

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.609 of 1995

Thursday, this the 28th day of November, 1996

CORAM

HON'BLE MR P V VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR A M SIVADAS, JUDICIAL MEMBER

1. S. Vijayakumar, S/o M.S. Subbian,
Electrical Fitter,
Diesel/Southern Railway, Erode.
2. S. Villavan Kothai, S/o R.S. Sivagnanam,
Electrical Fitter Grade-III,
Diesel/Southern Railway/Erode.
3. J.N. Stephen, S/o M. Johnson,
Electrical Fitter, Gr. III,
Diesel/Southern Railway/Erode.
4. P. Shanmugham, S/o Ponnusamy,
Electrical Fitter, Gr. III,
Diesel/Southern Railway/Erode.
5. K. Thennarasu, S/o Kannian,
Electrical Fitter Grade-II
Diesel/Southern Railway/Erode.
6. S. Selvamuthu Kumar, S/o Sengodan,
Electrical Fitter Grade-II,
Diesel/Southern Railway/Erode.
7. T. Srinivasan, S/o K. Thandavan,
Electrical Fitter, Grade-II,
Diesel/Southern Railway/Erode.

.. Applicants

By Advocate Mr T.C. Govindaswamy.

Vs

1. Union of India through
the General Manager,
Southern Railway, Park Town P.O.,
Madras -3.
2. The Divisional Personnel Officer,
Southern Railway,
Palghat Division, Palghat.
3. Workshop Personnel Officer,
Southern Railway, Golden Rock,
Tiruchirappalli District.
4. Divisional Railway Manager,
Southern Railway,
Palghat Division, Palghat.

5. T. Ranjith Singh,
Electrical Fitter/Diesel,
Diesel Shed, Southern Railway,
Golden Rock, Tiruchirappalli.
6. T. Thangavelu,
Electrical Fitter,
Diesel/Southern Railway/Erode.
7. S.P. Abdul Basith,
Electrical Fitter Grade-II,
Golden Rock Workshop,
Southern Railway, Golden Rock,
Tiruchirappalli.
8. M. Thangamuthu,
Electrical Fitter, Grade-I,
Diesel/Southern Railway,
Erode Railway Station, Erode.
9. A. Gopinathan,
Electrical Fitter,
Diesel/Southern Railway,
Erode Railway Station, Erode.
10. N. Doraisamy,
Electrical Fitter,
Diesel/Southern Railway,
Erode Railway Station, Erode.
11. P. Devendran,
Electrical Fitter, Grade-I,
Diesel/Southern Railway,
Erode Railway Station, Erode.
12. K. Velayudhan,
Diesel Shed, Southern Railway,
Krishnarajapuram Railway Station,
Bangalore.
13. J. Paul Rajendran,
Electrical Fitter, Grade-II,
Diesel/Southern Railway,
Erode Railway Station, Erode.

.. Respondents

By Advocate Mr James Kurian for Respondents 1 to 4.

By Advocate Mr P Santhosh Kumar for Respondents 6,8,9,10,
11 and 13.

The application having been heard on 7-11-1996, the Tribunal
delivered the following on 28th November, 96.

O R D E R

A M SIVADAS, JUDICIAL MEMBER

Applicants seek to quash A-7 in so far as it
assigns seniority to respondents 5 to 13 over the applicants,
to quash A-18 and also to direct Respondent-2 to assign

seniority of the applicants in the Diesel Electrical Cadre on the basis of their dates of appointment with all attendant benefits.

