

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No. 67/91

CORAM

Friday, this the 9th day of September, 1994

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR S KASIPANDIAN, ADMINISTRATIVE MEMBER

1. The All India Stationmasters' Association,
(Regd.No.1359), Through Shri P.Surendran,
Its Divisional Secretary,
Trivandrum Division ASM, Kadakavoor
Railway Station & Post,
Trivandrum District.

2. P. Sudhakara Kaimal
Assistant Station Master,
Southern Railway,
Ernakulam South.

... Applicants.

By Advocate Mr K. Prabhakaran.

Vs.

1. Union of India through
The General Manager,
Southern Railway, Madras-3.
2. The Railway Board through its Secretary(E),
Railway Board, Rail Bhavan,
New Delhi.
3. The Divisional Personnel Officer,
Southern Railway, Trivandrum.
4. The All India Railway Men's Federation
through its General Secretary(AIRF) No.4,
State Entry Road, New Delhi.
5. The Railway Board Class II Officers' Association,
through its General Secretary,
Rail Bhavan, New Delhi.
6. R. Sajid, Deputy Superintendent(Tfc. Apprentice),
through the Divisional Personnel Officer,
Southern Railway, Trivandrum.
7. Rajan Nainan, Deputy Station Superintendent,
Through the Divisional Personnel Officer,
Southern Railway, Trivandrum.

... Respondents.

By Advocate Mrs Sumathi Dandapani.

S. KASIPANDIAN, ADMINISTRATIVE MEMBER

This Original Application has been filed on the allegation that the scheme of recruitment of Traffic Apprentices for induction into the intermediary grade of Assistant Station Masters as contained in para 123 of Section B, Chapter I of Indian Railway Establishment Code has been modified illegally and without competence by the Railway Board by

Annexure A1. As a consequence of that, orders Annexures A5 and A6 have been issued wrongly, submit applicants. Applicants contend that this modification of the scheme brought about by the Railway Board is ultravires and unconstitutional, as a statutory rule cannot be modified by an administrative order. The modification introduced by Annexure A1 has the effect of inducting Traffic Apprentices directly into one of the grades of Station Masters, contrary to the stipulations in the original recruitment rules.

2. Learned counsel for applicants contend that:

"Annexure A1 order has shifted direct recruitment from the category of Assistant Station Masters in the scale of Rs.1400-2300 to the category of Station Masters in the scale of Rs.1600-2660."

Another change that was brought about by Annexure-A1 order was that the desirable qualification of a Degree in law originally prescribed for the post of Traffic Apprentices has now been dispensed with. Again, the period of their training has been reduced from three years to two years. Learned counsel for the applicants pointed out that according to the Indian Railway Establishment Code(Vol.I) published on 21st March 1951, Appendix.II contains the rules for the recruitment and training of Subordinate Staff (except Apprentice Mechanic) of the Indian Railways. Therein, an apprentice is defined as:

"...a person undergoing training with a view to employment in railway service, who draws pay or subsistence allowance during such training but is not employed in or against a substantive vacancy in the cadre of a branch or department. On satisfactory completion of his training he is eligible for appointment on probation in a substantive vacancy but no guarantee of such appointment is given."

In the same rules, a diagram is given illustrating the channel of promotions. That is contained in para 8 under the heading 'Station Masters'. In this scheme, the channel of promotion to the 'Station

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Masters' is only from the category of Assistant Station Masters. Learned counsel also contended that the Indian Railway Establishment Code(Vol.I) issued on March, 21 1951 was revised on 30.6.1959 by the Railway Board in exercise of powers conferred on them by the proviso to Article 309 of the Constitution of India. In this revised code, para 20 refers to the recruitment of Traffic Apprentices and it mentioned:

"Traffic Apprentices are recruited to fill a maximum of 25% of annual vacancies for appointment in the categories of Assistant Inspectors, Yard and Station Staff in the initial grade of Rs.150-225 and Section Controllers.

The authority for this Recruitment Rules is given in Appendix.10 concordance which refers to the Railway Board's letter No.E.49 RRI/1/3 dated 24th October, 1951 and 30th August, 1952. This provision corresponds to para 123 of the Revised Manual published on 1st August, 1960 which reads as follows:

"Traffic Apprentices are recruited to fill a maximum of 25% of annual vacancies for appointment in the categories of Section Controllers/Assistant Station Masters, Assistant Yard Masters and Traffic Inspectors in scale Rs.250-380."

