

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 262 of 1999

Monday, this the 17th day of September, 2001

CORAM

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

1. K. Padmanabhan,
S/o Kunjan Pillai,
Box Boy, Southern Railway,
Trivandrum Central,
Residing at: Ambadi, Kodappanakunnu,
Trivandrum-43Applicant

[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 Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum-14
3. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum-14
4. Shri P. Sivadasan, Server, Trivandrum
through the Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum-14Respondents

[By Advocate Mr. Thomas Mathew Nellimoottil (R1 to R3)(rep.)]
[By Advocate Mr. P.N. Purushothama Kaimal (R4)]

The application having been heard on 17-9-2001, 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 the following reliefs:-

- "(a) Call for the records leading to the issue of
Annexure A6 and quash the same.
- (b) Call for the records leading to the issue of
Annexure A3 and quash the same to the extent it
empanels the fourth respondent for promotion to
the post of Commercial Clerks against 33 1/3%
quota in preference to the applicant.

- (c) Direct the respondents to prepare a fresh panel of persons, who are found suitable in the selection according to their seniority to be determined on the basis of the dictum laid down by the Hon'ble Jabalpur Bench of the Central Administrative Tribunal reported in 1998 (2) SLJ-CAT 201, i.e. based on the total length of continuous service in the Group 'D' cadre irrespective of their grade.
- (d) Direct the respondents to include the name of the applicant in the panel at the appropriate place in preference to the fourth respondent and to grant him the consequential benefits thereof, from the date of publication of Annexure A3 panel.
- (e) Award costs of and incidental to this Application.
- (f) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

2. The applicant is at present working as a Group 'D' employee in the scale of pay of Rs.750-940/2050-3050 in the Traffic Department of Southern Railway, Trivandrum Division. He was regularly absorbed as Traffic Porter with effect from 19-6-1991 in the scale of pay of Rs.750-940. Applications were invited from employees belonging to the Group 'D' category of Operating and Commercial Departments (including Catering Department) who have put in 3 years of regular service for appointment by promotion against 33 1/3% quota vacancies in the category of Commercial Clerks. The selection in question pertained to the vacancies for the period from 1995 to 1998. The applicant submitted an application and participated in the written test. He came out successful in the written test. He was called for viva voce and he attended the same. In the panel of selected candidates (A3) published by the department, the 4th respondent is included at Serial No.5 and the applicant has not been included. Para 320 of the Indian Railway Establishment Manual (IREM) deals with the question of relative seniority of employees in an intermediate grade belonging to different seniority units appearing for a selection/non

selection post in higher grade. Aggrieved by A3, the applicant and two others approached this Bench of the Tribunal by filing OA No. 1740/98 inter alia praying that the Tribunal may be pleased to quash A3 to the extent it empanels the 4th respondent herein and two others for promotion to the post of Commercial Clerks against 33 1/3% quota. There was also a prayer for a direction to the respondents to prepare a fresh panel of persons who are found suitable in the selection according to their seniority to be determined on the basis of their total length of service in Group 'D' cadre. That OA was disposed of directing the applicants therein to submit a representation to the 3rd respondent and directing the said respondent to dispose of the same within a period of two months. A6, one of the impugned orders, is the order rejecting the representation of the applicants in the said OA.

3. Official respondents resist the OA contending that the seniority among the successful employees is made based on the length of service rendered by them in the same or equivalent grade. This has been done in terms of Para 320 of the Indian Railway Establishment Manual. 4th respondent entered the grade of Rs.775-1025 (Rs.2610-3540) on 4-3-1989, whereas the applicant is still in the lower grade of Rs.750-940 (Rs.2550-3200).

4. 4th respondent, the private respondent, says that A6 is a well considered order. Seniority among the successful employees is made on the basis of length of service rendered by them in the same or equivalent grade. The applicant never served in the equivalent grade of the 4th respondent.

5. This Bench of the Tribunal had occasion to consider an identical question in OA No. 1761/98. In that OA, this Bench

of the Tribunal referred to the ruling in Rajendra Prasad vs. Union of India through General Manager & Others [1998 (2) SLJ CAT 201], wherein it has been held that:

"Since Group 'D' employees from the different streams were eligible to appear for selection for the post of Jr.Clerk, their integrated seniority for purposes of the selection should have been determined on the basis of the total length of service rendered in the entry grade of Rs.750-940 or 775-1025 as the chances of promotion vary as between streams and this fortuitous factor cannot come in the way of eligible persons having longer length of approved service."

