

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATED THURSDAY THE THIRTY FIRST DAY OF AUGUST 1989
ONE THOUSAND NINE HUNDRED AND EIGHTY NINE

PRESENT

HON'BLE SHRI N. V. KRISHNAN, ADMINISTRATIVE MEMBER

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O.A. 97/87

Cicily D' Silva

Applicant

Vs.

1. The Divisional Personnel Officer
Southern Railway, Trivandrum,
2. Divisional Railway Manager,
Southern Railway, Trivandrum,
3. Chief Personnel Officer,
Southern Railway, Madras
4. P. A. Varghese, Head Clerk,
Area Office, Southern Railway,
Ernakulam
5. P. A. Varghese, Head Clerk
Commercial Branch, Divisional Office
Southern Railway, Trivandrum-14
6. C. Ponnumani, -do-
7. C. Vamadevan, -do-
8. K. Santhakumary, -do- /

Respondents

M/s. Chandrasekharan & Chandrasekhara Menon

Counsel for
the applicant

Smt. Sumathy Dandapani

Counsel for
R 1-3

Mr. T. A. Rajan

Counsel for
R-4, 6 & 7

Mr. Abraham Kurian

Counsel for
R-5

Mr. S. Gopakumaran Nair

Counsel for
R-8

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

The petitioner approached the Tribunal under Section 19 of the Administrative Tribunals Act claiming seniority over the respondents 4 to 8, after getting Annexure-I, an office order dated 22.11.1979, transferring her to Trivandrum Division on her request.

2. The petitioner and respondents 4 to 7 were originally working in the Madras Division of Southern Railway. When Trivandrum Division was formed on 2.10.1979, all of them were transferred to Trivandrum Division considering their choice. As per orders of transfer, they have joined on the dates shown below:-

Petitioner	19.1.80
4th respondent	9.1.80
5th -do-	14.1.80
6th -do-	14.1.80
7th -do-	7.1.80
8th -do-	17.12.80

3. Annexure-I shows that the petitioner who was working in the Electrical Branch will rank junior to the existing permanent and temporary clerks of that Division on the date of joining.

4. A provisional seniority list, Annexure-III of clerical staff in Commercial Branch of Trivandrum Division as on 1.12.84 was published in which the petitioner was shown in the 8th place, while the respondents 4 to 7 were shown from 4th to 7th places respectively. The 8th respondent/who was appointed at Trivandrum directly and joined on 17.12.80 was given only 9th place.

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5. The petitioner filed Annexure IV representation stating that the ranking given in Annexure-III is against rules and that the petitioner is senior to respondents 4 to 8. But in the reply at Annexure-V, it was stated that petitioner's correct place is 9th in the list and if she has any objection the same may be filed before 12.9.86. Accordingly, she filed Annexure-VI representation. She specifically contended that the statement in Annexure-V that she is only to be placed as 9 in the list even below the 8th respondent is illegal for appointment in the order of / given to the 8th respondent, it was stated that she would rank junior to all who are under orders of transfer or are being transferred from Madras. So in any case, the petitioner cannot be placed under the 8th respondent. She claims seniority over respondents 4 to 7 also. This was again rejected by Annexure VII order dated 20.11.86 stating / and involved by shift from Electrical Br. to Commercial Br. that since petitioner's transfer was on written request and since she had agreed to accept bottommost seniority among all clerks in Commercial Branch, she has to be placed below / Respondents 4 to 8.

6. The petitioner in this case is challenging the seniority list and the subsequent two orders Annexure V and VII rejecting her request for correcting the mistake and assign seniority over respondents 4 to 8. The learned counsel for the petitioner argued that the seniority of personnel in the Railway should be fixed with reference to the date of approval of transfer orders and not on the date of joining in the new units as directed in Annexure-I. In the

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case of the petitioner, Annexure-I itself would show that Chief Personnel Officer had accorded sanction for her transfer order No. P(S)535/VII/1/Vol.13 dated 22.11.79. So she is eligible for seniority over respondents 4 to 8 from that date.

7. This claim of the petitioner is opposed by all the respondents. The respondents 1 to 3 took the stand that the petitioner is entitled to seniority on the basis of her joining in the Trivandrum Division viz. 19.1.80 stipulated in Annexure-I itself. Similarly, the other respondents 4 to 7 were also given seniority on the basis of their date of joining in the new Division. But with regard to the 8th respondent, she was straight away appointed/on 17.12.79 on compassionate grouund in terms of R 1(b) filed along with the counter affidavit filed by Respondents 1 to 3.

8. The 8th respondent's representation in this regard, ~~xxxx~~ filed by her has been rejected as per Ext. R-1(c) dated 6.2.87. The 8th respondent also filed a counter affidavit and opposed the claim of the petitioner. Her counsel has standing orders brought to our notice Annexure R-8(a) and (b) /and submitted that when Railway servants are transferred from one Division to another at request, the transferred Railway servant should be placed below all existing confirmed as well as officiating and temporary Railway servants in the relevant grande in the promotion group of the new Establishment. All the other respondents also filed detailed counter affidavits and opposed the claim of the petitioner.

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9. Having heard the counsel representing all the parties and perused the records, there is only one conclusion i possible in this case viz. the seniority of the persons joining the new Divisions after transfer on request should ~~seniority~~ be on the basis of the date of joining as indicated in Annexure-I. There is no other specific rules or orders which apply to provisional transfers except R-8(a)⁺(b) which are brought to our notice governing provisional appointments and posting on inter-Divisional basis between Madras Division and Trivandrum Division. So we have to go by the yardstick of date of joining in the new post in the new Division. Going by the same, it is crystal clear that the petitioner's date of joining ~~is~~ 19.1.80 which is below the respondents 4 to 8.