Counsel for applicants attempts to make out a case that there is direct recruitment only in the initial entry grade of Assistant Station Masters. Traffic Apprentices form a distinct category. Para 156 of the Code refers to the Delegation of Powers given to the Railway Board. By this the Railway Board has full powers to make rules of general application to non-gazetted railway servants under their control. He further contended that the President himself has made the rules regulating recruitment of nongazetted staff which rules are in Chapter I, para.B of the Indian Railway Establishment Code(V.I). According to him as may be seen from Rule 123, the word "recruitment" is deliberately omitted and the fact that the President himself exercises that power make it abundantly clear that power to make rules regulating recruitment

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of railway servants and posts under Article 309 of the Constitution is still reserved to the President and that has not been delegated to the Railway Board at all. Annexure-A1 order is a rule regulating the recruitment of Railway servants and posts. It having been issued by an authority not competent to do so is ultravires to Rule 123 of the Indian Railway Establishment Code(Vol.I), it is without jurisdiction, void, and inoperative. Counsel for applicants contended further that Assistant Station Masters and Station Masters are separate cadres and that there is no Assistant Station Masters in the scale of Rs.1600-2600. By Annexure-A1 order, the Railway Board has changed the very basis of the recruitment by changing the category of appointments and the duration of training, submits counsel. Annexure-A1, therefore has the effect of substantially amending Rule 123, in fact, substituting it by an administrative order. Hence it is liable to be quashed. Consequently, Annexure-A5 and A6 orders also have to be quashed, submits counsel.

3. Learned counsel for respondents argued that Article 309 has evolved from Section 241 of the Government of India Act 1935 and that the Railway Board having originally derived its authority under Section 241 of the Government of India Act, continues to have those powers by virtue of Article 313 and 373(1). Learned counsel quoted Rule 1 A of the Indian Railway Establishment Code(Vol.I) published on 21st March, 1951 which states:

"Normally recruitment will be to the lowest grade of the lowest class but direct recruitment on limited scale to intermediate grades will be made in accordance with instructions laid down by the Railway Board from time to time."

4. According to Rule 137 of 1959 Code, governing recruitment of Class III and IV staff, the rules for the recruitment of non-gazetted Railway servants are contained in chapter I of the Indian Railway Establishment Manual. This manual contains Rules 156 and 157 which authorise the Railway Board and the General Managers to make rules of general application to nongazetted railway servants under their

control. Learned counsel cited K Nagraj Vs State of Andhra Pradesh and another (AIR 1985 SC 567) to contend that:

"It is well settled that the service rules can be as much amended, as they can be made, under the proviso to Article 309 and that the power to amend these rules carried with it the power to amend them retrospectively."

Learned counsel also cited Reserve Bank of India Vs NC Paniwal (1976 SC 2357) to contend that:

"It is entirely a matter for the State to decide whether to have several different cadres or one integrated cadre in its services. That is a matter of policy which does not attract the applicability of the equality clause."

5. The main issues that arise for determination are whether Annexure A1 order is an administrative instruction or whether it has the effect of amending a statutory rule and secondly, whether the Railway Board is competent to amend the Recruitment Rules when that power is not specifically vested in them. A reading of Annexure A1 order would indicate that it is only one of the administrative instructions issued by the Railway Board. It cannot amend a statutory rule. While Rule 137 of the Indian Railway Establishment Code(Vol.1) published in 1959 refers to the rules for recruitment of non gazetted railway servants as contained in Chapter I of the Indian Railway Establishment Manual, it does not specifically refer to Rules 156 and 157 of the Indian Railway Establishment Code(Vol.I) published in 1951. Moreover, neither Rule 137 of 1959 Code nor 156 and 157 of the 1951 Code keep a clear distinction between recruitment and conditions of services. Article 309 treats these as distinct. Keshav Chandra Joshi Vs. Union of India (AIR 1991 SC 284) clearly states that 'Recruitment' and 'Conditions of service' are distinct concepts. The Railway Board cannot have any sweeping powers under Rule 156 of the 1951 Code, nor can it convert any of their administrative instructions to and vest them with the sanctity of statutory rules.

6. We are constrained to observe that from the way the various editions of the Indian Railway Establishment Codes have been drafted, compiled, and revised, it looks as if the net effect is to elevate the executive instructions of the Railway Board to the status of statutory rules, and project the Manuals as pieces of primary, instead of subordinate legislation. Even the prefatory notes attempt to assume the significance of preamble to Acts and Rules as may be seen from the 1959 Edition, where it is casually mentioned:

"Apprentices II, IIA, III, IV, XIII, XIII A and XXIV of the 1951 Edition (Reprint) have been embodied in — the Indian Railway Establishment Manual, which is being issued separately."

