

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 525/91
XXX

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DATE OF DECISION 04.9.1992.

Mr PK Kunjukutty _____ Applicant (s)

Mr K Ramakumar _____ Advocate for the Applicant (s)

Versus

Union of India (GM, Southern
Railway) and 4 others _____ Respondent (s)

Mr MC Cherian _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. SP Mukerji - Vice Chairman

&

The Hon'ble Mr. AV Haridasan - Judicial Member

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

JUDGEMENT

(Hon'ble Shri AV Haridasan, JM)

The grievance of the applicant, Chief Parcel Supervisor, Erode, is that the respondents 4 & 5 have been shown as senior to him in the provisional seniority list of Commercial Clerks in the grade of Rs.2000-3200/- as on 1.1.1990. He has in this application prayed that the seniority list at Annexure D wherein respondents 4 & 5 have been placed at S1 Nos.6 & 19 respectively while he has been assigned S1 No.20, may be set aside to the extent of the placement of the respondents 4 & 5 above him, that it may be declared

that he is senior to respondents 4 & 5 and that the respondents 1 to 3 may be directed to promote him to the higher post before such promotion of respondents 4 & 5.

2. The facts can be briefly stated as follows:-

The applicant who belongs to a Scheduled Caste, was initially appointed as Commercial Clerk in the grade Rs.260-430/- in the Palakkad Division on 18.11.1966. The respondents 4 & 5 belong to Pulaya community which was, till the Scheduled Caste/Scheduled Tribe Act was amended by the SC/ST (Amendment) Act 1976, included in the list of STs. When the SC/ST (Amendment) Act, 1976 came into force with effect from 27.7.1977, the Pulaya community in Kerala was removed from the list of STs and was classified as Scheduled Caste. The 4th respondent was initially appointed against a ST quota in the Madras Division of the Southern Railway as Commercial Clerk in the scale of Rs.260-430/-. The 5th respondent was initially appointed in the ST quota in the Palakkad Division on 8.7.1976. After ^{the} passing of the SC/ST(Amendment) Act, 1976, the Railway Board issued an order dated 23.1.1978 bringing over the Pulaya community into the SC pursuant to the above Act. But before this date, the 4th respondent was promoted as Senior Commercial Clerk in the grade Rs.330-560/- in the Madras Division on 11.9.1977. The 5th respondent who was in Palakkad Division was also promoted as Senior Commercial Clerk with effect from 14.8.1977.

Since some employees belonging to Pulaya community who were originally recognised as Scheduled Tribes in the Malabar area of Kerala State prior to the issue of the SC/ST (Amendment) Act, 1976, were promoted against the quota reserved for STs between 27.7.1977 (the date on which the Act came into force) and 23.1.1978, a question was raised as to how the promotion of such employees should be dealt with in the light of the SC/ST (Amendment) Act, 1976. The Railway Board issued two letters dated 23.9.78 and 23.3.82 respectively giving clarification as to how such promotees had to be adjusted. In the letter dated 23.9.78 (Exhibit R1) it was directed as follows:-

"A question has, therefore, been raised as to how the promotion ordered of such employees against the quota reserved for Sch. Tribes during the period between 27.7.1977 and 23.1.78 should be dealt with in the light of the Sch. Castes and Sch. Tribes (Amendment) Act, 1976. Employees belonging to PULAYAN community, who were promoted against the Sch. Tribe quota after 27.7.77 should be adjusted against the quota reserved for Sch. Castes. But employees of PULAYAN community who are Christians cannot be regarded as Sch. Castes and as such they cannot be allowed to retain the benefit of promotion and counted against the Sch. Caste quota. The Sch. Tribe vacancies released by the adjustment of employees against the Sch. Caste quota should be provided to Sch. Tribes and filled accordingly. PULAYAN Christian employees who had been promoted as Sch. Tribes prior to the amended Act should not be reverted."

