Annexure-A7 and the earlier seniority list. The respondents could not sustain their reasoning mentioned in the seniority lists published in 1990, 1991 and 1992. Under these circumstances, we hold that the Railway has gone wrong in fixing seniority of Khalasis without following a settled principle for fixing the seniority of Khalasis as laid down by this Tribunal in the above cases.

7. In this view of the matter, we follow the earlier judgement of Annexure-A9 and A10 and allow the application after setting aside Annexure-A4 and A6. We direct the second respondent to fix the seniority of the applicant in the post of C&W Khalasi vis-a-vis the third respondent after giving notice to all affected persons. This shall be done within six months from the date of receipt of a copy of this judgement, bearing in mind the principles in Annexure-A9 and A10 judgement, notwithstanding the earlier seniority list referred to

above including Annexure-A7.

8. The application is allowed as above. No costs.

Dated, the 5th November, 1993.

  
(S KASIPANDIAN)

ADMINISTRATIVE MEMBER

  
(N DHARMADAN)  
JUDICIAL MEMBER

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