

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 595 of 1990
T. A. No.

DATE OF DECISION 21.4.92

K Sukumaran & 2 others Applicant (s)

M/s P Sivan Pillai & R Sreekumar Advocate for the Applicant (s)
Versus

Union of India & 6 others Respondent (s)

M/s MC Cherian, Saramma Advocate for the Respondent (s) 1-3
Cherian & TA Rajan

CORAM:

The Hon'ble Mr. SP MUKERJI, VICE CHAIRMAN

&

The Hon'ble Mr. AV HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal? Y

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

The applicants who are working as Electrical Fitters in the scale of Rs.950-1500 in the Palghat Division of Southern Railway are aggrieved by the lower seniority position when compared to the respondents 5 to 7 in the seniority list of Electrical Fitters at Annexure-A6 published on 27.5.1989 and by the exclusion of their names in the alert notice at Annexure-A7 dated 7.9.1990 for filling up of vacancies of Artisan Staff of Electrical Department. The facts averred in the application can be briefly stated as follows. While the applicants were working as semi-skilled Artisans in the scale of Rs.210-290, the Railway Board issued order No.E(P&A)1-82/JC/1 dated 13.11.1982(Annexure-A1), reclassifying

certain posts of semi-skilled Artisan as skilled in the scale of Rs.260-400. This fixation was to take effect from 1.1.1982 with fixation of pay and benefit of arrears from 1.8.1978. It has stipulated in the order that the initial allotment of skilled grade to semi-skilled staff would be on the basis of seniority-cum-suitability, without the eligible staff being subjected to any further trade test. Pursuant to the above order, the applicants 1 to 3 were fixed in the skilled grade w.e.f. 17.3.1981/1.1.1982, 14.3.1981/1.1.1982 and 21.6.1981/1.1.1982 by order dated 29.8.1983 at Annexure-A2. In the Railway Boards letter No.E(P&A)1-82/3C/1 dated 4.4.1984, it was stated that the percentage distribution of skilled post of Artisan for the highly skilled Grade-I, II and skilled in the ratio 20:25:55 should be extended to the posts of semi-skilled which was reclassified as skilled. After the applicants were fitted in the skilled grade carrying the scale of pay of Rs.260-400, the respondents 4 to 7 who were Khalasis below the applicants were appointed to the skilled grade towards the 25% direct recruitment quota in the year 1986. Thereafter, the respondents held a trade test in 1987. The result of which was published by circular dated 8.10.1987 at Annexure-A3. The applicants passed the trade test. Thereafter, on 13.12.1988, the respondents issued an office order stating that the applicants and other reclassified Fitters were absorbed as regular Fitters with effect from the date of the trade test mentioned in Annexure-A3. Following this, the respondents called employees including respondents 4 to 7 for trade

test for the post of skilled grade-II without including the applicants in the list. The applicants made representations. While the representations were pending, the impugned seniority list at Annexure-A6 in which respondents 4 to 7 were shown senior to the applicant was issued. On the basis of this seniority list, the respondents issued the impugned order at Annexure-A7 dated 7.6.1990, alerting 28 employees for trade test for Fitters highly skilled Grade-I and II wherein the respondents 4 to 7 were included and the applicants were left out. As the applicants entered cadre of Fitter in the scale of Rs.260-400 in the year 1982, the placement of the respondents 4 to 7 who were directly recruited to that grade only in the year 1986, above the applicants is illegal, discriminatory and violative of Articles 14 and 16 of the Constitution. Hence the applicants have filed this application under Section 19 of the Administrative Tribunals Act praying that the impugned orders at Annexure-A4, A6 and A7 may be quashed and the respondents 1 to 3 be directed to review the seniority of the Electrical Fitters skilled grade among the applicants and respondents 4 to 7 on the basis of the dates of entry into that grade and the date of joining the working post as provided in Rule 302 of the Indian Railway Establishment Manual.

