

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 200/90
T. A. No. 199

DATE OF DECISION 26.8.91

K.Kandan and 4 others Applicant (s)

Mr.P.K.Madhusoodhanan Advocate for the Applicant (s)

Versus

Union of India represented by the
General Manager, Southern Railway, Respondent (s)
Madras and 2 others

Smt.Sumathi Dandapani Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr.S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 3rd March, 1990 the four applicants who have been working as Electrical Fitter in Highly Skilled Grade I under the Senior Divisional Electrical Engineer, Southern Railway have prayed that the respondents be directed to give them the benefit of upgradation and promotion from 1.1.84 and seniority as H.S I with effect from 1.7.85.

They have also prayed that the second respondent be directed to pass orders on their representations at Annexure-5 filed by the first applicant and similar representations filed by other applicants on the basis of the instructions at Annexure-2. Their further prayer is that the second respondent be directed

to consider and dispose of the representation at Annexure-6 filed by the second applicant and similar representations filed by others regarding dates of regularisation of 2nd, 3rd and 4th applicants. The brief facts of the case are as follows.

2. The five applicants have been working as casual workers from various dates between 15.5.69 and 20.7.71 and granted temporary status on various dates between 15.11.69 and 20.1.72. According to them, they were posted as Electrical Khalasis thereafter and regularised as Electrical Khalasis on various dates between 7.6.71 and 6.4.73. After passing the prescribed trade test, they were promoted as Electrical Fitter/Train Lighting and after passing a further trade test promoted to Highly Skilled Grade I in the scale of Rs.380-560(Rs.1320-2040). In accordance with the Railway Board's letter dated 10.7.85(Annexure-2) the ratio of posts between Highly Skilled Grade I, Gr.II and Skilled is to be fixed as 30:35:35 with effect from 1.7.85. According to them, the total number of Grade I posts as per Annexure-2 is 47 out of which 27 are permanent and 20 are temporary. Their grievance is that these posts were not filled up with effect from 1.7.85 with benefit of notional pay fixation with effect from 1.1.84 in accordance with the reclassification order at Annexure-3. Their further grievance is that the second respondent vide Annexure-4 circular dated 14.7.89 has issued a provisional seniority list in which the applicants have been shown at Sl.Nos. 43 to 47 in the cadre of

Highly Skilled Grade I as on 1.7.89 but they were not given promotion to H.S Gr.I with effect from 1.7.85 even though there were 47 posts in that grade. Their representations have gone unresponded. Their contention is that with 47 posts in H.S I as on 1.7.85 they should have been promoted to H.S I with effect from 1.7.85 with actual payment from that date and notional promotion from 1.1.84 . They have also challenged the dates of appointment indicated in the seniority list being at variance with the dates of regularisation as given at Annexure-A1.

3. In the counter affidavit the respondents have accepted the dates of granting temporary status as averred by the applicants but have challenged the dates of regularisation as indicated by the applicants by stating that those dates are not of dates of regularisation but dates of posting as substitute Khalasis. They have contended that all the five applicants were empanelled on 8.7.75. Their service records also do not indicate the dates of regularisation as urged by the applicants. According to the respondents, the applicants were promoted after empanelment, to various grades of Electrical Fitter. They were promoted to Grade III during 1980, Grade II during 1983-84, and to Grade I in December 1987. The respondents concede that vide Railway Board's letter dated 10.7.85 based on the sanctioned strength as on 1.7.85, the number of posts in Grade I, Grade II and Ordinary Grade was to be in the ratio of 30:35:35 . The number of H.S.I posts was thus increased from 32



to 47 and accordingly only 15 seniormost eligible Electrical Fitters who were promoted to H.S II after 1.1.84 but before 3.12.87, i.e., the date of implementation, could be fitted against the reclassified posts with consequential benefits. They have contended that in terms of para 5 of Annexure-2 the benefit of retrospective fixation from 1.1.84 and current fixation from 1.7.85 will not be applicable to those employees who are promoted against the vacancies existing on the date of reclassification.

