

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.579/06

Friday this the 8th day of June 2007

C O R A M :

HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER

M.K.Ramaswamy,
Technician Grade – I,
Diesel Loco Shed, Erode.

...Applicant

(By Advocate Mr.Siby J Monippally)

Versus

1. Union of India represented by Chief Personnel Officer,
Southern Railway, Chennai.
2. Senior Divisional Mechanical Engineer,
Southern Railway, Palghat Division, Erode.
3. N.T.Thukkan,
Technician Grade – I, Electrical Loco Shed,
Palghat Division, Southern Railway, Erode.
4. P.K.Sivaraman,
Technician Grade – I, Electrical Loco Shed,
Palghat Division, Southern Railway, Erode.
5. Elahi John,
Technician Grade – I, Electrical Loco Shed,
Palghat Division, Southern Railway, Erode.
6. P.Rajendran,
Technician Grade – I, Electrical Loco Shed,
Palghat Division, Southern Railway, Erode.
7. K.Murugaesan,
Technician Grade – I, Electrical Loco Shed,
Palghat Division, Southern Railway, Erode.

...Respondents

(By Advocate Mr.K.M.Anthru [R1-2])

This application having been heard on 5th June 2007 the Tribunal on
8th June 2007 delivered the following :-

ORDER

HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER

This is a second round of litigation. Earlier in O.A.No.220/99 decided on 14th February 2001 the claim of the applicant for his deployment to the Electric Loco Shed at Erode was rejected on the ground that the applicant did not implead those who had already been selected and appointed and also on the ground that the field of choice was restricted to volunteers from Electrical Loco Wing for the reason that there is shortage of manpower in the Mechanical Loco Wing. Annexure A-2 refers. This decision was challenged by the applicant in O.P.No.8509/01 whereby the following order came to be passed :-

We notice from Ext.P1 that the manpower requirement for the new Electric Loco Shed was proposed to be met from the groups of staff in the order of priority. Clause (i) states as follows :-

"Volunteers from the existing staff on the rolls of Diesel Loco Shed/Erode in the categories of Technical Supervisors, Artizans and group "D" staff in all grades."

We may also refer to clause (vi) of the same order which reads as follows :-

"Volunteers who had earlier responded on the notification issued on 9.11.1994, or otherwise will not be considered and if any of them still desire a transfer to the proposed Electric Loco Shed, Erode, they have to submit their application in response to this notification. Preference for transfer on option to the Electric Loco Shed, Erode shall be in the order indicated in para 2 above."

We are of the view that the request of the petitioners requires reconsideration. Hence, we dispose of the Original Petition directing the first respondent to consider the claim raised by the petitioners in the light of Ext.P1 and pass appropriate orders within a period of three months from the date of receipt of a copy of this judgment.

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2. In pursuance of the above order of the Hon'ble High Court, the respondents have passed Annexure A-4 order dated 15th June 2001 rejecting the claim of the applicant for switching over from Diesel Shed, Erode to Electric Loco Shed, Erode on the following grounds :-

At that time, the total strength of Diesel Shed was 810 employees against the sanctioned strength of 907.

If all the volunteers are deployed from Diesel Shed, Erode to Electric Loco Shed, it will lead to acute manpower problem to maintain the Diesel Locomotives.

The Artisans of Diesel Loco Shed, Erode had also an avenue of promotion for posting as Diesel Assistants. In terms of Railway Board's letter No.E(NG)1-90/PM-7/34/Pl.II dated 25.4.1997, all the vacancies of Diesel Assistants were to be filled up by promotion from skilled artisans of Diesel Sheds. In the selection conducted in 1997, 67 staff from Diesel Shed Erode were selected as Diesel Assistants. This being a regular avenue of promotion given to the staff, the administration could not deprive the employees of their promotional rights. This exodus of the staff from Diesel Shed has considerably affected the working of Diesel Shed as many of the experienced and trained hands had opted for running cadre.

As on date, total holding of the Diesel Shed, Erode is 151 locos and the sanctioned and actual staff strength of diesel shed is as follows :-

Sanctioned Strength	907
Actual Strength	770

This shed is not in a position to spare any staff even today.

Non deployment of volunteers to the Electric Loco Shed, Erode does not amount to denial of legitimate promotion.

Further, the seniority of the new electric loco shed has already been formed from 18.8.1999. Any transfer of other employees from other areas including Diesel Shed, Erode will now have to be only on bottom seniority "on request" as applicable to any other inter-departmental and inter-divisional transfers.

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3. The applicant has challenged the above decision of the respondents in this O.A.

