

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 207/2006

FRIDAY THIS THE 24th DAY OF AUGUST, 2007

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

J. Chandrasekharan S/o Jagannathan
Loco Pilot /Goods
Crew Booking Office under Chief Crew Controller
Southern Railway, Erode
residing at 313/4, Poondurai Road
Mullambara PO, N.G. Palayam
Erode-638 115

..Applicant

By Advocate M/s Mr. Shafik M. Abdulkhadir,
Shemeena Salahudeen, Safiya Shafik, P.C. Kunjappan
and Simla Prabhakaran.

Vs

- 1 Union of India represented by the
General Manager, Southern Railway
Headquarters, Chennai-3
- 2 The Additional Divisional Railway Manager
Palghat Division, Southern Railway
Palghat.
- 3 The Senior Divisional Personnel Officer
Palghat Division, Southern Railway,
Palghat.
- 4 The Senior Divisional Mechanical Engineer
Palghat Division, Southern Railway
Palghat.

..Respondents

By Advocate Shri Sunil Jose

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant in this O. A is aggrieved by the rejection of his request to the third respondent for protection of seniority in the category of Goods Driver.

2 The applicant was initially appointed as Apprentice Diesel Assistant in the scale of pay of Rs. 950-1500 as per Annexure A-2 order dated 7.6.1990. The applicant's name is at Sl. No. 67. He was served with two major penalty charge memorandum dated 23.5.1996 and 9.10.1996. According to the applicant the proceedings initiated against him were completed in October, 1998. During the pendency of the disciplinary proceedings several persons were promoted as Senior Diesel Assistant and thereafter as Shunters by Annexure A-3 and A-4 orders. The applicant was promoted as Goods Driver on 22.1.1999 in the scale of Rs. 5000-8000. The respondents published provisional seniority list of Goods Driver as on 31.5.2003 (Annexure A-5). In Annexure A-5 the applicant is at Sl. No. 82 and his contention is that when his immediate senior Shri C. Girisan has been placed at Sl. No. 75, he should have been placed at Sl. No. 76 just below Shri Girisan. The discrepancy in the seniority has occurred presumably because the applicant was promoted to the post of Goods Driver without promoting him through the normal channel of promotion i.e. Sr. Diesel Assistant and Shunter on the ground that two disciplinary

proceedings were pending. The applicant had been representing for correct assignment of seniority from 2003 onwards and he was asked by the respondents to produce copies of the order dropping the disciplinary proceedings which he was unable as he misplaced them during the shifting of the family to new house during January, 2004. The applicant has contended that the respondents should be aware of the disposal of the disciplinary proceedings and as such entries should find place in the personal file of the applicant which is maintained by the respondents and the responsibility cannot be shifted to him to produce the same. While so, the seniority would adversely affect the applicant's future career prospects and also the pay fixation benefits by his direct promotion to the post of Goods Driver.

3 The applicant seeks the following reliefs:

(A) To call for the records leading to the issue of Annexure A-1 and to wash the same.

(B) To declare that the applicant is entitled to be placed between Sl.No. 75 and 76 just below Sri C. Gireesan in Annexure A-5 provisional seniority list and direct the respondents to grant consequential benefits.

© To pass such other order or direction which may deem just fit and necessary in the facts and circumstances of the case

(D) To award costs of this Original Application.

4 Per contra, the respondents have submitted that the applicant is seeking revision of seniority fixed in the year 2003 after keeping

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silent all these years and the O.A is hit by limitation, estoppel and acquiescence. They have admitted that he was not considered for promotion to the post of Senior Diesel Assistant/Shunter as there were two major penalty proceedings initiated under Railway Servants (Discipline & Appeal) Rule, 1968 pending against him. Out of these, one was dropped during 1999 but the other one has not been finalised till date. The selection Committee had empanelled the applicant for Goods Driver wherein his position was at Sl. No. 37 whereas the junior Sri C. Girisan was at Sl. No. 25. The applicant has been assigned seniority below Shri Girisan and the applicant never approached the department stating that the chargesheet issued to him has been dropped and only when he made a representation on 17.2.2003 (Annexure A-6) forwarded through Southern Railway Employees Sangh, necessary action was taken to look into the same. By that time, the records had been destroyed and were not available. Since the dropping of charges was only on 1.9.1999 the seniority now claimed cannot be granted. Since the promotion was approved on 14.9.99 and the seniority determined accordingly the settled position cannot be unsettled now.


5 The applicant has filed a rejoinder pointing out several inconsistencies in the reply statement including the reference of Shri C. Girisan as his junior. The applicant has not challenged the assignment of his seniority below Shri Girisan as he is his senior.

He has also pointed out that the respondents having denied the existence of the relevant files, cannot now argue that at the time of preparation of the panel also the disciplinary proceedings was pending. The destruction of the case files would prove that the DAR case was closed. The applicant further submitted that he could claim correction in his seniority only after the publication of the seniority list which was on 28.5.2003. Therefore there is no delay as contended by the respondents.

6 The respondents have filed additional reply with the counter statement that the applicant is misleading the Tribunal and trying to take advantage of the fact that the records have been destroyed. They have also submitted that at this distant date, records are not traceable either in Mechanical/Personnel branches due to periodic weeding out of records beyond the preservation period and no entry is made in the Service Register nor has the applicant any proof of the finalisation of the charge. Therefore it should be considered as not finalised.

7 We have heard learned counsel Shri Shafik for the applicant and Shri Sunil Jose, appearing for the respondents.

8 The applicant's basic challenge is against the provisional Annexure A-5 seniority list published on 28.5.2003 wherein he has been shown at Sl. No. 82, his immediate senior is shown at Sl.




