

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 547/2002

FRIDAY, THIS THE 15th DAY OF APRIL, 2005.

C O R A M

**HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER**

S. Vijayan S/o N. Sreedharan
Sr. Technician Signals, Karunagappalli
residing at Tharayil Puthen Veedu
Koor, Arinalloor Postal Quilon District Pin 690 538.....Applicant

By Advocate Mr. T.C. Govindaswamy

Vs.

1. Union of India represented by the General Manager
Southern Railway, Headquarters Office
Park Town P.O. Chennai-3.
2. Divisional Railway Manager
Southern Railway
Trivandrum Divisional
Trivandrum.
3. Senior Divisional Personnel Officer
Southern Railway
Trivandrum Divisional
Trivandrum
4. S. Anoop, Technician Grade-I(Signals)
Southern Railway,
Kottayam R.S. & P.O. Respondents

By Advocate Mr. Thomas Mathew Nellimoottil by R-3
By Advocate M/s Santhosh & Rajan for R-4

ORDER

HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

The applicant, S. Vijayan a Senior Technician, Signals (Master Craftsman) of the Southern Railway is aggrieved by his placement in A-11 seniority list of Technicians Grade-I(Signals) and by A-13 communication declaring him junior to one S. Anoop in disregard of his response to the show cause notice issued to him.

2. S. Vijayan joined the Railways as Electrical Signal Maintainer (ESM) Grade-III on 1.6.1981 and was absorbed against a working post on completion of training w.e.f. 10.8.1982. He was promoted as ESM Grade-II w.e.f. 1.4.1983. While so, S. Anoop (the fourth respondent) was appointed as ESM Grade-II on 13.5.1983 and on successful completion of training was absorbed against a working post on 26.11.1984. By RBE No. 207/85 dated 10.7.1985 the Railway Board decided to grant relief to unskilled, semi-skilled and skilled artisan staff through a reclassification allotting a higher proportion of posts in the higher echelons retrospectively w.e.f. 1.1.1984. In the category of ESMs, to which the applicant and the fourth respondent belonged, the ratio of posts in Highly Skilled-I, Highly Skilled-II and Highly Skilled changed from 30:35:35 to 50:30:20. This implied that a larger number of posts were made available by reclassification at the highest echelon of HSK-I w.e.f. 1.1.1984 and as per the scheme of fitment those working at HSK-II stood benefited by the grant of automatic elevation to HSK-I in the order of seniority and to the extant of additional posts made available by reclassification, provided they were otherwise suitable, without passing any trade test for promotion. The applicant

was at ESM(HSK) Grade-II on 1.1.1984 and the 4th respondent was still under training (drawing a stipend) as an Apprentice ESM (HSK) Grade-II. For reasons which could not be clarified by the respondents despite several rounds of litigations, the fourth respondent despite being a trainee HSK-II was granted in 1987 the promotional benefit of reclassification w.e.f. 1.1.1984 and the applicant was ignored. It is an established fact that the applicant stood promoted to ESM (HSK) Grade-II with effect from 1.4.1983, while the fourth respondent had joined as ESM(HSK) Grade-II apprentice on 13.5.1983. On representation, the applicant was promoted to ESM (HSK) Grade-I w.e.f. 1.1.1984 by A3 orders dated 4.2.1988 with the stipulation that the relative seniority of those (that included the fourth respondent) promoted in 1987 and those (that included the applicant) promoted in 1988 would be maintained. This meant that the relative seniority in HSK Grade-II would be maintained in HSK Grade-I in respect of those promoted. By this reckoning the applicant would most certainly stand higher in the order of seniority over the fourth respondent. But the provisional seniority list of January, 1993 did not reflect this position. After a litigation was raised by interested parties including the applicant, yet another provisional seniority list was published on 22.4.1999 (Annexure A4) which assigned Sl.No.6 to the applicant and Sl.No.36 to the fourth respondent. The fourth respondent filed OA 643/1999 on 10.6.1999 before this Tribunal seeking the quashing of this seniority list. The applicant in the present O.A. was however was not impleaded as a respondent in O.A. 643/1999. During the pendency of the Application, the applicant was promoted as Master Craftsman by A1 order dated 16.12.1999. The Tribunal by its order dated 5.10.2001, allowed OA 643/1999 and set aside the impugned provisional seniority list of 1999 directing the respondents to restore the seniority of the applicant

