

CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 54 of 2013

Tuesday this the 26th day of July , 2016

CORAM

Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member

Hon'ble Mrs. P. Gopinath, Administrative Member

1. Jayakumar J
Station Master-II, Thalassery Railway Station,
Southern Railway, Thalassery.
2. N.Vamanan Namboothiri,
Station Master-II, Payangadi Railway Station,
Southern Railway, Payangadi.
- 3 Jaffar Sadiq.M.
Station Master-II, Walayar Railway Station,
Southern Railway, Walayar. ...Applicants

(By Senior Advocate Mr. P.K. Madhusoodhanan)

Versus

1. Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Divisional Office, Personnel Branch,
Palakkad-2.
- 2 Assistant Personnel Officer/Traffic,
Southern Railway, Palghat Division
Divisional Office, Personnel Branch,
Palakkad-2.
- 3 Union of India through the General Manager
Southern Railway, Park Town
Chennai-3.

...Respondents

(By Advocate Mr. Sunil Jacob Jose)

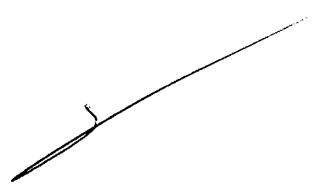
This application having been finally heard on 18.07.2016, the Tribunal on 26.07.2016 delivered the following:

ORDER

Per: Justice N.K. Balakrishnan, Judicial Member

The three applicants in this case seek to set aside Annexure A12 so far it denied seniority to them in the cadre of Station Master Grade.II (SMGr.II). They also seek a declaration that they are eligible and entitled to be placed in the seniority list of Station Master Grade II in Annexure A12 immediately below the existing Station Master Gr.II. Consequential reliefs are also claimed by them

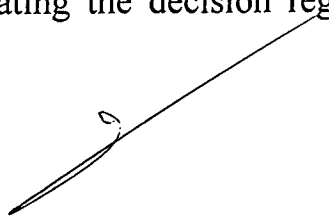
2. The applicants contend that they competed along with others in the selection for lateral induction to the post of SM.II (Traffic Apprentice) in the scale of Rs. 5500-9000 against 10% LDCE quota which was held pursuant to Annexure A1 employment notice dated 7.7.2006. The applicants came out successful as evident from Annexure A2 and A3. They successfully completed two years training in Zonal Railway Training Institute, Thiruchirapalli and were later appointed as SM.Gr.II in Palakkad Division by Annexure A2. In the provisional seniority list of SM. Gr.II and SM.Gr.III at Annexure A5 the applicants were shown below SM.III. Those persons had competed along with the applicants and had failed in the selection for SM. Gr.II under 10% LDCE. Representations were submitted against Annexure A5 but the request made by the applicants was not heeded to. Hence OA 269/2011 was filed. That OA was allowed. Though OP



(CAT) was filed that was dismissed. The applicants failed to comply with the directions contained in Annexure A11 order. Pursuant thereto Annexure A12 order dated 29.10.2012 was passed. It is stated that the applicants were placed below all available employees in the cadre of SM as on 4.9.2008 as stipulated in Railway Board's letter dated 26.9.2012. Annexure A12 order is per se illegal and hence they moved this Tribunals seeking the relief as aforesaid.

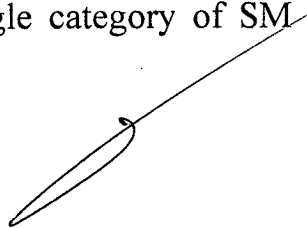
3. The respondents resisted the application contending as follows.

As per Annexure A11 this Tribunal directed the first respondent to publish the seniority list of SM.Gr.II and Gr.III in accordance with law after considering all objections received by the first respondent. It was stated that OP (CAT) 941/2012 filed by the respondents was disposed of by the Hon'ble High Court holding that what have been communicated in paras 7 and 8 of Annexure A11 order could be taken as guidelines which may have to be considered while carrying out the exercise of considering the objections to the provisional seniority lists and coming out with the final seniority lists of SM Grade II and III categories of Station Masters. The High Court did not find any legal infirmity or jurisdictional error in the impugned order of the Tribunal. As such the OP (CAT) was dismissed vide Annexure R1. The Railway Board had already issued a letter dated 26.9.2012 communicating the decision regarding the status of promotion



