

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 58/2004

WEDNESDAY THIS THE 24th DAY MAY, 2006.

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

**K. K. Gopalakrishnan S/o late K.R. Kanku
Adhoc Driver Grade-II
Office of the Depot Store Keeper/Construction
Southern Railway, Ernakulam Junction
residing at Kottungal House,
Madathimoola, Nedumbassery PO
Ernakulam District.**

Applicant.

By Advocate Mr. TCG Swamy

Vs.

- 1 Union of India represented by
the General Manager, Southern Railway
Headquarters Office
Park Town PO,
Chennai-3**
- 2 The Chief Engineer/Construction
Southern Railway, Egmore
Chennai-8**
- 3 The Chief Administrative Officer
Southern Railway,
Construction, Egmore,
Chennai-8**
- 4 A.G.Thomas, Motor vehicle Driver
Office of the Chief Administrative Officer
South Western Railway, Construction
Bangalore Cantt, Bangalore.**
- 5 N. Raju, Motor Vehicle Driver
Office of the Divisional Electrical Engineer
Construction, Southern Railway
Madurai.**

- 6 P.P. Nandakumar, Motor Vehicle Driver
Office of the Deputy Chief Engineer,
Construction, Southern Railway
Ernakulam Junction,
Ernakulam.
 - 7 Irudayraj Muthusamy, Motor Vehicle Driver
Office of the Chief Administrative Officer
Southern Railway, Construction
Egmore, Chennai-8
 - 8 A. Kamal Basha, Motor Vehicle Driver
Office of the Deputy Chief Engineer, Construction
Southern Railway, Gauge Conversion
Egmore, Chennai-8
 - 9 M.T. Venugopa, Motor Vehicle Driver
Office of the Chief Administrative Officer
Southern Railway, Construction, Egmore
Chennai-8
 - 10 C. Majeed, Motor Vehicle Driver
Office of the Chief Administrative Officer
Southern Railway, Construction, Egmore
Chennai-8
 - 11 V.A.Subran, Motor Vehicle Driver
Office of the Deputy Chief Engineer, Construction
Southern Railway, Gauge Conversion
Egmore, Chennai-8
 - 12 B. Albert Motor Vehicle Driver
Office of the Chief Administrative Officer
South Western Railway, Construction
Bangalore Cantt., Bangalore.
- Respondents

By Advocate Mr. P. Haridas for R 1-3

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant who is presently working as a Motor Vehicle Driver Grade-II in the Construction Organisation of the Southern Railway is aggrieved by the erroneous assignment of his seniority in the cadre of Motor Vehicle Drivers in the Construction Organisation as issued in Annexure A-6. He seeks the following reliefs:

(a) Declare that the applicant is entitled to be fitted and confirmed against a Construction Reserve Post of Driver in preference to the respondents 4 to 12 herein and direct the respondents to fit and confirm the applicant accordingly, at least from the date from which the fourth respondent is fitted and confirmed in Annexure A-4.

(b) Call for the records leading to the issue of Annexure A-6 and quash the same.

© Declare that the seniority of Motor Vehicle drivers working in the Construction Organisation is to be determined with reference to the date of regular appointment as a Motor Vehicle Driver in the Construction Organisation against a Construction Reserve Post and direct the respondents accordingly.

(d) Direct the respondents to prepare and circulate a fresh seniority list of Motor Vehicle Drivers of the Construction Organisation of Southern Railway in terms of the declaration at para 8(c) above, within a time limit as may be found just and proper by this Hon'ble Tribunal.


(e) Award costs of and incidental to this Application.

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

2 The facts as submitted by the applicant are that he joined the Construction Organisation of Southern Railway as a Casual Lorry Attendant on 3.10.1981. He was promoted as a Casual Driver on 21.6.1982 in the scale of Rs. 260-400. He was granted temporary status as Driver w.e.f. 1.1.1984. He was regularised as a Gangman w.e.f. 7.1.1993 in the Open Line Organisation but relieved back to the Construction Organisation and again promoted as adhoc Driver w.e.f. 1.3.1993 in the scale of Rs. 950-1500. Since the applicant was working as Driver from 21.6.1982 and was denied absorption as regular Driver he approached this Tribunal through O.A. 30/98 which was disposed of directing consideration of his representation. This representation was rejected and the applicant had again approached this Tribunal in O.A. 658/1998. While the O.A. was pending the

