

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.60/2001

Thursday this the 10th day of October, 2002.

CORAM:

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

1. S.Mohanan, Carriage & Wagon Khalasi Helper,
Senior Section Engineer,
(C & W) Southern Railway,
Trivandrum Division, Quilon.
2. B.Rajendran, -do-
3. K.A.Krishnan Kutty, -do-
4. S.Bhasker, -do-
5. B.Sevalikaran, -do-
6. N.Vijayan, -do-
7. K.Manikuttan, -do-
8. P.L.George, -do-
9. M.Balakrishnan, -do-
10. A.Titus, -do-
11. B.Arumugham, -do- Applicants

(By Advocate Shri Majnu Komath)

Vs.

1. Union of India represented by the
Chairman, Railway Board,
New Delhi.
2. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum.
3. Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum. Respondents

(By Advocate Smt. Rajeswari Krishnan)

The application having been heard on 25th September, 2002, the Tribunal on 10th day of October, delivered the following:



O R D E R

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicants eleven in number aggrieved by the letter dated 19.6.1997 (A2), the seniority list of Artizan staff, Mechanical Branch issued by the 3rd respondent and the communication dated 19.1.2000 issued by the 3rd respondent (A4) has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs.

i) To quash the Annexure A-2 seniority list and Annexure A-4 (a) to (k) communication to the extent of not providing the applicants the date of appointments as the dates of attainments of temporary status.;

ii) to direct the respondents to make necessary correction/revision in the annexure A-2 seniority list so as to provide the applicants their date of appointment as the dte of attainment of temporary status.

iii) To direct the respondents to promote the applicants as Fitters with retrospective effect considering their seniority based on the date of attainment of temporary status as the date of appointment with all connected benefits including arrears of pay.

iv) Any other reliefs deemed fit by this Hon'ble Tribunal in the circumstances of the case.

2. It is averred in the O.A. that the applicants are working as Carriage and Wagon Khalasi Helpers in the Mechanical Department of the Trivandrum Division of Southern Railway and at present they are posted under the office of Senior SectionEngineer (C&W), Trivandrum Division, southern Railway, Quilon. The applicants joined the service of the Railway in the year 1980 and 1981 and attained the temporary status after four months of service. They were granted temporary status in the monthly scale of pay as per Annexure A-1 (a) to (e) except the applicant No.2 (Shri B. Rajendran). The 3rd respondent published the seniority list (A2) on 19.6.97 wherein the



applicants have been placed at Sl.Nos 54,113,58,79,56,77,78,51,38,28 and 59. In A-2 seniority list, the date of appointment of the applicants have been shown erroneously and further submitted that the appointment dates of the applicants should have been the date of attainment of the temporary status. The applicants sent representations to the 3rd respondent to make necessary corrections in A2 seniority list on the date of appointment of the applicants. Since the 3rd respondent did not respond, the applicants filed O.A.1062/99 before this Tribunal seeking to quash A-2 seniority list and other reliefs and this Tribunal directed the 3rd respondent to consider the representation submitted by the applicants and to give an appropriate reply within three months as per A-3 order dated 13.12.1999. The 3rd respondent considered and sent a communication to the applicants on 19.1.2000 vide A-4 (a) to (k). It is further averred that the 3rd respondent has admitted the dates of attainment of temporary status of the applicants as mentioned in O.A. 1062/99. Further as per A-4 communication the applicants were informed that the seniority in the cadre of C&W Khalasi is maintained w.e.f. the respective dates mentioned therein. It is further stated in A-4 that the office letter No.V/P.612/IV/C&W/ Vol.5 dated 19.6.1997 (A2) is in conformity with the extant rules on the subject and the same does not need any revision, is not correct and faulted. The Annexure A.2 seniority list needs revision so as to provide the applicants their date of appointment as the date of attainment of temporary status, thus making the applicants eligible to be promoted as Fitter with retrospective effect considering their



seniority in the cadre of C&W Khalasi, w.e.f. the date on which the applicants had attained the temporary status.

