

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 453 199 1
T.A. No.

DATE OF DECISION 19.8.92

T. K. Vasudevan

Applicant (s)

Mr. P. Sivan Pillai

Advocate for the Applicant (s)

Versus

Union of India through the
General Manager, Southern Railway Respondent (s)
Madras-3 and others

Smt. Sumathi Dandapani

Advocate for the Respondent (s) 1 & 2

CORAM :

The Hon'ble Mr. P.S. Habeeb Mohamed, Administrative Member

The Hon'ble Mr. N. Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? *to*
3. Whether their Lordships wish to see the fair copy of the Judgement? *to*
4. To be circulated to all Benches of the Tribunal? *to*

JUDGEMENT

Mr. N. Dharmadan, Judicial Member

The applicant is a Motor Vehicle Driver (Cash van) at present working in the Trivandrum Division of the Southern Railway. He is aggrieved by Annexure A-6 letter issued by the DPO, Trivandrum rejecting his representation claiming seniority in the cadre of drivers on the basis of his promotion as per Annexure A-1 dated 20.4.74.

2. According to the applicant, he was initially appointed as a Bangalow Peon w.e.f. 19.6.69. On 14.6.72 he was transferred to Trivandrum Division. As per Annexure A-1 order he was promoted as M.V. Driver (Jeep) in the scale of 260-400 w.e.f. 2.1.74. The said order of promotion is extracted below:

"The pay of Shri T. K. Vasudevan, peon in scale Rs. 196-232 who has been promoted as Jeep Driver in scale Rs. 260-350 in terms of CE/CN/MS O.O.No.

618 of 7.1.74 is fixed at Rs. 260/- in scale Rs. 260-350 from 2.1.74, the date from which he assumed higher responsibility as Jeep Driver."

3. Thereafter, as per Annexure A-2 he was transferred to Divisional Accounts Department w.e.f. 11.12.81 as driver in the scale of 260-400. He was also sent to Iraq in the year 1982 and returned in 1984. Annexure A-3 letter was issued by the Divisional Accounts Officer to the DRM requesting him to take the applicant as Cash Van Driver in the pay scale of Rs. 260-400 in the Cash and Pay Branch in the seniority unit of General Pool of Drivers. Thereafter, as per Annexure A-4 letter dated 26.2.88, seniority list of Motor Vehicle Drivers in the scale of Rs. 950-1500 in the Trivandrum Division was issued. There were about 20 persons in the list but the applicant's name was not included in the list. Note appended to the list reads as follows:

"As per DRM's order Sri T.K. Vasudevan, Cash Van Driver, is taken in the G1. Pool. His name will be included in the Seniority list as and when his SR is received from Accounts Department."

The applicant submitted representation for getting his seniority to be reckoned w.e.f. the order of promotion in Annexure A-1. Ultimately, it was rejected by the impugned order Annexure A-6. The applicant has challenged this order in this application filed under section 19 of the Administrative Tribunals' Act, 1985. He has also prayed for a direction to fix his seniority taking into account his entry in the grade of Driver as shown in Annexure A-1 order.

4. Respondents 1 & 2 in the counter affidavit denied the applicant's claim for seniority as Driver w.e.f. 2.1.74. They have stated that the applicant was given an opportunity in the year 1980 as per Annexure R-1 to appear for trade test along with other similarly situated persons but he failed to respond to the notice. He was also given further opportunity for appearing for trade test in the year 1984

and 1988. But he refused to attend the trade test. Later on 23.6.88 another trade test was conducted in which the applicant was found fit for regularisation as Driver. Accordingly, he was included as Sl. No. 8 and given seniority w.e.f. 6.9.88 in the cadre of Driver as per Annexure R-5. They have further stated that the applicant is entitled to seniority in the cadre of Driver only after passing the trade test in 1988.

5. The applicant has filed rejoinder and denied the statements contained in the reply filed by the respondents.

6. We have heard arguments of learned counsel appearing on both sides and perused the documents. It is an admitted fact that the applicant had been working as Driver in the Department from 20.4.74 after Annexure A-1 order of promotion was passed. But learned counsel for respondents submitted that Annexure A-1 order was passed on a mistaken basis and this cannot be taken as basis for fixing the seniority of the applicant. The learned counsel did not bring to our notice any subsequent order cancelling Annexure A-1 nor did she produced any document to show that the applicant was a in-efficient driver and a trade test is necessary for his regularisation in the service. On the other hand, the averments of the applicant/that he was transferred to another Department by Annexure A-2 letter as a driver and thereafter sent to Iraq for service as Driver on behalf of the Department. He was allowed to rejoin the Department as driver in the year 1984. The respondents also did not deny Annexure A-3 letter written by the Accounts Officer.

7. The learned counsel for the respondents produced for our perusal the Service Records of the applicant. On a perusal of the Service Records, it is seen that the applicant was given increment on 8.8.74 in the cadre of Driver because

of his loyal service during the general strike. From 1974 onwards, he was treated as Driver in the scale of Rs. 260-350 which was later revised to Rs. 260-400. The Service Records further shows that sanction has been accorded to give a cash award of Rs. 100/- to the applicant for his meritorious service during the restoration of tracks damaged due to breaches in the Division.

8. From the fact that the applicant was working as a regular Driver and discharging duties to the satisfaction of the superior authorities from the date of Annexure A-1 indicates that there is no necessity for further trade test to be conducted to satisfy the efficiency and eligibility of the applicant for giving him seniority.

9. Having regard to the facts and circumstances of the case, we are not inclined to go along with learned counsel and accept the respondents' submission that the applicant is entitled to seniority only from the date of passing of the trade test i.e. 1988, conducted before preparation of Annexure R-4. Since the order of Annexure A-1 promoting the applicant to the Post of Driver has not been superseded or cancelled by the Railways, the applicant is entitled to get seniority in the post of Driver from the date shown in Annexure A-1. This order formally indicates that the applicant was promoted to the Post of Driver in the scale of Rs. 260-350 w.e.f. 2.1.74 and his salary was also fixed at Rs. 260 in that scale from 2.1.74. Accordingly, we direct the respondents to include the applicant also in the Annexure A-4 seniority list of drivers and fix his seniority on the basis of Annexure A-1 promotion order. The applicant is also entitled to all consequential benefits.

10. In the result, the application is allowed. There will be no order as to costs.

(N. Dharmadan)
Judicial Member

- 19.8.92

(P.S. Habeeb Mohamed)
Administrative Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

R.A. 16/93 in
O. A. No. 453 / 199 1

DATE OF DECISION 16.2.93

C. Padmanabhan Pillai and others Applicant (s)

Mr. K. Ramakumar Advocate for the Applicant (s)

Versus

T.K. Vasudevan, Cash Van Driver Respondent (s)
Divisional Accounts Office, Southern Railway, Trivandrum and
others

Mr. P. Sivan Pillai for R-1 Advocate for the Respondent (s)
Smt. Sumathi Dandapani for R 2 & 3

CORAM :

The Hon'ble Mr. N. DHARMADAN JUDICIAL MEMBER

The Hon'ble Mr. R. RANGARAJAN ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

MR. N. DHARMADAN JUDICIAL MEMBER

M.P. 251/93 has been filed by the review applicants for condoning the delay in filing the review application. According to the review applicants, they came to know about the judgment only on 22.12.92. Thereafter, xxxxxxxx, they have taken steps for getting a copy of the judgment and the review application has been filed on 31st January, 1993. Hence they contend that there is no delay from the date of knowledge of the judgment. Having regard to the statement in the application for condonation of delay, we are satisfied that the M.P. is to be allowed. Accordingly, we allow the M.P.

2. The Original respondents No. 3, 6, 7, 9 and 10 in the Original Application have filed this Review petition mainly

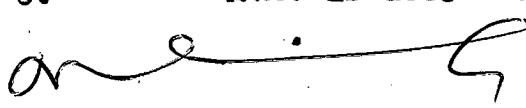
on the ground that by implementing the judgment the Railways are taking steps for reviewing the seniority, hence, the judgment is to be reviewed/clarified.

3. The original applicants in the case claimed seniority for promotion on the basis of Annexure A-1 list which was not cancelled or superseded by a subsequent order. Admittedly the said order is in force and after hearing counsel appearing on both sides we have decided to grant the claim of the applicant that he is entitled to seniority from the date of Annexure A-1. Hence, the claim was granted declaring that the applicant is also entitled to consequential benefits as envisaged in the judgment.

4. The reasons mentioned in the R.A. are not satisfactory and convincing. According to the review applicants the applicant has suppressed the facts before this Tribunal by not disclosing the fact that two other seniority lists are mentioned in Annexure A-4 while the applicant has produced only one of the seniority list.

5. It is admitted by the review applicants that Annexure A-1 has not been superseded or modified by any subsequent order. We have only accepted that Annexure A-1 is the basis for fixing his pay and he is entitled to reckon seniority on the basis of Annexure A-1. Consequential benefits are also to be given on the basis of direction of this Tribunal. If the review applicants are aggrieved by the subsequent orders passed on the basis of the judgment, they are at liberty to take appropriate legal action, if so advised under the rules.

6. R.A. is accordingly dismissed.


(R. RANGARAJAN)
ADMINISTRATIVE MEMBER

16.2.93

kmm


(N. DHARMADANY) 6/2/93
JUDICIAL MEMBER