

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 171 of 1999

Wednesday, this the 22nd day of August, 2001

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. M.C. Varghese, S/o Chacko,
Senior Gangman, Southern Railway,
Sherthalai, Residing at: Navungal House,
Pallipuram PO, Sherthalai,
Alleppey District.Applicant

[By Advocate Mr. T.C. Govindaswamy]

Versus

1. Union of India represented by the
General Manager, Southern Railway,
Headquarters Office, Park Town PO, Madras-3

2. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum-14

3. The Assistant Engineer,
Southern Railway, Quilon.

4. P.G. Sasi, Keyman, Southern Railway,
Gang No.6, Sherthalai, through Section Engineer,
(Permanent Way), Southern Railway, Alleppey.

5. C.R. Madhukumar, Keyman, Southern Railway,
Gang No.2, Aroor, through Section Engineer,
(Permanent Way), Southern Railway, Alleppey.

6. The Section Engineer (Permanent Way),
Southern Railway, Alleppey Railway Station & PO,
Alleppey.Respondents

[By Advocate Mr. Thomas Mathew Nellimoottil (R1-3 & 6)(rep.)]

The application having been heard on 22-8-2001, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks to quash A4 and also A1 to the
extent it promotes respondents 4 and 5 as Keyman and to direct
the official respondents to consider him for promotion as

Keyman in preference to respondents 4 and 5 with consequential benefits.

2. The applicant is presently working as Senior Gangman in the scale of pay of Rs.825-1200/2750-4400 under the 6th respondent. While he was working under the Chief Permanent Way Inspector, Ernakulam Junction, in accordance with his seniority he was promoted as Senior Gangman in the scale of pay of Rs.800-1150. During the year 1989 he was transferred to Sherthalai under the same authority in the same scale of pay. With effect from 1-3-1993 he was further promoted as Senior Gangman in the next higher scale of Rs.825-1200. With effect from 1-4-1994, Alleppey-Ernakulam Junction was bifurcated from the Chief Permanent Way Inspector, Ernakulam and was brought under a new Permanent Way Inspector's Headquarters at Alleppey. All incumbents who were working in the cadre of Gangmen in the Alleppey-Ernakulam Section were also brought under the Permanent Way Inspector, Alleppey. The private respondents were promoted as Senior Gangmen in the scale of Rs.800-1150 later than the applicant and later promoted as Senior Gangmen in the scale of Rs.825-1200 with effect from 1-3-1993. He is senior the private respondents 4 and 5. Official respondents have at no point of time published the seniority list of Gangmen/Senior Gangmen so as to enable him to know of his seniority position. Promotion to the post of Keymen in the scale of Rs.825-1200 is filled up based on seniority-cum-suitability. While so, the private respondents were promoted to the post of Keymen overlooking his priority. He submitted a representation to the 2nd respondent. A4 is the reply to his representation. As per A4, his request was turned down.

3. Official respondents resist the OA contending that the effective date of bifurcation of Alleppey-Ernakulam Junction is 1-1-1994. Respondents 4 and 5 who are the private respondents were promoted as Senior Gangmen in the scale of Rs.800-1150 earlier than the applicant. The seniority list of Senior Gangmen in the scale of Rs.800-1150 was published at the appropriate time. There are other employees also who are placed between the applicant and the private respondents. They are not brought in the party array. The Original Application is liable to be dismissed for nonjoinder of necessary parties. A4 was issued after examining all relevant aspects. Though an employee appointed earlier but if promoted after a longer period than an employee appointed subsequently but promoted earlier according to the vacancy position in various seniority units if get absorbed in a single seniority unit as optees, the seniority will be reckoned in the promoted grade based on the date of entry into the grade only and not from the date of initial appointment. Individual advises were given to all about publication of the seniority list and objections if any were to be made on or before 2-5-1994.

