

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 526/91
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188

DATE OF DECISION 4-11-1992

K.Ramesh Kumar Applicant (s)

Mr. P.Sivan Pillai Advocate for the Applicant (s)

Versus

Union of India through Respondent (s)
The General Manager, Southern
Railway, Madras & 2 others.

Smt.Sumathi Dandapani Advocate for the Respondent (s)

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? 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

Applicant is working as AC Coach Attendant in Southern Railway at Mangalore. He is aggrieved by the refusal of the respondents to include him also in Annexure-A5 panel prepared for appointment to the post of AC Machanic HS-II after trade test.

2. According to the applicant, he was appointed as a regular Khalasi in the Electrical Department, Palghat Division, in the year 1985. As per Annexure-A1 avenue chart for airconditioning staff applicant is eligible to be absorbed as AC Khalasi. He volunteered for the post of AC Khalasi and accordingly he was posted as AC Khalasi in terms of

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office order Annexure-A2 dated 17.6.1986. Thereafter, he was promoted as AC Coach Attendant in the scale of Rs.800-1150 as per Annexure-A3 order of Sr.DEE/PGT dated 10.6.1987. The promotion order mentioned that it was purely on ad-hoc basis and will not confer on the appointee any claim for continuance in the grade, promotion, seniority, etc. at a later stage but the posting orders are being issued pending regular posting in the cadre. Except in the case of serial No.1 whose promotion is subject to trade test, others need not subject themselves for trade test to get promotion. While so, when vacancy arose in the post of ACM/II in the scale of Rs.1200-1800 the applicant was also alerted as per Annexure-A4 ~~for~~ appearing along with others for trade test. In the said Memorandum, Annexure-A4, the applicant's name was at serial No.18. According to the applicant he attended the trade test. When the result of trade test was published as per Annexure-A5 memorandum dated 12.3.91 the applicant was shown at serial No.23 as having passed the trade test held against AC Coach Attendant, the post applicant is holding at present, and all those who are included in the panel, Annexure-A5, for ACM/II are juniors to the applicant. Hence the applicant stated that Annexure-A5 is illegal and discriminatory in so far it excludes xxx xxxx xx the applicant alone while others for the post of ACM HS II. junior to him were included in the same. He filed this application under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

- "(a) To direct the respondents to include the applicant also in Annexure-A5 panel for the post of AC Mechanic HS II in preference to his juniors with all attendant benefits.
- (b) To issue such other orders or directions as deemed fit and necessary by this Hon'ble Tribunal in the facts and circumstances of this case.

3. The respondents in the reply statement admitted the fact that the applicant was transferred to the AC Cadre considering his willingness in 1986 but contended that his working as AC Khalasi in the scale of Rs.750-940 was on ad-hoc basis till 16.11.89 on which date his appointment was regularised after trade test. Others who are included in the Annexure-A5 panel for ACM/II are senior to the applicant because they were appointed as AC Khalasis in 1987. In order to manage the day-to-day working, the applicant along with some other similarly placed employees were posted as AC Khalasis as per Annexure-A2 which was issued purely on a temporary basis at Palghat Division pending regular posting by Trivandrum Division. The applicant was also aware of the fact that his posting as AC Khalasi was purely on a temporary measure. The further posting of the applicant as AC Coach Attendant as per Annexure-A3 in a higher scale of Rs.800-1150 was also on ad-hoc basis and this is clear from Annexure-A3 itself. Based on his temporary posting in Palghat Division no seniority can be claimed by the applicant in a regular cadre which was controlled by the Trivandrum Division. His name was not included in the seniority list of AC Khalasis published on 6.5.90. Considering the representation filed by the applicant his name was included in the trade test for ACM/II in Annexure-A4. Inclusion of his name in the list Annexure-A4 raised complaints and a mass petition, it was ^{it was} ~~found~~ Annexure-R1 from others and on verification/ ^{it was} found that his inclusion in the list was due to a mistake and Annexure-R5 letter dated 12.12.90 was sent to Palghat Division stating that since the applicant was absorbed as regular AC Khalasi only with effect from 16.11.89 his name is to be deleted from the list of employees who have been alerted for trade test for the post of ACM/II / ACC (IC) and he is to be subjected

