

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 133/89
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~~199~~

DATE OF DECISION 12-7-1990

M.D.Francis Applicant (s)

M/s MP Krishnan Nair, Rajeswari Krishnan,
R.K.Muraleedharan &
K Praveen Kumar Advocate for the Applicant (x)

Versus

Union of India & 3 others Respondent (s)

M/s MC Cherian, Saramma Cherian &

TA Rajan

Advocate for the Respondent (s) 1 to 3

M/s Thampan Thomas & KA Cherian for respondents 4

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *Yes*

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

The prayer in this application is that the applicant may be declared as senior to the fourth respondent as Senior Clerk, quashing Annexures III and IV orders. The facts of the case can be briefly stated thus:

2. The applicant who was initially engaged as a casual labourer under the Executive Engineer(Construction), Podannur from 31.7.1970 was by order dated 31.12.1976 of the Divisional Personnel Officer, Olavakkot at Annexure-I selected by the Screening Committee for absorption in regular post as Gangman in the scale of Rs.200-250. The fourth respondent, who joined

as casual labourer on 26.11.1970 was similarly selected for absorption in the regular service as Gangman in the scale of Rs.200-250 by order dated 7.1.1977 of the Divisional Personnel Officer, Olavakkot at Annexure-II. All these persons included in Annexures-I and II were appointed in newly created posts under Executive Engineer(Construction), Podannur by letter dated 12.3.1977. It appears as per records, the fourth respondent joined service as Gangman on 13.3.1977 while the applicant joined only on 14.3.1977. The applicant as well as the fourth respondent having passed the clerical test, were appointed as Clerks on ad-hoc basis by the office order No.J/W9/84 dated 16.2.1984. The applicant and the fourth respondent were again promoted as Senior Clerks as per office order No.J/W/I/73/87 dated 16.11.1987(Annexure-III). As the fourth respondent was shown as senior to the applicant, he was given promotion with effect from 1.5.1987 as Senior Clerk in I.O.W.'s office, Podannur while the applicant was promoted only with effect from 23.5.1987. The applicant therefore submitted a representation on 20.11.1987 challenging the above order and requesting for a review. This representation was replied by the impugned order dated 17.2.1988 by the Divisional Personnel Officer(Annexure-V) stating that the seniority already assigned to the applicant was correct and that it required no change. Though the applicant filed an appeal to the Divisional Railway Manager, the same remains

unresponded to. The applicant has therefore filed this application challenging the legality, propriety and correctness of the orders at Annexures-III and V and for a declaration that he is senior to the fourth respondent. It is alleged in the application that the applicant as well as the fourth respondent were all directed to join duty on 14.3.1977, that as 13.3.1977 was a Sunday, the fourth respondent could not have joined duty on that date and that the records showing that the fourth respondent had joined duty on 13.3.1977 has been manipulated by the fourth respondent in collusion with his associates. He has further claimed that as he had joined the services of the Railways as a casual labourer earlier than the applicant and had more number of working days to his credit than him, he is to be deemed to be senior and that therefore the seniority given to the fourth respondent is unsustainable and baseless.

3. The respondents 1 to 3 have filed a joint reply statement and the fourth respondent has filed a separate reply affidavit. It has been contended by the fourth respondent that as a matter of fact, he joined duty on 13.3.1977, that seniority in the service of the Railways is on the basis of the date of joining in the regular service and that the applicant was aware of the fact that the fourth respondent was senior even at the beginning and that he had not raised any objection to the seniority list which ^{was} circulated in the year 1986. The

respondents 1 to 3 have in their reply statement contended that as the fourth respondent has joined service on 13.3.1977, the seniority fixed in respect of the applicant and the fourth respondent is in order and that there is absolutely no basis for the claim of the applicant. It has been further contended that there is no improprietyⁱⁿ allowing a Gangman to join duty on Sunday and that as the applicant had not objected to the seniority list which was circulated even in the year 1986, the application is only to be rejected.