4. Official respondents have, inter alia, contended that this Original Application is bad for nonjoinder of necessary parties for the reason that those who are likely to be affected by granting the reliefs sought are not brought in the party array. The applicant is claiming that he should be considered for promotion as Keyman in preference to the private respondents. That can be done only if he is senior to the private respondents. R-3, according to the official respondents, is the provisional seniority list published, which has become final. The applicant is Serial No.34 in R-3. Respondents 4 and 5 who are the private respondents are at Serial Nos. 27 and 29 respectively in R-3. It is seen that

there are other persons in between the applicant and the private respondents figuring in R-3 seniority list. They have not been brought in the party array. While claiming seniority and promotion, in the absence of persons likely to be affected by granting the relief prayed for, the OA should normally be dismissed unless there exist specific reasons for non-impleadment of the affected persons. There is no specific reason stated for the non-impleadment. What could be said at the most is that at the time of filing of the OA, the applicant was not quite aware of those persons who are likely to be affected. But that situation has changed by the production of R-3 by the official respondents. In any event after the production of R-3 the applicant ought to have impleaded other persons who are likely to be affected by granting the reliefs prayed for.

5. That apart, the applicant says that he was promoted as Senior Gangman earlier than the private respondents. Official respondents have specifically denied this and have stated that the 4th respondent was promoted as Senior Gangman on 21-10-1988, the 5th respondent on 2-2-1989 and the applicant only on 13-4-1989. From R-3 also it is seen that the applicant was promoted as Senior Gangman only subsequent to the promotion of the private respondents as Senior Gangmen.

6. The applicant is now practically seeking to get a promotion as Keyman in preference to the private respondents. That could be done only if he is senior to the private respondents. As per R-3 the applicant is junior to the private respondents. The applicant is saying that he was not aware of R-3 seniority list and that is why R-3 is not under challenge. From A4, one of the impugned orders, it is seen that the applicant was made aware of the fact that a seniority list

(R-3) was published. Even if it is taken that the applicant was not fully aware or he had no occasion to see the contents of the seniority list, at any way by the production of R-3 the applicant is very well in the know of the existence of R-3. Even after the production of R-3, which the official respondents emphatically say that it is the final seniority list, the applicant has not chosen to challenge the same. The learned counsel for the applicant submitted that the applicant was not aware of R-3 as there was no publication of the same. Official respondents say that as per R-4, R-3 was published. R-4 says that R-3 is available for perusal in the office of the Permanent Way Inspector, Alleppey. The applicant is working under the Permanent Way Inspector, Alleppey. That being so, it is difficult to accept that there was no notice of R-3 and therefore the applicant was not aware of it. Even if it is assumed that there was no due publication of R-3, in any event after production of the same by the official respondents the applicant cannot plead ignorance of the same and still he has not chosen to challenge the same.

7. A4 says that the stand of the applicant that he was appointed as Gangman on 21-4-1985 much earlier to the private respondents will not have an impact on the seniority of Senior Gangmen as they have joined Alleppey Section as Senior Gangmen consequent to their promotion as such in their erstwhile PWI units and the date of appointment as Gangman will not be the criteria for seniority in the cadre of Senior Gangmen, whereas the criteria will be the date of promotion as Senior Gangmen. As already stated, the definite stand of the official respondents is that the private respondents were promoted earlier to the applicant as Senior Gangmen. From R-3 also, as already stated, it is seen so.

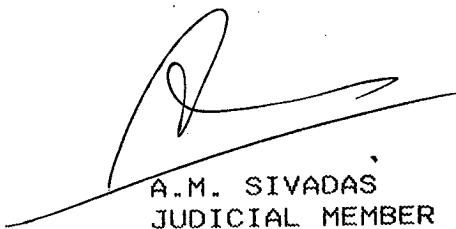
8. A1 is the office order as per which the private respondents have been promoted as Keymen. A1 order will be liable to be interfered only if A4 is quashed. As there is no challenge against R-3 seniority list and as the applicant was promoted as Senior Gangman subsequent to the promotion of the private respondents as contended by the official respondents is not controverted and as there is no material to show that the applicant was promoted as Senior Gangman earlier to the private respondents, there is no ground to interfere with A4. That being so, the Original Application is only to be dismissed.

9. Accordingly, the Original Application is dismissed. No costs.

Wednesday, this the 22nd day of August, 2001



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

ak.

List of Annexure referred to in this order:

1. A1 True copy of the Office Order No. AEN/QLN/231 dated 17-4-97 issued by the 3rd respondent.
2. A4 True copy of the letter No. V/P.OA.1613/98/129/ SE/P.Way/ALLP dated 20-1-99 issued by the 2nd respondent.
3. R-3 True photocopy of the full seniority list as on 12-6-89.
4. R-4 True photocopy of the letter No. ALLP/71 dated 22-4-94 issued by the Permanent Way Inspector, Alleppey.