for suitability test for the post of ACCA/AC Khalasi Helper in the scale of Rs.800-1150 only and that if any trade test for the post of ACM/II in the scale of Rs.1200-1800 was already conducted the same may be treated as cancelled. As such, in terms of Annexure-R5, the applicant was trade tested only for the post of AC Coach Attendant/AC Khalasi and he passed the trade test. Accordingly his name was included in Annexure-A5 panel at serial No.23. In view of this, the statement of the applicant that he attended the trade test successfully for the post of ACM/II is wrong and has been made on an imaginary basis only to mislead the Tribunal. It is to be noted that based on his regular appointment with effect from 16.11.89 applicant's submission that all persons who are included in Annexure-A5 panel for the post of ACM/II are junior to him is not correct and against the facts. Though he might have been working in the AC side from 1986 onwards, since the appointment was only on an ad-hoc basis he cannot claim any seniority over the others who have entered the AC cadre in 1987 on a regular manner. Therefore, there is no substance in the contention ~~in~~ the application ^{and} it is liable to be dismissed.

4. Applicant filed a detailed rejoinder reiterating his statement in the application and submitted that based on his entry in the AC cadre and his promotion to the grade of Rs.800-1150 by Annexure-A3 order dated 10.6.87 he should be deemed to have entered ~~the~~ AC cadre with effect from 17.6.86 on regular basis. It is only because he was having regular service that he was called for trade test for the post of ACM/II in the scale of Rs.1200-1800 by Annexure-A4 memorandum dated 15.11.90. Even though the applicant has passed the trade test for ACM/II the respondents failed to include him in Annexure-A5 as ACM/II. He has produced

Annexure-A6 letter of the Chief Personnel Officer dated 27.8.1986 to show that post of AC Khalasi can be filled up on a regular manner with volunteers having requisite qualification from the respective units by transfer. He was a regular employee in the Electrical side and his transfer to AC cadre comes within para 312 of the Indian Railway Establishment Manual. Hence the applicant is entitled to count his seniority in the AC cadre with effect from the date when he joined in the AC cadre i.e. 17.6.1986 and not from 16.11.1989 as contended by the respondents. He has also produced Annexure-A7 provisional seniority list of AC Khalasis as on 1.5.90 and a statement Annexure-A8 worked out by him to establish that the applicant is senior to persons included in Annexure-A5 panel for ACM/II.

5. Having heard the counsel on both sides and after perusing the documents the only question to be examined is the claim of the applicant for inclusion in Annexure-A5 panel for ACM/II and see whether the applicant's original entry in the AC cadre as per order dated 17.5.86 is only on temporary measure and whether that entry confers right on the applicant to count his seniority from that date. The specific case of the applicant is that persons who have volunteered for the post of AC Khalasis will be absorbed into AC Khalasis if such candidates satisfy educational and other qualifications prescribed by the railway and this is clear from Annexure-A1 avenue chart read along with Annexure-A6 letter of Chief Personnel Officer dated 27.6.1986. Annexure-A6 only states that if there are enough volunteers from regular Khalasis with qualification of Matriculation, they should be considered in that grade based on the length of service. After the appointment of the applicant as AC Khalasi as per Annexure-A2 he was given a further promotion

to higher grade having a scale of Rs.800-1150 without any trade test. Even though that order shows that the posting was ad-hoc and provisional he continued in that post till Annexure-A4 letter which was issued by the Divisional Personnel Officer alerting candidates to be ready to appear for a trade test. Applicant is the only ACCA included in the list for the post of ACM/II. He was also allowed to participate in the trade test and he was declared passed only as AC Coach Attendant by including his name at serial No.23, Annexure-A5. From these facts it can be seen that the applicant's entry as AC Khalasi in 1986 was only on a provisional basis as contended by the respondents. If his transfer to AC cadre was treated as a regular he would have been shown as ACM/III as in the case of others shown in the same list. Annexure-R1 is a letter from AC Staff of Palghat Division to Divisional Railway Manager. It shows that the applicant and one Shri Rajagiri were found unsuitable for AC cadre, but four others were found suitable and posted as AC Khalasis as per letter dated 25.5.87. Thereafter the applicant had given letter expressing unwillingness to work in the AC cadre. Again when he expressed his willingness to work in the AC cadre he was called for suitability test and he passed the same. Accordingly he was posted as regular AC Khalasi with effect from 16.11.89 as per letter Sr.DPO/PGT office order No.J/E27/90 dated 11.6.90. The applicant did not challenge the above two orders by which four of his juniors were regularly posted as AC Khalasis and the applicant was given regular posting with effect from 1989 respectively. Under these circumstances the applicant is estopped from claiming regular service from an earlier date particularly when the above proceedings remain unchallenged and his juniors were regularised at an earlier date after trade tests. It is also to be noted that the applicant had not impleaded any of his alleged juniors who will be adversely affected by according the reliefs prayed

