

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 552/97

Thursday, this the 6th day of April, 2000.

CORAM

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

- 1.. K.A. Shaheen, S/o J.K.Nawas,
Junior Accounts Assistant,
Divisional Accounts Office,
Palghat. Residing at "AZEEM",
New Colony, Kalmandapam,
Palghat.
- 2.. Chenthamarakshan Kunjappan,
S/o T. Kunjappan
Junior Accounts Assistant,
Divisional Accounts Office,
Southern Railway,
Palghat. Residing at
Railway Quarters No.216-A,
Kallekulanga Post,
Railway, Colony, Palghat-9.
- 3.. S. Geetha, W/o A.K. Harikumar,
Junior Accounts Assistant,
Divisional Accounts Office,
Southern Railway, Palghat.
Residing at: Geetha Nivas,
Anthaniparampu,
Kallekulangara, Palghat-9.
- 4.. T. Janardhanan, S/o P.C.Kunhiraman Nair,
Junior Accounts Assistant,
Divisional Accounts Office,
Southern Railway, Palghat.
Residing at: Railway Quarters No.112-A,
Kallekulangara Post,
Railway Colony, Palghat-9.
- 5.. A. Usha Devi, W/o M.K. Damodharan,
Junior Accounts Assistant,
Divisional Accounts Office,
Southern Railway, Palghat.
Residing at: Railway Quarters No.308-A,
Kallekulangara Post,
Railway Colony, Palghat.
- 6.. A.V. Suresh Kumar, S/o.A. Vijayan Nambiar,
Junior Accounts Assistant,
Divisional Accounts Office,
Southern Railway, Palghat.
Residing at "Ambady",
Industrial Estate P.O., Palghat-678 731.

7. S. Sooriya Narayanan, S/o. T.V. Srinivasan,
Junior Accounts Assistant,
Office of the Senior Accounts Officer,
Workshop and Stores,
Southern Railway, Podanur,
Coimbatore-641 023.
8. N.G. Ramesh, S/o M.R. Gopalan,
Junior Accounts Assistant,
Divisional Accounts Office,
Southern Railway, Palghat.
Residing at: E.S.I.C. Local Office,
Quarters No.B-106,
Jainmedu, Palghat.
9. C.D. Sujatha, W/o K.V. Devadas,
Junior Accounts Assistant,
Divisional Accounts Office,
Southern Railway, Palghat.
Residing at "Anagha",
Sivaji Nagar,
Kallekulangara Post.
10. R. Saseendaran, S/o N.K. Raman,
Junior Accounts Assistant,
Divisional Accounts Office,
Southern Railway, Palghat.
Residing at: Railway Quarters No.108-A,
Kallekulangara Post,
Railway Colony, Palghat-9.
11. K.P. Soya, S/o Late K.V. Nambudiripad,
Junior Accounts Assistant,
Divisional Accounts Office,
Southern Railway, Palghat.
Residing at: "Shreyas",
Opposite Hema Electricals,
Kallekulangara Post.

Applicants

By Advocate Mr T.C. Govindaswamy.

Vs.

1. Union of India through the
General Manager,
Southern Railway, Hqs. Office,
Park Town P.O., Madras-3.
2. Financial Advisor & Chief Accounts Officer,
Southern Railway, Hqs. Office,
Park Town P.O., Madras-3.
3. The Divisional Accounts Officer,
Southern Railway,
Palghat Division, Palghat.
4. Shri Chenthamaraikannan,
Accounts Assistant,
Office of the Divisional Accounts Officer,
Southern Railway,
Palghat Division, Palghat.

5. Shri P.C. Haraidasan, Accounts Assistant,
Office of the Divisional Accounts Officer,
Southern Railway,
Palghat Division, Palghat.
6. Shri C. Balakrishnan,
Junior Accounts Assistant,
Office of the Divisional Accounts Officer,
Southern Railway,
Palghata Division, Palghat. Respondents

By Advocate Mrs Sumathi Dandapani for Respondents 1 to 3
By Advocate Mr M.R. Rajendran Nair for Respondents 4 to 6.

The application having been heard on 10.3.2000, the
Tribunal delivered the following on 6.4.2000.

O R D E R


HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

Applicants seek the following reliefs:

"(a) Call for the records leading to the issue of Annexures A2(a) to A2(j) and similar order issued as regards the 3rd applicant and quash the same.

(b) Call for the records leading to the issue of Annexures A3 and A4 and quash the same.