2. The respondents have raised a contention that the application is barred by limitation as the Annexure-A4 order was issued as early as on 13.12.1988. On the merits of the seniority position assigned to the respondents 4 to 7 above the applicants in the impugned seniority list at Annexure-A6

the respondents 1-3 have contended that though the applicants were granted the scale of pay of Rs.260-400 on reclassification of the semi-skilled post as skilled with effect from the year 1982 as they were regularly absorbed towards the post of regular Fitters by Annexure-A4 order with effect ^{only} from the date on which they qualified in the trade test(8.10.1987) and that therefore, the respondents 4 to 7 who were appointed as regular Fitters in 1986 are infact seniors to the applicants. It has been contended that though the applicants were granted scale of Rs.260-400, they were not absorbed against ~~the~~ working post till they qualified in the trade test. / the alert notice at Annexure-A7 by which the respondents 4 to 7 are ~~to~~ called for the test excluding the applicants, the respondents have contended that as the respondents 4 to 7 are seniors, the applicants have no right to challenge this. It has further been contended that the second applicant Mr P Ravindran had in fact participated along with respondents 4 to 7 in the competitive examination for absorption in the regular skilled grade in the year 1985 and failed in the test and he had also filed OP No.7049/85 Before the Hon'ble High Court of Kerala claiming regular absorption as skilled Artisan on the basis of his seniority and ^{that} therefore this application is barred by res judicata estoppel and law of limitation.

3. The applicants have filed a rejoinder. They have clarified that the test which the second applicant allegedly took part and failed in the 1985 along with respondents 4 to 7 was for regular absorption as Fitter and Khalasis and the above question

has nothing to do with the inter-se seniority of the applicants and the respondents based on the entry into the cadre of Electrical Fitter. Regarding the plea of limitation, the applicants have stated that the order Annexure-A4 issued in the year 1988 purported to be absorbing the applicants did not affect the seniority of the applicants already accrued to them as nothing was mentioned about their seniority in the cadre, ^{and that} it was not necessary to challenge it ^W immediately. They have further stated that when the respondents started acting against their interest, they have made another representation at Annexure-A7 and the cause of action for filing of the application was the impugned seniority list and the alert notice. Since the application has been filed within time, the challenge against these orders are claimed to be sustainable. The applicants have also stated that the contention of the respondents 1 to 3 that in the cadre of Fitter, there were reclassified post and regular post is not true to fact and that after reclassification of semi-skilled post as skilled, all the posts whether reclassified or previously existing were all considered only as one cadre and that therefore the contention of the respondents that it was necessary to absorb the applicants towards the regular post has no force.

4. We have heard the learned for the parties and have also carefully perused the pleadings and the documents.

5. The important question that arises for consideration in this case is whether the applicants are entitled to seniority in the cadre of Electrical Fitter with effect from the date on which they were fitted against the reclassified post of Fitters in the



year 1982 or whether they could be considered to have entered the cadre only with effect from the dates mentioned in the Annexure-A4 order. The respondents 1-3 admit the case of the applicants that on reclassification of the semi-skilled post as skilled, pursuant to the Annexure-A1 order, the applicants were fitted against reclassified skilled posts with a scale of pay Rs.260-400 w.e.f. 17.3.1981/1.1.1982, 14.3.1981/1.1.1982 and 21.6.1981/1.1.1982. That the respondents 4 to 7 were appointed as Fitters skilled grade in the scale of Rs.260-400 only in the year 1986 is also admitted. According to Rule 302 of the Indian Railway Establishment Manual, the seniority in a grade is to be determined on the basis of the date of entry in the grade and the date of joining the working post. As observed earlier, there is no dispute of the fact that the applicants were granted the scale of pay of Rs.260-400 applicable to the grade of Fitter with effect from the year 1982. The contention of the respondents 1-3 is that though the scale of pay was given with effect from 1982, the applicants joined the working post only after they became qualified in the trade test with effect from the respective dates mentioned in the Annexure-A4 order. We do not find any force in this argument. The respondents have not produced any document to show that after re-classification of the posts under Annexure-A1, there ^{were} ~~was~~ 2 classes of Fitters as reclassified skilled Fitters and regular skilled Fitters. There is only a single pay scale namely, Rs.260-400 for the grade of Fitters. If reclassified Fitters and regular Fitters were different posts, there would have been different pay scales also. Annexure-A2 dated

