

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 131/95

Thursday, this the 21st day of March, 1996.

CORAM

HON'BLE MR. JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR. S. P. BISWAS, ADMINISTRATIVE MEMBER

1. G. K. Vijayakumar,
Electrical Fitter/Train Lighting/Highly Skilled-II
Southern Railway,
Thiruvananthapuram.
 2. J. Jayakumaran Nair,
Electrical Fitter/Train Lighting/Highly Skilled III,
Southern Railway,
Thiruvananthapuram.
 3. M. Raghunathan,
Electrical Fitter/Train Lighting/Highly Skilled III
Southern Railway,
Thiruvananthapuram.
- ..Applicants

By Advocate Mr. P.K. Madhusoodhanan

Versus

1. The Divisional Personnel Officer,
Southern Railway,
Thiruvananthapuram
 2. The Divisional Electrical Engineer,
Southern Railway,
Thiruvananthapuram
 3. Union of India represented by its
Secretary, Ministry of Railway,
Rail Bhavan, New Delhi.
 4. E. A. Thomas,
Khalasi Helper,
Southern Railway,
Kottayam
- ...Respondents

By Advocate Mr. Mathews J. Nedumpara for Respondents 1 to 3
Advocate Mr. V. R. Ramachandran Nair for R-4

The application having been heard on 20.2.96
the Tribunal delivered the following on 21.3.96

O R D E R

S. P. BISWAS, ADMINISTRATIVE MEMBER

Applicants challenge Annexure A8 memorandum issued
by first respondent granting seniority to respondent-4 over

applicants. Applicants, now working as Highly Skilled Electrical Fitters in Trivandrum Division of Southern Railway, are aggrieved by the alteration of seniority position settled in 1981.

2. The case of applicants can be briefly stated as under. Applicants who initially entered the services of Southern Railway as construction labourers in 1979, were transferred to open line in Electrical department and were working continuously as substitute electrical Khalasis in the grade of Rs. 196-232 since 1980. By A1 order they were given temporary status on the dates shown against each. Respondent-4 was given temporary status with effect from 8.7.81 as against 6.2.81 and 1.2.81 for applicants 1 & 2 respectively. Later on, applicants were promoted temporarily to the next higher grade of Rs. 210-290 as Khalasi Helpers in the Electrical Department by A2, against vacancies of 1980. Thereafter, they were empanelled for regularisation as Khalasi Helpers of grade Rs. 196-232 by A3. In A3, seniority is worked out on the basis of qualifying service put in as casual substitutes. Respondent-4 does not figure in A2 promotional order or in A3 order of empanelment for regularisation. A4 order indicates the position of confirmation in the post of Khalasi Helper of applicants as well as 4th respondent. Applicants 1 & 2 were further promoted as Electrical Fitter (Highly Skilled) Grade-III on 8.9.88, whereas applicant-3 got the above promotion in September, 1989. By A5, respondents published a provisional seniority list of the officials in two grades of Rs. 950-1500 and Rs. 800-1150. All the applicants, as seniors were placed in the higher grade of Rs. 950-1500 whereas respondent-4 being very

junior finds a place only in the lower grade of Rs. 800-1150. The facts of the case of applicants remained undisputed.

3. In the background of above facts continuing for 13-14 years, counsel for applicants submitted that orders A8 arising out of A6, issued by first respondent are illegal.

4. While urging the points vehemently, counsel mentioned that to the surprise of applicants, first respondent has issued A8 memorandum revising the seniority, giving 4th respondent placement as decided in A6 (A6 giving rise to A8) treating applicants and others as junior to him in the Electrical Department.