4. As directed by us, the learned counsel for the respondents 1 to 3 has produced for our perusal the Service Registers of the applicant and the fourth respondent. We have carefully gone through the pleadings and documents produced on either side and have also heard the arguments addressed by the learned counsel. The Service Register of the fourth respondent shows that he joined duty as Gangman on 13.3.1977. This entry in the Service Register of the fourth respondent is corroborated by Exbt.R1(d), true copy of the joining report submitted by the fourth respondent to the PWI who forwarded it to the AEN/CN. This joining report is dated 13.3.1977. The entry in the Service Register of the applicant shows that he joined service on 14.3.1977. This is also corroborated by Exbt.R1(c), the joining report submitted by the applicant dated 14.3.1977. The case of the applicant himself is that he joined duty on 14.3.1977. In

the application it is averred that all those who were included in Annexures-I and II were appointed on 14.3.1977 as Gangmen by the letter of the Executive Engineer(Construction), Podannur dated 12.3.1977. A copy of the letter of the Assistant Engineer(Construction), Podannur dated 12.3.1977 appointing the fourth respondent as Gangman has been produced by the fourth respondent as Annexure-R1(a). The letter is dated 12.3.1977. and there is nothing to indicate that the appointment was only with effect from 14.3.1977. The joining report Exbt.R1(d) and the entry in the Service Register of the fourth respondent show that the fourth respondent reported for duty as regular Gangman on 13.3.1977 and as he joined the regular services of the Railways on 13.3.1977 whereas admittedly the applicant has joined the services of the Railways only on 14.3.1977. Shri MP Krishnan Nair, the learned counsel appearing for the applicant vehemently argued that it is impossible to join duty on Sunday and that as 13.3.1977 was a Sunday, the fourth respondent could not have joined ^{on} / that date and therefore it has to be presumed that the entry in the joining report ⁶ ⁸ as ⁶ at Exbt.R1(d) was manipulated by the fourth respondent in collusion with the PWI under whom he had been working. The learned counsel for the respondents argued that there is no rule prohibiting the joining duty on Sunday and that even if the PWI has helped the fourth respondent to join duty at the earliest opportunity, there is ^{nothing} / objectionable in it.

The learned counsel for the applicant was not in a position to bring to our notice any provision either in the Railway Establishment Manual or in any other rules which prohibit allowing a Gangmen join duty on a Sunday. Apart from the wild allegations in the application and the vehement argument at the bar, there is not even an iota of evidence or any circumstance which would induce us to even doubt the veracity of the entry in the service register of the applicant and the joining report(Exbt.R1(d)). The respondents 1 to 3 have in the reply affidavit contended that in the empanelment list dated 17.6.1982 Exbt.R1(a) from which the applicant and the fourth respondent were promoted as Junior Clerks, the applicant was placed at Item No.10 whereas the fourth respondent was placed at Item No.9. They have also contended that a seniority list of clerical staff in the scale Rs.260-400 in the Works Branch as on 1.1.1986 was published in February, 1986 and this list(copy at Exbt.R1(b)) was circulated among the staff and that the applicant has endorsed in the covering letter. The respondents have produced this covering letter which contains the initials of the applicant. This has been marked as Exbt.R1(e). Of course in the additional rejoinder the applicant has disputed his initials in Exbt.R1(e). But we do not find any reason to disbelieve the respondents 1 to 3 when they say that Exbt.R1(b) seniority list was circulated among the clerical staff concerned and while there were only 2 Clerks, the applicant and one Mr Kumaran in the office of the A.E., Podannur at the relevant time, we find no reason

why this covering letter and the seniority list would have escaped the notice of the applicant. On a careful consideration of the entire/facts and circumstances and evidence available in this case we are convinced that the case of the applicant that the fourth respondent has joined/only on 14.3.1977 and that therefore he is junior to the applicant, which is opposed to the documentary evidence is absolutely baseless and has to be rejected.

5. For the reasons mentioned in the foregoing paragraphs, we find that there is absolutely no merit in the application and therefore we dismiss the same, without any order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


(SP MUKERJI)
VICE CHAIRMAN

12-7-1990

trs