2. Applicants 1 to 3 are working as Electrical Fitter Grade III and applicants 4 to 7 as Electrical Fitter Grade II in the Southern Railway Diesel Shed at Erode. All the applicants were initially appointed as Substitute Khalasis in the Diesel Shed, Erode on different dates varying from 9.9.81 to 14.11.81. They attained temporary status on completion of 4 months' continuous service on different dates varying from 14.2.82 to 14.3.82. Thereafter, they were empanelled against the vacancies as on 31.12.80, confirmed and later promoted to different grades. While applicants were continuing as temporary status substitutes, respondents 5 to 13 were appointed to the Diesel Cadre on different dates varying from 18.3.82 to 29.10.82. Respondents 5 to 13 were Steam Surplus staff transferred to the Diesel Unit with a clear condition that their seniority in the Diesel Unit will be reckoned only from the date they join the Diesel side as per extant orders. While so, the applicants were regularised in the posts against which they were working and thereafter the 2nd respondent published a provisional seniority list of Electrical Khalasis, Diesel Shed, Erode as on 15.6.86. As per the same, applicants 1 to 7 were assigned position in the seniority list as 191, 193, 198, 149, 173, 186 and 184 respectively. Respondents 5 to 13 were assigned the position in the seniority list as 204, 207, 210, 211, 212, 217, 220, 222 and 221 respectively. This has borne out by A-5. Based on A-5, applicants were promoted as Khalasi Helpers. Applicants 5 and 6 were further promoted as Electrical Fitter Grade-II. They were confirmed in the promoted post of Khalasi Helpers with effect from 1.1.87 as per

A-6. In A-7 even though the applicants were no more Khalasis and actually confirmed in higher grade, the applicants were also included. As per the same, Respondents 5 to 13 who were all along junior to the applicants were given a sudden jump and were placed at Sl.No. 1,4,7,8,9, 11,15,18 and 19 whereas, the applicants were relegated to the positions at Sl.No. 66,68,73,22,48,61 & 59 respectively. A-7 was issued without any intimation to the applicants. There is no reason to include the name of the applicants in A-7. Applicants submitted identical representations to Respondent-2 as per A-8. Identical replies as per A-9 were given to the applicants by Respondent-2. Applicant-2 submitted an appeal to Respondent-4 as per A-10. There was no response. Meanwhile, all applicants were promoted as skilled Grade III. Applicants 4 & 5 were further promoted as skilled Grade II on a regular basis. Applicants 6 & 7 were promoted as skilled Grade II on ad hoc basis. The matter was taken up by the applicants through their representative union. Applicants were informed that an identical question in O.A. 1226/90 is pending before this Tribunal and the applicants case will be considered based on the decision in the said O.A. The said O.A. was disposed of on 30.6.92. Respondents did not act in terms of the law laid down in O.A. 1226/90. Applicant-2 again submitted a representation to Respondent-2 as per A-12. A-13 representation was addressed to Respondent-4. The matter was taken up through representative union as per A-14. A joint representation as per A-17 was made to Respondent-1 and the same was disposed of as per A-18. According to applicants A-18 is untenable, arbitrary and illegal. Consequently, the position assigned as per A-7 is bad in law.

3. In the reply statement filed by respondents the contentions raised are thus. All the applicants who were engaged as substitute Diesel (Electric) Khalasis at Erode from 9-9-81 to 17-10-81 were granted temporary status on varying dates from 9-1-82 to 14-3-82. Applicants were screened and empanelled against vacancies as on 31-12-84 in the year 1985. Respondents 5 to 12 are Steam surplus staff redeployed in Diesel Shed, Erode during the year 1982. Respondent-13 was appointed on physically handicapped quota in the year 1982. It is a fact that it was mentioned in the office orders that the seniority of steam surplus staff in Diesel Shed, Erode will be reckoned only from the date they join the Diesel side. After screening/empanelment of the substitute Diesel (Electric) Khalasis who were regularised by then were somehow placed above the 13 steam surplus staff posted as Diesel (Electric) Khalasis (respondents) in the order indicated in the O.A. After considering the representations received consequent on the issue of provisional seniority list, a regular seniority list of Diesel (Electric) Khalasis was published on 9-5-88 making necessary corrections. In that list respondents 5 to 13 from the steam side at the time of rendering steam surplus were given their due seniority position. By doing so, the seniority of the applicants had to be brought down below the respondents. Considering that applicants were only casual labourers at the time of redeployment of respondents 5 to 13 in the Diesel Shed and that the elevated seniority of the applicant was only in the provisional list, there was no necessity to intimate the applicants. A-7 and A-18 are not arbitrary, discriminatory or illegal. The belated representations made in 1993 or the directions of this Tribunal in OA 1180/94 will

not give cause of action to the applicants to challenge the settled seniority. Applicants have not objected to earlier promotions and therefore, there is acquiescence.