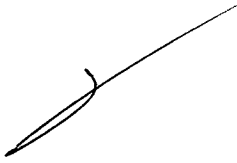
and seniority of staff holding post in grades which stood merged in pursuance of the recommendation of the 6th CPC. In compliance with those orders the seniority position of SM Gr.II/III was published as per letter dated 29.10.2012. Annexure A12 seniority list was published based on Annexure A13 directions. A13 instructions were not set aside by any court of law. The merger of SM Gr.II and Gr.III was a policy decision taken by the Government based on the recommendations of the 6th CPC. The equation or merger of posts and determination of pay scales is the primary function of the executive and it is not subject to judicial scrutiny. Seniority of a government servant is not his vested right. An act of a legislature or a rule made under Article 309 of the constitution can retrospectively affect the seniority of a government servant. The applicants appeared in the LDCE along with others. Applicants and ten others were empanelled as per Annexures A2 and A3. They were directed to undergo training from 10.9.2007 for a period of two years. On successful completion of the training, all of them were found suitable for absorption in the post of SM. Gr.II in scale 5000-8000.

4. The first applicant was working as SM Gr.III w.e.f. 23.8.2007 prior to his selection as SM Gr.II. Two categories were merged consequent on the introduction of the 6th Pay Commission pay scales w.e.f. 1.1.2006 and replaced by a single category of SM with grade pay of Rs. 4200/- w.e.f



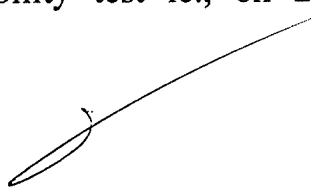
1.1.2006. The Railway Board in consultation with the DOP&T made it clear in Annexure A13 to protect the seniority of staff in cases in which at least a staff from a select list joined the selected post on or prior to 4.9.2008. Since none of the staff from Annexure A2 and Annexure A3 joined the post of SM on or prior to 4.9.2008 protection of seniority in terms of Annexure A13 cannot be granted. Therefore, the applicants are not entitled for seniority immediately below SM Gr.II who were holding the post prior to 4.9.2008. The applicants have already accepted the recommendations of the 6th CPC with retrospective effect from 1.1.2006 and obtained the consequential benefits/arrears also. Therefore, the applicants cannot stick on to the assignment of seniority based on their selection to SM. Gr. II in which they joined in July, 2009. The merger of the post of SM.Gr.II and SM Gr.III is a policy decision taken by the government based on the recommendation of the 6th Pay Commission. The allotment of pay scales, evaluation of duties and responsibilities etc. are purely of the function of the expert bodies like Pay Commission. As such the respondents contend that the applicants are not entitled to get the benefit as sought for by them.

5. The point for consideration is whether the applicants are entitled to be placed in the seniority list of SM.Gr.II in Annexure A12 immediately below the then existed SM Gr.II?



6. We have heard the learned counsel for the applicants and have also gone through the pleadings and documents on record.

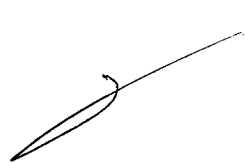
7. It is not disputed that the applicants appeared for the examination conducted under 10% LDCE quota which was held pursuant to Annexure A1 employment notification dated 7.7.2006. It is also not disputed that the applicants came out successful as can be seen from Annexures A2 and A3. After successful completion of the training for two years, they were appointed as SM Gr.II in Palakkad Division. Annexure A2 dated 5.7.2007 in respect of applicants 2, 3 and others would show that the applicants were selected and recommended for being placed for promotion as Traffic Apprentice (SM.Gr.II) in scale Rs. 5500-9000 against 10% LDCE quota. Annexure A3 is the similar order dated 6.8.2007 which is in respect of the first applicant and others. Annexure A4 would show that the applicants who were selected as per Annexure A2 and A3 were inducted to the post of SM Gr.II in PB 9300-34800 with GP of Rs. 4200/- against the vacancies earmarked for 10% departmental quota after completion of their training for a period of two years. It is further stated that they were declared as passed in the final suitability test held on 26.6.2009. It was also stated in Annexure A4 that for the purpose of future promotion to higher grade two years service in the lower grade is a must and this should be taken on the date of passing the final suitability test ie., on 26.6.2009. Therefore, it is