In the Board's letter dated 23.2.1982 (Exhibit R2) in regard to the seniority of employees promoted towards ST quota and adjusted against the SC quota, the following clarification was given:-

"It is clarified that candidates belonging to Pulayan community now treated as Scheduled Caste as per the Amendment Act 1976, may be adjusted against the scheduled caste quota. The seniority of the SC candidates should be revised to maintain the inter se seniority in case of senior SC candidates who have been promoted later than the SC candidate as per the Amendment Act now adjusted against the SC quota."

The 4th respondent was again promoted to the grade Rs.425-640/- on 9.3.78 to Rs.455-700/- on 11.12.80 and to Rs.550-750/- on 21.7.82 as per the seniority position in the Madras Division. While he was in the grade Rs.550-750/- he was transferred to Palakkad Division on 21.5.82 as Chief Commercial Clerk Grade II. The applicant was promoted to the grade Rs.330-560/- only on 12.10.80. While so, the applicant on 8.11.1986 made a representation to the Railway Divisional Manager (Personnel), Palakkad, claiming seniority over Mr Munusamy and Mr Kesavan and the 5th respondent on the ground that all these three person who are members of the SC joined service as Commercial Clerk in the grade Rs.260-430/- on 7.4.74, 21.11.73 and 8.7.76 respectively while he had joined service in the same grade on 18.11.66. This representation was made by him after a perusal of the seniority list of the Commercial Clerks in the grade Rs.260-430/-, 455-700/-, 550-750/-. But he had not raised any claim in this representation about the seniority assigned to the 4th respondent in the seniority list. On a consideration of this representation, the Divisional Personnel Officer, Palakkad, issued an order dated 19.6.87 (a full text of which is produced as Exhibit R4) by which the applicant was promoted as Senior

Clerk/Head Commercial Clerk/CBSR on proforma basis from the date of promotion of his junior Shri M Munusamy. His promotion as Senior Commercial Clerk in the Grade Rs.330-560/- was to take effect from 12.10.80 and that of the post of Head Commercial Clerk in Grade Rs.425-640/455-700/- was to take effect from 1.4.85 (due to withholding of a.i. for 18 months from 1.10.83) and as Chief Commercial Clerk in the grade Rs.550-750 (1600-2660) with effect from 20.4.85. Below this order, it was also stated as follows:-

"Shri PN Damodaran, CBSR was appointed against ST quota and got promotion as Sr Commr Clerk from 8.7.1976 against ST quota. His community has now been included as SC. As, however, he was promoted as Sr Commr Clerk earlier than you, he will rank senior to you."

On receipt of this order, the applicant on 19.8.87, made a further representation to DRM (P), Palakkad in which his only complaint was that he was not given the arrears of pay and allowances consequent on the ante-dated promotion. He did not raise any complaint against not assigning to him seniority over the 5th respondent (Annexure B is a copy of this representation made by the applicant). But more than two years thereafter, on 4.10.89, the applicant made a representation to the General Manager (Personnel), Southern Railway, Madras (Annexure C) in which the applicant contended that the promotion of Shri PM Damodaran to the grade Rs.330-560/- on 14.8.77 against ST quota after the Pulaya community was declared as a SC by the SC/ST (Amendment) Act, 1976

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with effect from 27.7.1977 was erroneous and illegal and claiming that the applicant should be given promotion ~~xxx~~ in advance of the promotion of the 5th respondent. This representation was not disposed of. While so, the 2nd respondent published the impugned provisional seniority list of Commercial Clerks as on 1.1.1990 (Annexure D) placing the 4th respondent at S.No.6, the 5th respondent at S.No.19 and the applicant at S.No.20. Against the provisional seniority list of 1.1.90, the applicant made a representation, a copy of which is at Annexure E claiming seniority over respondents 4 & 5. As this representation has not been disposed of and apprehending that the respondents 1 to 3 would grant further promotions to the respondents 4 & 5 basing on the impugned provisional seniority list, the applicant has filed this application. It has been averred in the application that as the promotion of the respondents 4 & 5 in the SC quota was only by a mistake, they do not have any further right to seniority over the applicant or for further promotion on the basis of the mistaken seniority.