4. Learned counsel appearing for respondents contended that the O.A. is barred by limitation and there is also acquiescence of various orders.

5. Learned counsel appearing for the applicants submitted that A-11 order of this Tribunal in O.A. 1226/90 is squarely applicable to the facts of this case and the whole matter is concluded by the same and in the light of the same this O.A. is only to be allowed.

6. The case of the applicants that they were initially appointed as substitute Khalasis in the Diesel Shed at Erode on different dates is admitted by Respondents 1 to 4 in the reply statement. It is also admitted by Respondents 1 to 4 that the seniority of steam surplus staff, Diesel Shed, Erode will be reckoned only from the date they join the diesel side. It is further admitted that in the provisional seniority list, the names of substitute Diesel (Electric) Khalasis who were regularised by then were placed above the steam surplus staff posted as Diesel(Electric) Khalasis in the order indicated in the O.A. But at the same time, Respondents 1 to 4 have stated that it happened 'some how'. How it happened is not clearly stated.

7. From A-20 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.

8. It is not necessary to have a detailed discussion on each and every aspect involved in this O.A. for the reason that the matter is already concluded by A-11 judgment of this Tribunal in O.A. 1226/90. Learned counsel appearing for the respondents argued that A-11 judgment is not applicable to the facts of this case. On going through A-11 we are unable to agree with the submission made by learned counsel for the respondents. A-11 judgment is on identical facts and it is applicable to the case on hand.

9. It is contended by the respondents that in OAK 435/1988 it was held that the service rendered after attaining temporary status and before regular absorption will not count for seniority and that has been followed. In A-11 judgment it has been held thus:

"We have gone through the judgment of this Tribunal dated 12.12.89 in OAK No.435/88 at Ext.B-2 and find that the applicants therein were casual labourers who attained temporary status after serving continuously for four months. The judgment in that case, therefore, cannot be made applicable for determining the seniority of the applicants and respondents 4 to 30 before us who were not originally appointed as casual labourers, but admittedly as substitutes."

So it is quite clear that OAK 435/88 has no application to the case at hand.

10. There is no case for the parties that A-11 judgment has been reversed or modified by the appellate court. That being so, A-11 judgment is in force and is to be followed and in the light of A-11 judgment the contentions raised by the respondents cannot be accepted.

11. Following the judgment A-11, we allow the original application, quash A-7 in so far as it assigns seniority to Respondents 5 to 13 over the applicants, quash A-18 and direct Respondent-2 to fix the seniority of the applicants on the basis of their date of attainment of temporary status as substitutes followed by regularisation and that of Respondents 5 to 13 strictly in accordance with A-2 to A-4. No costs.

Dated the 28th November, 1996.