6. In OA No. 1761/98 the ruling referred to above was followed.

7. In B. Ram Mohan & Another vs. Union of India & Others [JT 2001 (5) SC 575] it has been held that the total length of service in the equivalent grade held by the employees would be the determining factor. The Apex Court delivered the said judgement on the 25th of April, 2001. OA No. 1761/98 was disposed of on the 21st of June, 2001. On the date of disposal of OA No. 1761/98 the ruling of the Apex Court reported in JT 2001 (5) SC 575 was not reported and was not available.

8. The learned counsel appearing for the applicant submitted that the ruling of the Apex Court will not as such apply to the facts of the case at hand and the ruling of this Bench of the Tribunal will squarely apply to the facts of the case.

9. The finding of the Apex Court and the finding of this Bench of the Tribunal are not on identical lines. That being the position, it is necessary to refer the matter to a Larger Bench.

10. The Registry is directed to refer the matter to the Hon'ble Chairman, Central Administrative Tribunal for the purpose of constituting the Larger Bench for answering the question of law formulated, i.e. while applying Para 321 of the Indian Railway Establishment Manual, the inter se seniority is to be determined by taking the total length of service in the equivalent grade held by the employees or the total length of service.]

11. Before parting with, we are constrained to observe that in the reply statement filed by the official respondents in paragraph-3 it is stated that the 4th respondent entered the grade of Rs.775-1025 (Rs.2610-3540) on 4-3-1989. We called for the service records of the 4th respondent. The learned counsel appearing for the official respondents made available the same for our perusal. With regard to the date of first appointment, it is shown as "4.3.89/01.7.1991". At this juncture, it is also relevant to note that the 4th respondent, the private respondent, has not raised a plea specifically to the effect that his date of first appointment is '4-3-89'. In the normal course, there cannot be two dates with regard to the date of first appointment. On the last hearing date we asked the learned counsel for official respondents to get necessary instructions and to submit how this has occurred and what is the significance of the date '4-3-89'. Today across the bar it was submitted that the entry relating to '4-3-89' was made unintentional. This is not what we wanted to know from the respondents through their counsel. It is needless to say that there cannot be any unattested entry in a service register. The date '01-7-1991' and other entries made in the service register of the 4th respondent are written in blue ink and the date '4-3-89' is written in black ink. It is apparently clear that it is a subsequent entry. Then it is for the official

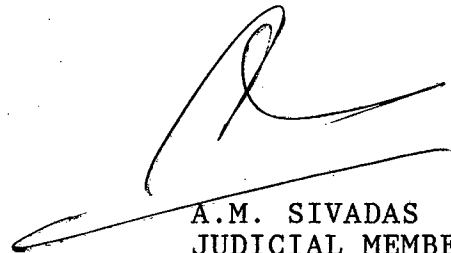
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respondents to explain how that subsequent entry was made and under what circumstances and that too unattested. If the stand of the official respondents is that the 4th respondent entered the grade of Rs.775-1025 on 4-3-1989, in the normal course he would have earned an increment on 4-3-1990. From the service register of the 4th respondent produced it is seen that the first increment was given to him with effect from 1-7-1992. So, the entry in the service register is not in tune with what is stated in the reply statement. This depicts an unfortunate situation. The General Manager, Southern Railway, Madras is directed to look into the matter and take appropriate action in this matter. We are constrained to say this for the reason that the like averments in the reply statement will be having very serious consequences of affecting the seniority of persons in service. The Registry is directed to send a copy of this order to the General Manager, Southern Railway, Madras.

Monday, this the 17th day of September, 2001



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

ak.

APPENDIX

1. Annexure A1: Copy of the notification No.V/P.531/III/CC/Vol.5 dt. 25.6.98 issued by the third respondent.
2. Annexure A2: Copy of the Order No.V/P.531/III/CC/Vol.5 dt. 18.11.98 issued by the third respondent.
3. Annexure A3: Copy of the letter No.V/P.531/III/CC/Vol.V dt. 7.12.98 issued by the third respondent.
4. Annexure A4: Copy of the judgement in O.A.1740 of 1998 dt. 22.12.98 delivered by this Hon'ble Tribunal.
5. Annexure A5: Copy of representation dt. 27.12.98 by the applicant and 2 others to the third respondent.
6. Annexure A6: Copy of the letter No.V/P.531/III/CC/Vol.5 dt. 18.2.99 issued by the third respondent.

