

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO.93 OF 2005

Friday, this the 15th December, 2006.

CORAM:

**HON'BLE DR K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR N RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

1. T. Joseph Mathew,
S/o Mathew Kuruvilla,
Loco Pilot/Goods I,
Palghat Junction Railway Station.
2. Babu K Gopalan,
S/o K.A. Gopalan,
Loco Pilot/ Goods I,
Palghat Junction Railway Station.
3. Jomy Paul,
S/o P.J.Paul,
Loco Pilot/ Goods I,
Palghat Junction Railway Station.
4. A.V. Sreenivasan,
S/o K Govindan Nair,
Loco Pilot/ Goods I,
Palghat Junction Railway Station.
5. T.Hareendra Das,
S/o T Narayanan,
Loco Pilot/ Goods I,
Palghat Junction Railway Station. - Applicants

By Advocate Mr TC Govindaswamy

v.

1. Union of India represented by the General Manager, Southern Railway, Chennai-3.
2. The Chief Personnel Officer, Southern Railway, Chennai-3.
3. The Divisional Railway Manager, Southern Railway, Palghat Division, Palghat.
4. The Senior Divisional Personnel Officer, Southern Railway, Palghat Division, Palghat.

5. R.Arumugham,
Loco Pilot/Goods I,
Crew Booking Office,
Coimbatore Junction Railway Station,
Coimbatore.
6. N. Babu Rajan,
Loco Pilot/Goods I,
Crew Booking Centre,
Calicut Railway Station, Calicut.
7. V.K.Rajan,
Loco Pilot/Goods I,
Crew Booking Centre,
Calicut Railway Station, Calicut.
8. Manimaran,
Loco Pilot/Goods I,
Crew Booking Centre,
Erode Railway Station, Erode.
9. Devadasan,
Loco Pilot/Goods I,
Crew Booking Centre,
Calicut Railway Station, Calicut.
10. KK Soman,
Loco Pilot/Goods I,
Crew Booking Centre,
Mangalore Railway Station,
Mangalore.
11. Linus Ekka,
Loco Pilot/Goods I,
Crew Booking Centre,
Erode Railway Station, Erode.
12. V.Renjith,
Loco Pilot/Goods II,
Crew Booking Centre,
Mangalore Railway Station,
Mangalore.
13. A. Sekhar,
Loco Pilot/Goods II,
Crew Booking Centre,
Erode Railway Station, Erode.
14. A.K. Babu,
Loco Pilot/Goods II,
Crew Booking Centre,
Palakkad Railway Station, Palakkad.
15. K.Viswanathan,
Loco Pilot/Goods II,
Crew Booking Centre,
Calicut Railway Station, Calicut.

16. B.Ramesh Kumar,
Loco Pilot/Goods II,
Crew Booking Centre,
Erode Railway Station, Erode.

17. G.Neethivelan,
Loco Pilot/Goods II,
Crew Booking Centre,
Erode Railway Station, Erode.

18. Gregory Kandulna,
Loco Pilot/Goods II,
Crew Booking Centre,
Erode Railway Station, Erode.

Respondents

By Advocate Mr Thomas Mathew Nellimootttil (for R.1 to 4)

By Advocate Mr Martin G Thottan (for R.6, 7, 9, 10, 13 & 16)

The application having been heard on 23.10.2006, the Tribunal on 15.12.2006 delivered the following:

O R D E R

HON'BLE MR N RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. The applicants in this O.A, five in number, are aggrieved by perceived loss of seniority and consequential benefits, on cadre-restructuring.

2. All of them are presently working as Loco Pilot/Goods-I at Palghat. The party respondents 14 in number are all working as Loco Pilot/Goods-I and Goods-II. The applicants were initially appointed on different dates between 5.1.87 and 3.8.87 as Diesel Assistants. They were all promoted, first as Goods Drivers (Loco Pilots Goods-II) and then as Senior Goods Drivers, again on different dates. They all belong to the unreserved/general category. Diesel Loco Running staff are brought under the following different cadres-Diesel Assistants->Shunting Driver->Goods Driver ->Passenger Driver->Mail/Express Driver. The channel of promotion as provided for Rule 140 Section B Chapter-I IREM, Vol.I is as follows:

Goods Driver (Rs.1350-2200)-> Passenger Driver (Rs.1600-2600)->Mail Driver(Rs.1640-2900)

The post of Passenger Driver is a selection post. The Railway Board ordered restructuring vide RBE No.19/93 PCIII/91/CRC/1/dated 27.1.1993 (A-4) The highlights



of the restructuring were as follows:

- Two grades, 1350-2200 & 1600-2600 were created out of the posts of Goods Driver ,1350-2200.
- 80% of the cadre strength on 1.3.93 to be in 1350-2200 (5000-8000 – revised)
- 20% of the cadre strength on 1.3.93 to be in 1600-2600 (5500-9000)
- 1.3.93 to be date of implementation of the restructuring .
- Vacancies as on that date, 1.3.93 to be filled in from valid and current panels as on that date.
- The existing instructions with regard to reservations of SC/ST will continue to apply, while filling additional vacancies in the higher grades, arising as a result of restructuring.

