

CENTRAL ADMINISTRATIVE TRIBUNAL: ERNAKULAM BENCH

Date of decision: 8.12.89

Present

Hon^{ble} Shri NV Krishnan, Administrative Member
and

Hon^{ble} Shri AV Haridasan, Judicial Member

CA 117/89

1 K Abdul Rahiman
2 N Velukutty
3 S Angamuthu : Applicants

Vs.

1 Union of India rep. by the
General Manager
Southern Railway, Madras.
2 Divisional Railway Manager
Southern Railway, Palghat.
3 Divisional Personnel Officer
Southern Railway, Palghat.
4 Senior Divisional Mechanical
Engineer (LOW)
Southern Railway, Palghat. : Respondents
Mr P Santosh Kumar : Counsel of Applicant
M/s MC Cherian, Saramma Cherian &
TA Rajan : Counsel of Respondents

O R D E R

Shri NV Krishnan, Administrative Member.

The 3 applicants in this case have retired as Driver "B" in the Establishment of Respondent-2. Their grievance is that they were not given promotion to the next higher grade of Driver "A" even though they were fully qualified for that purpose and were in fact placed in a panel of persons selected for promotion as Driver "A".

2 The applicants' case is as follows:

2.1 A Selection Committee had prepared a list of
(Annexure-1)
51 names of Drivers "B" eligible for promotion as Drivers "A".

This was in respect of 53 vacancies of which 11 were

reserved for SCs and STs. The names of the applicants figure at Sl.No. 44, 50 and 51 in the list at Annexure-1.

2.2 Two applications under Section 19 of the Administrative Tribunals Act were considered by this Bench earlier (TA 786/86 and OA 445/86). The former was filed by certain persons who were reverted consequent upon the preparation of the list at Annexure-1 and its implementation. The latter application was filed by the first applicant in the present case to ensure that the list (Annexure-2) was implemented quickly. By an order dated 10.12.86, the Bench held that though all the 51 persons whose names are included in Annexure-I have been regularly selected, the inclusion of the names of the last 9 persons at Sl.No.43 to 51 was irregular as they were all general candidates and there were only 42 vacancies available for general candidates and hence, that order (Annexure-2) in the present case) was quashed.

2.3 Subsequently, when another selection was being made to the post of Driver 'A', a number of persons were altered, including 5 of the 9 persons whose names were got deleted by the Tribunal's order dated 10.12.86

(Annexure-3). These five persons approached the Tribunal and claimed that as they had already been empanelled earlier, it was not necessary to appear again in another test. This contention was upheld by the Bench in OAK 43/87 (Annexure-4) and the applicants were directed to be treated as duly qualified persons on the basis of the earlier selection.

2.4 On the basis of that order of the Tribunal, Annexure-V order was issued empanelling 6 persons. They were appointed as Driver 'A' with effect from 10.12.87 by the order dated 20.12.88 (Annexure-6).

3. The applicants' contention is that there were as many as 40 vacancies, even when OA No.445/86 was pending before the Tribunal to which the applicants could have been appointed. The applicants have, thus, been deprived of an opportunity for promotion to the next higher Grade of Driver 'A', as they had to retire as Driver 'B' from 30.6.86, 31.3.87 and 30.4.87 respectively. In the circumstances, the applicants seek a direction to the effect that they are entitled to be promoted as Driver 'A' by virtue of the inclusion of their names in the Selection

List originally prepared on 17.4.85 (Annexure-I) against vacancies ^{that} ~~that~~ then existed. They also seek a direction that they may be given consequential benefits as a result of such promotion.

4. The Respondents have denied that the applicants are entitled to any relief and have stated their case as follows:

4.1 It can be seen from Annexure-6 that EV Selvaraj who is senior to all the applicants and who is placed at Sl.No. 43 in the Annexure-I Selection List, ie, above all the applicants, was himself promoted as Driver 'A' only from 10.12.87. That being the case, the applicants cannot have a claim to be promoted from an earlier date. As none of the 3 applicants was in service on 10.12.87, all of them having retired earlier, they could not be promoted with Selvaraj.

4.2 Even otherwise, the Selection List at Annexure-I could be implemented in so far as general category candidates were concerned to the extent of only filling up of 42 vacancies and no more because when that selection list was prepared there were only 42 unreserved vacancies and

the remaining 11 vacancies were for reserved candidates.

4.3 The next lot of vacancies arose later on for which purpose a panel of names was got prepared on 1.8.85 as is clear from Annexure-5. However, 5 of the candidates at Sl.No. 43, to 51 in the Annexure-I list challenged that panel in OAK 43/87 and by the order dated 4.3.88 of the Madras Bench of the Tribunal ^(An IV) in that case they were placed above all the persons selected on the basis of the second selection. It is on that basis that the appointment order Annexure-6 was issued to the subsequent vacancies.

EV Selvaraj who is senior to all the applicants was then promoted by order dated 20.12.88 (Annexure-6) as Driver 'A' from 10.12.87, ie, the date from which his junior was promoted.

5. We have perused the records of the case and heard the counsel. The applicants' contention that as about 40 additional posts were available even after filling up of 42 unreserved vacancies for which the selection list at Annexure-1 was prepared, there was no need to cancel his name from that panel has to be ^{the examinees} ~~amended~~. They have a point that 11 vacancies could have been earmarked for SCs and STs as a carry over from the previous selection, for which

Annexure-1 panel was prepared and they could have been promoted to ~~the~~ three other vacancies. This could not have been done because, for filling up those posts a separate panel had already been prepared on 1.8.85 and in that panel the names of the applicants were not included. That apart, this is a matter which the 1st Applicant could have pressed in OA 445/86 in which he sought a direction that his name also be included in the list of officials promoted as Driver 'A'. It would appear from the order (Annexure-3) in that original application that such a plea was not taken therein. One cannot guess what order the Bench would have passed if such a plea had been taken, but it has to be noted that the Bench was quite critical of the manner in which the panel was prepared in instalments spread over two years.

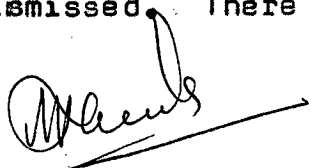
6. As far as the instant application is concerned, the applicants would have been on a stronger ground if any of their juniors had been promoted from a date on which they were still in service. That position does not obtain in the case. It is clear that the persons at Sl.No.43 to 51 of Annexure-1 panel ~~which~~ (including the applicants) were not included in the panel prepared subsequently for another 40 vacancies. The applicants did not challenge that panel.

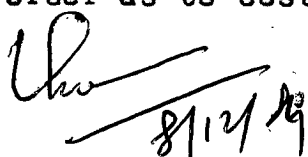
Had they also challenged it, as was done by five others in OAK 43/87 (vide para 4.3 above), they too would have got an order in their favour on 20.12.88, when that application was disposed of by this Tribunal. By that time they had all retired. Even otherwise, as rightly pointed ^{out} by the counsel of Respondents, EV Selvaraj, the person immediately senior to the first applicant was promoted as a result of the Tribunal's order in OAK 43/87 only from 10.12.87 (ie, quite some time after all the 3 applicants had retired) as that was the date from which his junior had been promoted earlier.

10.12.87

7. In the circumstances, we are of the view that the applicants cannot claim to be promoted from a date earlier than that of EV Selvaraj who was promoted only on 10.12.87. As the applicants had already retired on that date, the question of giving them promotion did not arise.

8. The application, therefore, has no force and the same is dismissed. There will be no order as to costs.


(A.V. Haridasan)
Judicial Member


(N.V. Krishnan)
Administrative Member

8.12.1989