(c) Declare that the seniority of respondents 4 to 6 on joining the cadre of Accounts Clerks, Palghat Division is liable to be determined in terms of para 312 of the Indian Railway Establishment Manual, Volume-I and direct the respondents to 1 to 3 accordingly, with a further direction to grant the applicants the consequential benefits thereof.



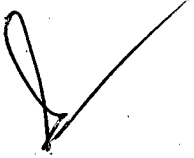
(d) Direct the respondents to grant the applicants the benefit of promotion to the post of Accounts Assistant in scale Rs.1400-2600, from the date of such promotion of the fourth respondent, as provided under para 228(I) of Section-B, Chapter II of the Indian Railway Establishment Manual, Volume-I.

(e) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

2. Applicants are at present working as Junior Accounts Assistants in the Palghat Division of the Southern Railway. Their grievance relate to the determination of inter se seniority of them and respondents 4 to 6. Applicants say that respondents 4 to 6 joined the cadre much later than them on the basis of inter divisional/inter cadre transfer on request. The cadre of Accounts Clerks/Junior Accounts Assistants/Accounts Assistants is a divisional cadre controlled by the 3rd respondent, the Divisional Accounts Officer. All the applicants joined the post of Accounts Clerks from different cadres/divisions during different spells in the years 1998 to 1990. They passed the Appendix II Indian Railway Establishment Manual Examination between the years 1977 and 1990. They were promoted as Junior Accounts Assistants during different spells in the years 1991 to 1994. They have not been so far promoted as Accounts Assistants. The 4th respondent joined as Junior Stenographer in the Western Railway on 18.9.89. He joined Madras Division on inter railway




transfer on loss of seniority on 16.7.91 and thereafter to the cadre of Accounts Clerk in Palghat Division of Southern Railway on 3.6.92 on inter divisional/inter cadre transfer request. The 5th respondent joined Western Railway as Typist on 17.12.79 and got transfer on request to Madras Division on inter railway transfer and joined Madras Division on 27.4.87. He joined Palghat Division in the cadre of Accounts Clerk on inter divisional/inter cadre transfer request on 15.6.89. The 6th respondent joined as Typist on 2.1.86 and thereafter was transferred on request to the cadre of Accounts Clerk, Palghat Division, on 21.1.91. Applicants came to know that the respondents were promoted on regular basis as Accounts Assistants with effect from 3.6.96 and that the 4th respondent was promoted to the post of Accounts Assistant on regular basis with effect from 1.5.95. The 4th respondent who joined the cadre of Accounts Clerk, Palghat Division much earlier than the applicants and who passed the Appendix II IREM Examination in September, 1993 (later than all the applicants) has been promoted as Junior Accounts Assistant on 21.1.94. He has been further promoted as Accounts Assistant. The 5th respondent who also joined as Accounts Clerk later than the applicants 1 to 6, is assigned seniority over applicants 1 to 6 and other applicants. The 6th respondent is assigned seniority over applicants 4 to 11. Seniority of railway servants transferred on their own request from one railway to another, or from one division to another, or from one cadre to another is to be determined in terms of para 312 of the Indian Railway Establishment Manual (Volume-I), according to which, they are to be allotted places below the existing confirmed,



temporary and officiating employees. Assignment of seniority of respondents 4,5 and 6 vis-a-vis the applicants, is erroneous and illegal. Having come to know of the position, the applicants submitted almost uniformly worded representations to the cadre controlling officer. The 3rd respondent has disposed of all the representations as per order dated 25.4.97. In the orders issued on 25.4.97, order dated 31.5.63 and letter dated 18.9.95 are referred to. Orders dated 25.4.97, 31.5.63 and letter dated 18.9.65 are arbitrary and discriminatory. From A5 and A6 it can be seen that the benefit of seniority to Typist/Stenographers/Accounts Clerks has already been deleted/withdrawn by the respondents. Official respondents are bound to consider and promote the applicants to the post of Accounts Assistants from the date of promotion of the 4th respondent to that grade as provided in Chapter 228 of Indian Railway Establishment Manual.

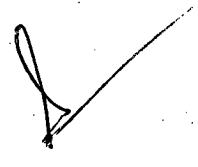
3. Official respondents resist the O.A. They contend that para 312 of the Indian Railway Establishment Manual (Volume-I) is not applicable in fixing seniority of respondents 4 to 6 for the reason that they have been transferred in the same cadre to Palghat Division on qualifying the Appendix II IREM Examination. They have been absorbed against Clerical Cadre on their exercising option to change over to Clerical Cadre. Accordingly, their seniority has been fixed as per Railway Board's letter dated 31.5.63 and Circular dated 18.9.65. Respondents 4 to 6 are thus senior to the applicants and they were promoted rightly following the principle of seniority-cum-suitability. The 4th respondent has



fulfilled all the conditions laid down in Railway Board's letter dated 25.5.93. That letter is further referred to in Board's letter dated 20.4.95 and without challenging these letters by annulling A3 and A4, no useful purpose would be met with. Hence, A3 and A4 are not liable to be quashed. The transfer of Respondents 4 to 6 is not an inter divisional transfer since they are in centrally controlled cadres. Seniority of Typist/Stenographers in the department are on zonal basis and not on divisional basis. Respondents 4, 5 and 6 were absorbed as Accounts Clerk after having passed the Appendix II IREM Examination. Respondents 4 & 5 were promoted on the basis of seniority assigned to them on fulfilling the conditions prescribed by the Board's letter dated 25.5.93. Transfer of Respondents 4 to 6, if not any inter divisional transfer, the Railway Board's letters dated 31.5.1963 and 10.9.1965 are still in force.

4. Respondents 4 to 6 contend that they were absorbed as Junior Accounts Assistants on option after passing the Appendix II IREM Examination. Option does not come under transfer on request. Thus absorption of respondents 4 to 6 as Junior Accounts does not come under the purview of para 312 of the Indian Railway Establishment Manual (Vol.I). Para 228 of the Indian Railway Establishment Manual is applicable only to erroneous promotions.


5. A2(a) to A2(j) and A3 and A4 are sought to be quashed by the applicants. A2(a) to A2(j) are the orders passed by the 3rd respondent on the representations submitted by the applicants. A2(a) to A2(j) are identical.



In A2(a) to A2(j) it is stated that seniority has been assigned based on the instructions contained in Railway Board's letter dated 31.5.63 read with the clarification contained in the letter dated 18.9.65 and therefore, promotions are correct according to the extant rules. The letter dated 31.5.63 is A3 and the letter dated 18.9.65 is A4.

6. Respondents 4 and 5 have been promoted by the department relying on A3 and A4. Relying on A3 and A4, the 6th respondent is assigned seniority over the applicants. Applicants challenge A3 and A4. They say that A3 and A4 were issued to meet the specific contingency and therefore, those cannot be acted upon in the instant case. They further say that A3 and A4 have been deleted by the official respondents as evidenced from A5 and A6. Official respondents have categorically stated in the reply statement that A3 and A4 are in force even now. On careful reading of A5 and A6, we are not inclined to accept the stand of the applicants that A3 and A4 have been deleted. There is also nothing to arrive at a conclusion that A3 and A4 were issued to meet the specific contingency and therefore those cannot be acted upon in the instant case.

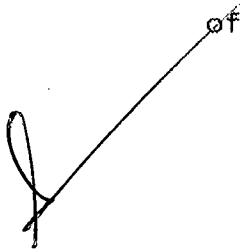
7. From A3 it is clearly seen that it is only a clarification to certain questions raised. That being the position, it is evident that there is a main order. A4 refers to circular dated 12/15.6.64 and says that further to the said circular, the following instructions are issued for information and guidance. So, it is clear from A4 that A4 is only by way of further instructions and guidance to



the circular dated 12/15.6.64. Applicants have chosen to challenge only the clarifications and further instructions for guidance without challenging the main orders. A3 and A 4 alone cannot be challenged without challenging the main orders.

8. Applicants press into service paragraph 312 of the Indian Railway Establishment Manual (Vol.I). Official respondents have specifically stated that respondents 4 to 6 on qualifying Appendix-II IREM Examination were absorbed against clerical cadre on their exercising option to change over to clerical cadre. Respondents 4 to 6 have also taken identical stand in the reply statement. There is no rejoinder filed by the applicants denying that respondents 4 to 6 were absorbed in clerical cadre on their exercising option to change over to clerical cadre. R4A dated 21.1.94 clearly shows that the 4th respondent on changing over to clerical cadre was absorbed as Junior Accounts Assistant with effect from 21.1.94. R1(d) dated 8.6.89 shows that the 5th respondent opted for change over to clerical cadre and was absorbed as Accounts Clerk. These annexures give strength to the stand of the respondents that respondents 4 to 6 were absorbed in clerical cadre on their exercising option to change over to clerical cadre. That being the position, para 312 of the Indian Railway Establishment Manual has no application here.