(Anoop) as reflected in the seniority lists and set aside the impugned lists as on 30.4.1985, 1.3.1989 and 30.11.1992. The Tribunal also found that the post of ESM(HS) Grade-II held by Anoop, which was open for direct recruitment, did not involve apprenticeship and therefore the date of entry into the grade on completion of training should be reckoned as 13.5.1983 and not 26.11.1984. By that reckoning, the Tribunal reasoned that Anoop was very well entitled for promotion w.e.f. 1.1.1984 to the ESM (HS) Grade-I following reclassification.

3. The present application filed on 2.8.2002 by S. Vijayan, who was not impleaded in OA 643/1999 and which was decided in favour of Anoop (the applicant in OA 643/1999, impleaded as the fourth respondent herein), has opened up a breach taken as sealed by the orders in O.A. 643/1999. Considering the unsettling effects it may produce on the body-fabric of a cadre of employees, we have persuaded ourselves to recheck the calibrations materializing from the Tribunal's orders in O.A. 643/1999 in the light of the applicant's claim for relief in this Application. Incidentally, one of us was a member of the Bench that delivered the verdict in O.A. 643/99.

4. Heard.

5. It is an undisputed fact that the applicant was promoted as ESM Grade-II on 1.4.1983, while the fourth respondent (Anoop) joined ESM Grade-II on 13.5.1983. This Tribunal in OA 643/1999 having already decided that the date of joining the grade by Anoop should be held as 13.5.1983 notwithstanding the fact that he was appointed

against a working post only on 26.11.1984, this matter is settled. Thus, in any seniority list of ESM Grade-II, the applicant would figure above the fourth respondent. This inter-se seniority would be carried forward when both of them would be promoted to ESM Grade w.e.f. 1.1.1984. Thus in any seniority list of ESM Grade-I the applicant would figure above the fourth respondent. Further, promotion to the grade of Master Craftsman would follow this established seniority and hence the applicant would, in the circumstance, not be required to make way for the respondent who is his junior. The Tribunal in O.A. 643/1999 basically determined the date from which the seniority of the fourth respondent (Anoop) would be reckoned. Accordingly it went on to grant Anoop, in the absence of any meaningful pleadings to the contrary, the benefits of seniority as determined in the provisional seniority lists of 1985, 1989, and 1992, while quashing the proposals to recast those seniority lists. As the seniority lists of 1985, 1989 and 1992 were not challenged, the Tribunal quite naturally accepted these as final. It was not brought to the notice of the Tribunal that these lists were not only provisional, these would have to be recast on the basis of Anoop's date of commencement of regular service decided by the Tribunal. The present Application provides us with the opportunity to ensure that no adverse consequence ensue from the implementation of the incorrect and provisional seniority lists.

6. For the foregoing reasons, we quash A-13 and declare that the fourth respondent S. Anoop is not entitled to seniority over the applicant in the cadre of ESM-II and ESM-I and therefore he is not liable to be reverted from the post of Senior Technician (MC) so as to accommodate the fourth respondent. We also declare that the dates of entry of the

applicant and the fourth respondent in ESM-II are 10.4.1983 and 13.5.1983 (as determined as by this Tribunal in OA 643/1999) respectively and their dates of entry into ESM-I is 1.1.1984 leaving the inter-se seniority between them intact. We direct accordingly that matters of seniority and promotion of the applicant and the fourth respondent be regulated on the basis of declaration above and consequential benefits if any, be made available within a period of four months from the date of issue of these orders. The Application is thus allowed to this extent. No order as to costs.

Dated the 15th April, 2005

Mr. P. Das

H. P. DAS
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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