

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.159/2006

Monday, the 17th day of March, 2008.

CORAM :

HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE DR.K.S.SUGATHAN, ADMINISTRATIVE MEMBER

P.M.Radhakrishnan

Dy.Chief Yard Master,

Southern Railway,Panambur,
Mangalore-9.

Residing at No.1, Railway Quarters,
Panambur, Mangalore – 10.

... Applicant

By Advocate Mr.R.Sreeraj for Mr.Shafik M.A

V/s

- 1 Union of India
represented .by Secretary,
Ministry of Railways,
Rail Bhavan,New Delhi.
- 2 The General Manager,
Southern Railway, Headquarters Office,
Chennai-3.
- 3 The Divisional Railway Manager,
Southern Railway,Palakkad Division,
Palakkad.
- 4 The Senior Divisional Personnel Officer,
Southern Railway, Palakkad Dn,
Palakkad.

By Advocate Ms.P.K.Nandini

The application having been heard on 15.2.2008 the Tribunal delivered the following :



(ORDER)

Hon'ble Shri George Paracken, Judicial Member

The dispute in this case is regarding the position of the applicant in the Annexure A-2 provisional seniority list of "Unified Cadre of SM/YM" dated 26.11.2004 in the scale of Rs.6500-10500, Rs.5500-9000 and Rs.5000-8000 as on 1.11.2003 as against the positions of the persons at serial Nos.8 to 20 therein.

2 The applicant who was a Yard Master in the scale of Rs.1600-2660 was retrospectively promoted as Dy CYM in the scale of Rs.2000-3200 on officiating basis w.e.f. 11.2.1993 vide Annexure A-3 Office Order dated 27.4.1995 against the vacancy of one Shri R.Gopalakrishnan Pillai DYM/SRR under suspension. Thereafter, he was empaneled as Dy.CYM and appointed on regular basis w.e.f. 21.1.97 vide Annexure A-4 Office Order dated 6/7.2.1997. In the Annexure A-5 seniority list of Yard staff in the scale of Rs.6500-10500, the applicant is placed at serial no.5 and his date of entry into the said grade was also shown as 21.1.1997.

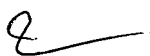
3 Meanwhile, the respondents restructured certain Group 'C' and 'D' cadres for strengthening and rationalising the staff and introduced the concept of Multi Skilling system by merging (i) SM/ASM + YM + TI, (ii) Personnel/Welfare/HOER Inspectors and (iii) ESM and MSM. The Railway Board wanted to have an integrated seniority list of the aforementioned categories and to combine their duties, responsibilities and functions so that each member of the cadre is equipped with necessary skills and




functions through training and deployment. Para-10 of the Annexure A-6, restructuring orders issued by the Ministry of Railway Board vide RBE.No.177/2003 dated 9.10.2003 reads as under:-

"10. The concept of Multi-skilling is to be introduced by merging the different categories as mentioned hereunder. While the revised percentage distribution of posts as indicated in the annexures to this letter should be implemented in the unified cadres based on the integrated seniority list, the duties, responsibilities and functions being performed by the employees of the respective cadres will be combined in a phased manner. Each member of the cadre will have to be equipped with necessary skills and functions through proper training and development. The categories indicated herein will be merged by integrating the seniority of the employees working in respective grades with reference to length of non-fortuitous service in the relevant grade keeping the inter-se seniority in the respective group intact."

Consequently, the cadres have been merged and the officials have been included in one single cadre and their the seniority was fixed as per the Annexure A-2 provisional list, after integrating the cadres on the basis of their relative seniority in the respective cadres. The applicant was placed at serial no.27 with his date of joining as 21.1.97. He has, therefore, made the Annexure A-7 representation dated 30.11.2004 raising objection to the Annexure A-2 provisional seniority list. According to him, even though the vacancy of R.Gopalakrishna Pillai, Dy.CYM under suspension was available on 30.4.88, he was given the officiating promotion to the said post only on 11.2.93 i.e. the date on which his next senior in the cadre Shri Bhadarudeen took up higher responsibility in the grade of Rs.2000-3200 based on selection. He has also stated that the persons in the seniority list