The respondents have produced the list of 15 H.S II officers who were senior to the applicants and who were given the benefit of retrospective promotion to Grade I. Since the applicants were not senior enough, they could not be given benefits of reclassified posts. They have referred to the instructions of the Chief Personnel Officer clarifying that the employees promoted between 1.1.84 and 30.6.85 should be fitted first against the reclassified posts. Those who are promoted against the regular vacancies so released would get the benefit from the date of actual promotion. The respondents have stated that the applicants were promoted to H.S I posts against vacancies released by their seniors who were promoted with retrospective effect against additional posts on reclassification. The applicants No.2 to 4 were given the benefit of reclassification in Grade II with effect from 1.1.84 with benefits of pay also. Since the applicants were promoted to H.S I posts against existing vacancies

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and not against additional vacancies arising out of reclassification which went to their seniors, the applicants cannot get the benefit of retrospective promotion and pay. They have clarified that the seniority list as at Annexure-4 gives the position as on 1.7.89 and not as on 1.1.84/1.7.85 from which dates the reclassified posts came into existence. Similarly those seniors who retired between 1.1.84 and 4.12.87 had to be given the benefit of reclassification in preference to the applicants who are junior. These retired persons cannot figure in the seniority list at Annexure-4 which gives the position as on 1.7.89. They have denied that the applicants were trade-tested for filling up the 47 vacancies of Grade I. They could be adjusted only against H.S II posts with retrospective effect and were promoted against regular vacancies in H.S I when the same were released by their seniors.

4. In the rejoinder the applicants have contended that since they were regularised, their previous casual service also should count for seniority. The respondents cannot challenge the dates of regular appointment of the applicants indicated at Annexure-A1 merely because there are no similar entries in the Service Register. They have also argued that column 6 entries ^{at Annexure-4,} about dates of appointment support the dates at Annexure-A1. The applicants ⁶ raised a new point that the respondents did not implement the Railway Board's order dated ^{24.8.1978 (Annexure 2)} 4.11.84 classifying

PS

the posts of Grade I, Grade II and Ordinary Grade in the ratio of 20:25:35 and did not upgrade the applicants. By applying the ratio of 30:35:35 in implementation of the Railway Board's letter dated 10.7.85 without implementing the Board's earlier order of ~~1984~~ specifying the ratio of 20:25:35, the applicants have been denied the benefits of these orders. They have argued that the respondents have not produced any proof of promoting 32 employees between 1.4.83 and 1.4.84 and if they had implemented the ~~1984~~ order first, there would have been at least 15 additional posts over and above the 47 posts.

5. In the reply to the rejoinder the respondents have stated that the seniority of casual labourers on their empanelment counts from the dates of approval of the screened list. Their position in the screened list is based on the aggregate number of days of service put in by them. They have categorically stated that the dates of promotion of the applicants were advanced vide Annexure-8 on the basis of the reclassification which took effect from 1.8.78. Advancement of the dates of promotion cannot change their seniority. They have stated further that it is after implementing the Board's order dated ~~4.4.84~~ that they have implemented the Board's order dated 10.7.85. They have already furnished the list of 15 employees senior to the applicants who have been accommodated against reclassification posts. This has not been challenged by the applicants. The respondents, however, have not produced the list of 32 H.S

I employees stating that only 15 posts which were additionally allotted need be accounted for. If certain vacancies out of 32 posts had not been filled up, it might have been due to administrative reasons and the applicants cannot claim any benefit from them.

6. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The applicants cannot claim promotion to H.S I on the basis of additional posts on the basis of reclassification scheme at Annexure-2 created with effect ~~1.7.85~~ from 1st January 1984 on the basis of their position in the seniority list as on 1.7.89 at Annexure-4. Accommodation in H.S I grade against 47 posts in that grade existing as on ~~1.1.84~~ of which 32 were old posts and 15 were additional posts created under second reclassification can be claimed only if the applicants can show that they fall within the first 47 positions in the seniority list of H.S I as on 1.1.84. In the alternative they have to show that as on 1.1.84 they fall within the zone of selection in the lower grade of H.S II. This they have not been able to show. On the other hand, the respondents have specifically given the list of 15 employees who are senior to the applicants and have been promoted against the 15 additional posts under the second reclassification scheme. The vacancies released by these seniors have been made available to the applicants and others who are junior to these 15 employees. The applicants have not challenged their promotion with

effect from 1.1.84. The applicants' promotion to H.S I grade is not directly linked with the reclassification scheme and therefore, they cannot claim the benefit of retrospective promotion with effect from 1.1.84. The applicants' ^{allegation} ~~claim~~ that the respondents have not given effect to the first reclassification scheme promulgated vide the Board's letter of 24th August, 1978 (referred to in Annexure-2) has been denied by the respondents. The office order at Annexure-8 produced by the applicants themselves show that they had been given the benefit of the earlier reclassification order. If they are aggrieved by the manner in which that order has been given effect to, they should have challenged the same either in this application or a separate application.