Rule 137 of the 1959 Code reads as under:

"Recruitment of class II and IV staff: The rules for the recruitment of nongazetted railway servants are contained in chapter I of the Indian Railway Establishment Manual."

Such a reference could hardly be construed as a proper exercise of rule making power. Administrative orders cannot be upgraded as statutory orders. Thus, the distinction between the rule making power conferred by Article 309 and the exercise of delegated powers under proviso to Article 309 is getting increasingly blurred. It is true that in the United Kingdom the evolution of law on the basis of conventions assume constitutional significance by lapse of time. But, in India, we have given to ourselves a written constitution and that too, one of the most exhaustively drafted constitutions in the world much more exhaustive than the constitution of United States of America or even more elaborate ^{one, viz. ~~the~~} the constitution of Australia. The very fact that the Indian Railways is almost a mini Government compared in size to other departments of the Government of India, casts a heavy responsibility on the Railway Board to emulate the constitutional practices much more scrupulously. It cannot be said that the Railway Board is vested with plenary powers of the legislature, much less, the residuary sovereign powers vested in the President of India. Over a period of time, the Indian railway

Establishment Code has become so voluminous that it is difficult to correlate which rule corresponds to which instructions of the Railway Board, and as between various editions of the Manual which rules in one edition correspond to which other rules in the subsequent editions. It is, therefore, high time that the powers of subordinate legislation is duly exercised by the Railway Board under the authority delegated by the President of India and the rules they so formulate should be codified in a compact, comprehensive manner and placed before the legislature for scrutiny and sanction, if need be.

7. In the light of the position explained above, we hold that Annexure A1 order is only an administrative instruction. It cannot have the effect of amending the earlier statutory recruitment rules. Annexure A1 order cannot therefore be sustained. At the same time, while setting as right a wrong committed,, care has to be taken that it does not result in allround unsettlement of well established service conditions. We are aware that several appointments would have been made in the past decades, under the prevailing orders. We are also aware that all the officials who would be affected have not been heard. Therefore we think that this is a case where our order need be given only prospective operation as in India Cements Vs State of Tamil Nadu (AIR 1990 SC 85). While quashing Annexure A1, we direct that this will take effect prospectively from 15.1.1991 when an interim order was passed by this Tribunal directing respondents not to act upon Annexure-A1 order, till a final decision is taken in the application.

8. As orders, Annexures A5 and A6 are earlier to this date, these are not quashed. It is for the respondents to consider the

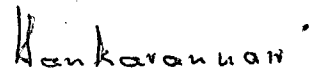
need or otherwise to modify the scheme relating to induction of Traffic Apprentices into the intermediary grades keeping in view the points raised by the applicants in this application on their merits, when they issue amendments to the original scheme of promotions incorporated in the statutory rules.

9. Application is disposed of with the above directions. No costs.

Dated, 9th September, 1994.



S KASIPANDIAN
ADMINISTRATIVE MEMBER



CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

RA No.49/95 in OA No.67/91

Thursday, this the 3rd day of August, 1995.

C O R A M

HON'BLE MR.JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR.SP.BISWAS, ADMINISTRATIVE MEMBER

1. G.Manu, Commercial Apprentice,
Southern Railway,
Palghat Division,
Palghat.
2. Jayadevan CN, Traffic Apprentice,
Palakkad Division, Palakkad.
3. Lalgudi Parthasarathy Balaji,
Commercial Apprentice,
Madras Division, Madras.
4. N.Mahesh, Commercial Apprentice,
Southern Railway, Madras Division,
Madras.

: Review Applicants.

By Advocate Mr.MR Rajendran Nair

Vs.

1. The All India Stationmasters' Association,
Through Sh.P.Surendran, Its Divisional
Secretary, Trivandrum Division ASM,
Kadakavoor Railway Station & Post,
Trivandrum District.
 2. P.Sudhakara Kaimal,
Assistant Station Master,
Southern Railway,
Ernakulam South.
 3. Union of India through
The General Manager, Southern Railway,
Madras - 3.
 4. The Railway Board through its Secretary (E),
Railway Board, Rail Bhavan, New Delhi.
 5. The Divisional Personnel Officer,
Southern Railway, Trivandrum.
 6. The All India Railway Men's Federation
through its General Secretary (AIRF) No.4,
State Entry Road, New Delhi.
 7. The Railway Board Class II Officers' Association
through its General Secretary, Rail Bhavan,
New Delhi.
 8. R.Sajid, Deputy Superintendent (Tfc.Apprentice)
through the Divisional Personnel Officer,
Southern Railway, Trivandrum.
 9. Rajan Nainan, Deputy Station Superintendent,
through the Divisional Personnel Officer,
Southern Railway, Trivandrum.
- ... Respondents

By Advocates Mr.TCG Swamy
Mrs.Sumathi Dandapani
Mr.P.Sukumaran Nair

The application having been heard on 3rd August, 1995, the Tribunal on the same day delivered the following:

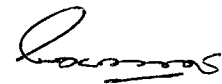
O R D E R

CHETTUR SANKARAN NAIR (J), VICE CHAIRMAN

This is an application to review the order in OA 67/91. During the pendency of OA 67/91, review applicants were selected for appointment as Commercial Apprentice/Traffic Apprentice by Respondent Railways. Review Applicants say that as a direct result of the order in the Original Application, they are denied appointment though they were not parties to the original application.

2. If Review Applicants are denied appointment, it is not due to our order in OA 67/91, but it is due to the illegality in the appointment granted to them contrary to the interim orders in OA 67/91 restraining appointments. This is essentially a matter between the Railways and the applicants and our judgment sought to be reviewed does not interact on the fortunes of review applicants. There is no error, much less error apparent on the face of the record.
3. The Review Application is dismissed but without costs,

Dated, 3rd August, 1995.



S.P. BISWAS
ADMINISTRATIVE MEMBER



CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

R.A.61/95 in O.A.67/91 and O.A.886/95

Tuesday, this the 6th day of August, 1996.

CORAM:

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

R.A.61/95 in O.A.67/91

A Xavier Chandar,
Commercial Apprentice,
Divisional Office, Personnel Branch,
Southern Railway,
Tiruchirappalli.

- Review Applicant

By Advocate Mr MR Rajendran Nair

Vs

1. The All India Stationmasters Association
(Regd.No.1359), through Shri P Surendran,
its Divisional Secretary,
Trivandrum Division ASM,
Kadavoor Railway Station and Post,
Trivandrum District.
2. P Sudhakara Kaimal,
Assistant Station Master,
Southern Railway, Ernakulam South.
3. Union of India through the
General Manager,
Southern Railway, Madras-3.
4. The Railway Board through its
Secretary(E), Railway Board,
Rail Bhavan, New Delhi.
5. The Divisional Personnel Officer,
Southern Railway, Trivandrum.
6. The All India Railway Men's Federation
through its General Secretary(AIRF)
No.4, State Entry Road, New Delhi.
7. The Railway Board Class II Officer's
Association, through its General Secretary,
Rail Bhavan, New Delhi.
8. R Sajid,
Deputy Superintendent(Tfc.Apprentice)
through the Divisional Personnel Officer,
Southern Railway, Trivandrum.

- Respondents

9. Rajan Nainan,
Deputy Station Superintendent,
through the Divisional Personnel Officer,
Southern Railway, Trivandrum. - Respondents

By Advocate Mrs Preethy for Mrs Sumathi Dandapani(for R.3 to 5)

O.A.886/95

1. G Manu,
Commercial Apprentice,
Southern Railway,
Palghat Division,
Palghat.
2. Jayadevan CN,
Traffic Apprentice, Southern Railway,
Palakkad Division,
Palakkad. - Applicants

By Advocate Mr MR Rajendran Nair

Vs

1. The Railway Board
represented by its Secretary,
Rail Bhavan, New Delhi.
2. The Chief Personnel Officer,
Southern Railway,
Head Quarters Office,
Personnel Branch, Madras.
3. The Divisional Personnel Officer,
Southern Railway, Palakkad.
4. Union of India represented by
Secretary to Government,
Ministry of Railway,
New Delhi. - Respondents

By Advocate Mrs Preethy for Mrs Sumathi Dandapani

The application having been heard on 6.8.96 the Tribunal
on the same day delivered the following:

O R D E R

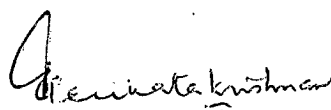
CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

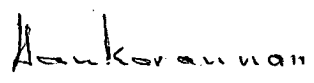
Respondents-Railways have stated that the reliefs prayed
for will be granted to applicants in the event of Supreme Court
setting aside the order of this Tribunal in O.A.67/91. The order

of this Tribunal in O.A.67/91 has since been set aside by the Supreme Court and respondents-Railways will act according to the statement made in the reply statement.

2. The Review Application and the Original Application are disposed of as aforesaid. No costs.

Dated, the 6th August, 1996.


PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

trs/68