3. In the reply statement filed on behalf of the respondents 1 to 3, it has been contended that the respondents 4 & 5 had been promoted to the grade Rs.330-560/- on 11.9.77 and 14.8.77 respectively before the receipt of Railway Board's order dated 23.1.1978, that their promotions were dealt with in accordance with the clarifications given by the Railway Board in its letters dated 23.9.78 and 23.3.82, that at the time when the respondents 4 & 5 were promoted to the grade

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Rs.330-560/-, the applicant was in the lower grade of Rs.260-430/- and thereafter they had never been in the same grade and that, therefore, there is absolutely no merit in the contention of the applicant that the placement of the respondents 4 & 5 above him in the seniority list is erroneous or unjustified. It has further been contended that as the 4th respondent came to Palakkad Division on 21.5.1983 on transfer while he was in the grade Rs.550-750/- while the applicant was in the lower grade of Rs.425-640/- there is absolutely no basis for the claim of the applicant that he is entitled to seniority over the 4th respondent. Regarding the claim of the applicant for seniority above the 5th respondent, it has been contended that as early as in the year 1987 (Exhibit R4), the applicant was made to understand that the 5th respondent having been promoted in the ST quota earlier than the applicant, he had to take rank below him and that in his representation dated 19.8.87 at Annexure B, the only grievance which was raised by him against the Exhibit R4 order was that he had been denied arrears of pay and allowances. The respondents, therefore, contend that there is absolutely no legitimate grievance for the applicant to be redressed.

4. In the rejoinder, the applicant has contended that on 21.5.1983 when the 5th respondent was transferred from Madras Division to Palakkad Division he should have been reverted to the lower grade and should have been made to

occupy the bottom-most position in the seniority list in accordance with the statutory rules. Regarding Exhibit R4 and the statement contained therein that the 5th respondent would rank senior to the applicant, the applicant has contended that it was for the first time through Exhibit R4 that he came to know that the 5th respondent ranked senior to him and that he had made Annexure C representation to higher authorities and that, therefore, there is no question of any acquiescence.

5. Shri Ramachandran Nair, the learned counsel for the applicant sternly argued that as the applicant and the respondents 4 & 5 belong to SC, as the applicant was appointed as Commercial Clerk on 18.11.1966 while respondents 4 and 5 were so appointed only on 14.3.1977 and 8.7.1976 respectively, the erroneous promotion given to the 4th & 5th respondents in the ST quota in the year 1977 would not confer on them an eternal benefit of seniority over the applicant and that the respondents 1 to 3 have committed a severe mistake in not rectifying the error committed by them in violation of the statutory rules. Shri Nair further argued that if the respondents 1 to 3 had done that at least when the applicant had pointed their attention to the injustice done to him, the applicant would not have been driven to & 5th litigation. If the promotion of the 4th/respondents to the grade Rs.330-560/- with effect from 11.9.77 and 14.8.77 respectively, was erroneous and by a mistake, probably it

could be said that there is merit in this contention. Pulayan community of Malabar in Kerala was recognised as a community included in the ST category until it was brought under SC by the SC/ST (Amendment) Act, 1976 which came to ~~force~~ with effect from 27.7.1977 by a notification which was issued thereafter. So, until the amendment, persons belonging to Pulaya community were treated as belonging to ST. The Railway Board's letter communicating the conversion of Pulaya community from ST to SC was issued on 23.1.1978. Between 27.7.1977 and 23.1.78 some persons belonging to Pulaya community including the respondents 4 & 5 had been promoted. The question whether such promotions should be cancelled or the promotees should be allowed to continue in the promoted post was considered by the Railway Board and the Railway Board issued two letters dated 23.9.78 and 23.2.82 (Exhibit R1 & R2) clarifying in unambiguous terms that such promotees should not be reverted and that in the case of Hindus, such promotions should be adjusted towards the SC quota vacancies. Even Pulaya Christians promoted during this period, though not to be adjusted towards the SC quota, were directed not to be reverted. Therefore, by these two clarifications issued by the Railway Board, the promotions of respondents 4 & 5 to the grade Rs.330-560/- and promotions of similarly placed other persons were ~~protected~~ saved. Therefore, there is absolutely no merit in the contention raised on behalf of the applicant at this distance of time that the promotions of respondents 4 & 5 were by a mistake and that by such