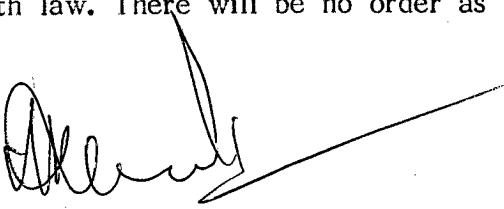
7. However, we are not impressed by the argument of the respondents that they were not obliged to fill up 32 posts ^{already} in existence in H.S I as on 1.7.85 as a result of the first reclassification and they will accommodate employees under second reclassification scheme only to the extent of 15 additional posts. Under the reclassification scheme no new post is created but the percentage distribution of the 'sanctioned strength' is changed in conformity with the prescribed percentage distribution. Accordingly the number of H.S I posts as on 1.7.85 will have to be based on the sanctioned strength taking into account the unfilled posts also. In accordance with the respondents own showing under the

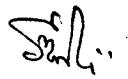
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reclassification scheme the number of H.S I posts as on 1.7.85 being 47, 47 employees will have to be physically accommodated in H.S I grade as on 1.7.85 taking into account the seniority and eligibility of employees in H.S II grade as on 1.1.85. If in that process the applicants also fall within the zone of promotion to H.S I under the second reclassification scheme, the same cannot be denied to them.

8. As regards the dates of appointment indicated in the seniority list at Annexure-4, we feel that the dates from which appointment of the applicants were regularised as indicated at Annexure-A1 and similar orders, should be adhered to in column 6 of the seniority list also.

9. In the conspectus of facts and circumstances we allow the application in part to the extent of directing the respondents to dispose of the representations of the applicants at Annexures 5 and 6 and similar representations filed by them keeping in view the observations made above. If these representations are not readily available with the respondents, the applicants are directed to file authenticated copies of their representations within a period of one week from the date of receipt of this order to respondent No.2 and the respondent No.2 is directed to dispose of such representations as are ^{so} received by him, within a period of three months from their receipt, on the above lines and in accordance with law. There will be no order as to costs.


(A.V.Haridasan)
Judicial Member


26.8.91
(S.P.Mukerji)
Vice Chairman

18.2.92

SPM&AVH

CCP 23/92

Mr. Madhusoodhanan
Mrs. Dandapani

The learned counsel for the respondents Smt. Dandapani takes notice on CCP. She wishes to file a reply to the CCP which she may do within three weeks with a copy to the learned counsel for the petitioner.

List for further directions on 10th March, 1992.

✓ Sh
18.2.92

10.3.92

Mr. Madhusoodhanan & ~~copy~~
Mrs. Dandapani
One to party of time, list for
further directions on 20.4.92

M
G/H
10/3/92

Sh
SPM
10/3/92

20.4.92

(13)

Mr. P. H. Madhusoodhanan
Mrs. Dandapani

The Learned Counsel for the respondent seeks some more time to file a clarificatory statement on the points raised by the petitioners on 12.3.92. She may do so within 4 weeks with a copy to the other side. She is also directed to clarify whether on 1.7.85 there were 44 persons actually holding the post of H.S. Grade-I as indicated by them in their

Letter on 11.2.92 of Annexure-
R2.

List on 3.6.92.

A copy of this order be
given to the learned counsel for
the respondents by hand.