A M SIVADAS
JUDICIAL MEMBER

P V VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

P/27-11

List of Annexures

1. Annexure A2: A true copy of the letter No: J/P 533/V/Surplus dt. 12-3-82 issued by the 2nd respondent. (transfer order of Respondent 5 & 6)
2. Annexure A3: A true copy of Order No: J/P 532/V/Surplus dt. 20-4-82 issued by the 2nd respondent. (transfer order of respondents 7 to 11.
3. Annexure A4: A true copy of Order No. J/P 533/V/Surplus dt. 31-3-1982 of the 2nd respondent.
4. Annexure A5: A true copy of letter No: J/P 621/III/DSL/Vol. dt. 24-6-86 issued by the 2nd respondent.
5. Annexure A6: A true copy of the Order bearing No: J/P 186/III/DSL dt. 14-1-88 issued by the 2nd respondent.
6. Annexure A7: Provisional Seniority List issued under Letter No. J/P 612/III/DSL/Vol. 3 dt. 9-5-88 by the 2nd respondent
7. Annexure A8: A true copy of the representation dt. Nil submitted by 2nd applicant to 2nd respondent.
8. Annexure A9: A true copy of Order No: J/P 612/III/DSL/Vol. 3 dt. 8-8-88 of the 2nd respondent.
9. Annexure A10: A true copy of the Appeal dt. 30-8-88 filed against Annexure A9 - before the 4th respondent.
10. Annexure A11: A true copy of the Judgement dt. 30-6-92 in O.A. 1226/90 of this Hon'ble Tribunal.
11. Annexure A12: A true copy of the representation dt. 29-1-93 of 2nd applicant to the 2nd respondent.
12. Annexure A13: A true copy of the representation submitted by second applicant dt. 4-4-93 before the 4th respondent.
13. Annexure A14: A true copy of the Letter of the representative Union dt. 21-4-93.
14. Annexure A17: A true copy of the Joint representation of applicants dt. 2-10-94 filed before the 1st respondent.
15. Annexure A18: Letter No: J/P CAT/1180/94 dt. 1-12-94, communicated by the 2nd respondent.
16. Annexure A20: A true copy of Railway Board Letter No. E(NG) II/77/SB/33 dt. 19-9-79.

CA 1573/2000
FORM 28.

IN THE SUPREME COURT OF INDIA

(Order XVI Rule 4(1)(a))

CIVIL APPELLATE JURISDICTION.

SPECIAL LEAVE PETITION

414235

(Under Article 136 of the Constitution of India).

SPECIAL LEAVE PETITION (CIVIL) NO. 5885 OF 1998.

Between:-

- | | | |
|--|---|---------------------|
| A. T. Thangavelu,
Electrical Fitter,
Diesel/Southern Railway,
Erode,
Tamil Nadu. | Respondent No.6
in O.A.No.609/95
of the CAT,
Ernakulam Bench. | Petitioner
No.1. |
| B. M. Thangamuthu,
Electrical Fitter, Grade-I,
Diesel/Southern Railway,
Erode Railway Station,
Erode, Tamil Nadu. | Respondent No.8
in O.A.No.609/95
of the CAT, Erna-
kulam Bench. | Petitioner
No.2. |
| C. A. Gopinathan,
Electrical Fitter,
Diesel/Southern Railway,
Erode Railway Station,
Erode, Tamil Nadu. | Respondent No.9
in O.A.No.609/95
of the CAT. Erna-
kulam Bench. | Petitioner
No.3. |
| D. N. Doraisamy,
Electrical Fitter,
Diesel/Southern Railway,
Erode Railway Station,
Erode, Tamil Nadu. | Respondent No.10
in O.A.No.609/95
of the CAT, Erna-
kulam Bench. | Petitioner
No.4. |
| E. P. Devendran,
Electrical Fitter Grade-I,
Diesel/Southern Railway,
Erode Railway Station,
Erode,
Tamil Nadu. | Respondent No.11
in O.A.No.609/95
of the CAT, Erna-
kulam Bench. | Petitioner
No.5. |
| F. J. Paul Rajendran,
Electrical Fitter Grade-II,
Diesel/Southern Railway,
Erode Railway Station,
Erode, Tamil Nadu. | Respondent No.12
in O.A.No.609/95
of the CAT, Erna-
kulam Bench. | Petitioner
No.6. |