3.. The respondents have filed a detailed reply statement contending that A-2 seniority list and A4 (a) to (k) list to the extent they do not provide the applicants their date of appointments as the date of attaining temporary status and the reliefs sought for cannot be granted. It is submitted that the grant of temporary status will not confer any right to claim to the applicants for absorption in any regular establishment in which they are selected by duly constituted Screening Committee by the process of empanelment. The applicants did not challenge this aspect and on that basis their claim for seniority from the date of temporary status can be dismissed. The Casual Labourers treated as temporary status-attained are not considered for granting any seniority, but they are given only benefits admissible to temporary Railway servants though they do not come under the term "Railway Servants." Further the applicants have not impleaded the persons above whom or on par with whom they claim revision of seniority. The applicants' statements as to their joining the service of Railways in the year 1980 are not accepted as their engagements are only as Casual Labourers and not as regular employees. The applicants did not ever challenge the A-1 (a) to A1(e) issued in the year 1980/1981/1982, as per which they have been granted temporary status and they have accepted the same all through the years passed. After having enjoyed the benefits of temporary status as permissible in the rules, the applicants cannot now turn around and challenge the above said Annexures. Annexure A4 (a) to (k) have been issued in compliance with the directions of



this Tribunal in O.A.1062/99 in terms of the instructions of letter N.P(S)443/WSRMIJ dated 16.7.1990 of the CPD, Southern Railway, Madras. The date of empanelment has been preponed to the date of the occurrence of vacancies in the case of the employees whose empanelment had been approved on 23.1.86, as in the case of the Petitioners in O.A.Nos. 281/87, 158/87 and 31/88. The applicants' case have been revised accordingly and it has been stated in the A-2 seniority list. The reasons as per para 2005 of the Indian Railway Establishment Manual volume II 1990 edition, the service prior to absorption in temporary/permanent/regular cadre after the required selection/screening will not count for the purpose of seniority and the dates of the employees' regular appointment after due selection shall determine their seniority vis-a-vis other regular/temporary employees. As per Sub-para (b) of Para 2005 of the IREM, the casual labourers like the applicants could not have been treated as in employments prior to the date on which their empanelment list. was approved. As per paragraph 302 of the IREM Vol I 1989 Edition Edition, unless specifically stated otherwise, the seniority among the incumbents of a post or in a grade is governed by the date of appointment to the grade. Therefore, it is submitted that the seniority can be granted only from the date on which one joins the post on regular absorption and hence the claim of the applicants for grant of seniority from a date earlier to regular absorption, is liable to be rejected.

4. The applicants have filed a rejoinder contending that the seniority of the applicants was provisionally fixed in Annexure A-2 Seniority list which was under challenge in the



O.A. to the extent of not considering the date of attainment of temporary status as their date of appointment. The contention of the respondents that the applicants' have challenged the seniority list only on a later stage is not correct and in support of their case, they produced A-5 transfer order issued by the 3rd respondent wherein the names of three of the applicants figured as Serial Nos.26, 30 and 39. As per that document, it can be seen that the applicants are not Casual Labourers, as contended by the respondents but they are substitutes.

5. We have heard the learned counsel for the applicant and that of the respondents and perused the pleadings and material placed on record. Learned counsel of the applicants submitted that the applicants were substitutes and their date of appointment shall be the date of attainment of temporary status and not the date of screening or absorption as was done in A-2 seniority list. This Tribunal in O.A.609/96 held that the seniority should be fixed on the basis of date of attainment of temporary status as substitutes followed by regularisation. The applicants are also substitutes followed by regularisation hence, they are eligible for the seniority on the basis of their date of attainment of temporary status.

6. Learned counsel of the respondents also argued that the decision in O.A.609/95 is not applicable in this case because that has been considered on different set of facts claiming inter-se seniority of two groups of persons. The arguments



advanced by the counsels have been analyzed and it is the admitted fact that the applicants are substitutes, whose seniority in the cadre of C&W Khalasis maintained w.e.f. the last date of the year in which they were empaneled.

7. The issue involved in this case is whether for the purpose of reckoning the seniority the period of service rendered as casual labourers from the date on which they have been given temporary status could count or they can count their seniority only from the date of their regular appointment as temporary/permanent Railway servants. In this context, it will be useful to note what the Rule pertains to such claims as per Indian Railway Establishment Manual (IREM for short) and Indian Railway Establishment Code (IREC for short). Rule 2005 of IREM, Vol.II Revised Edition 1990 reads as follows:

"However, their service prior to absorption in temporary/permanent/regular cadre after the required selection/screening will not count for the purpose of seniority and the date of their regular appointment after screening/selection shall determine their seniority vis-a-vis other regular/temporary employees. This is, however, subject to the provision that if the seniority of certain individual employees has already been determined in any other manner, either in pursuance of judicial decisions or otherwise, the seniority so determined shall not be altered."

8. Further, it is also made in the said rules that the Casual labour including Project casual labour shall be eligible to count only half the period of service rendered by them after attaining temporary status on completion of prescribed days of continuous employment and before regular absorption as qualifying service for the purpose of pensionary benefits. This benefit will be admissible only after their absorption in



regular employment. It is clear from the reading of the above Section (supra) that absorption of the Casual Labourers in temporary/permanent cadre after the required selection and screening will not count for the purpose of seniority.

