

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 618/2004

FRIDAY THIS THE 2nd DAY OF MARCH 2007

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

- 1 F. Sebastia, Titus S/o Frank
Loco Inspector, Southern Railway
Quilon
residing at Savion, MRA 73-B
Mundakkal West, Kollam
- 2 K.V. Mathew S/o K.G. Varghese
Loco Inspector, Southern Railway
Ernakulam
residing at Kochuplamoottil
Chennithala South PO
Mavelikkara

Applicants

By Advocate Mr. P. Ramakrishnan

Vs.

- 1 Union of India represented by the
General Manager, Southern Railway
Headquarters Office, Chennai
- 2 The Chief Personnel Officers
Southern Railway, Head Quarters Office
Personnel Branch, Chennai-600003
- 3 Deputy Chief Personnel Officers M&E
Southern Railway, Headquarter Office
Personnel Branch
Chennai-600003
- 4 The Divisional Personnel Officer
Southern Railway
Trivandrum

- 5 K.S. Rajendra Kumar, Loco Inspector
O/o the Senior Divisional Mechanical Engineer,
Southern Railway, Trivandrum
- 6 J. Krishnakutty, Loco Inspector
Office of the Area Superintendent
(Mechanical) Southern Railway, Kollam.
- 7 S. Kulathu Iyer, Loco Inspector
Office of Senior Divisional Mechanical Engineer
Southern Railway,
Trivandrum.
- 8 K.M. Dasappan, Loco Inspector
Diesel Loco Shed
Southern Railway,
Ernakulam.

Respondents

By Advocates Mrs. Sumathi Dandapani Senior Advocate,
Ms. P.K. Nandini for R 1-4
Mr. T.C. Govindaswamy for R-8
Mr M.P. Varkey for R 5, 6 & 7

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

This Application has been filed seeking the following reliefs:

- a) Issue an order quashing and setting aside Annexure A-5 and A-7 as arbitrary and illegal
- b) hold that the appellants are entitled to seniority over respondents 5 to 8 in the cadre of Loco Supervisors and that the applicants seniority position vis-a-vis respondents 5 to 8 in Annexure A-4 is not liable to be disturbed.
- c) issue an order directing respondents 1 to 4 to restored the applicants seniority over respondents 5 to 8 and
- d) such other orders and directions as are deemed fit in the facts and circumstances of the case.

2 The applicants had commenced service as Diesel Assistants, on 13.10.1986, pursuant to direct recruitment by the Railway



Recruitment Board. They were promoted as Goods Driver 14.9.1991. Thereafter the applicants were selected for promotion to the post of Loco Running Supervisors and posted in Trivandrum Division a per order dated 25.11.1992 of the Assistant Personnel Officer, Southern Railway, Madras.

3 The applicants had joined the promoted post on 24.12.1992 and 31.12.1992 respectively. Respondents 5 to 8 who are promoted along with the applicants as per Annexure A-1 and posted to Bangalore, did not join as Loco Inspectors. Instead, they filed O.A. NO. 180/92 before this Tribunal challenging the applicants' promotion and seeking posting in Trivandrum Division. The said Original Application was subsequently withdrawn and respondents 5 to 8 had joined as Loco Inspectors only on 12.2.1994, 1.3.1994, 12.2.1994 and 1.3.1994 respectively. The 4th respondent had published a seniority list of Loco Running Supervisors as on 1.6.1993. Applicants were at Sl. Nos. 85 and 86 respectively in the said Seniority List. Respondents 5 to 8 did not figure in the said seniority list at all. Subsequently by a letter dated 23.1.1998, the 2nd respondent herein published a seniority list of Loco Running Supervisors in compliance of the order of the Central Administrative Tribunal Madras Bench. The applicants were at Sl. NOs. 62 and 63 respectively in the said seniority list. Respondents 5 to 8 did not figure in the said seniority list as well. Thereafter, the 2nd respondent published a Provisional seniority list of Loco Running Supervisors as on 1.5.2002, as per his letter dated 22.5.2002. Applicants were at

2

Sl. Nos. 36 and 37 respectively in the said seniority list. Respondents 5 to 8 were included in the list at Sl. Nos. 39 to 42. A true copy of the above said seniority list published vide letter dated 22.5.2002 is at Annexure A-4.

4 The main grounds relied on by the applicants is that the applicants' seniority in the cadre of Loco Inspector which has been settled since 1992 has been unsettled by virtue of Annexure A-5 without giving any notice and therefore is in violation of the principle of natural justice. It has been contended that there is no provision in the IREM which provides for reckoning seniority on the basis of placement in the selection panel. Therefore the party respondents cannot have a higher seniority than the the applicants as they had joined the promotion post later, on their own volition. The representation of the applicants spelling out these objections have not been considered by the respondents.