A N D

- | | | |
|---|---|-----------------------------------|
| G. Union of India,
represented by the
General Manager,
Southern Railway,
Park Town P.O.,
Madras-3. | Respondent No.1
in O.A.No.609/95
of the CAT. Erna-
kulam Bench. | Contesting
Respondent
No.1. |
| H. The Divisional Personnel-
Officer, Southern Railway,
Palghat Division,
Palghat,
Kerala State. | Respondent No.2
in O.A.No.609/95
of the CAT, Erna-
kulam Bench, | Contesting
Respondent
No.2. |
| I. Workshop Personnel Officer,
Southern Railway,
Golden Rock,
Tiruchirappalli Dist.
Tamil Nadu. | Respondent No.3
in O.A.No.609/95
of the CAT, Erna-
kulam Bench, | Contesting
Respondent
No.3. |
| J. Divisional Railway Manager,
Southern Railway,
Palghat Division,
Palghat,
Kerala State. | Respondent No.4
in O.A.No.609/95
of the CAT, Erna-
kulam Bench. | Contesting
Respondent
No.4. |
| K. T. Ranjith Singh,
Electrical Fitter/Diesel,
Diesel Shed,
Southern Railway,
Golden Rock,
Tiruchirappalli,
Tamil Nadu. | Respondent No.5
in O.A.No.609/95
of the CAT. Erna-
kulam Bench. | Formal
Respondent
No.5 |
| L. S.P. Abdul Basith,
Electrical Fitter Grade-II,
Golden Rock Workshop,
Southern Railway,
Golden Rock,
Tiruchirappalli,
Tamil Nadu. | Respondent No.7
in O.A.No.609/95
of the CAT, Erna-
kulam Bench. | Formal
Respondent
No.6. |
| M. K. Velayudhan,
Diesel Shed,
Southern Railway,
Krishnarajapuram-
Railway Station,
Bangalore,
Karnataka State. | Respondent No.12
in O.A.No.609/95
of the CAT. Erna-
kulam Bench, | Formal
Respondent
No.7 |
| N. S. Vijayakumar,
S/o. M.S. Subbian,
Electrical Fitter,
Diesel/Southern Railway,
Erode, Tamil Nadu. | Applicant No.1
in O.A.No.609/95
of the CAT, Erna-
kulam Bench. | Contesting
Respondent
No.8 |

O. S. Villavan Kothai,
S/o. R.S. Sivagnanam,
Electrical Fitter Grade-III,
Diesel/Southern Railway,
Erode, Tamil Nadu.

Applicant No.2
in O.A.No.609/95
of the CAT, Erna-
kulam Bench.

Contesting
Respondent
No.9

P. J.N. Stephen,
S/o. M. Johnson,
Electrical Fitter Grade-III,
Diesel/Southern Railway,
Erode, Tamil Nadu.

Applicant No.3
in O.A.No.609/95
of the CAT, Erna-
kulam Bench,

Contesting
Respondent
No.10.

Q. P. Shanmugham,
S/o. Ponnusamy,
Electrical Fitter Grade-III,
Diesel/Southern Railway,
Erode, Tamil Nadu.

Applicant No.4
in O.A.No.609/95
of the CAT, Erna-
kulam Bench

Contesting
Respondent
No.11

R. K. Thennarasu,
S/o. Kannian,
Electrical Fitter Grade-II,
Diesel/Southern Railway,
Erode, Tamil Nadu.

Applicant No.5
in O.A.No.609/95
of the CAT, Erna-
kulam Bench,

Contesting
Respondent
No.12.

S. S. Selvamuthu Kumar,
S/o. Sengodan,
Electrical Fitter Grade-II,
Diesel/Southern Railway,
Erode, Tamil Nadu.

Applicant No.6
in O.A.No.609/95
of the CAT. Erna-
kulam Bench,

Contesting
Respondent
No.13.

T. T. Srinivasan,
S/o. K. Thandavan,
Electrical Fitter Grade-II,
Diesel/Southern Railway,
Erode, Tamil Nadu.

Applicant No.7
in O.A.No.609/95
of the CAT, Erna-
kulam Bench,

Contesting
Respondent
No.14.