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respondents assured the applicant that he would be considered for the post of Driver against a Construction Reserve post provided he withdrew the O.A. Accordingly O.A. 658/98 was withdrawn with liberty to take up the matter with the departmental authorities. The applicant was then fitted against a Construction Reserve Post of Lorry Attendant w.e.f. 1.6.1993 and against a Construction Reserve Post of Driver w.e.f. 1.6.1995. Subsequently by virtue of his seniority he was also promoted during the year 2000 as an adhoc Driver Grade-II in the scale of Rs. 4000-6000. While so the respondents issued the seniority list of Drivers working in the Construction Division Annexure A-2 in which the applicant's name figures at Sl. No. 28 and he has submitted a representation dated 29.6.2002 (Annexure A-3) contending that he is entitled to be placed between Sl.NO. 2 & 3. Mean while the respondents confirmed the private respondents 4 to 12 against Construction Reserve Posts from anterior dates. Immediately thereafter, the respondents published another seniority list as at Annexure A-6 which appears to be the final seniority list based as the dates of entry as Driver in the scale of Rs. 260-400/3050-4590 in Construction Organisation. In the case of the applicant, it is alleged that all the dates shown in the said seniority list are erroneous and not according to the principle said to be adopted by the respondents. The respondents 4 to 12 who find place above the applicant in the list are only juniors by virtue of their absorption as Lorry Attendants and also as Driver. Annexure A-9



and A-10 orders regularising the private respondents would make the position clear. Thus it has been claimed that the action of the respondents are without any basis or authority of law and if the seniority adopted by the respondents is to be followed, the applicant and many others would have to be reverted. Aggrieved he has approached this Tribunal with the above prayers.

3. It is admitted by the respondents that the applicant was engaged as Project Casual Labourer and granted temporary status w.e.f. 1.1.1986 and he was continuously engaged in the Construction organisation and empanelled as Gangman and he was sent to the Open Line and joined the post on 8.1.1993. Since he had requested for transfer to Construction Organisation he was once again taken back and joined as Khalasi on 8.2.1993. Subsequently he was fitted against Construction Reserve Post as Lorry Attendant w.e.f. 1.5.1993 and as Driver w.e.f. 1.6.1995. The concept of Construction Reserve post was introduced by the Railway Board to facilitate confirmation of Casual Labourers in Projects working for more than five years. The period of five years was subsequently reduced to three years and the confirmation against Construction Reserve Post enables a Casual Labourer to get a permanent status and are subsequently screened for empanelment. The scheme of Construction Reserve post was introduced w.e.f. 1.4.1973. The applicant was confirmed against CR post of Lorry Attendant w.e.f.

1.5.1993 and as Driver w.e.f. 1.6.1995. The provisional seniority list of Drivers dated 21.6.2002 was issued in which the applicant's seniority was assigned taking his date of entry into the Construction Organisation as 8.2.1993. The concept of Construction Reserve posts have already lost its utility and Railway Board has imposed complete ban on the said issue and in terms of Board's letter dated 10.5.2002 all employees working in the Construction Organisation should be provided lien in the appropriate category in Open line for their seniority and further promotion. In terms of the above orders at Annexure R-1 according to the respondents, the seniority list published by the construction Organisation by Annexure A-6 will in no way be a hindrance for promotion. But the status of the applicant was not changed publishing the seniority list. Even assuming that the claim of the applicant was allowed, it would not change the status of the applicant either in the Construction or Open line and the applicant would in no way be benefited by changing his position in Annexure R-1. The party respondents 4 to 12 were fitted against Construction Reserve posts as they were all along working in the Construction Organisation and have never joined Open line as a result of empanelment. Therefore, they had not lost their seniority position whereas the applicant availed the benefit of empanelment and had been taken back to the Construction Organisation and was granted the benefit of fitment from a later date.