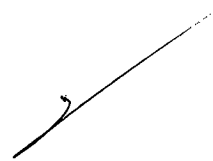
contended by the respondents that applicants cannot contend that they became SM Gr.II on any date prior to 26.6.2009. It is vehemently argued by the learned counsel for the applicants that since the applicants were inducted as SM Gr.II as can be seen from Annexure A4, they cannot be placed in the seniority list below the then existed SM. Gr.III officers. In short their plea is that they should have been placed immediately below the then existed SM.Gr.II.

8. Though the applicants contend that they should be placed immediately before the then existing SM.Gr.II and not below the then existing SM Gr.III, the officers who are likely to be affected by the claim raised by the applicants are not made parties to this OA. When the claim made by the applicants is for giving them seniority above the then existing SM Gr.III officers, those parties should have been made necessary parties to this OA. No reason was stated as to why those persons have not been made parties to this OA. The contention that it is for the respondents to fix the correct seniority position and so there was no necessity for the applicants to implead other officers of SM.Gr.II cannot be accepted.

9. Be that as it may, now the question for consideration is whether the applicants are entitled to get their seniority fixed just below the then existing SM.Gr.II officers. It is not in dispute that based on the recommendation of the 6th CPC there was merger of SM.Gr.II and Gr.III.



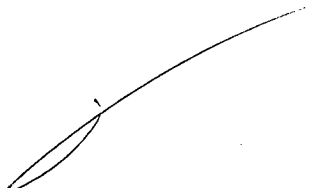
There can be no doubt that the merger of SM.Gr.II and III was a policy decision taken by the government based on the recommendations of the 6th Central Pay Commission. That is not under challenge also. According to the respondents, the applicants had, in fact obtained the benefit of consequential pay revision based on the 6th CPC. Relying the decision of the Hon'ble Supreme Court in *Secretary, Finance Department and others Vs. West Bengal Registration Service Association and others - AIR 1992 SC 1203*, it is argued by the learned counsel for the respondents that the equation of posts and determination of pay scale is a primary function of the executive and not the judiciary and therefore, ordinarily the courts will not enter upon the job of evaluation which is generally left to the executive like the Pay Commission. But the learned counsel for the applicants would submit that here, admittedly the applicants were selected as SM.Gr.II as can be seen from Annexures A2 and A3 under 10% LDCE quota as the applicants became successful in the examination conducted for that purpose. That is not in dispute. Thus according to the applicants since they were selected as SM.Gr.II they cannot be placed in the seniority list below the then existed SM.Gr.III. But since the recommendation of the 6th CPC was to be implemented w.e.f. 1.1.2006 the position as it stood on 1.1.2006 had to be reckoned. The applicants came out successful only after 1.1.2006. Not only that their position in the seniority list of SM Gr.II or Gr.III, as the case



may be, would be governed only w.e.f. the date 26.6.2009, the date of passing the final suitability test as mentioned therein. Therefore, the claim to have the seniority fixed would arise only w.e.f. 26.6.2009. But long prior to that there was merger of SM Gr.II and SM Gr.III.

10. The learned counsel for the applicant has drawn our attention to the fact that the applicants had earlier moved this Tribunal filing OA 269/2011. Annexure A11 is the copy of the order passed therein by this Tribunal. It is pointed out that provisional seniority list of SM.Gr.II and III cadre as on 1.1.2010 was circulated vide letter dated 24.3.2010 inviting representations from staff within one month from the date of issue of the said list. Objections were raised by the applicants and other persons. The applicants would refer to the observation made by the Tribunal that the promotion that was granted as per recruitment rules cannot be nullified arbitrarily.

11. The decision of the Hon'ble High Court in *Radhakrishnan Vs. State of Kerala – 1999 (2) KLT 465* was also relied upon in Annexure A11 where it was held that persons holding inferior posts should be placed below the last person holding the higher time scale post when integration is brought out. Finally the first respondent in that OA was directed to publish the final seniority list of S.M Gr.II and S.M Gr.III in accordance with law after considering all objections received by the first respondent.