To

The Hon'ble the Chief Justice of India

and His Companion Judges of the

Supreme Court of India

The Special leave petition of the petitioners most
respectfully sheweth:

13

1. The petitioners above named respectfully submits this petition seeking special leave to appeal against the final judgment and order of the Central Administrative Tribunal. Ernakulam Bench dated 28th November, 1996 in O.A. No. 609 of 1995, allowing the Application filed by Respondents 8 to 14 herein and quashing A-7 and A-18 (Annexures P-3 and P-4 in the S.L.P).

2. QUESTIONS OF LAW:-

- (a) Whether the date of appointment as a 'substitute' employee in Indian Railway Establishment, is the date of his appointment to regular service?
- (b) Whether a 'substitute' employee as defined in para 2315 of the Indian Railway Establishment Manual is a regular employee?
- (c) Whether the period of employment as a 'substitute' can be added to the period of regular employment of a railway servant for the purpose of his seniority?

3. DECLARATION IN TERMS OF RULE 4(2).

The Petitioners have not filed any other Special Leave Petition from the judgment and order dated 28-11-1996 in O.A. No. 609 of 1995 of the Central Administrative Tribunal, Ernakulam Bench.

4. DECLARATION IN TERMS OF RULE 6:

The annexures produced along with the S.L.P. are true copies of the documents which formed part of the records of the case in the Central Administrative Tribunal Ernakulam Bench against the order dated 28-11-1996 in O.A. No.609 of 1995.

5.

G R O U N D S

- I. Because the judgment of the Central Administrative Tribunal, Ernakulam Bench in O.A. No.609 of 1995 is unsustainable both on facts and in law.
- II. Because a substitute is a person engaged in Indian Railway Establishment on vacancies arising on account of a regular railway servant being on leave or due to non-availability of permanent or temporary railway servant and which can not be kept vacant. A substitute is not a regular railway servant. The period of engagement as a substitute can not be reckoned or added to the period of regular service for purposes of seniority.
- III. Because the Tribunal has erred in appreciating the scope of para 2315 of the Indian Railway Establishment Manual. Merely because a substitute is not a casual labour within the meaning of para 2561(a) of the Manual, the person does not become a railway servant. A substitute engaged by the Railways is different and distinct from a railway servant.
- IV. Because the petitioners herein joined duty on being absorbed on the diesel side on 26-3-1982, 26-6-1982, 29-4-1982, 3-5-1982 and 3-5-1982 respectively and their seniority in the diesel unit is reckoned from the said

respective dates. The contesting respondents were empanelled and absorbed only in 1985 in posts arising in 1984. Therefore the S.L.P. petitioners are senior to the contesting respondents. The mere engagement of the contesting respondents as casual labourers/substitutes during the period 9-9-1981 to 14-11-1981 do not give them seniority over the petitioners because the contesting respondents were absorbed in regular service only in 1985.

V. Because even assuming that 'substitute' status has to be added to regular service for reckoning seniority, the petitioners were given temporary status as substitutes in the year 1978 whereas the contesting respondents were given the same status only in 1981. For this reason also, the petitioners are senior to the contesting respondents.

VI. Because the respondents 6, 8 to 11 were initially engaged as Casual Labourers on 4.1.1975, 25.6.1978,

16.8.1977, 21.7.1978, 27.5.1978 respectively and they were granted temporary status on completion of 4 months service. They were granted temporary status on various dates in 1978 and were subsequently regularised in service with effect from 26.10.1979. Later they were transferred and posted in the diesel shed in 1982. The applicants were initially in 1981, and they were attained temporary status in February/March 1982 and were regularly absorbed in 1985. From the above details it can be seen that the respondents 6,8 to 11 are seniors to the applicants in the date of their engagement, the date of attainment of temporary status, date of regular absorption, date of entry into diesel shed. The Hon'ble Tribunal has not considered these aspects while disposing the said O.A.

VII. The 13th respondent was a directly appointed employee in the physically handicapped quota. He was not a steam surplus employee. In the counter affidavit filed on behalf of respondents 6,8 to 11 and 13 it was specifically stated that the 13th respondent was a direct recruit and his appointment was on 23.10.82 and as such he is senior to the applicants.