for in this application.

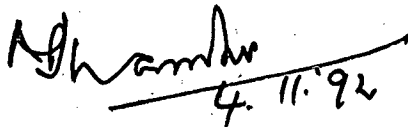
6. The applicant had been selected for ACCA after the alert letter, Annexure-A4 and this is clear from Annexure-A4 and R5. Annexure-R5 produced along with the reply shows that the applicant's selection, if any, for the post of ACM/II in the scale of Rs.1200-1800 is to be cancelled. Since there was ~~no~~ selection for ACM/II the cancellation did not take effect. The applicant was never trade tested for ACM/II as contended by him in the application. He was only trade tested for ACCA and this is clear from Annexure-A5 and assignment of rank No.23.

7. The applicant's contention based on Annexure-A2 and A3 read with A6 that he was regular employee in AC cadre from 1986 cannot be accepted in view of the clear statement in Exhibit-R1 that he appeared for trade test for regularisation in the year 1987 and 1989. If he was a regular employee in that cadre he would not have appeared for trade test along with others ^{in 1987 & 1989.} When he was not successful in 1987 he expressed his unwillingness to continue in AC cadre. These facts are suppressed by the applicant and are against the allegations and statements in the original petition and rejoinder. Having regard to the facts and circumstances of the case we are of the view that the applicant's original entry in AC cadre on 17.6.1986 was not regular as contended by him. This posting was not after a regular trade test or other formalities for absorption in that cadre. Merely because the applicant was given Annexures-A2 and A3 and posting on ad-hoc basis we cannot come to the conclusion that the applicant's posting was on a regular basis. Hence we reject the contentions of the applicant.

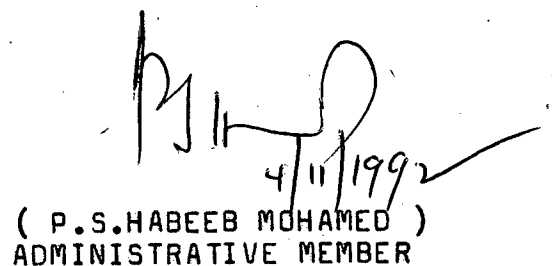
8. In the light of the foregoing discussions we are of the view that the applicant's absorption as AC Khalasi as per Annexure-A2 cannot be treated as of a regular basis

particularly when Annexure-A2 itself states that the Khalasis including the applicant have opted to come over to AC cadre and were posted as AC Khalasis on temporary measure pending regular posting. If orders at Annexures-A2 and A3 had conferred a valid right on the applicant as regular employee in AC cadre he would not have expressed ^{after failure in trade test in 87.} his unwillingness to continue in the AC cadre⁷. In these circumstances we are of the view that the applicant's seniority in the AC cadre cannot be accepted from 1986.

9. In this view of the matter we are satisfied that the applicant has not made out a genuine grievance and he is not eligible to be included, for the post of ACM/II, in Annexure-A5 taking into consideration his pass in the trade test for AC Coach Attendant and declaration of the same by including his name at serial No.23. Accordingly we dismiss the application as devoid of any substance. There will be no order as to costs.


4. 11. 92

(N.DHARMADAN)
JUDICIAL MEMBER


4/11/1992

(P.S.HABEEB MOHAMED)
ADMINISTRATIVE MEMBER

v/-