5 The respondents have denied the allegations of the applicants. It is submitted that the applicants and the private respondents 5 to 8 while working as Goods Drivers in Trivandrum and Palghat Divisions respectively were selected to the post of Loco Running Supervisor (Mechanical Wing) in the scale of Rs. 2000-3200 and placed in the panel as per CPO letter NO. P(S)312/IV/0L/Panel dated 29.10.1992 (Annexure R-1). As per the panel position, the names of the applicants were at Sl.No. 35 and 36 and the names of the private respondents 5 to 8 were at Sl. NO. 21, 23, 24 and 25 respectively. By Annexure A-1 order dated 25.11.1992 the applicants were posted at

2

7

Trivandrum and Ernakulam and the private respondents were posted at Ernakulam Division. The private respondents then filed O.A. Nos.1807/92 and 35/93 before this Tribunal against their posting to Bangalore, the Tribunal disposed of the OAs and the operative portion of the order reads as under:

"Accordingly we record the submission of the learned counsel for applicants that they are prepared to join at Bangalore pursuant to Annexure A-5 and A-3 respectively. We direct the CPO, Southern Railway, Madras to consider the representations filed by the applicants, and dispose of the same in accordance with law. This shall be done within the period of two months from the date of receipt of the copy of the orders. It goes without saying that the applicants' right for fixation of proper seniority in accordance with law is left open to be agitated by the applicants separately if they are aggrieved by the same."

6 In obedience to the directions of the Tribunal, the private respondents 5 to 8 were posted to Bangalore vide letter dated 23.1.1994 (Annexure R-3). The private respondents were not to be debarred from promotion as the OAs mentioned above were pending before this Tribunal. It was considered that provisions of Para 224 of IREM Vol. dealing with refusal of promotion are not applicable in their cases. Therefore a decision was taken to assign seniority based on their position in the panel notified by Annexure A-1 in accordance with the provisions of Paras 305, 306 and 309 of IREM Vol. I. This decision was conveyed to the private respondents through Trivandrum Division vide letter No. P(S)535/IV/LRS Pt. Dated 22.2.1996 (R-6). However, due to oversight this decision was not taken note of while issuing the provisional seniority list as on

1.5.2002 (Annexure A-4). The respondents 7 & 8 then represented for rectification of the mistake in the seniority list and their representations were considered and correct seniority was assigned as per the panel position in Annexure A-5. This seniority list which was published by letter dated 23.1.1998 (Annexure A-3) was not a fresh list, but only a revival of the earlier seniority list issued in 1993 which came to be issued in compliance of the judgment dated 16.6.1997 of the CAT, Madras Bench in O.A. 1076/94 and the order of the Hon'ble High Court of Madras in WP 17886/97. Hence the respondents have argued that the provisional seniority list was not afresh one but mere implementation of the earlier position conveyed in 1993. It was further submitted that the representations of the applicants were considered by the competent authority and disposed of by Annexure A-7. The applicants are juniors to the party respondents 5 to 8 and the impugned order is only a correction of the mistake and therefore no separate notice was required for correcting the earlier seniority.

7 The private respondents 5 to 7 filed a reply statement affirming the statement filed by the official respondents and that the points raised by the applicants are not based on any rules and that the applicants cannot deny that they are juniors to the party respondents in the panel by the mere fact that they joined the posts earlier, they cannot gain seniority in the panel. It was also submitted that the applicants were very much aware that the respondents have filed O.A.1807/9 and 35/93 before this Tribunal and the OAs were

2

disposed of making clear that fixation of their proper seniority in accordance with law was left open to be agitated by the applicants separately.

8 The 8th respondent also filed separate reply statement on the same lines.

9 The applicants then filed reply affidavit enclosing Annexure A-8 order in which the respondents have been transferred from Bangalore to Trivandrum Division on their own request contending that since R-5 to 8 are beneficiaries to the inter divisional transfer, they cannot claim seniority over the applicants.

10 In response to the above contention, the official respondents filed two reply affidavits. In the first affidavit they have enclosed representations made by the private respondents 5 to 8 for rectification of the seniority list on 22.5.2002 (Annexure R-12 series). In the second additional affidavit, the respondents have explained the background in which Annexure A-8 order of inter-divisional transfer was issued. It has been submitted that prior to 6/1994, the cadre of Loco Running Staff was centrally controlled by the Headquarters Southern Railway and the staff working were eligible to be transferred to any division of the Southern Railway. A policy decision was taken during the year 1994 to decentralise the Loco Running Staff in the Central Zone. While taking necessary action to implement this decision it was also indicated such transfer will be on protection of seniority. The respondents 5 to 8 and very many other employees were willing to join Trivandrum/Palghat Division and they

