

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 123/93

Monday, this the 17th January, 1994

SHRI N. DHARMADAN, MEMBER (J)
SHRI S.KASIPANDIAN, MEMBER(A)

M. Rengasamy,
Senior Gangman, D.T.M.No.8,
O/o Permanent Way Inspector,
SR, Thiruppur.

.. Applicant

By Advocate Shri P.Sivan Pillai.

V/s

1. The Sr. Divisional Engineer (East),
Southern Railway, Palghat.
2. The Divnl. Personnel Officer,
SR, Palghat.
3. The Assistant Engineer,
SR, Erode.
4. K.Kandasamy,
Senior Gangman DTM.8,
C/o Permanent Way Inspector,
SR, Tiruppur.

.. Respondents

By Advocate Shri Bahuleyan for
Shri T.P.M.Ibrahim Khan, ACGSC (for respondents 1 to 3)

By Advocate Shri Asok M.Churian (for Resp. 4)

ORDER

N. DHARMADAN

The applicant is a Gangman aspiring for posting as a Gate Keeper in the level cross at KM 438/2-3, considering his medical decategorisation.

2. According to the applicant, he was appointed as Gangman on 23.12.74. Because of the medical classification and decategorisation, he requested for a change of category and posting as a Gate Keeper. In the medical examination held in the year 1980, the applicant was found fit only in Medical Class-A3 which is suitable medical classification

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for a postng as Gate Keeper. He registered his name in that year itself. Accordingly, he was also given postings on a provisional basis as a Gate Keeper in temporary vacancies on various occasions. But when a regular vacancy of Gate Keeper arose at KM 438/2-3 in the Level Crossing Gate, the 3rd respondent arbitrarily appointed the 4th respondent without taking into consideration either the priority in registration or the seniority. Applicant is eligible to be appointed in the above vacancy considering the date of his registration and seniority. Since he was not given the regular posting after conducting a selection, he approached this Tribunal.

3. While admitting the application on 20.1.93, we passed an interim order directing that the posting of Gate Keepers in Km 438/2-3 shall be subject to the outcome of this application.

4. Respondents 1 to 3 and the 4th respondent have filed separate reply statements. According to the respondents, the 4th respondent also worked in the level cross referred to above for the last about 7 to 8 years as nominee of the PWI. He is also performing the duties satisfactorily. But the seniority of the applicant and his earlier registration had been admitted. But they have produced Annexure-R2 to show that the applicant had been severely warned once on account of some irregularity in the work as a Gateman. Hence the respondents have taken the stand that even though the applicant is senior and having earlier registration, the 4th respondent is suitable for posting as regular Gate Keeper.

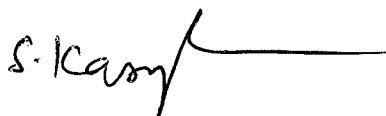
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5. Admittedly, no selection has been made for deciding the suitability of the candidates. Both applicant as well as the 4th respondent have experience in the work since they had worked provisionally in the level crossing as Gate Keeper. Since both of them are staking their claim for a regular posting giving details of their rights to get posting, it would be fit and proper to conduct a selection in accordance with law and make regular appointment particularly when the respondents have taken the view that they are not keeping any register for deciding the priority of registration for appointment. In the instant case, the PWI has nominated the 4th respondent without following any principle or procedure. In these matters of appointment, it is necessary that the appointing authority should follow some procedure for selection in order to avoid arbitrariness and favouratism.

6. Now, admittedly, a regular vacancy of Gate Keeper has arisen in the level cross at KM 438/2-3 under the 3rd respondent and no regular selection has been made. Under these circumstances, the post can be filled up after considering the merit of both the applicant as also the 4th respondent.

7. In this view of the matter, we are satisfied that the application can be disposed of with appropriate directions in the interest of justice. Accordingly, we direct the 2nd respondent to conduct a selection in accordance with law for filling up the post of Gate Keeper at Level Crossing Gate at KM 438/2-3, under the 3rd respondent, in which both applicant and 4th respondent shall be considered. This shall be done within three months from the date of receipt of a copy of this order, till which date the interim order already passed in this case will continue.

8. The original application is disposed of as above.
There will be no order as to costs.



(S.KASIPANDIAN)
MEMBER(A)



(N.DHARMADAN)
MEMBER(J)

17.1.94

v/-