10. But the petitioner has a special grievance against Annexure-V by which she was put below the 8th respondent though by Annexure III seniority list, she was shown above her. This is repeated again in Annexure-VII. This appears to be wrong. It is true that the 8th respondent joined on 17.12.79 in the new Division, but her order is produced along with the counter affidavit filed by the respondents 1 to 3 as Ext. R-1(b) in which it is made very clear that "she will rank junior to all temporary and permanent clerks presently posted to Commercial Branch and also other serving employees who are being posted to Commercial Branch against existing vacancies." The representation filed by the 8th respondent against this order having been rejected

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as per Ext. R-1(c), she cannot claim any seniority over the petitioner. It is true that on going by the date of joining not the petitioner can have any grievance against other respondents 4 to 7, but her specific plea of seniority over the 8th respondent is entitled to succeed because in Annexure-III seniority list, she was placed above the 8th respondent by respondents 1 to 3. But it was sought to be corrected in Annexure V and this is objected by the petitioner by filing a detailed representation Annexure-VI. The petitioner has been posted in the Commercial branch of the new Division as per order dated 22.11.79 and accordingly she joined on 19.1.80. Respondent 8 was directly appointed at Trivandrum in the Commercial Branch. Ext. R-1(b) states in unequivocal terms that she will rank junior to not only all the temporary and permanent clerks in the Commercial branch but also other serving employees who are being posted to this branch against existing vacancies. In the counter affidavit filed on behalf of respondents 1 to 3, it has been stated that the 8th respondent joined duty on the basis of this order "without any whimper of a protest". It proceeds further and states "she has acquiesced herself in those terms and without any demur, she joined duty." Subsequently, her representation filed against Ext. R-1(b) was rejected as per Ext. R-1(c). Under these circumstances, the claim of the 8th respondent that she is senior not only against the petitioner but also against respondents 4 to 7 on the basis of her date of joining cannot be acceded to.

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Her counsel submitted that this is only a mistake and by accepting this mistake the Tribunal may perpetuate the mistake.

But the respondents 1 to 3 have no case that this is due to any/ perpetuation of a mistake. Even otherwise, his contention cannot survive because we are not now examining the legality or otherwise of the orders by which the 8th respondent was posted or her seniority has been fixed. In this case, we are only called upon to examine the seniority of the petitioner over respondents 4 to 8 and we are only examining that question alone in this petition.

11. Having examined the rival contentions in detail in the light of the available materials, we have no hesitation in coming to the conclusion that the petitioner's claim of seniority over Respondents 4 to 7 has no force and the seniority of the petitioner vis-a-vis Respondent-8 is to be fixed on the basis of her date of joining in pursuance of Annexure-I order, coupled with the wordings in Ext. R-1(b) & (c) applicable to the seniority of Respondent-8. We hold therefore, that the petitioner is entitled to seniority over the 8th respondent only.

12. In this view of the matter, we quash Annexure-V and VII and declare her seniority over the 8th respondent and direct the respondents 1 to fix her seniority on that basis.

13. Accordingly, we allow the original petition in part without any order as to costs.

M. Dharmadan
(N. Dharmadan)
Judicial Member

N. V. Krishnan
(N. V. Krishnan)
Administrative Member

CENTRAL ADMINISTRATIVE TRIBUNAL : ERNAKULAM BENCH

Date of decision: 24-10-1989

Present

Hon'ble Shri NV Krishnan, Administrative Member
and
Hon'ble Shri N Dharmadan, Judicial Member

RA NO.57/89 IN OA NO.97/87

K Santhakumari

: Review Applicant/
8th Respondent in OA.

vs.

1 Cicily D' Silva

2 The Divisional Personnel Officer
Southern Railway, Trivandrum.

3 Divisional Railway Manager,
Southern Railway, Trivandrum.

4 Chief Personnel Officer,
Southern Railway, Madras.

5 PA Verghese, Head Clerk,
Area Office, Southern Railway,
Ernakulam.

6 PA Varghese, Head Clerk
Commercial Branch, Divisional Office
Southern Railway, Trivandrum.

7 C Ponnumani -do-

8 C Vamadevan -do- : Respondents/Respondents
and applicant in O.A.

Mr K Ramakumar

: Counsel of Review Applicant

Mr K Vijayan (for R1)

Smt Sumathi Dandapani (for R 2-4)

Mr TA Rajan (for R 5,7 & 8)

Mr Abraham Kurian (for R6)

ORDER

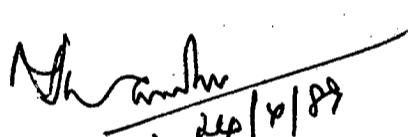
Shri N Dharmadan, Judicial Member.

The 8th Respondent filed this Review Application with a contention that the Hon'ble Tribunal committed an error of law on record in making a declaration contained in the judgment and submitted that if para 312 of the Indian Railway Establishment Manual had been noticed, this Tribunal would have been pleased to hold the view as submitted in the present petition for review.

2 We heard the arguments of the learned counsel.

In fact, in para 10 of the judgment, we have considered the contentions of the petitioner in this Review Application (Respondent-8) and held that her contention cannot ^{be} ~~be~~ survive because we ^{were} ~~are~~ not now examining the legality or other wise of the orders by which the 8th Respondent was posted or her seniority has been ~~fixed~~ ^{from her} ~~be~~ fixed. Apart ^{from} the said provision of 312 of the Railway Establishment Manual was not brought to our notice at that time. So, in the facts and circumstances of the case we feel that there is no error apparent on the face of the record and we see no merit in this Review Application.

3 Accordingly, the same is dismissed.


(N Dharmadan)
Judicial Member
24.10.89


(NV Krishnan)
Administrative Member
24.10.89