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promotion they should not be given the benefit of seniority. has only to be rejected. The applicant has not sought to challenge the validity of the Railway Board's decision contained in Exhibit R1 & R2. Respondents 4 & 5 and the applicant had never been in the same grade after they were promoted to the scale of Rs.330-560/-. In the case of the 4th respondent, he being appointed in the Madras Division and promoted while working in Madras Division to Grade Rs.330-560/-, 425-640/-, 455-700/- and 550-750/- has come to Palakkad Division to which the applicant belongs, as Chief Commercial Clerk grade II in the scale of Rs.550-750/- on 21.5.83 while the applicant was in the scale Rs.330-560/-. He was promoted to the grade Rs.425-640/- only on 1.4.85. Therefore, there is absolutely no meaning in the applicant's claiming that he is senior to the 4th respondent. ~~that is the 4th respondent has come to Palakkad Division in the scale of Rs.550-750/-~~

Even in his representation made on 8.11.86 (Exhibit R3), the applicant had not raised any grievance regarding the position assigned to him. The learned counsel for the applicant argued that the 4th respondent should have been reverted to the lower grade when he was transferred to Palakkad Division because according to the rules regarding inter-divisional transfers on request, the transfer should be made only to the recruitment grade and that the recruitment grade in this case is only in the grade Rs.260-430/-. First of all, there is no indication in the application or

even in the rejoinder that the 4th respondent was transferred at his request. Even assuming that the transfer was on his own request and even conceding that transfer could only be in the recruitment grade as the applicant has not chosen to challenge the transfer of the 4th respondent in the scale of Rs.550-750/- made on 20.5.83, he cannot be heard to challenge it at this distance of time.

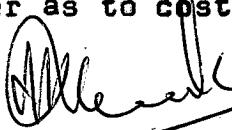
6. Regarding his grievance about the inter se seniority position between him and the 5th respondent, the applicant was told on 19.7.87 by Exhibit R4 order that the 5th respondent having been promoted against ST quota as Senior Commercial Clerk earlier than the applicant, the applicant was junior to him. In his representation at Annexure B made pursuant to the order dated 19.6.87 at Exhibit R4, he did not raise any grievance regarding the seniority position given to the 5th respondent. On the other hand, the first paragraph in the Annexure B representation reads as follows:-

"I am in indesited to the action of the administration, in that my representation against denial of promotion was considered with an unbiased attitude and orders passed favourably."

His only grievance projected in this representation was that he was not given arrears of pay and allowances on the basis of the ante-dated promotion. Further, as observed by us, since the promotion of the 5th respondent on 14.8.87 to the grade Rs.330-560/- cannot be considered to be made as a mistake and since that had been regularised in terms of the

decision contained in the letters of the Railway Board at Exhibit R1 & R2, the 5th respondent is entitled to all the benefits of the promotion. Since the applicant and the respondents 4 & 5 were in entirely different grades right from 1977 onwards, we are convinced that there is absolutely no merit in his claim that he is entitled to be given seniority over respondents 4 & 5 and that he should be given promotion to the next higher grade before respondents 4 & 5 are promoted. We are also convinced that the seniority position assigned to the applicant and the respondents 4 & 5 does not call for any modification.

7. In the light of what is discussed above, finding no merit in the application, we dismiss the same without any order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER

4-9-92


(SP MUKERJI)
VICE CHAIRMAN

04.9.1992.

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