

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.609/2002.

Thursday this the 26th day of August 2004.

CORAM:

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.H.P.DAS, ADMINISTRATIVE MEMBER

N.C.Ayyappan,
Kinattuparambil Veedu, Eroor P.O.-682 306 from
Velipparambil Tripunithura, working as
Traffic Porter, Irumpanam Yard,
Trippunithura, Southern Railway. Applicant
(By Advocate Ms. Chincy Gopakumar)

Vs.

1. Union of India, represented by
General Manager,
Southern Railway, Madras-3.
2. Divisional Railway Manager,
Southern Railway, Thiruvananthapuram.
3. Divisional Personnel Officer,
Divisional Office, Southern Railway,
Thiruvananthapuram. Respondents

(By Advocate Mr.P.Haridas)

The application having been heard on 30.8.2004, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

When the matter came up before the Bench today, none
appeared for the applicant. None was appeared for the applicant
even on the last date of hearing dated 6.8.2004. It appears that
the applicant is not interested in prosecuting the matter any
further. Hence, the Original Application is dismissed for
default.

Dated the 26th August, 2004.


H.P.DAS
ADMINISTRATIVE MEMBER


A.V.HARIDASAN
VICE CHAIRMAN

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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.609/02

Monday this the 28th day of February 2005

C O R A M :

**HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.H.P.DAS, ADMINISTRATIVE MEMBER**

N.C.Ayyappan,
S/o.Chathappan,
Kinattuparambil Veedu,
Eroor P.O., 682 306. from Velipparambil,
Tripunithura. Working as Traffic Porter,
Irumpanam Yard, Tripunithura, Southern Railway.

..Applicant

(By Advocate Mrs.Chincy Gopakumar)

Versus

1. Union of India represented by General Manager,
Southern Railway, Madras – 3.
2. Divisional Railway Manager,
Southern Railway, Thiruvananthapuram.
3. Divisional Personnel Officer,
Divisional Office, Southern Railway,
Thiruvananthapuram.

..Respondents

(By Advocate Mr.P.Haridas [R1-3])

This application having been heard on 28th February 2005 the Tribunal on the same day delivered the following :-


ORDER

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

The applicant who commenced service as a casual labourer in the year 1968 was brought into the regular service as a Gangman with effect from 12.10.1997 as per order dated 26.9.1979. On implementation of the recommendations of the 4th Central Pay Commission the applicant's pay was fixed by order dated 23.10.1986 at Rs.875 in the scale of pay of Rs.800-1150 (Annexure A-3). While so the applicant was send on BAAR Project secondment with effect from 30.4.1988. On return from the

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secondment by Annexure A-5 order the applicant was to be given a posting in the Engineering Department itself. However the applicant was transferred to the Traffic Department as Sweeper cum Porter in the scale Rs.750-940 with effect from 8.2.1991 and his pay was fixed at Rs.940 as on 1.8.1991. Alleging that the transfer was in the exigencies of service and transfer to the post carrying a lower pay scale at bottom seniority was not on his request it appears that the applicant made representation for restoration of seniority and protection of pay. The entry regarding the date of appointment was also complained of by the applicant and necessary correction was made. However the applicant was aggrieved by the placement in the seniority list in Annexure A-9. According to the applicant he should have been placed between Serial Nos.13 and 14 going by the date of appointment and therefore his seniority has been illegally suppressed. Alleging these the applicant has submitted a representation which was not considered and disposed of. Therefore the applicant filed O.A.1004/01 which was disposed of permitting the applicant to make a detailed representation and directing the 3rd respondent to consider and dispose of the same. In obedience to the above directions the 3rd respondent has passed impugned order Annexure A-1 dated 14.2.2002 turning down the claim of the applicant for alteration of seniority on the ground that the applicant having accepted transfer to the post of Sweeper cum Porter in the Traffic Department at bottom seniority with effect from 1.2.1991 the placement of his name in the seniority list was perfectly in order and the applicant's pay on transfer to lower post has already been protected as per rules. Aggrieved by that the applicant has filed this application seeking to set aside Annexure A-1 and for a direction to the respondents to place the applicant's name in Annexure A-9 in between Sl.No.13 and 14 giving the date of continuous regular service as 12.10.1979 and to fix his pay and allowance as requested for in Annexures



A-7 and A-8.

2. The respondents in their reply statement contended that the applicant having volunteered to be transferred to the Traffic Department as Sweeper cum Porter carrying pay scale of Rs.750-940 by Annexure R-2 undertaking and having been transferred by Annexure R-1 order dated 24.1.1991 there is no merit in the claim of the applicant either for seniority or for protection of pay because his pay has already been protected to the extent admissible as is seen mentioned in Annexure A-6 order.

3. I have carefully gone through the pleadings and materials on record and have heard the learned counsel on either side. We do not find any legitimate grievance of the applicant which calls for intervention. The case of the applicant is that his transfer as Sweeper cum Porter was in the exigencies of service and therefore he was entitled to protection of seniority and pay. If the transfer of the applicant from Engineering Department to Traffic Department was in the exigencies of service then in fairness the respondents are bound to protect his seniority and pay. However the case of the respondents is that the applicant was transferred from Engineering Department to Traffic Department as Sweeper cum Porter in the scale of pay of Rs.750-940 was on his volunteering and submitting a declaration that he was willing to work in the Traffic Department as Sweeper cum Porter in the scale Rs.750-940 on the bottom seniority. To establish this contention the respondents have produced Annexures R-1 to R-3. The applicant's case is that no such undertaking was given by him. A careful scrutiny of Annexures R-1 to R-3 shows without any reason for doubt that the applicant was transferred to Traffic Department on his willingness. Annexure R-3 communication dated 2.1.1991 from the Divisional Office, Trivandrum shows a list of employees of Engineering Department who

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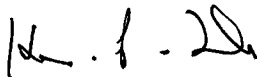
were found suitable for absorption in the Traffic Department in scale Rs.750-940. The first name is of the applicant. Annexure R-2 is a letter of the applicant to DPO/TVC dated 10.1.1991. It is seen written as follows :

"I hereby declare that I am willing to work in Tfc. Dept. as S.C.P. In scale Rs.750-940 on bottom seniority".

4. It is seen that after Annexure R-2 the order Annexure R-1 was issued transferring the applicant also as SCP/CKI with bottom seniority. We do not find any reason to disbelieve the respondents and to doubt the genuineness of Annexures R-1 to R-3. The applicant having been transferred on his willingness accepting bottom seniority in the Traffic Department is not entitled to claim any higher seniority now. His pay to the extent admissible has been protected also. We therefore do not find any merit in this O.A.

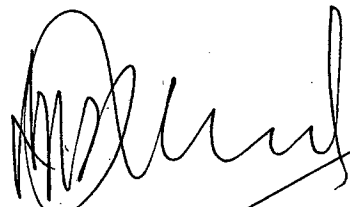
5. In the result the Original Application is dismissed. No costs.

(Dated the 28th day of February 2005)



H.P.DAS
ADMINISTRATIVE MEMBER

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A.V.HARIDASAN
VICE CHAIRMAN