Subsequent to fitments in the higher scale of certain employees, a doubt arose about their seniority vis-a-vis their earlier colleagues, who did not get such fitments. Vide A-5 dated 24.2.95, the DPO, Palghat clarified that "... *the seniority of Senior Goods Driver in scale 1600-2660 and Goods Driver in scale 1350-2200 are combined one. There is no change in this position of these employees in the seniority list published on 18/30-11-93*". According to the applicants, by virtue of para 215(a) of Chapter II IREM, a residency period of 2 years was prescribed(A-6) for promotion. The Goods Drivers as a class were to be taken as one grade, irrespective of whether they were in a functional or a non-functional grade for promotion etc. Based on this principle, a seniority list of Goods Drivers including Senior Goods Drivers as on 1.11.98 was published in which, the applicants had serial Nos.162, 165, 169, 172 and 176 whereas R-5 to R-7 had Sl.Nos.230, 232 and 233, other respondents not figuring in the list (A-7). But, subsequently,an order was issued by the 4th respondent on 23.3.2001 (A-8) bifurcating the seniority of Goods Drivers into two groups-one for Goods Drivers and another for Senior Goods Drivers. The issue dealt with in that letter was the loss of opportunity of officiation faced by the employees who were given higher grade, as a result of restructuring and hence denied such opportunities, whereas persons junior to them, based upon the same common seniority were given the benefits of officiation. The decision was communicated in the following lines:

"The above matter has been examined in detail and it has been decided to



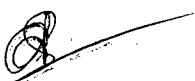
bifurcate the common seniority. Therefore, the employees who are working in the restructured higher grade posts of a particular category will have separate seniority hereafter which will be of higher seniority than the employees working in lower grade posts of that category."

"The supervisors are requested to notify the same to the employees"

"This issues with the approval of the competent authority."

Despite the endorsement therein, this was not brought to the notice of any. This letter is impugned. This was followed by publication of a provisional seniority list of Senior Goods Drivers as on 1.7.2002(A-9). The applicants' names did not figure therein, as they would get the promotion only during 2003. This appeared to be a sequel to A-8 document. Vide A-10, alert notice dated 7.10.2004, 83 Senior Goods Drivers and Goods Drivers were alerted to be in readiness to appear for the selection for the post of Loco Pilot (Pass) Gr-II. Therein, the applicants were placed below the respondents 5 to 11. Agitated over this, the 1st applicant made A-11 representation. The main request therein was to maintain combined original seniority. It was pointed out in the above representation that the maintenance of the separate seniority list resulted in reserved candidates, occupying a higher position though such candidates had a junior position in the earlier combined Goods Driver category. Other applicants, too, made similar applications. Apparently, no reply was received to the representation. But, more importantly, the applicants kept silent thereafter. The applicants also mention that neither a combined seniority list of both types of Goods Drivers nor a separate seniority list of Senior Goods Drivers were published after 23.11.98 including both the applicants and the respondents. They also mentioned a provisional list of Goods Drivers as on 1.3.2003 was published. This is not part of the material papers.

3. Subsequently, The Railway Board undertook another restructuring vide A-12 dated 9.10.2003. Para 3, dealing with fixation of pay of those promoted, would make it clear that the grade of Senior Goods Drivers was only non-functional and nothing more, according to the applicant. By way of illustration, the applicants draw a comparison with the seniority list of Goods Guards and Senior Goods Guards, based upon the original seniority list, irrespective of non-functional up-gradation. The respondents published a list of selected candidates vide impugned memorandum (A-



15) dated 3.2.2005, who have been placed in the panel for promotion to the post of Loco Pilot (Pass) Gr-II. Aggrieved thus by A-8 and A-15 orders, the applicants have approached this Tribunal.

4. The following reliefs are being sought:

- i) Quashing of A-8,
- ii) Quashing of A-15 to the extent it places the respondents 5 to 18 in preference to the applicants and to the extent it includes the respondents 12 to 18.
- iii) A declaration that the selection to the post of Passenger Drivers is to be based on the seniority position in the feeder cadre of Goods Drivers as per A-7 seniority list as on 1.11.98 and not on the date of placement in the non-functional grade of Senior Goods Drivers.

