

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.586/2001.

Thursday this the 15th day of January 2003.

CORAM:

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

(By Advocate Shri V.R.Ramachandran Nair)

vs.

1. Union of India represented by the General Manager, Southern Railway, Chennai.
2. The Senior Divisional Personnel Officer, Southern Railway, Trivandrum.
3. The Senior Divisional Engineer, Southern Railway, Trivandrum Division, Trivandrum.
4. S.K.Sanilkumar, Head Clerk, Office of the Senior Divisional Engineer, Southern Railway, Thycaud, Trivandrum through the Senior Divisional Engineer, Southern Railway, Thaycaud, Trivandrum.

(By Advocate Shri Thomas Mathew Nellimoottil (R.1-3)

(By Advocate Shri Thottathil B Radhakrishnan (R-4)

The application having been heard on 15.1.2004, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicant who is working as Senior Clerk under the 3rd respondent is aggrieved by A-5 order dated 5.6.2000 whereby the 4th respondent Shri S.K.Sanilkumar, Senior Clerk in scale Rs.4500-7000 was promoted to officiate as Head Clerk in scale Rs.5000-8000 purely on adhoc basis from 8.10.99, ignoring the superior claim of the applicant who had earlier been promoted to officiate as Head Clerk against a leave vacancy (A4). The

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applicant's case is that at the relevant point of time he was the seniormost Senior Clerk and that therefore, he ought to have been considered for the adhoc promotion in preference to the 4th respondent.

2. Opposing these basic contentions in the O.A. the respondents in their reply statement have, inter alia stated that the 4th respondent, Shri S.K.Sanilkumar on account of the mutual transfer with Smt.KT Geetha, Sr.Clerk from Trivandrum to Palghat was accorded her seniority position in Trivandrum and that Smt.Geetha's seniority position being above the applicant in this case, it followed that for adhoc promotion to the post of Head Clerk, the 4th respondent ought to be and was given preferential treatment. According to the respondents, Smt. KT Geetha, Sr.Clerk came on mutual transfer from South Eastern Railway in the place of one Kanduram Hembrum who was a Sr.Clerk at Trivandrum officiating as Head Clerk on adhoc basis and accordingly she got the seniority position of Kanduram Hembrum as per the relevant rules. It is stated by the respondents that, when Smt. Geetha was again transferred on mutual basis with the 4th respondent, Shri Sanilkumar Sr.Clerk involving a transfer of the two Sr.Clerks between Trivandrum and Palghat. The 4th respondent, who was transferred from Palghat to Trivandrum on mutual basis, was given the seniority position occupied by Smt.KT Geetha in accordance with the rules. Thus, the seniority position originally occupied by Shri Kanduram Hembrum happened to be eventually occupied by the 4th respondent and therefore, the applicant occupied a lower position in the seniority placement, did not have any enforceable right or a subsisting cause of action, the respondents would point out. The 4th respondent has also filed a reply statement with similar contentions.

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3. We have heard Shri V.R.Ramachandran Nair, learned counsel for the applicant and Shri Thomas Mathew Nellimoottil, Standing Counsel for the Railways. According to the learned counsel for the applicant, after Smt. KT Geetha was transferred from Trivandrum to Palghat on mutual basis with the 4th respondent, the applicant was given officiating duties as a Head Clerk in Trivandrum showing that he was the Seniormost Sr.Clerk to be considered if any adhoc promotion was to be made(A4). However, when the counsel for respondents filed a Memo seeking to produce the original mutual transfer order No.62/98/WP dated 27.7.98 involving Shri Kanduram Hembrum, Sr. Clerk of Trivandrum and Smt.KT Geetha, Sr.Clerk from South Eastern Railway, learned counsel for the applicant apparently had no argument to rebut the contentions of the respondents in the reply statement to the effect that the original seniority occupied by Smt. KT Geetha on her mutual transfer with Shri Kanduram Hembrum came to be accorded to the 4th respondent as a result of the subsequent mutual transfer between Smt. KT Geetha and the 4th respondent. Thus, it seems to be settled that the 4th respondent is occupying a seniority position substantively above the applicant in view of the two earlier mutual transfers, referred to by the respondents in their reply statement.

4. On a consideraion of the above facts we are satisified that the 4th respondent on his mutual transfer from Palghat to Trivandrum in the place of Smt. KT Geetha was accorded her seniority position which had originally been occupied by Shri Kanduram Hembrum. There is no subsisting dispute with regard to the seniority position of Shri Kanduram Hembrum. That is to say, the seniority position that came to be occupied by the 4th

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respondent on his mutual transfer with Smt.KT Geetha cannot also be questioned. We notice that the provisions of the rule i.e. Para 310 of Indian Railway Establishment Manual have been followed in according the seniority position occupied by the 4th respondent. It obtains, therefore, that the applicant does not any subsisting cause of action as far as the officiating promotion of the 4th respondent on adhoc basis in the cadre of Head Clerk is concerned.

5. In the circumstances we hold that, this application does not have any merit and it is liable to be dismissed. The O.A. is dismissed leaving the parties to bear their own costs.

Dated the 15th January 2004.



K.V.SACHIDANANDAN
JUDICIAL MEMBER



T.N.T.NAYAR
ADMINISTRATIVE MEMBER

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