h

were considered for transfer to the division of their choice and thus Annexure A-8 order came to be issued and it has been conspicuously mentioned therein that the staff concerned will retain their relevant seniority in the cadre of Loco Running Staff in the Trivandrum Division by para 1 of the condition of transfer. Accordingly, Respondents 5 to 8 joined the cadre in January, 1994 and after their joining no other seniority list was issued. The earlier list issued in 1993 did not carry the names of respondents 5 to 8 as they joined during 1994, 95 and 97. It was also not correct to contend that the respondents have not represented their cases. The respondents 5 to 8 have represented soon after issue of the seniority list dated 22.5.2002 and these representations were forwarded by Trivandrum division by letter dated 21.6.2002 (Annexure R-XV). However, these representations forwarded by the Trivandrum Division were not received by the second respondent. In order to rectify the mistake committed by oversight, a copy of the representation from Annexure R-7 was obtained and the same was considered. Therefore the grounds urged by the applicants are not tenable and the O.A deserves to be dismissed.

11 We have heard Shri P. Ramakrishnan, the learned counsel appearing for the applicants, Smt. Sumathi Dandapani, the learned Senior Counsel for the railways, Shri T.C. Govindaswamy for R-8 and Shri M.P. Varkey the learned counsel appearing for R 5 to 7.

12 The learned counsel for the applicants contended that the orders revising the seniority had been issued after 10 years of the

applicants joining the Division thereby unsettling the settled seniority which was continued since 1993, on the basis of representations given by individuals without any prior notice to the applicants and the applicants who had obeyed the orders of posting and joined the new places in Trivandrum division are now being displaced by those who have not obeyed the order and approached the Tribunal for cancellation of their transfer on promotion. In this context he relied on the judgment in Rabindra Nath Bose and Others Vs. Union of India and Others (AIR 1970 SC 470) in which the Apex Court had observed that "each person ought to be entitled to sit back and consider that his appointment and promotion effected along time ago would not be set aside after a lapse of a number of years" and that "there is a limit to the time" which can be considered as reasonable for making representations" and thereby dismissed the Writ Petition.

13 The counsel for the party respondents contended that though it is true that the respondents have approached the Tribunal, the Tribunal had in their order specifically protected the question of seniority giving them liberty to agitate the matter if aggrieved as seniority was not initially agitated in those OAs filed by the respondents. The applicants cannot deny that the respondents were placed much higher in fact at Sl. Nos 1, 3, 4 & 5 in the panel whereas the applicants were at Sl. Nos. 15th & 16th. The respondents had also been informed by Annexure R-8 that as the matter is sub judice in the OAs filed before the CAT they cannot be relieved till the final disposal of the O.A. Therefore it was not their fault that they could

not join earlier. The counsel submitted that the impugned orders are all provisional seniority lists and therefore no separate notices were necessary for revising seniority. The applicants and respondents both are free to submit representation against the provisional seniority list.

14 On behalf of the official respondents the counsel drew our attention to para 6 of the reply statement and to the provisions of the IREM regarding debarment on receipt of promotion. This provision had not been invoked against the party respondents as the respondents have conveyed the decision in Annexure R-8 that they cannot be relieved and hence the responsibility is that of the Department and could not be fixed on the party respondents. They also affirmed the position regarding the receipt of representations from the respondents. It is not true that the party respondents have kept quiet on their loss of seniority since the 1993 seniority list and confirmed that they had been representing for a long time.

15 It is admitted that as per the order in Annexure A-1 the party respondents who are placed at Sl. Nos 1, 3, 4 and 5 are senior to the applicants who are placed at Sl.No.35 and 36 and according to the normal rule, the seniority shall be governed by their respective position in the panel and applying this rule the party respondents have to be considered senior to the applicants. However, the applicants having been posted in the same division in which they were joined earlier on the dates mentioned above and the private respondents having been posted to Palghat approached this

Tribunal against their posting to Palghat Division. The OAs were disposed of by the order dated 13.11.1993 (R-2) after the applicant submitted before the Tribunal that they were prepared to join Bangalore. Thereafter the respondents joined at Bangalore on various dates from 1995. In the Tribunal's order their right for seniority was left open. In addition, the respondents also by order in Annexure R-8(c) dated 8.10.93 conveyed the decision that they cannot be relieved from their earlier posts till the OAs are disposed of. Going by these facts on record, the delay in joining the promoted post cannot be attributed to the private respondents. Para 224 of the IREM would govern a situation in the normal course, where the promoted employee does not join the post or declines to carry out the promotion. If the non-joining of the respondents in the promoted post was in terms of the provisions of Para 224 then in terms of Para 322 (iii) the seniority would have been determined irrespective of the panel position and the respondents would have been junior to the applicants who have joined earlier. In this context para 322 are not attracted in the light of the submission by the official respondents that the employees were informed that they would not be relieved till the OA is disposed of. The official respondents were fully aware of this position and the decision and delay caused was directly attributable to the official respondents and not to the party respondents. Later, after submitting before the Tribunal that they are prepared for the transfer, recording the submission, the OA was disposed of. Hence as the private respondents 5 to 8 were not

relieved in terms of the rules and any delay which has been caused in joining is not attributable to them despite the fact that they had approached the Tribunal, their seniority will have to be protected as per their position in the panel in accordance with normal rules.