5. Counsel argued that seniority assigned should not be disturbed after a lapse of many years. In the case on hand as is evident from Annexures A1 to A5, the applicants were seniors to Respondent-4 from 1981 onwards and the 4th respondent has never challenged the seniority position. Applicants were given promotions also to higher posts from the initial post of Electrical Khalasi to Khalasi Helper and from Grade-III to Grade-II (Highly Skilled Fitters) as in the case of first applicant. Respondent-4 has neither challenged any of these promotions nor the seniority given to applicants. Therefore, applicants are eligible and entitled to get seniority in view of the 'sit back theory' in the light of the decisions reported in AIR 1970 SC 470 and 1973 JT 151.

6. Counsel for applicants further submitted that as per Para 2005 of the Indian Railway Establishment Manual Vol. II 1990 (Revised Edition) service of a casual labour prior to absorption in temporary/permanent/regular cadre after the required selection/screening will not count for the

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purpose of seniority and the date of their regular appointment after screening/selection shall determine their seniority vis-a-vis other regular/temporary employees. Casual labour shall be eligible to count only half the period of service rendered by them after attaining temporary status before regular absorption as qualifying service for the purpose of pensionary benefits. Therefore, counting of the casual labour service of the 4th respondent for the purpose of granting him seniority over the applicants and others at this belated stage, after 14 years, is unjust, illegal, harsh and against the law laid down on the subject.

7. According to counsel for applicants, the first respondent ought to have considered the position that when a casual labour is transferred from one department to another, he will be the juniormost in the receiving department and he cannot claim seniority over others in the new department in the same grade as per provisions under Rule 2004 of Indian Railway Establishment Manual Vol.II Revised Edition 1990. These aspects were overlooked in issuing Annexures A6 and A8 orders. A7 and similar representations filed by applicants were not considered before issuing A8. A6 was only an empty formality and an eye wash and a pretext for giving an opportunity to the affected persons.

8. Counsel for respondent-4 submitted that the date of attaining temporary status of a casual mazdoor has no relation to the empanelment and seniority. For the purpose of empanelment, the aggregate number of days of service as casual mazdoor has to be taken into consideration. Respondent-4 was initially engaged under Inspector of Works

(Construction) Trivandrum from 10.7.78. From 16.9.79 he is working in the Electrical Division. Therefore, respondent-4 is in continuous service from 10.7.78 onwards. The services rendered by respondent-4 in the construction was not taken into consideration by the railways while calculating the total number of days worked for the purpose of empanelment and hence the name of this respondent was not included in Annexure A3.

9. Counsel also argued that all the promotions to applicants were made after considering total number of days of work put in by them. In Annexure A3 itself, the total aggregate service as on 31.12.80 shown against applicants is inclusive of the past services rendered by them in the construction department. Not counting similar service of fourth respondent was only a mistake committed by railways. When this was brought to their notice before publishing the provisional seniority list, the mistake was corrected with due notice with opportunity of being heard as per Annexure A6 and this is covered under provisions of Rule 228 of Indian Railway Establishment Manual Vol.I. In an attempt to substantiate the above contention, counsel drew support from Rule 179 (xiii)(c) of IREM Vol.I. This reads as under:

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"(c) A register should be maintained by all Divisions concerned to indicate the names of casual labour, substitutes and temporary workmen who have rendered 6 months service either continuous or in broken periods, for the purpose of future employment as casual workmen and also as regular employees, provided they are eligible for regular employment. The names should be recorded strictly in the order of their taking up casual appointment at the initial stage and for the purpose of empanelment for regular Group 'D' posts, they should as far as possible, be selected in the order maintained in the aforesaid registers. In showing preference to casual labour over other outsiders due consideration and weightage should be given to the knowledge and experience gained by them.

Other conditions being equal, total length of service as casual labour, either continuous or in broken periods, irrespective of whether they have attained the temporary status or not, should be taken into account so as to ensure that casual labour who are senior by virtue of longer service are not left out."

10. According to Counsel, the above view finds support in the decision of Apex Court in the case of Inder Pal Yadav & Others Vs. Union of India & Others, (1985 [2] SCC 648) wherein their Lordships laid down the principle that "absorption should be in the order of length of continuous service".

