

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

OA No.195/94

Tuesday, this the 17th day of January, 1995.

C O R A M

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR P SURYAPRAKASAM, JUDICIAL MEMBER

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KR Arunachalam, MV Driver,  
Office of the Executive Engineer (Construction),  
Southern Railway, Trivandrum.

....Applicant

By Advocate Shri KM Anthru.

vs.

1. The Chief Engineer (CN),  
Southern Railway,  
Egmore, Madras--8.
2. The Executive Engineer (CN),  
Southern Railway, Trivandrum-14.
3. Sri V Anantharaman, Motor Vehicle Driver Through the Chief Engineer  
(Construction), Southern Railway,  
Madras--8.
4. K Alagirisamy, Motor Vehicle Driver -do-
5. K Bose, Motor Vehicle Driver -do-
6. O Kochupappy, Motor Vehicle Driver -do-
7. M Vembuli, Motor Vehicle Driver -do-
8. L Raju, Motor Vehicle Driver -do-
9. K Mariappan, Motor Vehicle Driver -do-
10. KN Vasudevan Namboothiri, Motor Vehicle Driver -do-
11. K Appukuttan, Motor Vehicle Driver -do-
12. AMD Mynuddin, Motor Vehicle Driver -do-

....Respondents

By Advocate Smt Sumathi Dandapani. (R.1 & 2)

contd.

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant, who is a Motor Vehicle Driver in the Office of the Executive Engineer (Construction), Southern Railway, Trivandrum, is aggrieved by the non-inclusion of his name in the list of staff fitted against Construction Reserve Posts in the scale of Rs.1320-2040 and Rs.1200-1800 (A 11) and the rejection of his representation by the impugned orders A 16. Earlier, applicant had approached the Tribunal in OA 150/90 praying that his name should be included in the seniority list of Motor Vehicle Drivers of Trivandrum Division and placed above those who entered service as Motor Vehicle Drivers subsequent to the date when he was appointed as such on an adhoc basis and continued without break. Admittedly, applicant was continuing as Motor Vehicle Driver uninterruptedly from 28.9.1978.

2. In OA 150/90, the Tribunal noticed that applicant was engaged as a casual labourer in the construction unit of Madurai Division in 1953 and was later absorbed as a regular Gangman in open line in 1958. He was posted as lorry attendant with effect from 18.4.1973 in the Construction Branch and later promoted as lorry driver. He worked as Motor Vehicle Driver with certain breaks till 1978 and continuously from 28.9.1978 on ad hoc basis, as stated earlier. When the Trivandrum Division was formed on 2.10.1979, applications were called from serving Class IV employees (R1) including ad hoc Motor Vehicle Drivers for regular absorption, but applicant did not volunteer. Similar applications were called again during 1984 and 1988, but applicant did not submit any application. In the decision in OA 150/90, the Tribunal stated:

"It is not denied by the applicant that he has

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always been working as Motor Vehicle Driver on an ad hoc basis. He has also not denied the existence of the circular dated 22.11.80 at Ext R1 inviting applications for regular absorption as Motor Vehicle Driver. He concedes that he might have missed the circular and not applied for the post. As an ad hoc Motor Vehicle Driver he cannot claim a place in the seniority list at Annexure A3 which is a list of Motor Vehicle Drivers who are included in the cadre of such Drivers of Trivandrum Division. Even if construction and open line wings are taken to be parts of the Trivandrum Division, the applicant as an ad hoc Motor Vehicle Driver cannot be included in the seniority list so long as he is not regularised as a Motor Vehicle Driver. His having passed the trade test in 1975 entitled him to ad hoc promotion as Motor Vehicle Driver/Jeep Driver thereafter, but for regular absorption he had to apply and compete with others...we allow this application to the extent of directing the respondents to consider the applicant for the next vacancy of Motor Vehicle Driver either in the open line or in the Construction Wing and appoint him as such if he satisfied the requisite qualifications without raising the question of age bar...he will be at liberty to raise the question of seniority at that stage."