29.8.1983 is the order by which the semi skilled Artisans were fitted against reclassified scale and their pay was fixed w.e.f. 1.1.1982. All the 3 applicants are included in this order. It is not stated that the fitment in the grade of Fitter in the scale of Rs.260-400 was on ~~xxxxxxxxxxxx&xxxx~~ adhoc basis. On the contrary, it is evident from this order that the fitment and fixation was done on a regular basis. Therefore, having come to the grade of Fitter carrying a pay scale of Rs.260-400, only for the reason that it was on account of reclassification, it cannot be seriously contended that the applicants did not enter the grade of Fitter in the year 1982. In K Ramanujam and another V Union of India and others, 1986 SLJ(3), 81, the Karnataka High Court had occasion to consider an almost similar question. That was a case in which the post of Supervisor Gr.II were upgraded to those of Chargemen Gr.II w.e.f. 1.3.1977 as duties and responsibilities of this post being substantially similar. But it was stipulated in the orders that seniority would be given to the petitioners, namely, Supervisor Gr.II w.e.f. 1.1.1980, the date on which the rules were amended ~~merging~~ the 2 cadres. The Karnataka High Court held that the order under which the service rendered by the petitioners therein even after 1.3.1977 were denied for seniority amounted to violation of Articles 14 and 16 of the Constitution. The Court held that even though the actual order ~~merging~~ the 2 cadre was issued only on 1.1.1980, for the purpose of seniority, the services of the petitioner from 1.3.1977 cannot be treated as in a lower cadre. We are in perfect agreement with the above reasoning of the Karnataka High Court. In this

case also as the applicants 1-3 came to the pay scale came to the pay scale of Rs.260-400 which is applicable to the post of Fitters earlier than respondents 4-7. Merely because Annexure-A4 order was issued purporting to regularly absorb them only in the year 1987 it would not make the service rendered by the applicants from 1982 to 1987 in an interior grade or post. Further, the applicants even after prior to Annexure-A4 order were working in the same post on which they were working after the Annexure-A4 order. Therefore, that the contention that the applicants were not fitted on working posts is also devoid any merit. As the applicants had already been regularly appointed to the post of Fitters on reclassification, in fact Annexure-A4 order was unnecessary and the inaction on the part of the applicants to challenge it till it was used to their disadvantage will not operate to preclude them from challenging the lower seniority assigned to them in the seniority list at Annexure-A6. Therefore, there is no merit in the contention that the application is barred by limitation.

6. As the respondents 4 to 7 who admittedly entered the cadre of Electrical Fitter only in the year 1986 were placed above the applicants who entered the cadre in the year 1982, to that extent, the Annexure-A6 seniority list is unsustainable and vitiated. In the seniority list, the date of entry in the cadre and such other details are absolutely essential for the reason that without these informations it may not be possible for the aggrieved persons to explain even whether they are aggrieved or not. Therefore, it is highly necessary that the impugned

seniority list at Annexure-A6 is quashed and the respondents 1-3 are directed to recast the seniority list of Electrical Fitters in the scale Rs.950-1500, assigning the applicants their due position above the respondents 4 to 7 treating that they were promoted as Fitters on a regular basis in the year 1982 under Annexure-A2 order. The memorandum dated 7.6.1990 alerting employees to appear for the trade test including respondents 4 to 7 and excluding the applicants who are seniors to them has therefore to be quashed. The respondents have to be directed to hold the test afresh giving chance to the applicants also to appear in the test.

7. In the result, the application is allowed and the impugned orders at Annexure-A4 and A7 and the seniority list at Annexure-A6 are quashed. The respondents 1 to 3 are directed to recast the seniority list of Electrical Fitters in the scale Rs.260-400 assigning appropriate positions to the applicants 1 to 3 above the respondents 4 to 7 taking into account the fact that the applicants entered on a regular basis. in the cadre of Electrical Fitters in the year 1982. The respondents are also directed to conduct the test for filling the post of Artisans staff for Electrical Department notified by the Annexure-A7 order after issuing a fresh alert notice including the names of the applicants within a period of two months from the date of communication of this order.

8. There is no order as to costs.

(AV HARIDASAN) 21-4-92
JUDICIAL MEMBER

trs

(SP MUKERJI)
VICE CHAIRMAN

21.4.92