(AVH)

SPM

20-4-92

21/6/92
SPM
21/6/92

3.6.92. Mr. P.K. Madhusoodhanan
(16) Mrs. Dandapani

At the request of the
learned counsel for the respon-
dents, list for further directions
on 8.6.92

(AVH)

SPM

3-6-92

8.6.92 Mr. P.K. Madhusoodhanan
Mrs. Dandapani

Heard the learned counsel for both the parties.
The learned counsel for the respondents seeks three
weeks time for full compliance of our judgment dated
26.8.91 in O.A. 200/90 in the sense that the repre-
sentations of the applicants therein will be disposed
of in the light of the directions in para 7&8 of the
judgment by holding 47 employees as on 1.7.85 physically
working against H.S. I grade and if in that process
the applicants fall within the zone of promotion the
same will be given to them. Due consideration should
be given to para 8 also. The representations should
be disposed of by a speaking order bringing out the
manner in which the observations made in the judgment
have been complied with in the disposal of the repre-
sentations. Accordingly list for further directions on
the CCP on 30.6.92. No further adjournment will be given.

AVH

SPM

30.6.92.

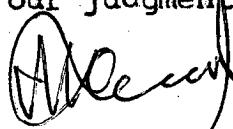
CCP 23/92 in O.A. 200/90

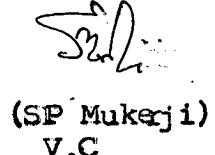
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Mr. Madhusoodhanan PK for applicant.
Mrs. Sumati Dandapani for respondents.

The learned counsel for the petitioners states that no order granting them relief has been passed. No speaking order as directed by us on 8.6.92 has been produced by the learned counsel for the respondents.

Accordingly we direct that a notice be issued to Shri V. Rajeevan, Divisional Personnel Officer, Southern Railway, Thiruvananthapuram to appear before us in person on 10th July, 1992 and explain why proceedings under the Contempt of Court Act be not initiated against him for non-compliance of our judgment dated 26.8.91 in O.A. 200/90.


(AV Haridasan)
J.M.


(SP Mukerji)
V.C.

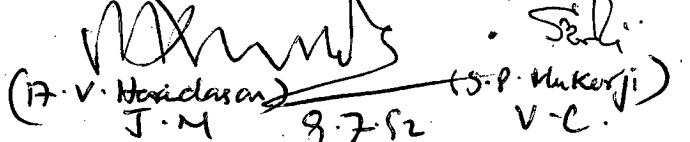
30.6.92.

9.7.92. Mr. Madhusoodhanan
Mrs. Sumati Dandapani

The learned counsel for the original applicants agrees that the original applicants have since been given seniority position in the gradation list as per the directions of this Tribunal in O.A. 200/90 but states that the dates of appointment to the particular grade have not been indicated in the order which the respondents have passed on 24.6.92 in compliance with the order of this Tribunal.

The learned counsel for the respondents Smt. Sumati Dandapani undertakes to get an addendum to the order dated 24.6.92 issued in favour of the three applicants indicating their dates of appointment in the grade of H.S.I within a period of two weeks in consonance with Annexure-A in O.A. 200/90 as directed by the Tribunal, with a copy to the learned counsel for the original applicants. In view of the submission made by the learned counsel for the respondents we advance the date of hearing of the CCP from 10th July, 1992 to this date and close the CCP and discharge the notice of Contempt issued to the contemner. The applicants will be at liberty to seek appropriate legal redress in case they are not satisfied with the orders issued and yet to be issued by the respondents on the above lines.

Copy of the order be given to the learned counsel for both the parties on priority basis.


(A.V. Haridasan) 9.7.92
J.M. (S.P. Mukerji)
V.C.

Received Order
at 2.40pm
17/7/92

No. 1
Mr. Rajeevan
Smt. Sumati Dandapani
24.6.92

Printed
Mr. V.S.
M.K.R.M.
Order Communicated
on 10.7.92
T.A.

~~INTERIM~~ ORDER

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

M.G.Road,
Kochi.11.

THURSDAY THE 9TH DAY OF JULY, 1992

P R E S E N T

Hon'ble Mr. S.P. Mukerji ... Vice Chairman

and

Hon'ble Mr. A.V. Haridasan ... Judicial Member

RA-96/92 In CCP-23/92 IN ORIGINAL APPLICATION NO.: 200/90

V. Rajeevan ... Applicant(s)

Versus

Kandan & others ... Respondent(s)

Smt. Sumathi Dandapani ... Counsel for applicant(s) in RA

Mr. Madhusoodanan PK ... Counsel for respondent(s) in RA

O R D E R

We have heard the learned counsel for both the parties on R.A.96/92. The learned counsel for the review applicant Smt.Dandapani indicated that the wording of the prayer in the R.A. is not proper and that it was never the intention of the Review Applicant to pray for review of the order of the Tribunal on the ground of any patent irregularity on the face of record. In the circumstances and in view of what has been stated in the R.A. and the averment of the learned counsel that the order of the Tribunal had been fully complied with on 24.6.92, we recall our order dated 30.6.92 in CCP 23/92 in O.A. 200/90 ^{with the} direction that Shri V.Rajeevan, Divisional Personnel Officer, Southern Railway, Trivandrum need not appear before us in person on 10th July, 1992.

