

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 129/06

TUESDAY THIS THE 10th DAY OF APRIL, 2007

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

Christopher S/o Lazor
Assistant Cook, Southern Railway
Staff Canteen, Trivandrum
residing at Theruvila Puthan Veedu
(Christ Bhavan), Fort Ward,
Neyyattikara PO, Thiruvananthapuram.

..Applicant

By Advocate Mr. M.P. Varkey

Vs.

- 1 Union of India represented by
the General Manager,
Southern Railway,
Chennai-600003
- 2 Senior Divisional Personnel Officer
Southern Railway,
Trivandrum-695 014
- 3 The Chief Personnel Officer
Southern Railway,
Chennai-600 003
- 4 K. Vijayakumar
Salesman/Grade-I
Southern Railway Staff Canteen
Trivandrum-695 014
- 5 R. Ambi, Cook/Grade-I
Southern Railway Staff Canteen
Trivandrum-695 014

Respondents.

By Advocate Shri Thomas Mathew Nellimootttil for R. 1-3

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant in this case is aggrieved by the promotions given allegedly to his juniors by Annexure A-2 and A-7 impugned orders.

2 The facts of the case as submitted by the applicant are as under:- The applicant as well as the respondents 4 & 5 began their career as Casual Labourer Tea Maker-cum-Server/Cleaner in the Southern Railway Cooperative Canteen, Trivandrum. The applicant started his service as Casual Labour Tea Maker-cum-Server on 5.1.1981, the 4th respondent from 30.3.1982 and the 5th respondent from 1.1.1983. The applicant was promoted to officiate as Assistant Cook in the scale of Rs. 2650-4000 vide Annexure A-2 order dated 3.6.2003 whereas the 5th respondent was promoted to officiate as Cook Grade-II in the scale of Rs. 3650-4590, duly regularising his officiating service as Assistant Cook in the scale of Rs. 3050-4000 w.e.f. 8.11.2000. The applicant has alleged that the officiating service of the 5th respondent was done clandestinely and was not known to any staff and undue favour was shown to the 5th respondent. Therefore he made a representation on 15.6.2003 to the second respondent but there was no response. Thus, he has been constrained to approach this Tribunal but in the absence of relevant seniority list he could not file the Application in time. The applicant was able to secure documents showing his service in

the Southern Railway Staff Co-operative Canteen only on 15.1.2006 and therefore delay has occurred in filing this Application. The respondents have now issued the impugned order at Annexure A-7 in which the 5th respondent was further promoted from Cook Grade-II to Cook Grade-I and the 4th respondent was promoted from Vendor grade-I to Salesman Grade-I ignoring applicant's seniority and his earlier representation. According to him the applicant is not aware of any seniority list as no such list has been circulated among the staff. He has sought the following reliefs:

(a) Declare that MA(R-1) provisional seniority list is illegal, contrary to rules and at variance with A-11 and A-10 series A-9, A-6 and A-4 and quash the same.

(b) Declare that A-2 order is unjust, illegal unconstitutional and without jurisdiction as regards the 5th respondent and, quash the same to the said extent.

© Declare that A-7 order is unjust, illegal unconstitutional and without jurisdiction as regards the 5th and 4th respondents and quash the same to the said extent.

(d) Declare that the applicant is entitled to be promoted as Assistant Cook in scale Rs. 2620-3540 with effect from 8.11.2000, as Cook Grade-II in scale Rs. 3050-4590 w.e.f. 3.5.6.2003 and as Cook Grade-I in scale Rs. 3200-4500 in place of or on par with the 5th respondent, with all consequential benefits and direct the respondents accordingly.

(e) Award costs of and incidental to this application in favour of the applicant.

(f) Pass such other orders or directions as just, fit and necessary in the facts and circumstances of this case.