No. 75. According to the applicant Sl. Nos. 76 to 81 are juniors to him. Prima facie, the applicant has not produced any records to show that those placed between Sl. Nos. 76 to 81 are juniors to him in the category of Diesel Assistants which is the feeder cadre. The seniority list shows that all of them except Sl. No. 81 have been promoted to the grade on the same date as that of the applicant. Annexure A-2 produced by the applicant showing his initial absorption in the post of Diesel Assistant in which he figures at Sl. No.67, Shri C. Girisan at Sl. No. 65, does not include the alleged juniors figuring at Sl. No.76 to 81 in the Annexure A-5 list it could be that they were appointed later than the applicant or could have come through another source of recruitment. These facts are not averred by the applicant or by the respondents nor have these persons been impleaded in the O.A.

9 The basis of applicant's claim for seniority is that he was promoted directly as a Goods Driver (order not produced) whereas his juniors from Sl.No. 20 onwards in Annexure A-3 and Sl. No. 38 onwards in Annexure A-4 seniority lists were promoted to another category of Senior Diesel Assistants and Shunters in November, 1996 and October, 1997 during which time he could not be promoted as two disciplinary proceedings were pending against him. The respondents have admitted this fact and also the fact that the applicant had been directly promoted as Goods Driver in 1999. The question that arises then for consideration is whether the

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disciplinary proceedings were dropped and if so when, the rule position being that if the proceedings were dropped or the employee exonerated from the charges, he is entitled to retrospective promotion from the date on which his juniors were promoted. In case a punishment is awarded, the employee could be promoted only after the punishment period is over. The replies furnished by the respondents are conflicting at various places. The final position that emerges is that out of the two charges against the applicant, there is no doubt that the first proceeding was dropped as shown by Annexure R-1 document dated 13.5.2005. Regarding the second charge, the respondents are blowing hot and cold, at one time they state that the proceedings is still pending without any action and on other occasions they state that the records have been destroyed due to efflux of time. They also argue that the applicant should have produced the records to prove his contention that the proceedings had actually been dropped. From these contradictory averments it can be finally concluded that the records pertaining to the second charge are not traceable and have most probably been destroyed. It is pertinent to note that if the proceedings was kept pending and not completed, even if the retention period was over the case file could not have been closed. That there are no entries in the service record is also admitted. It could therefore be reasonably presumed that these proceedings were also closed by dropping the charges. It is further confirmed by the fact that the respondents



have themselves admitted that at the time of selection to the post of Goods Driver in 1999 the applicant was free from penalties and only on that basis he had been selected as Goods Driver. Hence we conclude that both the charges which were pending against him when Annexures A-3 and A-4 orders were issued were dropped and thereby the applicant is entitled to retrospective promotion from the date his juniors came to be promoted.

10 The respondents have also averred that they were made aware of the dropping of charges only after the representations were submitted by the applicant in 2003 and they have blamed the applicant that he should have represented in 1998-99 itself when the proceedings were allegedly dropped. If he came to know about the dropping of the penalties against him he could have represented for restoration of promotion. But the factual position appears to be that the respondents promoted him directly as Goods Driver in 1999 as such he would have been complacent about the earlier promotions granted to his juniors as he had directly got promotion to the higher post. Also it is a fact that only with the publication of the provisional seniority list, the applicant became aware of the drop in his seniority. Therefore we are of the view that the delay from 1999 to 2003 cannot be held against the applicant. Since the publication of the seniority list in 2003 the applicant had been consistently pursuing the matter. But it is seen that the representations of the applicant has not been properly

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considered by the respondents and even in the reply furnished before this Tribunal in this O.A. there are very many inconsistencies. They have not viewed the matter in the light of the factual position as pointed out by the applicant. If the applicant had been free from the charges he becomes eligible for promotion to the intermediary posts of Senior Diesel Assistant and Shunter with reference to such promotions granted to his juniors by Annexures A-3 and A-4 orders and if the respondents had published the seniority list in 1999 or shortly thereafter, the applicant could have brought this position to the notice of the respondents. However, as mentioned earlier the relative seniority of the applicant vis-a-vis the persons at Sl. No. 76 to 81 in the seniority list at Annexure A-5 not clearly brought out in the pleadings on either side. Therefore we are unable to give any specific declaration on applicant's placement at Sl. No. 76 in the list as prayed for by him. This would have to be determined by the respondents by giving notice. But before that the respondents have to consider the applicant for promotion to the intermediary post of Senior Diesel Assistant and Shunter on par with his juniors as shown in Annexure A-2 list as on that basis if any of the juniors have been given seniority above the applicant in the cadre of Goods Driver, then only that seniority would have to be reviewed. On review of the promotion to the Senior Diesel Assistant and Shunter the applicant will be entitled to pay fixation benefits also as the charges which had been pending at the relevant time had been

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dropped.

11 In the light of the above discussions, we direct the respondents to consider the case of the applicant for promotion with retrospective effect to the post of Senior Diesel Assistant and Shunter on par with juniors who were granted such promotion in Annexure A-3 and A-4 and to grant him notional pay fixation benefits in the above posts. Thereafter the respondents shall consider his representation for correction of his placement in the seniority list at Annexure A-5 with reference to his immediate senior Shri C. Girisan and his seniority as determined after retrospective promotion and after giving due notice to all those affected and take a decision thereon which shall be communicated to the applicant. This exercise shall be completed within a period of three months from the date of receipt of this order.

No costs.

Dated 24 -8-2007


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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