

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No. 550 of 1995

Wednesday this the 7th day of August, 1996.

CORAM

HON'BLE MR. JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR. P.V.VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

C.Anandan Nambiar,
Retd. Head Parcel Clerk,
Southern Railway, Palghat Division,
residing at Door No.356,
Aiswarya, Melepuram,
Palghat.2.

..... Applicant

(By Advocate Mr. T.C.Govindaswamy)

Vs.

1. Union of India through the
Secretary to the Government of India,
Ministry of Railways, Railway Board,
New Delhi.
2. The General Manager,
Southern Railway,
Headquarters Office, Park Town PO,
Madras.3.
3. The Chief Personnel Officer,
Southern Railway,
Headquarters Office,
Park Town PO, Madras.3.
4. The Divisional Railway Manager,
Southern Railway,
Palghat Division, Palghat.
5. The Divisional Personnel Officer,
Southern Railway,
Palghat Division, Palghat.
6. Shri K.G.Joseph,
Chief Goods Clerk,
Southern Railway, Salem Market. Respondents

(By Advocate Mr. James Kurien, R.1to5)

The application having been heard on 7.8.1996, the
Tribunal on the same day delivered the following:

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O R D E R

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

Applicant seeks a declaration that he is entitled to be absorbed as Head Commercial Clerk in the scale 1400-2300, with effect from 26-10-87.

2. While working as an Assistant Station Master in the scale 1400-2300 (revised) applicant was medically decategorised and reclassified in C1 and C2 categories on 4.8.87. For some time, he was not given any appointment. Then he was appointed as a Siding Clerk in the 975-1540 grade. He protested against that, and he was then placed in 1200-2040 grade, by A5 order. Even that did not satisfy him and he claimed still higher fitment. By A6, he was placed in the 1400-2300 scale. According to applicant he should have been placed in the scale in which he was. Paragraph 1308 of the Indian Railway Establishment Manual governs such a situation and it reads:

"Before any post is filled or a promotion is ordered, officers concerned will refer to their registers and satisfy themselves that no medically incapacitated Railway Servant who is suitable for the post is available.

Such medically incapacitated Railway servants will under all circumstances be given preference..."

(emphasis supplied)

What follows from the rule, is that a medically incapacitated/decategorised person will enjoy preference in the matter of appointment to a grade, equivalent to the

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one he was holding and subject to his turn vis-a-vis similar employees. The question that comes into sharp focus, is whether there was a suitable post in which applicant could have been appointed, at the time of decategorisation. Referring to A9 order of the Railways itself, applicant submits that there was a post available for him. A9 states:

"....on perusal of records it is seen that all the vacancies in grade Rs.1400-2300 and Rs.1200-2040 in Commercial Clerk cadre in this Division were filled up on 26.10.87..."

It follows that on the date of decategorisation namely 4.8.87 and till 26.10.87, there were posts in which applicant could have been accommodated, and should have been accommodated in terms of para 1308 hereinbefore mentioned. Applicant is therefore entitled to get that grade.

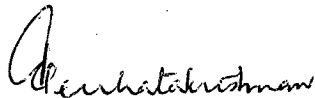
3. It is pointed out by the Divisional Personnel Officer, Palakkad in his reply statement, that applicant did not make a claim at the relevant time. He had been agitating the matter generally, since A4 representation in 1988 till A9 order was passed in 1993. In the circumstances, we direct respondents to grant notional fitment to applicant in the grade of Rs.1400-2300 in the first vacancy arising after 4.8.87 which was not filled before 26.10.87. Applicant will not be entitled

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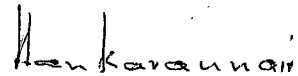
to arrears of wages. The notional fitment will be material only for the purpose of fixation, revision and payment of arrears of pension and other retiral benefits.

4. Original Application is allowed to the aforesaid extent. Parties will suffer their costs.

Dated the 7th day of August, 1996.



P.V.VENKATAKRISHNAN
ADMINISTRATIVE MEMBER



CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

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