3 The respondents have stated in the reply statement that seniority list has been published on various dates wherein the applicant has been shown as junior to respondents 4 and 5 and the said seniority position is being followed for promotions. Annexure A-2 and A-7 orders have been issued following the said seniority position. The applicant has not submitted any representation against the seniority position as shown in the published seniority list which they have produced as Annexure R-1. The applicant has also not challenged the promotion orders issued in Annexure A-2 on 3.6.2003. Not having challenged Annexure A-2 he cannot challenge the consequential A-7 order. The respondents have refuted the claim of the applicant regarding alleged service rendered prior to 1.4.90 as totally irrelevant since only w.e.f. 1.4.1990 the staff in the Canteen like the applicant came to be treated as Railway employees in compliance with the judgment of the Apex Court in MMR Khan & ors. Vs. Union of India and Ors. Any such service rendered under the Managing Committee of the said Canteen prior to the said decision cannot be counted as service under the Railways. The applicant has no proof for claiming that the respondents 4 and 5 are his juniors. Hence the applicant's averments in the matter of seniority are hit by acquiescence and estoppel. They have also denied receipt of any representation as alleged by the applicant. It is further submitted that Annexure

A-6 is no proof of seniority wherein the applicant is shown at Sl. NO. 3 and the respondents at Sl.Nos. 5 and 7 respectively. As the 4th and 5th respondents are senior to the applicant they have been promoted as per Annexure A-2 and A-7 and all of them became railway employees w.e.f. 1.4.1990. Hence they are all appointed from the same date of 1.4.1990, the seniority amongst them had to be determined with reference to their date of birth as under:

<i>Sl. No.</i>	<i>Name</i>	<i>Designation</i>	<i>Date of birth</i>	<i>Date of Appointment</i>
5	R. Ambi	Bearer-II	08/10/56	01-07-19783/ 1.4.1990
6	L.Christopher	-do-	30.05.1959	-do-
7	J, Vijayakumaran	-do-	25-07-61	-do-

The above seniority is being followed by the Department. The seniority of the applicant vis-a-vis the 5th respondent is clear from the above and hence the promotion of the 5th respondent as per Annexure A-2 is not liable to be quashed.

4 Applicant has filed a rejoinder contesting that there cannot be a common seniority for different groups since the Railway Board's order NO. P(R)MC/38/Canteen dated 8.5.1998 (Annexure A-11) stipulated that the Canteen staff is divided in to three self contained Groups. Since Annexure R-1 seniority

produced by the respondents contains names of canteen staff of different groups and designations its bonafides are to be doubted. The applicant could not give any representation as his seniority list was not published. The applicant has further relied on Annexure A-10 series of documents produced by him to show that he was engaged in the Canteen earlier than the respondents and that date of birth cannot determine seniority in such cases.

5 We have heard Shri . M.P. Varkey the learned counsel appearing for the applicant and Shri Varghese John counsel appearing for Shri Thomas Mathew Nellimoottil, the learned counsel for the respondents.

6 Applicant has filed M.A. 187/06 to condone the delay to which the respondents have raised objections. Having heard the learned counsel on both sides the M.A was allowed the delay in filing the O.A. was condoned.

7 The main dispute is about the seniority of the applicant vis-a-vis 4th and 5th respondents. The applicant's claim for seniority is based on his prior service said to have been rendered as Casual Labourer under the Southern Railway Cooperative Canteen, Trivandrum. The applicant has produced Annexure

A-10 series of muster rolls to show that the applicant was engaged in the Canteen from January 1981 onwards whereas the 4th respondent has figured in the muster rolls from March, 1982 and the 5th respondent from January, 1983 onwards. These Muster rolls are pertaining to three months from January, 1981 to March, 1983, though they contain the name of the applicant and respondents, they cannot be taken as proof of the dates of initial engagement and unless the muster rolls of all the months of the year 1981 to 1983 are produced the initial date of appointment cannot be ascertained. However, this position is irrelevant in view of the fact that this service was not rendered in the capacity as Casual Labourer under the Southern Railway. The applicant and the respondents were Casual Labourers working in the Canteens under the control of a Managing Committee which was a purely private co-operative organisation. By virtue of the judgment of the Apex Court in MMR Khan's case canteen staff employed in such private Cooperative Societies came to be treated as railway employees. Annexure A-9 order makes it clear that they were appointed on a temporary basis by the Managing Committee w.e.f. 1.7.1983. The applicant and the 5th respondents were having the designation of Tea Maker and the 4th respondent as Bearer and they were placed provisionally in the scale of Rs. 196-232. Later consequent on the decision of the Hon'ble Supreme Court the

employees in non-statutory canteens working in the sanctioned post of scale of pay were treated as temporary railway servants from 1.4.1990. Annexure A-6 will go to show that the applicant figures at Sl. No. 3 and the respondents at 5 and 7 and were all absorbed with the same date of 1.7.1983 as per Annexure A-9 and treated as railway servants from the same date of 1.4.1990. The entry in the Railway service was based on their entry into a sanctioned scale of pay in the service of the Cooperative Canteen as evident from Annexure A-6 order which date was the same for the applicant as well as the respondents namely 1.7.1983. Since all of them have been absorbed and appointed in service on the same date, their seniority has been determined based on the date of birth as rightly pointed out by the respondents. The claim of the applicant for counting his previous service as a Casual Labourer in a non-statutory Canteen for determining the seniority is not tenable.