5. The following grounds are adduced in support of the above reliefs:

- i) A-8 is without authority of law and the recital, that it has been issued with the approval of the competent authority, is untrue.
- ii) Promotion to the cadre of Passenger Drivers is from the feeder cadre of Goods Drivers and hence placing of Senior Goods Drivers, which cadre is essentially non-functional, over the Goods Drivers is against the rules and instructions of the respondents themselves. This would lead to a justifiable quashing of A-8, A-10 and A-15.

6. The respondents, both the official and party, resist the application. Their points are as follows:

- i) Prior to the selection as per A-15, a separate seniority list was published vide A-9 dated 6.8.2002 which went unchallenged by the applicants.
- ii) Again, an alert notice was published by A-10 dated 7.10.2004. Having acquiesced with the selection process right from that stage, they have no right to challenge the selection now.
- iii) The applicants cannot be said to have a common interest – applicants 1 to 3 have already been selected and placed in the impugned panel for promotion as

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Passenger Driver (26th, 28th and 32nd position). These three applicants want to have an improved position. The other two applicants, have not been so selected and they demand inclusion in the impugned panel. Thus, the situation is actually a case of misjoinder of parties.

- iv) Seniority among incumbents of a post in a grade is governed by the date of appointment to such grade. As per Railway Board's letter No.95-E(SCT)1/49/5 (1) dated 21.8.97, cadre means a particular grade and hence the Senior Goods Drivers and Goods Drivers form separate cadres. This formed the basis for preparing separate seniority lists for both by the DRM in consonance with the Railway Board's order. Hence A-8 impugned order is not incompetent.
- v) With the formation of two separate seniority lists as mentioned above, the original combined seniority list (A-7) becomes no more operational.
- vi) The portion of restructuring orders vide A-12 as referred to by the applicants in the OA relates only to fixation and not seniority regulation.
- Vii) The reserved candidates among the party respondents(5 to 10) were promoted earlier than the applicants and became senior to them; due to their higher seniority position, they were considered against unreserved vacancies. The remaining party respondents were empaneled against the short fall SC/ST vacancies.
- Viii) As per the orders of the Apex Court in Karfam Chand v. Haryana State Electricity Board (1989 Suppl (1) SCC 342) the date of promotion to a particular grade or category determines the seniority in that grade or category.

7. No rejoinder has been filed to rebut the contentions of the respondents.

8. Heard the parties and perused the documents. The respondents have cited the following O.A, 833/2005, which makes a reference to the decisions of the Apex Court in R.K. Sethi v. ONGC [1997 10 SCC 616] on the point of fixation of inter-se seniority, consequent upon merger of two categories.



9. The first point to be considered is whether the applicants displayed the required alertness, relating to the orders affecting them prejudicially. As pointed out by the respondents, there were at least two instances, when the required alertness was not in evidence. Taking first the impugned A-8 order dated 23.3.2001, the applicants' case is that it was not brought to the notice of any person. Even accepting that, Vide A-9 document dated 6.8.2002, a separate seniority list was published of the Senior Goods Drivers. According to both parties, this is a sequel to the impugned A-8 order dated 23.3.2001. The applicants' only point is the absence of their names was due to their upgradation to the posts of Senior Goods Drivers only later, in 2003. On that score, their names might not have been in that list, but, the concept of such a separate seniority list was very much questionable but the applicants chose to remain silent. This was the first instance of inexplicable silence. Subsequently, the selection process for the post of Loco Pilot was initiated by an alert notice vide A-10 dated 7.10.2004. The applicants found themselves, at places below the respondents 5 to 11. Apart from making a representation against their relative positions, precious little else was done by them. Worse still, they participated in the selection process and three of the applicants actually got selected. These aspects, as pointed out by the respondents, have not invited any retort from the applicants, which again would show just acquiescence on their part and lack of vigilance. It is seen that the names of the successful candidates in the impugned A-15 panel are listed in a particular sequence. The same sequence is more or less substantially followed in the seniority list of Senior Goods Drivers in A-9 as well as the alert notice in A-10. Non-challenge of A-10 would constitute the second instalment of inexplicable silence. Another important point to be noted is that the applicants themselves have mentioned about A-10 in grounds (c), (d) and (e) to the effect that the said Annexure is liable to be set aside. Strangely, such challenge to A-10 is missing in the relief portion of the application. This is perhaps due to a possible apprehension in their minds that it was not challenged at the relevant point of time and thereby lies an element of their weakness. Apart from these two instances, the applicants mention about a seniority list of Goods Drivers released in 2003. This has not been made a part of the material papers. This appears to be a case of defective documentation. On a combination of these factors, we find, therefore, that at least on



two occasions, the applicants did not show the required vigilance and did not duly agitate for their rightful claims and by such inexplicable silence, they have lost the right to re-agitate.