11. Counsel for respondent-4 submits that it is not correct to say that 4th respondent never challenged the seniority of applicants. The provisional seniority was published on 5-2-1993 and 4th respondent had made representations to appropriate authorities. One such representation dated 27-7-92 (R-4) addressed to respondent-1 has been annexed as evidence. The revision effected after considering the past service of this respondent is only consequential to earlier representations, Counsel submitted.

12. The issues that fall for our determination are:

- (i) whether the length of casual service in one department can be counted for empanelment/regularisation/seniority in other departments of the Railways?
- (ii) should casual service prior to regularisation/temporary status be counted for the purpose of seniority? and
- (iii) whether the prayer seeking alteration in inter-se seniority settled more than a decade before could be considered?

13. On the basis of material on record, we find that respondent-4 rendered casual services between 16-7-78 to 15-9-79 in the Civil Engineering (Construction) Department.

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Admittedly, respondent-4 did not get temporary status before joining Electrical department with effect from 16.9.79. Seniority of such employees are to be determined on the basis of principles laid down in Para 2004 of the Indian Railway Establishment Manual Vol.II. It stipulates:

"For project casual labour on Zonal Railways, the unit for this purpose will be Division-wise and Department-wise as per instructions issued by the Railway Board. Casual labour diverted from one unit to another will rank juniormost in the new unit."

The claim of Respondent -4 that total casual service be counted for the purpose of empanelment/temporary status irrespective of the department in which the casual employee works, is not supported by any rule.

14. Under rule 2005-"Entitlement and Privilege admissible to Casual Labour who are treated as temporary (i.e. given temporary status) after the completion of 120 days or 360 days of continuous employment (as the case may be)" it has been mentioned that :

"...However, their service prior to absorption in temporary/permanent/regular cadre after the required selection/screening will not count for the purpose of seniority and the date of their regular appointment after screening/selection shall determine their seniority vis-a-vis other regular/temporary employees. This is however, subject to the provision that if the seniority of certain individual employees has already been determined in any other manner either in pursuance of judicial decisions or otherwise, the seniority so determined shall not be altered."

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15. It has been held by Supreme Court that seniority will be counted for casual employees only from the date of regularisation, even if they had been engaged earlier. In the absence of any evidence as regards the status of respondent-4 in Construction (Civil) Department, it can only be presumed that Respondent-4 was not granted temporary status while working in that department from 16.7.78 to 15.9.79. This initial period of casual service was apparently a stop gap/ad-hoc arrangement. Officiation in such post can't be taken into account for considering seniority (See Direct Recruit Class -II Engineering Officers' Association V. State of Maharashtra (1990 2 SCC 715). Again, in a recent decision of S.K. Saha V. Prem Prakash Aggarwal (1994) 1 SCC 431), a three Judge Bench of Hon'ble Supreme Court by its decision dated 23.11.93 held that service rendered prior to regular appointment would not count for seniority.

16. The decision in (Inder Pal Yadav & Others V. Union of India & Others (1985 2 SCC 648) cited by counsel for respondent 4 is of no assistance as their Lordships in the above case were examining a scheme framed by Railways for absorption of workmen on completion of different days of continuous employment and did not lay down as to how the seniority of a casual employee rendered in a department of Railways is to be fixed when transferred to another department.

17. We find that necessary order empanelling Respondent-4 against a vacancy as on 31.12.80, and refixing his seniority position was issued on 5.1.95. Seniority positions decided and circulated earlier in 1981 (A1 order on 7.11.81) and 1984 (A3 order 8.1.84) have thus been

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reversed in favour of Respondent-4 after a lapse of 13-14 years. In paras 5 & 6 of his reply statement dated 5.6.95 Respondent-1 has elaborated the steps taken to alter the earlier order of seniority but is silent about the legal basis relied upon. Provisions under rule 228 of the Indian Railway Establishment Manual Vol.I permit re-assignment of correct seniority on account of administrative errors.