8 The respondents have produced the seniority list and the applicant has submitted that no such seniority list has been circulated. As seen from the list produced and circulated on 1.2.2001 a copy of which was also exhibited on the notice board, it cannot be now contended that there is no seniority list as such. The applicant's apprehension is purely based on his perception that he had been a Casual Labourer prior to the

respondents which fact as already stated above is not relevant in fixing the seniority of canteen staff who were absorbed in the railway service consequent on the judgment of the Apex Court in MMR Khan's case.

9 However, it is noticed that according to the seniority list produced by the respondents the 4th respondent is junior to the applicant since the applicant's date of birth is earlier. However, by Annexure A-7 order the 4th respondent has been promoted to the scale of 2750-4400 from the scale of Rs. 2650-4000 in which the applicant is now placed and has been continuing ever since his promotion by Annexure A-2 order dated 3.6.2003. This is the apparent grievance of the applicant that his juniors have gained promotion earlier. However, this is not exactly correct as the applicant is officiating in a post of Assistant Cook and he was promoted to that post from the post of Bearer Grade-II whereas the 4th respondent is promoted as Salesman Grade-I from the post of Vendor Grade-I. There is thus a difference in the post held by both the applicant and the 4th respondent, and the post to which the applicant can be promoted and to which the 4th respondent has now been promoted. The applicant himself has enclosed a copy of the Railway Board's circular dated 10.5.1998 (Annexure A-11) which shows that the Canteen staff is divided into three self contained groups. Group-I consists of Cleaners, Vendor II and I, Bearer Grade-II, Salesman Grade-I etc. and Group-II consists of Asst. Cook, Cook,

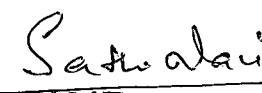
Grade-II and Grade-I, etc. The 4th respondent belongs to Group-I and his promotion channel is from vendor Grade-I to Salesman Grade-I which has been now given to him by Annexure A-7 order. The promotion channel of the applicant who is in the scale of Rs. 2650-4000 as Assistant Cook is to Cook Grade-II which is in the same scale as Salesman Grade-I. It could be due to this difference in the pay posts having different channels of promotion that the 4th respondent has been now promoted whereas the applicant has not yet got his promotion to the scale of Rs. 2750-4400, perhaps due to non-availability of vacancy in that category. However, this has to be verified by the respondents and we cannot express any firm opinion as it was not part of the pleadings on record. When the Canteen staff are divided into three groups with distinct channels of promotion, we do not see any reason for issue of a common seniority list. The respondents should maintain three separate seniority lists for the three groups so that there would not be any confusion in the minds of the employees and it will be possible for them to know which group they belong and what are their promotion prospects etc..

10 In the result, we are of the view that there are no grounds for interference with Annexure A-2 and A-7 orders and also no interference is called for to the seniority list in which the 5th respondent is clearly senior to the applicant and the 4th respondent is junior. However, in the light of our observation in para 9 above, we direct the respondents to prepare separate seniority lists of the

three groups of canteen staff and circulate amongst the staff inviting objections if any. After consideration of the representations the seniority lists shall be finalised and published. We also declare that the applicant is entitled to promotion as Cook Grade-II in the scale of Rs. 2750-4400 and for Grade-I in the scale of Rs. 3050-4500 in his turn as he has already qualified by passing the trade test and he shall be promoted if a vacancy is available at present or in the next available vacancy in the said posts as determined by the respondents after segregating and finalisation of the seniority of the three groups of Canteen staff. These directions shall be implemented as expeditiously as possible, at any rate within four months from the date of receipt of this order. No costs.

Dated 10.4.2007.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHRI NAIR
VICE CHAIRMAN

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