4 Though notices were issued to the party respondents they have not filed any reply statement.

5 We have heard the learned counsel for the parties and perused the records produced before us.

6 The first contention of the learned counsel for the respondents is that the seniority list in the impugned order is not relevant for the promotion either in the Open line or in the Construction Wing and therefore the applicant is not prejudiced by his lower position in the said seniority list. If that is so, there was no need for the issue of the seniority list. It can reasonably be presumed that the seniority list can be used for various purposes to determine the inter-se seniority of the employees in various units. Hence, this argument is rejected.

7 The next contention of the respondents is that in the original fitment in the Construction Reserve list the applicant's name is at Annexure A-2 dated 21.6.2002, and that the applicant had not put forth any claim when Annexure A-1 order confirming him in the Construction Reserve post w.e.f. 1.5.1993 and as Driver on 1.6.1995 was issued, also that the applicant had not represented for revision of his fitment. It is seen from the records that the applicant had represented against the Annexure A-2 seniority list and had also

approached this Tribunal in O.A. 658/1998 regarding his absorption against the Construction Reserve post and hence it is not correct for the respondents to contend that the claims made in the O.A are belated on that count. While the respondents admit that the applicant entered service on 21.6.1982 and was granted temporary status w.e.f. 1.1.1984, in the provisional seniority list of Drivers in the Construction Organisation the particulars entered in the relevant column, against the applicant the date of appointment is shown as 1.1.1984 but the seniority position has been shown below those who were appointed even in the year 1986 whereas in the case of Sl. No. 3 who is the 4th respondent in this O.A., though the date of appointment is the same, he is ranked as No.3 in the list. Similarly, the 6th respondent is ranked as NO. 7, the 7th respondent as No. 10, the 9th respondent as Sl.No. 18, the 10th respondent as Sl. NO. 19, the 11th respondent as Sl. No. 20 all figuring above the applicant who is at Sl. No. 28 even though having the same date of appointment as borne out by Annexure R-1. The only reason given by the respondents is that whereas the private respondents continued without any interruption in the Construction Organisation, the applicant was reverted back to the Open Line on 8.1.1993 and had joined back again on 8.2.1993. The applicant was empanelled in the Open Line as a Gangman and had only a break of one month within which he returned to the Construction Organisation and if the respondents' arguments are to be accepted, the service of almost



seven years got wiped out. By the respondents own admission, he came back on 8.2.1993. The respondents thereafter granted the fitment against the Construction Reserve post w.e.f. 1.5.1993 which according to them is very much in accordance with the norms under the Construction Reserve scheme. We are of the view that the contention of the applicant that he has been discriminated has some merit. Moreover, in Annexure A-6 final seniority list the principle stated to be adopted by the respondents as evidenced from the second para of the letter, is that the seniority has been assigned based on the dates of entry in the scale of Rs. 260-400 or Rs. 3050-4590 in the Construction Organisation. It is evident from the orders issued at Annexure A-8 granting temporary status to the applicant along with others who were placed in the pay scale of Rs. 260-400 w.e.f. 1.1.1984. Therefore showing his date of entry as Driver only on 1.3.1993 i.e. the date of his reversion to the Construction Organisation is unjust and untenable. It is also seen from the list that in respect of the private respondents at Sl. NO. 10, 14, 15 and 18, the dates of initial appointment are shown against column 8 namely the date of entry and the date of attaining temporary status are shown against the date of appointment. The same should have been the criterion in the case of the applicant also. Thus we find that no uniform principle has been followed in the preparation of the seniority list. Since the respondents themselves have asserted that the seniority list is not being used for promotion and promotion would be

determined on the basis of lien position there is no reason why the respondents could not have adopted the actual date of appointment as date of entry in respect of the applicant duly condoning the period of 30 days during which he was out of Construction Organisation but at the same time holding the post in the Open Line. We therefore find merit in the prayers of the applicant and declare that the applicant is entitled to be fitted against the Construction Reserve post of Driver in preference to Respondents 4 to 5 and that the seniority of the applicant shall be determined with reference to the date of his entry as Motor Vehicle Driver in the Construction Organisation, ignoring the break caused by one month's service rendered in the Open Line.

8 In the result, we direct the respondents to revise the seniority list at Annexure A-6 in terms of the above declaration after giving notice to the affected parties. This exercise shall be completed within a period of four months from the date of receipt of this order. No costs.

Dated 24.5.2006.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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