9 Section 302 of Chapter III of IREM (Vol.I) reads as follows:

"Seniority in initial recruitment grades--Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade."

Therefore, it is very clear that though the casual labourer's service in the case of a Railway employee are taken for the purpose of payment of pension, DCRG, leave purpose etc., it is never counted for the purpose of seniority.

10. The contention of the applicant that the temporary status attained in the casual labour service will count for seniority is not substantiated on the strength of the above Rules position. Apart from that, para 2511(c) specifically states that the service prior to absorption against the regular temporary/permanent post after the requisite selection will, however, not constitute as qualifying service for pensionary benefits. It is assumed that if a service counts for seniority, it should also count for pensionary benefits. When such service is not counted for pension, it cannot count for seniority either. Among the aversion of the said rule, para 2511(a) of the IREM (Vol.I) clarifies that service before absorption in temporary/permanent regular cadre after the required selection/screening will not count for the purpose of seniority and the only purpose for which service rendered after



attaining temporary status will count is for pension and that too, to the extent of half of that service. This aspect has been considered by this Tribunal in the order in O.A.-K No.435/88 dated 12.12.89 and this Court observed that:

"We are, therefore, satisfied that the applicants are labouring under a misconception about the exact benefits which they can claim by virtue of their having acquired temporary status. Those rights have been enumerated in the Manual. The Manual also makes it unambiguously clear that the service rendered after acquiring temporary status but before regular absorption against temporary/permanent posts, will not count for seniority. In the circumstances, we do not find any substance in this application and it is accordingly rejected."

Therefore, it is clear that the seniority can be granted only from the date on which one joins the post on regular absorption and the temporary service either as casual labour or substitute service cannot be reckoned for the purpose of seniority. This was again reiterated and emphasized in the order in O.A.609/95 of this Tribunal, the portion of which is reproduced as under:

....."It is seen that the Ministry of Railways have decided that the date of appointment of a substitute to be recorded in the Service Book against the column date of appointment should be the date on which he attains temporary status if the same is followed by his regular absorption otherwise it should be the date on which he is regularly appointed/absorbed. Learned counsel for applicants submitted that it is in force and the same was not denied by the learned counsel for respondents."

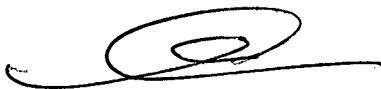
11. Apart from that it is a known fact that in case this O.A. is allowed, so many affected parties who have been put on the top of the seniority list over the years may have to be brought down which will cause substantial prejudice to such employees. The applicant has not chosen nor taken pain to make those affected persons as parties in the O.A. and the O.A. is



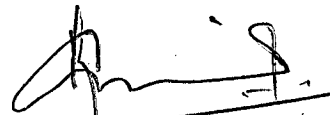
bad for non-joinder of necessary parties and is to be dismissed. If the seniority list is altered, this Tribunal will be unsettling a settled position of seniority causing great damages and great prejudice and legal injury to many other employees. On going through the legal provisions in para 2005 of IREM Vol(II) and sub para (b) of the same and para 302 of IREM (Vol.I) and earlier decisions of this Tribunal, we are of the considered view that the impugned order A-2 is not faulted. It is in conformity with the legal position and the seniority has been correctly fixed. Reasoning given in A3(a) to (e) also is not faulted and we do not find any reason to interfere with these impugned orders. Therefore, the application has no merit and the same is only to be dismissed.

12. In the result, we dismiss the O.A. There shall be no order as to costs.

Dated the 10th day of October 2002.



K.V.SACHIDANANDAN
JUDICIAL MEMBER



G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

A P P E N D I X

(In O.A. No.. 60/2001)

Applicant's Annexures:

1. Annex.A/1 True copy of the Memorandum No. V/P.407/QLN/
(a) to (e) Ty.Status dts. 27.3.81, 24.8.82, 29.6.81,
28.11.80 and 9.10.80 respectively issued by
the third respondent.
2. Annex.A/2 True extract copy of the seniority list No.
V/P.612/IV/C&W/Vol.5 dt. 19.6.97 issued by the
third respondent.
3. Annex.A/3 True copy of the order dated 13.12.99 in O.A.
No. 1062/99
4. Annex.A/4 True copies of the Communication No. V/P.612/
(a) to (k) IV/C&W/Vol.5 dt. 19.1.2000 issued by the third
respondent to the applicants.
5. Annex.A/5 True copy of the Office Order No.7/81/Mechl.
dt. 22.01.81 issued by the third respondent.