(Emphasis added)

3. According to respondents, in pursuance of this decision, a vacancy was pin-pointed in 1988 and applicant was regularised against that vacancy assigning seniority with effect from that date. As such, applicant was not entitled for seniority above that of respondents 3 to 12. It is seen that applicant was working only as an ad hoc Driver as noticed by the Tribunal in OA 150/90 and, therefore, he could not be included in the seniority list till he was regularised. The Tribunal directed that he may be regularised

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against the next vacancy and respondents have regularised applicant even against an earlier vacancy. Applicant would, therefore, be entitled to claim seniority only from the date of his regularisation.

4. Learned counsel for applicant submitted that in terms of the decision in 1990 2 SCC 715 the ad hoc service of the applicant should be taken into account in fixing seniority. As pointed out by the learned counsel for respondents, applicant in this case has already been regularised and confirmed as a Gangman and he has all along been holding a lien to that post and so the decision in the judgement cited would not be applicable in this case. Learned counsel for respondents, on the other hand, submitted that applicant did not take any action till 1990 even when his co-workers applied for regular posting in 1980 and subsequent years and that any unsettling of the seniority of respondents 3 to 12 at this stage should not be permitted.

5. It is seen that while applicant states that he is senior to respondents 3 to 12, it is only by implication and there is no single seniority list which indicates that applicant is senior to respondents 3 to 12. Rules by which applicant can claim seniority over respondents 3 to 12 have not been placed before us. As observed by the Supreme Court in Reserve Bank of India vs. NC Paliwal and others etc, AIR 1976 SC 2345 at page 2357,

"...it is open to the State to lay down any rule which it thinks appropriate for determining seniority in service and it is not competent to the Court to strike down such rule on the ground that in its opinion another rule would have been better or more appropriate. The only enquiry which the Court can make is whether the rule laid down by the State is arbitrary and irrational so that it results in inequality of opportunity amongst employees belonging to the same class."

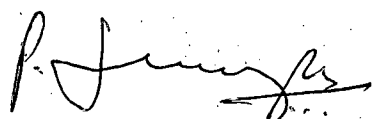
Respondents being those who volunteered for the post of Motor

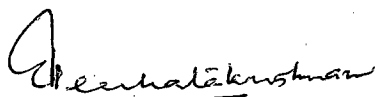
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Vehicle Driver, and the applicant being a person who did not so volunteer, they cannot be said to belong to the same class. Considering that respondents 3 to 12 have a different service background of entering into the post of Motor Vehicle Drivers, it is not possible to say that they are junior to applicant because of "length of service, competence and length of service in the Construction Wing" alone. We notice that the post of Motor Vehicle Driver is not a normal promotional channel for Gangmen like the applicant and applicant has to volunteer to be considered for that post. He did not so volunteer in response to notifications issued calling for volunteers. According to respondents, "the Construction Reserve Posts sanctioned in 1973 were filled up by casual labourers. (Casual labourers) who had been working against posts of continuous nature for over three years against sanctioned post of one or more projects were screened and appointed against the Construction Reserve Posts. The case of applicant, who was a Gangman on 21.4.1958 and subsequently appointed in the Construction Wing on 18.4.1973, was not considered for fitting against the Construction Reserve Post from 1.7.1973 being a regular Gangman. Respondent 3 was appointed on 31.3.1958 and considered against the Construction Reserve Post as a Driver on 1.1.1976. Till 1993, applicant had not claimed seniority over respondent 3." We cannot, therefore, accept that inter se applicant is senior to respondents 3 to 12.

6. The application is without merit and is accordingly dismissed. No costs.

Dated the 17th January, 1995.

  
P SURYAPRAKASAM  
JUDICIAL MEMBER

  
PV VENKATAKRISHNAN  
ADMINISTRATIVE MEMBER

List of Annexures

Annexures A11: True copy of the list of Drivers No.P.564/1/CN/CR.  
dated 22-3-91 issued by the Chief Engineer/Construction  
(1st respondent)

Annexure A 16: True copy of the letter No.676/CN/TVC dated 2-11-93  
issued by the Executive Engineer( CN), Trivandrum  
(2nd respondent)

Annexure-R1:- True copy of the letter No.V/P.535/Staff Car  
dated 22-11-1980 sent by the Divisional Personnel  
Officer, Thiruvananthapuram.