at position nos.8 to 20 entered the grade from 1.3.1993 and they were promoted in the non-existing vacancies when cadre restructuring was effected from 1.3.93 and the panel was approved by DRM only on 26.5.93. He has, therefore, requested to consider and re-cast the seniority list and place him at serial no.10, next to Shri K.Raghavan and M.Bhadrudeen who are senior to him. The aforesaid representation was followed by the Annexure A-8 reminder dated 9.5.2005. Thereafter, he had approached this Tribunal vide OA 667/2005 but the same was disposed of with a direction to respondents to dispose of the above mentioned representations within two months' time. It was also ordered that no promotions affecting the applicant should be made prior to such disposal in pursuance of the provisional seniority list. It is in purported compliance of the aforesaid orders in OA 667/2005 dated 19.9.2005 that the Annexure A-1 impugned order dated 15.11.2005 was passed by the respondents. They have submitted that the "Unified seniority" published on 26.11.2002 (A-2) merging the cadre of SMS/TIS/YMS is in terms of Railway Board's letter No.PC.ITI/2003/CRC/6 dated 9.10.2003 received under CPO/MAS letter No.PC (PC)524/Cadre restructuring 2003 of 17.10.03 and CPO/MAS letter Bi,P(PC)524/Cadre Restructuring dated 6.2.04. They have also submitted that the merging of the cadre of SMS/TIS and YMS have been done in terms of the para 320 of I.R.E.M with reference to the total length of non-fortuitous service in the relevant grade keeping the inter-se-seniority in the respective group in tact and he was assigned seniority position in SMI/TI/Dy.CYM Cadre and placed at serial no.27 of the provisional



seniority list with reference to his date of promotion as Dy.CYM on regular basis w.e.f. 27.1.97. Challenging the aforesaid impugned order, the applicant has filed the present OA seeking the following reliefs:-

"(i) To call for the records relating to Annexure A-1 to A-9 and to quash Annexure A-1 and A-2 to the extent it positions the applicant below his juniors with date of appointment as 1997 in the grade.

(ii) To declare that the applicant is entitled to be considered as promoted to the grade of Dy. CYM with effect from 11.2.1993. The date of initial appointment in the grade of Deputy Chief Yard Master and to direct the respondents to immediately pass the necessary orders to that effect.

(iii) To declare that the applicant is entitled to be placed in Annexures A-2 provisional seniority list above persons at serial no.8 to 20 there-in, consequent to that and to direct the respondents to place the applicant in Annexure A-2 provisional seniority list above persons at serial nos.8 to 20 with all consequential benefits of further promotions.

(iv) To pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

And

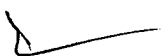
(v) To award costs of, and incidental to this application.

5 The respondents, noting that the Applicant has claimed seniority above persons at serial nos.8 to 20 in the Annexure A-2 seniority list, raised the preliminary objection that without impleading them, this OA cannot be heard and, therefore, the same is to be dismissed in limine for non joinder of necessary parties. However, the Counsel for the Applicant relied upon the case of *Rudra Kumar Sain Vs. Union of India JT 2000 (9)*

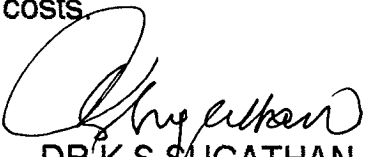
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SC 299, V.P.Shrivastava V/s. The State of M.P. & Ors JT 1996 (2) S.C. 374, and S.N.Dhigra vs. Union of India, A.K.Sharma & Ors. V/s. Union of India AIR 1999 SC 897. and OA 680/2004 decided by this Tribunal on 7.9.2005 to argue that it was not necessary to implead the persons at serial nos.8 to 20 as respondents in the present OA.

6 We have heard Advocate Mr.Sreeraj for the Applicant and Advocate Ms.P.K.Nandini for the Respondents. In the prayer clause, the applicant has expressly sought placement of his position above that of the persons at serial nos.8 to 20. We shall, therefore, consider this preliminary objection raised by the Respondents first without going into the merit of the case. The issue raised by the Applicant in his representations to respondents, in the earlier OA No.667/05 and in the present OA is regarding the date on which the vacancies arose in the cadre of Dy.CYMs. In his Annexure A 10 representation dated 10.10.2005, he requested to effect the change in his position in the "Unified Cadre" seniority list of SMS/TI/YMS from 27 to 10. The reason given by him for such a change in the seniority position was that "The SMs/TIs shown in the seniority list at position No.8 to 20 who entered the grade from 01.03.93 were promoted in the non existing vacancies, when cadre restructuring was effected from 01.03.93, the panel for which was approved by DRM only on 26.05.93." It is a well known position of law that the settled seniority cannot be unsettled without prior notice to the affected persons. If the request of the applicant is acceded to, naturally the persons at Sr.Nos.8 to 20 will be adversely affected. Any adverse order affecting their seniority by the Respondent



department or this Tribunal without prior notice to them would be against the principles of natural justice. We, therefore, dismiss this OA on the preliminary ground of non-joinder of necessary parties alone without expressing our view on the merit of the case. However, the applicant is at liberty to file a fresh Application impleading the persons at serial nos.8 to 20 of the seniority list so that the matter on merit can be heard after due notice to them. OA is accordingly dismissed. There shall be no orders as to costs.


DR. K. S. SUGATHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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