18. However, the facility under the above provision is to be availed of keeping in view of the rule 321. In this rule " PERMISSION TO RAILWAY SERVANTS TO PERUSE SENIORITY LIST" it has been mentioned that:

(a) Railway servants may be permitted to see the seniority lists in which their names are placed, or if this cannot conveniently be arranged, they may be informed, on request, of their place on the seniority list.

(b) Staff concerned may be allowed to represent about the assignment of their seniority position within a period of one year after the publishing of the seniority list. No cases for revision in seniority list should be entertained beyond this period."

It is, thus evident that the steps taken by the Railways are contrary to provisions laid down under rule 321 of the Indian Railway Establishment Manual Vol.I.

19. A8 order amounts to granting of retrospective promotion to respondent-4 and re-fixation of seniority. Such retrospective promotion should not have been granted by respondent-1 affecting the rights of applicants and others who were already working in their respective grades for long.

In a recent decision in the case of P.R. Sinha V. State of Bihar (1994 Supp.(2) SCC 43), the Supreme Court held that

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granting retrospective promotions and regularisation should not be done to the detriment of those who had already been regularly appointed.

20. Evidence available on record establishes that Respondent-4 had not raised his claim for seniority before 27.7.92, although he claims to have made several representations earlier. The following orders on promotion/regularisation and seniority were issued:-

- (a) A1 order dated 7.11.81 - Offer of Temporary status-Respondent-4 is shown as junior to applicants;
- (b) A2 order dated 19.11.83 -Promotion as Khalasi Helper-Respondent-4 is not shown at all;
- (c) A3 order dated 8.1.84-empanelment for regular absorption as Temporary Electrical Khalasi R-4 is not shown at all;
- (d) A4 order dated 31.7.89- Confirmation of staff in Electrical Branch - Respondent-4 being shown as junior though the date of confirmation is the same for all;
- (e) Orders dated 8.9.88 and September, '89- Promotion of applicants to Highly Skilled Fitter Grade-III - Respondent -4 is not considered, and
- (f) A5 order dated 5.2.93-Provisional seniority list of officials of different grades in Electrical Branch, Trivandrum- Respondent-4, being junior, was placed in a grade lower than the grade offered to applicants.

Thus, for eleven years Respondent-4 did not raise any objection against the series of orders issued between November, 1981 to September, 1989. Surprisingly, there was no objection by Respondent-4 to even A5 provisional seniority. By a single representation in July, 1992 after 11 years, Respondent-4 sought to disrupt the seniority, rank and promotions which had accrued

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to a large number of officials during the intervening period. We are of the view that no relief should have been given to Respondent-4 who without any satisfactory explanation, approached Respondent-1 after an inordinate delay of more than a decade. It would be unjust to deprive applicants of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after a lapse of many years. Respondent-4 claims to have made several representations similar to one at R4 dated 27.7.92. Making of several representations on similar lines would not enable the respondent to explain the delay (See Rabindra Nath Bose & Ors. V. Union of India and Ors. (AIR 1970 SC 470)).

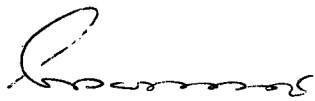
21. We may also refer here to the weighty observations made by a Constitution Bench of Supreme Court in Malcom Lawrence Cecil D'Souza V. Union of India (1975 Supp. SCR 409 at pages 413-414 (AIR 1975 SC 1269 at page 1272) which are as follows:

"Although security of service cannot be used as a shield against administrative action for lapse of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be re-opened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time."

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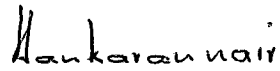
22. For the reasons above mentioned, we set aside A8 memorandum dated 5.1.1995 on the grounds of laches. Application is accordingly allowed. There shall be no order as to costs.

Dated the 21st March, 1996.



S.P. BISWAS
ADMINISTRATIVE MEMBER

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CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN