

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A. NO. 470 OF 1997.

Monday this the 31st day of January 2000.

CORAM:

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

HON'BLE MR. J.L. NEGI, ADMINISTRATIVE MEMBER

S. Jagadeesh Babu,  
AC/ Coach Attendant/AC Khalasi Helper,  
Electrical Department,  
Southern Railway, Trivandrum  
Division, Trivandrum. Applicant  
(By Advocate Shri Sibi J. Monippally)

Vs.

1. Chief Personnel Officer,  
Southern Railway, Park Town,  
Chennai.
2. Senior Divisional Electrical  
Engineer, Southern Railway,  
Trivandrum Division,  
Trivandrum.
3. Senior Divisional Personnel Officer,  
Southern Railway, Trivandrum  
Division, Trivandrum.
4. S. Venkitaraman, AC Mechanic  
Grade III, Southern Railway,  
Trivandrum Division,  
Trivandrum. Respondents  
(By Advocate Shri P.K. Madhusoodhanan (R-4)  
(By Advocate Shri Mathews J. Nedumpara (R.1-3)

(The application having been heard on 31st January 20000  
the Tribunal on the same day delivered the following:)

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant who entered service as Casual Labourer  
on 7.4.80 was engaged as a substitute in the electrical Branch  
on 6.12.80 and was granted temporary status with effect from  
18.7.81. He was empanelled as a Khalasi by order 9.5.84  
against a vacancy of the year 1982 (A1). When the official

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respondents called for volunteers for filling up of vacancies of Air Condition Khalasis, the applicant volunteered and was allowed to work in the A/C Wing. However, he was regularised only with effect from 7.3.91.

2. Though the respondents conducted a suitability test in the year 1985 in the Select Panel the names of Chandradathan and Samuel were not there. Chandradathan and Samuel got later inducted into the A/C Wing and therefore, Shri Venkataraman, the 4th respondent in this case also filed an application O.A. 83/96 seeking similar treatment. Purportedly, in the implementation of the directions contained in the order in O.A. 83/96, the respondents revised the seniority of Shri Venkataraman, 4th respondent and placed him above, the applicant after giving the applicant a show-cause notice (A6). The reply given by the applicant to show cause notice was considered and A8 order was issued. The applicant states that the applicant who has been regularly appointed in the A/C Wing with effect from 7.3.91 cannot be placed below, the 4th respondent who has joined A/C Wing only on 8.11.94 as stated in the impugned order. The applicant has, therefore, prayed that the respondents may be directed to grant seniority to the applicant above the 4th respondent in the A/C Wing of the Electrical Department of the Trivandrum Division and direct the respondents to invite the applicant for suitability test for work in the AC Wing.

3. When the application came up for hearing the learned counsel appearing for the applicant stated that the applicant is pressing only the relief claimed at sub-para(a) of para 8 of the O.A.

4. The official respondents have filed a reply statement seeking to justify the impugned action on the ground that the seniority was revised only pursuant to the directions of the orders in O.A. 83/96.

5. The 4th respondent though was served with notice and entered appearance did not file any reply statement.

6. We have heard the learned counsel on either side and have perused the pleadings and materials placed on record. It is not in dispute that the date of entry and continuance of service in the cadre determine the seniority. A case involving identical issue as in this case filed earlier was disposed of by this Bench in O.A. 894/96. The four applicants in that case were persons who entered in the A/C Cadre prior to the date of entry of the R.4 when the 4th respondent was assigned placement between S1. No. 46 and 47 purportedly in the implementation of the order in O.A. 83/96, the applicants in those cases claimed that since they had entered the service in the A/C Wing earlier the placement of Shri Venkataraman, 4th respondent above them was illegal. The applicants in that case also were given a show cause notice as in this case as there were similar contentions. The case was considered and the Tribunal observed as follows:

"It is not disputed that Chandradathan was working in the AC Unit from 1987. The only thing that is common between Chandradathan and the fourth respondent according to the parties is that they both appeared in the suitability test which was held in the year 1987 and that both of them failed. While Chandradathan was inducted into the AC Unit on 25.4.87, the fourth respondent was never inducted into the AC Unit. He was inducted into the AC Unit only with effect from 2.2.93. No material has been placed on record to show that the fourth respondent had been serving in the AC Unit any day prior to 2.2.93. To ascertain whether the fourth respondent had worked in the AC Unit during any time prior to 2.2.93, the Tribunal vide its order dated 8.6.98 directed the respondents 1 to 3 to produce document, if any, to show whether the fourth respondent had worked in the AC Unit prior to 2.2.93. Counsel for respondents 1 to 3 filed a statement on 29th July, 1998 wherein it was stated that no record was available with the respondents to show that the fourth respondent ever worked in the AC Unit prior to 13.1.93. The fourth respondent also has not produced any material to show that at any time prior to 13.1.93, he had worked in the AC Unit. The direction in the judgement of the

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Tribunal in O.A. K. Nos. 159/88, 298/88 and 95/88 was to fix the seniority with effect from the date of entry into the AC Unit. Therefore, the fourth respondent having entered the AC Unit only in 1993, the second and third respondents were wrong in assigning him seniority between item Nos. 46 & 47 which has resulted in suppression in seniority of the applicants in this case."

7. The facts situation in that O.A. 894/96 and in this case are similar. While the applicants in O.A. 894/96 entered the A/C Wing in 1989 and 1991, the 4th respondent, Venkatraman had entered the A/C wing only with effect from 2.2.93. The respondents have also not produced any materials to show that the 4th respondent, had worked in the AC wing at any time prior to 1993. On that basis it was held that the revision of seniority and placement of the applicant in that case below the 4th respondent was not justified. We do not find any justification to take a different view in this case. The applicant in this case entered in AC wing on a regular basis on 7.3.91 whereas the 4th respondent entered the AC wing on 2.2.93 and he had not worked in the AC wing at any time prior to that date.

8. Under these circumstances, the action on the part of the official respondents for revising the seniority and placing the 4th respondent above the applicant is not at all justified.

9. The application, is therefore, allowed in part. The annexure A8 is set aside and the respondents are directed to fix the seniority of the applicant above the 4th respondent in the A/C wing of the Electrical Department of the Trivandrum Division. There is no order as to costs.

Dated the 31st January 2000.

  
J.L. NEGI  
ADMINISTRATIVE MEMBER

  
A.V. HARIDASAN  
VICE CHAIRMAN

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List of Annexures referred to in the order:

- Annexure A1: A true copy of order No.V/P 564/VIII/EMD/Vol I issued by Assistant Personnel Officer, Divisional Office, Personnel Branch, Trivandrum-14, dated 9.5.1984.
- Annexure A6: A photostat copy of the order No. V/P/535/VIII/AC/PNM/FNM dated 11.1.1995 issued by the Divisional Personnel Officer to the Applicant.
- Annexure A8: True copy of order No. V/P.535/VIII/AC/PNM/FNM dated 11.6.1996 issued by the Senior Divisional Personnel Officer (Respondent No.3) Trivandrum Division, Trivandrum.