4. According to the applicant once a priority schedule has been prescribed vide para 2 of Annexure A-1 notification dated 14.5.1997, and applications were submitted, the respondents ought to have followed the same priority and acted accordingly. Especially, when the Hon'ble High Court has clearly mandated the respondents vide their order extracted above, there is no question of rejection of the case of the applicant for the reasons stated in the impugned order dated 15th June 2001.

5. The contention of the respondents, on the other hand, is that pursuant to the earlier notification of 14.5.1997 (Annexure A-1), in response to which the applicant had applied, after filling up some vacancies on the basis of the said notification, on finding that there was scarcity of staff in the Mechanical Loco Shed, it was decided not to deploy any more from the Mechanical Loco Shed and to restrict the field of choice and accordingly another notification dated 19.6.1998 was issued vide Annexure R-1 whereby the priority already indicated was obviated.

6. Counsel for the applicant submitted that the applicant's comes squarely within priority one and is sufficiently senior in the priority list. As such, when the Hon'ble High Court has directed the respondents to consider the case of the applicant, there is no question of the case of the applicant not being considered and hence rejection vide order dated

15th June 2001 was illegal. As there was a complete violation of the order of the Hon'ble High Court, the applicant took up the matter under Contempt Jurisdiction and vide order dated 18th November 2005 the Contempt Application was dismissed with liberty to the applicant to pursue the grievance in appropriate proceedings.

7. Counsel for the respondents, on the other hand, submitted that the revision of priority became inevitable as the number of applicants from one priority was much more than required and as such picking up all the persons from them would imbalance the staff strength in the Mechanical Loco Shed, Erode. This aspect was brought to the notice of the Tribunal in the earlier O.A and that having been accepted only the Tribunal dismissed the O.A.

8. Arguments were heard and documents perused. The mandate of the Hon'ble High Court is clear. The rejection of the case of the applicant in the earlier O.A does speak about the imbalance in the staff strength of the Mechanical Loco Shed. It is after consideration of the same only that the Hon'ble High Court has passed the order for reconsideration of the applicant's case. As such, the earlier self-same reason for rejection of the applicant's candidature cannot be pressed into service when the Hon'ble High Court has directed to reconsider the matter. In case there have been many applicants from priority one category and only limited number of candidates could have been selected, there ought to have been a scientific way of filtration process and the best among such filtration processes would be to give preference to the seniors in the said priority

category. Had this been followed the applicant's case would have been through subject to his having sufficient seniority in the priority category. After the Hon'ble High Court's verdict, the respondents ought to have accordingly considered the case of the applicant. This has not been done and rejection of the applicant's case has infringed upon the equality clause.

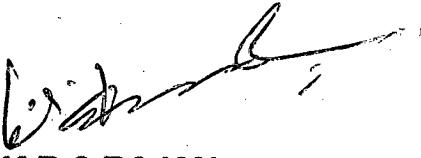
The Apex Court in the case of Balakrishnan Vs. Delhi Administration (1989 [2] SCC 351) has held that in service jurisprudence there is only one norm - no juniors can be considered for promotion or confirmation without considering the seniors. Any deviation from this principle will have demoralising effect in service apart from being contrary to Art. 16 (1) of the Constitution. The same principles holds good in respect of absorption in another unit, as in this present case. That a seniority of the absorbed candidates had already been drawn in 1999 and as such it could not be possible to induct the applicant cannot be a reason for rejection of the applicant's case. The applicant's right to equality having been infringed upon, the rejection order dated 15th June 2001 cannot be legally sustained. As such, the same is quashed and set aside. Respondents are directed to consider the case of the applicant and if in the priority category No.1 the applicant's position in the seniority is higher than any one or more individuals who have already been selected, the applicant be inducted and his seniority fixed accordingly in the Electric Loco Shed. Needless to mention that in the event of such induction, while revising the seniority, notice to all those, whose seniority position would have been affected, shall be given before revising the seniority list. The applicant would be deemed to have been serving in the Electric Loco Shed from the date any of his junior have so been serving

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and this notional service shall also be taken into account for working out the eligibility condition, if any, for further promotion. (see U.O.I. Vs. K.B.Rajoria 2000 [3] SCC 562) It is made clear that by virtue of the induction on the basis of seniority, none already inducted shall be reverted. If necessary, supernumerary post may be created for the purpose of accommodating the one who may face reversion.

9. The above drill is to be performed within a period of three months from the date of communication of this order. The O.A is allowed to the above extent. No costs.

(Dated the 8th day of June 2007)



K.B.S. RAJAN
JUDICIAL MEMBER

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