16 The next contention of the applicants is that the principle of natural justice has been violated by not giving notice and there was no representation by the party respondents right from the initial seniority list of 1993 onwards and hence the impugned orders are arbitrary and illegal. This position is also not found to be correct. The respondents have produced series of representations at Annexure R-7 to 13 made by the Respondents 5 to 8 since 1995. The respondents have explained why the names of the private respondents have not found place in the 1998 seniority list. The 1998 seniority list produced by the applicant as is evident from the covering letter and as averred by the respondents in the reply statement, is in compliance of the judgment of the CAT Madras Bench and was a revival of the 1993 provisional seniority list. The seniority list at Annexure A-4 was issued after the belated joining of the respondents. Against this seniority list at Annexure A-4 dated 22.5.2002 the private respondents have represented immediately on 13.6.2002. The representation of the 7th respondent has been produced. On going through this representation the arguments of the applicants that official respondents have taken a unilateral decision in the year 2002 does not appeal to us. The decision to retain their seniority was conveyed through Annexure R-6 letter dated 22.2.1996

itself Annexure A-6 is reproduced below:

P(5)535/IV/LRS(Pt.)

**Headquarters office
Personnel Branch
Madras-3
Dt. 22.2.96**

DRM/P/TVC

**Sub: Representation of Loco Running
Supervisors-Mechanical Branch**

**Ref: Your letter No. V/P 535/VI/LRS/III
dt. 14.12.95**

The identical representations received from the following Loco Running Supervisors regarding fixation of seniority in the cadre of Loco Running Supervisors in scale Rs. 2000-3200 (RPS) has been examined:

- | | | |
|---|--------------------------|-------------|
| 1 | Shri K.S. Rajendra Kumar | CRC/TVC |
| 2 | Shri J. Krishnan Kutty | CRC/TVC |
| 3 | Shri S. Kulathu Iyer | PRC/TVC |
| 4 | Shri K.M. Dasappan | CRC/ERS/TVC |

It has been decided that the seniority of the above employees in the cadre of Loco Running Supervisors will be assessed on the basis of their position in the panel notified vide this office letter No. LP(S)312/IV/OL/Panel dt. 29.10.92.

The above employees may be advised accordingly with reference to their representations.

Sd/- for Chief Personnel Officer.

Since this decision had not been properly reflected in the seniority list issued in 2002 and it was the first seniority list to be issued after the said decision had been taken, the representation required to be considered. The applicants herein cannot argue for the same reasons that their settled seniority has been unsettled after two decades. The records also prove that for the same reasons that no seniority had been settled before issue of provisional seniority list in

2002 and all the lists have been provisional only. Moreover, as far as the party respondents are concerned, they have been claiming as early as from 1996 that their seniority according to the panel is maintainable, as they had not been debarred from promotion.

17. The contention is also raised to the effect that the respondents have come on inter-divisional transfer and therefore had lost their seniority and should be shown as juniormost in the division to which they have been transferred. Annexure A-8 order has been produced in support of this argument. The respondents have sufficiently explained that decision by showing that a special dispensation was given in 1994 for such inter-divisional transfer with protection of seniority. They enclosed Annexure R-14 dated 30.6.1994 in support of their contention in which it was stated in para 4 that the transfers will be accommodated with protection of seniority. Hence this contention is also not tenable.

18 The other ground taken is regarding violation of principle of natural justice in that they were not given any notice. As the seniority lists were of provisional, sufficient notice was given by publishing the list itself inviting representation. It is clearly mentioned in Annexure A-5 order that it is with reference to the provisional seniority list issued on 25.2.2002 and that the seniority position has been notified to all concerned. It was open to the applicants to make their representation which appeared to have been

made and have been replied to by Annexure A-7 order. The judgment referred to by the applicant in this connection in our view is also not applicable in this case as that was a case where the persons who had acquired certain rights under the seniority rules of 1950 were proposed to be unseated and the court had declined to intervene. The present case is not similar in any respect.

19 In view of the above discussions and the legal position we do not find any merit on the prayer of the applicants. The OA is dismissed. No costs.

Dated 2.3.2007.



GEORGE PARACKEN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

Kmn