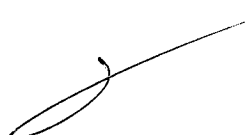


12. The Govt. of India/Ministry/Railway Board issued notification dated 26.9.2012 with regard to the issue of status of promotion made between date of effect and date of implementation of recommendations of 6th CPC and seniority of staff, in case, where two or more pre-revised grades were merged and placed in a common grade pay, in consonance with the recommendations of 6th CPC. The relevant portion of the order reads:

"The matter has since been examined and it has been decided that status of promotions and seniority of staff holding post in grades which have been merged in pursuance to recommendations of 6th CPC will be determined as under-

(i) The promotions made between 1.1.2006 to 4.9.2008 (date of implementation of 6th CPC on Raiwlays) will be protected as the same were made as per the provisions of statutory rules existing at that time. The merger of the pay sale(s) of the post(s) as recommended by 6th CPC have been made effective w.e.f. 1.1.2006; the seniority of government servant which existed on 4.9.2008 will be maintained ie., the holder of post having higher pay scale or post which constituted promotion post for the posts in the feeder grade, will rank enbloc senior to those holding post having lower pay scale or the posts in feeder grade.

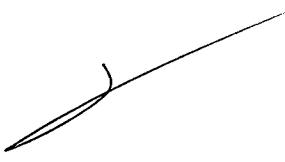
(ii) Where posts having different pay scales prior to 6th CPC recommendations and now after merger have come to lie in the same Pay Band with same Grade Pay, the inter-se seniority of all the employees will be fully maintained with employee in a higher pre-revised pay scale being placed higher vis-a-vis an employee in a lower revised pay scale being placed higher vis-a-vis an



employee in a lower pay scale. Within the same pre-revised pay scale, seniority which existed prior to revision would continue.


(iii) Where recruitment of the posts in different pre-revised pay scale(s) was initiated separately for each posts, prior to acceptance of recommendations of 6th CPC, ie., prior to 4.9.2008 but selected individual joined duty on or after 5.9.2008, in the revised pay scale(s) against the posts which have been granted same Grade Pay, such staff will be assigned seniority enbloc below those who were in position as on 4.9.2008."

Therefore, in the light of what have been directed under Annexure A1 the learned counsel for respondents would submit that since as per Annexure A4 they could claim seniority as SM Gr.II only w.e.f. 26.6.2009 and since Annexure A13 is clear on the point that the selected individual who joined duty on or after 5.9.2008 can be assigned seniority enbloc below those who were in position as on 4.9.2008, the claim made by the applicant cannot be sustained at all. Since there was merger of two posts, SM Gr.II and Gr.III, as on the date of implementation of the 6th CPC ie., 4.9.2008 and since that was directed to take effect from 1.1.2006 and as admittedly the applicants can claim the seniority only w.e.f. 26.6.2009 their plea that they should be placed above all SM Gr.III officers who were in position before the implementation of the 6th CPC cannot be sustained. Had there been no merger of SM. Gr.II and SM. Gr.III then there could be no doubt that the applicants should have been placed in SM Gr.II below all the existing SM



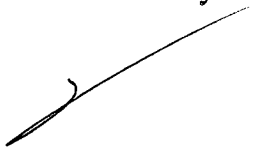
Gr.II Officers as on 26.6.2009. But based on the policy decision taken by the Government of India accepting the recommendations of 6th CPC the merger of two posts of SM Gr.II and SM Gr.III had taken effect. The post became SM ever since the date of implementation of the 6th CPC ie., 4.9.2008, and when it was implemented w.ef. 1.1.2006 the applicants cannot now contend that they should be placed below SM Gr.II officers as it stood prior to the integration/merger. It was clarified by the Hon'ble High Court in OP (CAT) No.941 of 2012 (vide Annexure R1) that all what was communicated in para 7 and 8 of Annexure A11 order could be taken as guidelines which may have to be considered while carrying out the exercise of considering the objections to the provisional seniority lists for coming out with the final seniority list of SM Grade II and III categories of Station Masters.