With the above observations, the Review Application is disposed of.

Sd/-

(A.V. Haridasan)
Judicial Member

Sd/-

(S.P. Mukerji)
Vice Chairman

CERTIFIED TRUE COPY
Date 13-7-1992

Deputy Registrar

To 15/7/92
1. V. Rajeevan (Applicant)... Through... Smt. Sumathi Dandapani, Advocate, Kochi.

2. Kandan & others (Respondents)... Through... Mr. Madhusoodanan PK, Advocate, Kochi.

9.7.92.

R.A. No. 96/92 in
CCP 23/92
(O.A. 200/90)

Mrs. Sumati Dandapani for applicant (Review)
Mr. Madhusoodhanan PK for original applicants.

We have heard the learned counsel for both the parties on R.A. 96/92. The learned counsel for the review applicant Smt. Dandapani indicated that the wording of the prayer in the R.A. is not proper and that it was never the intention of the Review Applicant to pray for review of the order of the Tribunal on the ground of any patent irregularity on the face of record. In the circumstances and in view of what has been stated in the R.A. and the averment of the learned counsel that the order of the Tribunal had been fully complied with on 24.6.92, we recall our order dated 30.6.92 in CCP 23/92 in O.A. 200/90 ^{with the} direction that Shri V. Rajeevan, Divisional Personnel Officer, Southern Railway, Trivandrum need not appear before us in person on 10th July, 1992.

*SD
Mukerji
mukerji*

With the above observations, the Review Application is disposed of.

AV Haridasan
(AV Haridasan)
Judicial Member

SD Mukerji
(SD Mukerji)
Vice Chairman

9th July, 1992

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Placed below is a Review Petition filed by Mr. Rajeevan
Divisional personnel officer, S. Railway (Applicant/
 Respondents in BA/TA No. 23/42) seeking a review of
 the order dated 30.6.42 passed by this Tribunal in the
 above noted case.

As per Rule 17(ii) and (iii), a review petition shall
 ordinarily be heard by the same Bench which passed the Order
 and unless ordered otherwise by the Bench concerned, a review
 petition shall be disposed of by circulation where the Bench
 may either dismiss the petition or direct notice to the issued
 to the opposite party.

The Review petition is therefore, submitted for orders
 of the Bench consisting of Hon'ble Shri S.P. Venkayya, V.C.
Hon'ble Shri D.V. Hande, J.J.

which pronounced the Order sought to be reviewed.

CCP 23/42 stands posted before Bench on 10.7.42]

2/1

PS/ to Hon'ble V.C

SC

8.7.42

Hon'ble V.C

I have perused the Review Application. This is
 an interesting document. The Review
 applicant (the Complainant) has explained
 at length the circumstances of his
 absence from his headquarters, absence
 of other A.P.O's and the new A.P.O.
 being innocent of the action to be
 taken on our orders as also lack
 of communication between the Department
 and the lawyer and sending of letters
 by ordinary post. Having said all this
 the Review applicant concludes the R.A.
 with his finding that there has been a
 'patent irregularity on the face of record' in
 the order of Tribunal! Opp. Hon'ble V.C (II)
against the RA who was dismissed by circulation
and the statement given was not convincing

Hon'ble J.M. (II)

Hanover in view of the fact that one of
the Tribunal - his being complied with
as may from faith the parties on
the RA. today if Hon Ch. SM (II) agrees

~~DR. HILL~~

~~Han Ch. SM (II)~~

~~SD~~

~~9.7.92~~

urgent

list this

RA today

230 pm

in HK

5 pm

6.30

SD 9.7.92

cm

SD (II)

immediately

as

SD

Parties informed

As
9.7.92