

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 129/97

Thursday, this the 21st day of October, 1999.

CORAM:

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

HON'BLE MR G RAMAKRISHNAN, ADMINISTRATIVE MEMBER

R. Somarajan Nair,
Carrier and Wagon Fitter Grade-II,
Office of the Carriage & Wagon Superintendent,
Southern Railway, Kollam.

...Applicant

By Advocate Mr. M.V. Thampan

Vs.

1. The Chief Personnel Officer,
Southern Railway, Madras.
2. The Senior Divisional Personnel Officer,
Southern Railway, Thiruvananthapuram.

...Respondents

By Advocate Mrs. Sumathi Dandapani

The application having been heard on 21.10.99, the
Tribunal on the same day delivered the following:

ORDER

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

Applicant seeks to quash A-5, A-7, A-9 and A-10, to
declare that he is not liable to be reverted from the present
post of Carrier and Wagon Fitter Grade-II and to direct the
respondents to disburse arrears of pay and allowances conse-
quent upon the retrospective promotions granted to him as per
A-2.

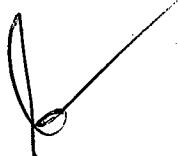
2. Applicant joined as a substitute Khalasi with effect
from 1.8.1978. He was granted temporary status with effect
from 1.12.1978. He was empanelled with effect from 31.12.1980.
His name was not included in the seniority list while many of
his juniors with less number of days at the time of empanel-
ment were included. Since no action was taken on the represen-
tations submitted by him, he approached this Bench of the
Tribunal by filing O.A. 423/92. It was directed in that O.A.

to fix the seniority of the applicant in the post of Carriage and Wagon Khalasi viz-a-viz Shri S. Sambasivan who was the 3rd respondent therein after giving notice to all affected persons. As per A-2, the applicant was promoted as Carrier and Wagon Fitter Grade-III with effect from 30.9.1986 and further to Carrier and Wagon Fitter Grade-II in the scale of Rs. 1200-1800 with effect from 3.3.1993 notionally. His pay was fixed accordingly at Rs.1230/- in the scale of Rs.1200-1800 with effect from 1.9.1994. Since he was not granted arrears of salary inspite of representations made, he approached this Bench of the Tribunal by filing O.A. 40/95 for a direction to the respondents to disburse arrears of pay and allowances accrued on the basis of the notional promotion granted to him on the basis of A-1 judgement. In O.A. 40/95, this Bench of the Tribunal directed the respondents to consider the representations and pass speaking orders. As per A-5, the request of the applicant was rejected. Certain other persons filed O.A. 341/95 before this Bench of the Tribunal. The applicant was the 3rd respondent therein. The applicant did not contest the matter. The said O.A. was disposed of recording the submission on behalf of the respondents that a communication dated 12.7.1994 will be withdrawn. Subsequently, A-7 was served on the applicant and he filed his objections as per A-8. Thereupon, A-9 order was passed re-assigning the seniority on the basis of the number of days put in by the applicant as well as by one Shri. S. Sambasivan. From the order dated 31.8.1992, it can be seen that while the applicant had put in 884 days, Shri. S. Sambasivan had put in only 869 days. In the meanwhile, seniority list of Grade-III was issued on 3.3.1993 wherein the applicant's name was not included. Many of his juniors were included. Shri.S. Sambasivan's name also finds a place there. Thereafter, the 2nd respondent issued A-10 order reverting the applicant to the lower grade of Carriage and Wagon Fitter Grade-III with effect from 15.12.1995.

3. Respondents resist the O.A. contending that the revised seniority position of the applicant was issued in pursuance of the direction in A-1 judgement. When A-2 was issued promoting the applicant notionally to Grade-III and Grade-II, some of the affected employees filed O.A. 341/95 before this Bench of the Tribunal challenging the order dated 12.7.1994 promoting the applicant herein. Shri.S. Sambasivan is senior to the applicant. Applicants in O.A. 341/95 were granted temporary status earlier to the date on which the applicant was granted the same. As per the directions in the judgement in O.A. 423/92, revising the seniority position of the applicant happened to be issued which in turn, later led to the issuance of the order promoting the applicant to higher grades. Thus, a benefit for which the applicant herein has neither any legal right nor as contemplated in the said judgement happened to be extended to him detrimental to the interest of other eligible employees. The claim of the applicant for arrears of pay and allowances has been considered and has been negatived as per A-5 which remains unchallenged.

4. Even though the first prayer is to quash A-5, A-7, A-9 and A-10, when the O.A. came up for admission on 27.1.1997, the learned counsel appearing for the applicant sought permission to restrict the claim in regard to challenging the orders at A-7, A-9 and A-10 and the O.A. was admitted in regard to the challenge against A-7, A-9 and A-10 only.

5. A-7 dated 12.12.1996 is only a proposal to re-assign the seniority and the applicant was given the right to submit representation, if any, against the withdrawal of the memorandum dated 22.7.1994. The applicant submitted A-8 representation. That apart, A-7 order was issued in compliance with the decision of this Bench of the Tribunal in O.A. 341/95. When it is in compliance with the direction of this Bench of the Tribunal and



the applicant was given the opportunity to make representation, if any, and he has admittedly submitted a representation as per A-8, it is not known for what purpose A-7 has to be quashed.

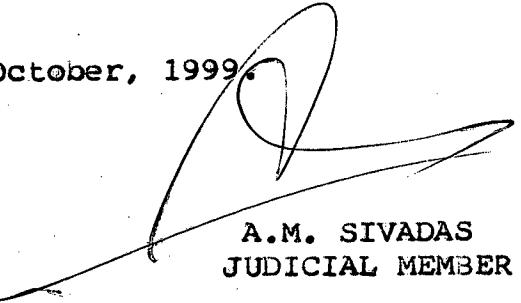
6. As per A-9, one Shri. S. Sambasivan has been placed senior to the applicant on the ground that Shri.S. Sambasivan had rendered 1147 days of service while the applicant had rendered only 884 days of service. The applicant says that as per order dated 31.8.1982, the applicant had put in only 869 days of service. From R-1 dated 6.5.1983, it is clearly seen that Shri. S. Sambasivan had put in 1147 days of service. That is the basis on which Shri.S. Sambasivan is placed above the applicant. What is stated with regard to R-1 in the rejoinder is that if the respondents have issued R-1 order, it is without notice to the applicant and therefore, it is illegal and unsustainable. If that is so, the applicant could have challenged the same.

7. A-10 is based on A-9. If A-9 is not liable to be quashed, A-10 also cannot be quashed. Since the seniority assigned to Shri.S. Sambasivan above the applicant as per A-7 is found to be correct as per R-1 and the said Shri.S.Sambasivan will be affected if A-9 is quashed and he is not brought in the party array, A-9 cannot be quashed.

8. Accordingly, we do not find any merit in this O.A. and the O.A. is dismissed. No costs.

Dated this the 21st day of October, 1999.


G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER


A.M. SIVADAS
JUDICIAL MEMBER

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