VIII. The applicants have never objected the absorption/appointment of these respondents in the diesel shed and their further promotions to the higher grades. The date of joining and further promotions of these respondents are much earlier to the appointment/promotions

of the applicants. The dates of joining of respondents 6,8 to 11 and 13 in the diesel shed and their further promotions are given below:

Name	Date of joining in diesel shed	Date of promotion as Elecl. Fitter Gr.III	Date of promotion as Elctcl. Fitter Grade-III
I. Thangamuthu (R6)	26.3.82	27.7.86	13.10.90
M. Thangamuthu (R8)	26.6.82	27.7.86	13.10.90
A. Gopinathan (R9)	29.4.82	22.8.86	13.10.90
N. Doraiswamy (R10)	3.5.82	22.7.88	24.10.90
P. Devendran (R11)	3.5.82	22.7.86	3.9.90
Paul Rajendran (R13)	29.00.82	17.7.86	24.11.90

The 11th respondent has been given further promotion and he is now working as Electrical Fitter Grade-I.

The applicants have never objected to the earlier promotions of the respondents 6,8 to 11 and 13 and thus they have acquiesced seniority of respondents 6,8 to 11 and 13 and as such not entitled to challenge the seniority of the applicants at a later date.

IX. . The impugned seniority in the above case (Annexure-A3) was published as early as in 1988. The applicants representation against the said seniority list was disposed of 1988 in itself by Annexure-A9 order. Thereafter they have taken up the matter only in 1994. Hence the challenge against the seniority list is bad by limitation. In para 14 of the judgement the Tribunal has noted the contentions of the respondents regarding the limitation and acquiescence of various orders. However the Tribunal has not considered the above matters.

X. The Hon'ble Tribunal simply followed the judgement in O.A.No.1226/90 (Annexure-P⁵) and allowed the said O.A. The Hon'ble Tribunal's Annexure-P⁵ judgement relates to employees in an entirely different department. In any case the employees in the said case approached the Hon'ble Tribunal immediately after the publication of the impugned seniority list therein.

XI. The substitute is defined in para 1512 of the Indian Railway Establishment Manual which is reproduced below:

"Definition:- Substitutes are persons engaged in Indian Railway Establishments on regular scales of pay and allowances applicable to posts against which they are employed. These posts fall vacant on account of a railway servant being on ~~the~~ leave or due to non-availability of permanent or temporary railway servants and which cannot be kept vacant".

The rights and privileges admissible the substitutes is laid down in Para 1515 of the Indian Railway Establishment Manual (1989 Edition). The said provision is reproduced below:

"Substitutes should be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time on completion of four months continuous service. Substitute school teachers may, however, be afforded temporary status after they have put in continuous service of three months and their services should be treated as continuous for all purposes except seniority on their eventual absorption against regular posts after selection"

Note:- The conferment of temporary status on the substitutes on completion of four months continuous service will not entitle them to automatic absorption/ appointment to railway service unless they are in

....

~~xxxx~~ turn for such appointment on the basis of their position in the select lists and or they are selected in the approved manner for appointment to railway posts.

From the note it can be seen that the conferment of temporary status on completion of 4 months service will not entitle them to automatic absorption/appointment to railway service unless they are in turn for such appointment on the basis of their position in select list and/or they are selected in the approved manner for appointment to regular railway posts. In the case of the applicants, even though they attained temporary status in Feb/March 1982, they were screened for absorption only in 1985 and as such they are entitled to get seniority from the date of their regular absorption only. In fact staff numbers were allotted to them after screening of their regular absorption.

xii. . The seniority in initial recruitment grade of railway servants is determined as per para 302 of Indian Railway Establishment Manual. The said provision is reproduced below:

"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. The grant of pay higher than the initial pay should not, as a rule, confer on a railway servant seniority above those who are already appointed against regular posts. In categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of

...

promotee and the date of joining the working post after due process in the case of direct recruit, subject to maintenance of inter-seniority of promotees and direct recruits among themselves. When the date of entry into a grade of promoted railway servants and direct recruits are the same they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter-se-seniority of each group".

