

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 144 of 2004

Thursday, this the 26th day of February, 2004

CORAM

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

1. K.K. Vijayakumar,
Bearer, Kerala Express Batch No.IX,
Southern Railway, Thiruvananthapuram-14
 2. P.S. Ramakrishnan,
Bearer, Kerala Express Batch No.IX,
Southern Railway, Thiruvananthapuram-14
 3. C.O. Nicholas,
Bearer, Kerala Express Batch No.IX,
Southern Railway, Thiruvananthapuram-14
 4. K.V. Baby,
Bearer, Kerala Express Batch No.IX,
Southern Railway, Thiruvananthapuram-14
 5. P.S. Johnson,
Bearer, Kerala Express Batch No.IX,
Southern Railway,
Thiruvananthapuram-14
-Applicants

[By Advocate Mr. P.K. Madhusoodanan]

Versus

1. The Chief Commercial Manager,
Southern Railway, Chennai-3
 2. The General Manager,
Southern Railway, Park Town, Chennai-3
 3. Union of India represented by its
Secretary, Ministry of Railways,
Railway Board, Rail Bhavan,
New Delhi.
-Respondents

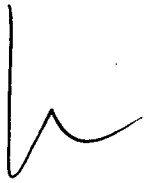
[By Advocate Mrs Sumathi Dandapani]

The application having been heard on 26-2-2004, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

Applicants were initially appointed as Commission
Server/Bearers in the Commercial Department of the Southern
Railway on selection by the department officials after



suitability test. Their grievance is that the services rendered by them before their regularization has not been considered the respondents for counting their pensionary benefits. In the OA, the applicants have contended that they are entitled to get the benefit that is bestowed on the casual service having completed 120/240 days of continuous service before regularization. Aggrieved by the said inaction on the part of the respondents, the applicants have filed a representation (Annexure A3) to the Chief Commercial Manager, which was not disposed of and therefore the applicants have approached this Tribunal in OA.No.613/2003, wherein this Court has directed to dispose of the representation, the operative portion of the order reads as follows:-

".. On a consideration of the relevant facts and having regard to the submissions made by the learned counsel on either side, we deem it fit to direct the first respondent to dispose of or cause to dispose of A-3 representation in accordance with the extant procedure and issue or cause appropriate orders to be issued to the applicants within 4 months from the date of receipt of a copy of this order. We order accordingly and make it clear that if decision favourable to the applicant is taken by the General Manager and/or the Railway Board, orders granting consequential benefits should be issued by the first respondent within the time frame ordered above.

2. The representation was disposed of by the Chief Commercial Manager rejecting the claim and also observed that "the case of the applicants is not fit to be recommended to the General Manager or the Railway Board for any revised orders". Aggrieved by the said order (Annexure A5), the applicant has filed this OA seeking the following reliefs:-

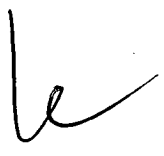
- "i) set aside Annexure-A5;
- ii) declare that the applicants' continuous service on contractual basis as Commission Bearers till his regularization as Bearer are eligible to be taken into consideration for calculating their pensionary benefits;



- iii) Issue necessary directions to the respondents to count uninterrupted service of the applicants as Commission Bearers before regularization in service as well for their pensionary benefits, or in the alternative,
- iv) to issue necessary directions to the respondents to count 1/2 of the service of the applicants as Commission Bearers after 120 days of such continuous service since their initial appointment till regularization as well for retiral benefits granting them temporary status on their completion of 120 days of their initial continuous service and grant them all monetary benefits arising therefrom;
- v) issue necessary directions to the respondents 2 and 3 to take up Annexure-A3 and consider the same in the light of the ruling of the Apex Court in W.P.171/1986 dated 4/2/1987, the relevant rules in the Railway Services (Pension) Rules, 1993 and the relevant rules in Indian Railway Establishment Code Volume I (1985 Edition) and pass orders in accordance with law within a time limit to be fixed by this Hon'ble Tribunal untrammelled by the decision in Annexure-A5;
- vi) costs of these proceedings; and
- vii) grant such other reliefs as this Hon'ble Tribunal deems fit and proper."

3. When the case came up for hearing, learned counsel for the applicant submitted that only the Railway Board/General Manager has full powers to make rules of general application to Group C and D Railway servants under their control as per Rule 123 and 124 of the Indian Railway Establishment Code Vol.I (1985 Edition). Therefore, in all fairness, the representation should have been disposed of by the General Manager or by the Railway Board, according to the learned counsel for the applicant.

4. Smt.Sumathi Dandapani takes notice for the respondents. At this juncture, learned counsel for the respondents submitted that, if the applicants' grievance is non-consideration of the representation by the General Manager, she has no objection in permitting the applicants to file an appeal/representation to

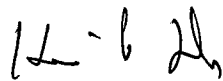


the 2nd respondent, General Manager, Southern Railway, Chennai and directing the 2nd respondent to dispose of the same within a time frame, as suggested by the counsel for the applicants.

5. Considering the above submissions made by the learned counsel on either side and considering the fact that the General Manager is the competent authority to dispose of the appeal/representation, without expressing any merit of the case, we permit the applicants to make an appeal/representation before the 2nd respondent through proper channel with supporting documents, if any, within three weeks and on receipt of the appeal/representation the 2nd respondent shall dispose of the same within a period of three months from the date of receipt of the appeal/representation.

6. The Original Application is disposed of as above at the admission stage itself. In the circumstances, no order as to costs.

Thursday, this the 26th day of February, 2004



H.P. DAS
ADMINISTRATIVE MEMBER



K.V. SACHIDANANDAN
JUDICIAL MEMBER

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