10. Next question relates to misjoinder of parties as alleged by the respondents. As mentioned above, the applicants fall into two categories, to the first one belong, the applicants 1 to 3 who have been already empanelled and the only question that remains is their relative position; to the other category, belong the remaining applicants, who never made it to the selection. We find that there is hardly any common cause for the applicants to agitate.

11. Next point relates to the question of vires of demerger of Senior Goods Drivers and Goods Drivers. According to the applicants, the selection process should have been based upon the earlier combined seniority list. The respondents contend that the de-merger was occasioned by passing of the impugned A-8 order, in pursuance of the Railway Board orders and hence is valid. This is not disputed by the applicants in any rejoinder. According to the applicants, the old combined seniority list should prevail, where the sorting parameter was the date of joining. The respondents contention is that grade should be such parameter. The senior goods drivers, having got a higher grade, should take senior positions vis-a-vis the others who had not got such grades. In support of this contention they seek reliance on the ruling given by this Tribunal in OA 833/05 which in turn invoked the rulings of the Apex Court in this regard. This Tribunal decided the case of determination of seniority in the following lines:

17. *In fact the selection being based on seniority cum fitness, (fitness being evaluated by holding written test and viva voce, the marks obtained therein together with the marks for service records and prescribing 60% as qualifying marks), weightage is given to seniority. In other words, those group D candidates who secure 6% and above are eligible for promotion, but on the basis of seniority and seniority has been fixed in the order of pay scale and not on the basis of length of service. Thus, the seniority is an integrated seniority of all those who have qualified in the test-cum-viva voce. This method has been upheld in the aforesaid order of the Tribunal. It would be useful to refer to the decision of the Apex Court in the case of R.K. Sethi v. Oil & Natural Gas Commission, (1997) 10 SCC 616 which inter alia holds as under:*



"Fixation of inter se seniority consequent upon merger of two categories – Where under R&P Regulations, 1980, two or more categories have been merged, for purposes of promotions to the next higher pay scale, inter se seniority of the employees considered for promotion will be fixed on the basis of length of service put in by the individual in the respective pay scale with those in the higher erstwhile scale, being treated as senior to those in the lower erstwhile scale, en bloc. Existing inter se seniority will not be disturbed."

In this context it may also be mentioned that with 1.4.1979 the pay scales of Telex Operators were lower than those of AG-II and it was only with effect from 1.4.1979 that both have been placed on the same scale. The earlier service of the Telex Operators in a lower pay scale could not be equated with the service of regular employees in AG-II cadre in a higher pay scale. The Telex Operators in AG-II cadre at the time of merger of the cadre of Telex Operators in the cadre of AG-II."

(In the above case, there were two different grades, Asst, Grade II and Telex Operator, the former having higher pay scale than the latter. Later on, the two grades were merged together and the above rule, with regard to fixation of seniority, was introduced at the time of merger. Such a fixation of seniority, i.e. Those in the higher pay scales being placed as senior to those in the lower pay scale was challenged. The Apex Court in this case thus, held that the services in the lower pay scale cannot be equated with the services of the higher pay scale (for fixation of seniority on the basis of length of service).

18. Though in the above case there was a merger of two grades which formed the feeder grade for the promotional post, and to that extent, the case is distinguishable from the case under consideration, what is to be taken into account is the ratio, i.e. Those, who are in the higher pay scale, becomes en bloc senior to those, who are in the lower pay scale, notwithstanding the fact that the latter would have been having a longer length of service.

It, therefore, transpires that the respondents were right in placing the Senior Goods Drivers above the Goods Drivers in the seniority listing.

12. In sum, we find that the applicants were not vigilant enough to agitate for their rights, having participated in the selection process for which seniority listing was one of the parameters, they have acquiesced in the said seniority listing, the applicants taken as a whole do not have a common cause and hence there is a mis-joinder of parties and



the respondents were right in placing the Senior Goods Drivers above the Goods Drivers in the seniority listing.

13. Under these circumstances, the O.A is dismissed. No costs.

Dated, the 15th December, 2006.


N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER


K.B.S. RAJAN
JUDICIAL MEMBER

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