13. Relying upon the observations made by the Supreme Court in *Secretary, Finance* (supra) the respondents contend that the equation of posts and equation of salary is a complex matter which should be left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post. Court's interference is required only where it is absolutely necessary to undo the injustice. Annexure A13, is a common order passed by the Railway Board in consultation with the DOP&T. Such an order had



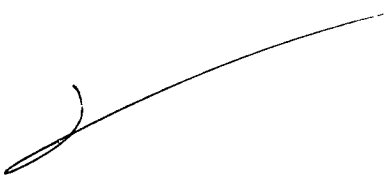
to be issued based on the policy decision taken by them consequent to the acceptance of the 6th CPC based on which the merger of SM. Gr.II and Gr.III had been implemented. Though recommendation of the Pay Commission implementation took place on 4.9.2008 it was done with retrospective effect from 1.1.2006. Even as on 4.9.2008 the applicants were not and could not be in the seniority list of SM.Gr.II since they passed the final suitability test only on 26.6.2009 as can be seen from Annexure A4. Therefore, the position as it stood on 4.9.2008 or prior to that date cannot be unsettled; that too when the applicants did not implead any of the officers who are likely to be affected, if the claim made by the applicants is to be allowed.

14. It is contended by the respondents that the seniority as assigned in Annexure A12, was done as per existing instructions of seniority that is date of entry into the Grade Pay of Rs. 4200/-. The selection of the applicants to SM.Gr.II as per Annexures A2 and A3 do not entitle the applicants for assignment of seniority over other SMs in Gr.III who were working as SM Gr.III in the scale of Rs. 5000-8000 prior to 1.1.2006. Since the Grade Pay of SM, from 1.1.2006 is Rs. 4200/- the seniority would be assigned from the date of entry into the Grade Pay of Rs. 4200/- based on the provisions at para 2(ii) of Annexure A13 quoted above. It is further pointed out that the applicants' date of entry into the Grade Pay Rs. 4200/-



would be date of promotion as SM.Gr.II in the scale of Rs. 5000-8000. The first applicant was promoted as SM.Gr.III w.e.f. 23.8.2007 and he was assigned seniority in Grade Pay of Rs. 4200/- w.e.f 23.8.2007. Applicants 2 and 3 were selected as SM Gr.III from ASM in Grade Pay Rs. 2800/-and therefore they are entitled for assignment of seniority in SM grade only from the date of their regular promotion to the Grade Pay of Rs. 4200/- ie., from 19.7.2009 in the case of 2nd applicant and from 20.7.2009 in the case of the third applicant.

15. The first applicant was working as SM Gr.III w.e.f. 23.8.2007 prior to his selection as SM.II but the two categories of SM.Gr.II and Gr.III scales of pay were replaced by a single category - SM Gr.II with GP of Rs. 4200/- w.e.f. 1.1.2006. The guidelines in Annexure A13 make the position clear as regards assignment of seniority in the merged grades in the cases of promotees between 1.1.2006 and 4.9.2008 and what should be the position after 4.9.2008. The first applicant was promoted as SM Gr.III w.e.f. 23.8.2007 and he was assigned seniority in Grade Pay of Rs. 4200/- w.e.f.. 23.8.2007. Since 2nd and 3rd applicants have joined as SM in PB II with Grade Pay of 4200/- after 4.9.2008, they can be placed only below all available staff as on 4.9.2008 in the cadre of Station Master Grade III. That was done maintaining their inter-se seniority followed in Palakkad Division .



16. The respondents would also rely upon a common order passed by this Tribunal in OA 631/2014 and two other cases dated 18.5.2015. There also the Railway Board letter (Annexure A13) referred to supra, which was marked as Annexure A7 in the aforesaid OA 631/2014, was dealt with. The applicants therein actually joined the post only after the prescribed cut off date and hence it was held that they cannot claim seniority above those who have already been there in the merged cadre as on the cut off date.

17. Therefore, in the light of what have been delineated earlier, we have no hesitation to hold that the claim made by the applicants that they should be placed below existing SM.Gr.II in the seniority position is found to be bereft of any merit. The seniority fixed following Annexure A13 is found to be just and proper. It needs no interference. The OA is found to be devoid of any merit. It is accordingly dismissed. No order as to costs.


(Mrs. P. Gopinath)
Administrative Member


(N.K. Balakrishnan)
Judicial Member