9. Applicants are also pressing into service para 228 of the Indian Railway Establishment Manual. That applies only in the case of erroneous promotions. As the promotion of respondents 4 and 5 was only with reference to their



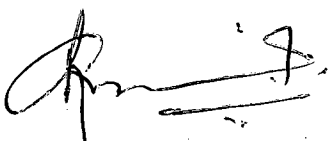
seniority based on A3 and A4, it cannot be said that there is any erroneous promotion. That being so, para 228 of the Indian Railway Establishment Manual does not apply here.

10. R1(a) is the letter of the Railway Board dated 25.5.93. It says that Junior Stenographers of Accounts Department on passing Appendix II IREM Examination may also be allowed to count their service as Junior Stenographers towards the minimum prescribed limit of 3 years service for their promotion as Accounts Assistants. It also says that in terms of Board's letter dated 13.2.90, Senior Typist of Accounts Department who has become JAA on passing Appendix II (IREM) Examination is allowed to count the service in the scale of Rs.1200-2040 as Senior Typist towards the minimum prescribed limit of 3 years service in the grade Rs.1200-2040 for promotion as Accounts Assistant. Without challenging R1(a) as contended by the official respondents, no useful purpose will be served by quashing A3 and A4.

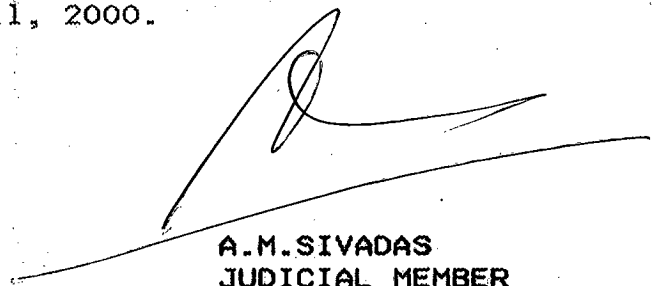
11. The question of seniority should not be reopened in such situations after a lapse of reasonable period because that results in disturbing the settled position which is not justifiable [see (1992) 2 SCC 523].

12. Accordingly, the Original Application is dismissed. No costs.

Dated the 6th of April, 2000.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

LIST OF ANNEXURES REFERRED TO IN THIS ORDER

- A2(a) True copy of the letter No.P.612/PGT/ADMN/VI dated 25.4.97 issued by the 3rd respondent.
- A2(b): True copy of the letter No.P.612/PGT/ADMN/VI dated 25.4.97 issued by the 3rd respondent.
- A2(c) True copy of the letter No.P.612/PGT/ADMN/VI dated 25.4.97 issued by the 3rd respondent.
- A2(d) True copy of the letter No.P.612/PGT/ADMN/VI dated 25.4.97 issued by the 3rd respondent.
- A2(e): True copy of the letter No.P.612/PGT/ADMN/VI dated 25.4.97 issued by the 3rd respondent.
- A2(f): True copy of the letter No.P.612/PGT/ADMN/VI dated 25.4.97 issued by the 3rd respondent.
- A2(g): True copy of the letter No.P.612/PGT/ADMN/VI dated 25.4.97 issued by the 3rd respondent.
- A2(h): True copy of the letter No.P.612/PGT/ADMN/VI dated 25.4.97 issued by the 3rd respondent.
- A2(1): True copy of the letter No.P.612/PGT/ADMN/VI dated 25.4.97 issued by the 3rd respondent.
- A2(j): True copy of the letter No.P.612/PGT/ADMN/VI dated 25.4.97 issued by the 3rd respondent.
- A3: Railway Board's letter No.E(S)63 CPC/30 dated 31.5.63.
- A4: Letter No. P.282/ADMN/APP.II A/O dated 18.9.65 issued by the 3rd respondent.
- A5: True copy of the Rule 178 as contained in the Indian Railway Establishment Manual, Vol.I
- A6: True copy of the amended rule published in the corrigendum part of the Indian Railway Establishment Manual, Vol. I (1989 Edition).
- R1(a): True copy of Board's letter No.E(NG)I/93/PM/9/2 dated 25.5.93 issued by the Director, Establishment (N) Railway Board to the General Manager(A/cs).
- R1(d): True copy of Office Order No.G.179/Admn/Stenbs/Changeover dated 8.6.89 of the Southern Railway, Madras Division.
- R4A: True copy of the Office Order No.G.179/PGT/Admn/94/2 dated 21.1.94 issued by the 3rd respondent.