The date of appointment of the respondents 6,8 to 11 and 13 in the post of diesel electrical khalasi are as on various dates in 1982 where as the applicants were screened and absorbed as diesel khalasies ~~xxx~~ only in 1985 and hence the respondents 6,8 to 11 and 13 are entitled to get seniority over the applicants.

XIII . In Annexure-A20 the ministry of railway's decision is that the date of appointment of substitute to be rendered 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. The above said order does not provide that the seniority and other benefits to be given to the employees based on the said date. If the substitutes are entitled to get seniority also from the said date the railway board would have specifically stated in the said order regarding the seniority. Since there is no such order from the railway board, the applicants are not entitled to get seniority over the respondents 6,8 to 11 and 13.

- XIV. Annexure-P3 seniority list was earlier challenged by certain persons in O.A. 435/88 and the Tribunal by judgment dated 13-12-89 dismissed the said case. The respondents 6,8 to 11 and 13 were parties in the said O.A. and the seniority assigned to them in Annexure-P3 seniority list was accepted by the Hon'ble Tribunal. Thus the matter relating to the seniority of respondents 6,8 to 11 and 13 were concluded by the said judgment. No appeal was also filed against the said judgment. However, the Hon'ble Tribunal has discarded the judgment in the above O.A. stating that O.A.K. 435/88 has no application to the respondents 6.8 to 11 and 13. They were parties in the said case and their fact was failed to note by the Tribunal.
- XV. Now by order dated 9.5.1987, the Administration has revised the seniority of the respondents. It can be seen that not only the applicants in O.A. No.609/95 have been placed above these respondent but about 70 to 80 persons were placed above these respondents. This is arbitrary and illegal.
- XVI The implication of the impugned judgment herein is that casual labourers/substitutes will get seniority over regular employees which is not permitted by any service rules.

6. GROUND FOR INTERIM RELIEF.

The Tribunal has quashed A-7 seniority list and directed to fix seniority of the contesting respondents on the basis of attainment of temporary status as substitutes. Consequently the S.L.P. petitioners will be reverted in rank in the seniority list which will prejudice their promotion and other service prospects. The order and direction of the Tribunal is unsustainable both on facts and in law. The S.L.P. petitioners are senior in rank to the contesting respondents as per the seniority list published by the Railway administration and which has been in operation for over 10 years. The contesting respondents are not entitled to counter their period of engagement as substitutes which is not a regular service. The Tribunal has not correctly appreciated or applied the law or the correct facts. A-11 judgment is inapplicable to the case. At any rate A-11 judgment is unsustainable in law.

7. MAIN PRAYER.

It is therefore most respectfully prayed that
Your Lordships may be graciously pleased -

- (1) to grant Special leave to appeal from the final judgment and order dated 28-11-1996 in O.A.No.609 of 1995 of the Central Administrative Tribunal, Ernakulam Bench;

- (ii) to set aside the judgment and order dated 28-11-1996 in O.A. No.609 of 1995 of the Central Administrative Tribunal, Ernakulam Bench;
- (iii) to declare that Annexure-P3 (A-7 before the Tribunal) is a valid and proper seniority list.
- a n d
- (iv) to pass such other order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case.

8.

INTERIM RELIEF.

It is therefore most respectfully prayed that Your Lordships may be graciously pleased to stay the operation and implementation of the judgment dated 28-11-1996 in O.A. No.609 of 1995 of the Central Administrative Tribunal, Ernakulam Bench, and all proceedings consequential thereto till the final disposal of the S.L.P. and to grant ad-interim ex-parte stay in terms of the prayers above.

Drawn & Filed by:

New Delhi

Dated: 29-9-1997

(E.M.S. ANAM)
Advocate for the Petitioners.