

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.218/95

Friday, this the 26th day of April, 1996.

CORAM:

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Krishna Manjunath Prakash,
Junior Stenographer,
Southern Railway, Divisional Office,
Personnel Branch, Palakkad. - Applicant

By Advocate Mr MR Rajendran Nair

vs

1. The Divisional Personnel Officer,
Southern Railway,
Palghat-2.
2. The Chief Personnel Officer,
Southern Railway,
Madras.
3. The General Manager,
Southern Railway,
Madras.
4. SM Philip,
Junior Stenographer,
Personnel Branch, Southern Railway,
Palghat. - Respondents

By Advocate Mr Mathews J Nedumpara

The application having been heard on 26.4.96 the Tribunal
on the same day delivered the following:

O R D E R

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

Applicant challenges A4 and A6 orders, by which 4th
respondent was placed above him in the seniority list. He was
recruited as Junior Stenographer and posted at Baroda in the

Western Railway. He obtained a request transfer to Madras. While so, applicant and 4th respondent who was senior to him in Madras, made requests for transfer to Palghat Division. Both of them were transferred to Palghat Division by A1 order. A1 order inter alia states:

"They will rank juniormost to all permanent, temporary and officiating Jr.Stenos in scale Rs.1200-2040 on the date of their joining the new seniority unit."

(Emphasis added)

Applicant joined Palghat Unit on 13.6.91 and 4th respondent, his senior at Madras, six days later on 19.6.91. In A3 seniority list applicant was shown senior to 4th respondent. But, A4 changed the position, and applicant was placed below 4th respondent. That is under challenge.

2. According to learned counsel for applicant, irrespective of the past seniority, seniority in a new Division will be determined by the date of joining that Division. Since applicant joined earlier than 4th respondent, he should be ranked above 4th respondent, submits applicant. He relies on paragraph 312 of the Indian Railway Establishment Manual to support his contention.

3. Learned counsel for respondents who argued his case with thoroughness submitted that the original seniority between the applicant and 4th respondent in the Madras Unit must be reflected in the new Unit also. He relied on two decisions of the Tribunal in VK Saxena V. Union of India and others, (1990)

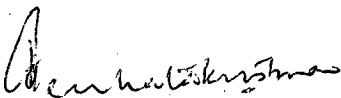
13 ATC 798 and Sudhakar B Agarkar V. Divisional Railway Manager, Central Railway, Nagpur and another, (1993) 23 ATC 292 to support his contention.

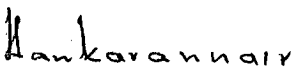
4. We find it difficult to accept the submission that the seniority in the earlier Unit should prevail in the latter Unit. If that were so, that would make para 312 meaningless. The general principle is that those who join a new Unit on request, will rank junior to those in position in that Unit. Merely because two officials were transferred under the same order, will be no ground to make an exception to rule, which is that seniority will be determined by the date of joining the new Unit (below all those who are in position in that Unit). What the rules do not contemplate, or negative, cannot be read into it by the Administration, irrespective of hardships. As far as the Palghat Unit is concerned, 4th respondent joined six days after applicant joined, and one who joins later will be placed below everyone in position that Unit. An order under which 4th respondent and applicant obtained a transfer states in no uncertain terms, that those who join the new Unit under that order, will rank junior to everyone in position. In terms of the order under which he obtained the transfer itself, 4th respondent has to rank below applicant who joined six days earlier. On the date when 4th respondent joined applicant was already in position and naturally 4th respondent must take his rank below the applicant. If the view of the Railways is to be accepted that inter se seniority in the previous Unit is to prevail, the Para 312 and A1 will be rendered meaningless. This argument flies in the face of the rule. Fourth respondent

who had notice of the application has not sought to sustain the order.

5. We quash A4 and A6 and declare that the seniority reflected in A3 will be prevail. Application is allowed as afcresaid. No costs.

Dated, the 26th April, 1996.


PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

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List of Annexures:

1. Annexure A1: True copy of the sanction order No.P(GS)676/XI/IDT/91 dated 6/6/91 issued by Assistant Personnel Officer/GI. to the applicant.
2. Annexure A3: True copy of the seniority list No.J/P.676/XI/IDT/Vol.4 dated 14/10/1992 issued by 1st respondent to the applicant.
3. Annexure A4: True copy of the revised seniority list No.J/P.676/XI/IDT/Vol.4 dated 15/2/93 issued by 1st respondent to the applicant.
4. Annexure A6: True copy of the letter No.J/P 612/XI/Vol.2 dated 13/12/94 issued by 1st respondent to the applicant.