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 262 of 1999

Friday, this the 9th day of November, 2001

CORAM

HON'BLE MR. JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. K. Padmanabhan,
S/o Kunjan Pillai,
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Versus

1. Union of India represented by the
General Manager, Southern Railway,
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4. Shri P. Sivadasan, Server, Trivandrum
through the Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum-14Respondents

[By Advocate Mr. Thomas Mathew Nellimoottil (R1 to R3)]
[By Advocate Mr. P.N. Purushothama Kaimal (R4)]

The application having been heard on 9-11-2001, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant who commenced service on 19-6-1991 as a
Traffic Porter in the Traffic Department in the scale of
Rs.750-940 and the 4th respondent who commenced service on
1-7-1991 as a Server in the Catering Department in the scale of
Rs.775-1025, both in Group 'D', participated in a selection for

appointment to the Group 'C' post of Commercial Clerks against 33 1/3% quota. After the written test and viva voce, when the panel at Annexure A3 was prepared, to the applicant's dismay he found his name has been excluded and the name of the 4th respondent included. Finding that the official respondents have included the name of the 4th respondent, who actually is junior to the applicant by length of service in Group 'D', the applicant made a representation to the 3rd respondent. The said representation was disposed of pursuant to the direction of this Tribunal in OA No.1740/98 filed by the applicant, however rejecting his claim by Annexure A6 order justifying the selection of the 4th respondent on the ground that he was considered to be senior and he was holding a post in a higher grade. Aggrieved, the applicant filed this OA seeking to set aside Annexure A3 and A6 orders and to direct the respondents to prepare a fresh panel of persons who are found suitable in the selection according to their seniority to be determined on the basis of the dictum laid down by the Jabalpur Bench of this Tribunal in 1998 (2) SLJ-CAT 201. It is alleged in the application that in accordance with the provisions in paragraphs 180 and 189 of the Indian Railway Establishment Manual, Group 'D' employees allowed to participate in the examination for appointment as Commercial Clerks belonging to one class cannot be discriminated on the basis of pay scale of the post held by them as such postings are fortuitous in nature.

2. The official respondents as also the 4th respondent have filed reply statements.

3. When the OA was taken up for disposal by the Division Bench, the applicant's counsel relied on the decision of the Jabalpur Bench in 1998 (2) SLJ-CAT 201 as also another decision

of the Ernakulam Bench of the Tribunal in OA No.1761/98 following the decision of the Jabalpur Bench, holding that the total length of service in the Group 'D' should be taken as the criteria for seniority. Finding that the ruling of the Jabalpur Bench followed by the Ernakulam Bench was not in agreement with the ruling of the Apex Court in B.Ram Mohan & Another vs. Union of India & others, JT 2001 (5) SC 575, the Division Bench referred the following point for determination by a Full Bench:

"While applying Para 321 of the Indian Railway Establishment Manual, the inter se seniority is to be determined by taking the total length of service in the equivalent grade held by the employees or the total length of service."

4. By orders of the Hon'ble Chairman, this Full Bench has been constituted for settling the above point formulated by the Division Bench.

5. Shri TC Govindaswamy, learned counsel appearing for the applicant, relied on sub-clause (a)(i) and (a)(i)(4) of paragraph 189 of the Indian Railway Establishment Manual, which reads as follows:-

"....."

(a)(i) All promotion should be made on the basis of selection. There should be written tests to assess the educational attainments of candidates followed by interviews where considered necessary. Group 'C' categories referred to above should be suitably linked with specified categories in the lower grades on broad affinity of work to form groups for promotion but it should be ensured that the prospects are made regularly equal in the different groups. The test should be correlated to the standards of proficiency that can reasonably be expected from railway servants who are generally non-matriculates. The aim of the examiners should be to assess the general suitability of the class IV railway servants offering themselves for promotion to

class III posts from the point of view of their knowledge of English and their general standard of intelligence.

.....

- (4) All those who qualify in written and oral test, the qualifying percentage of marks being prescribed by the General Manager, should be arranged in the order of their seniority for promotion against the yearly vacancies available for them in Group 'C' categories.

....."

6. The learned counsel of the applicant argued that the intention of the rule makers was that equal opportunity for promotion should be given to those in Group 'D' considered as a class for being elevated to Group 'C' post and that therefore discrimination between persons holding different grades in the Group on further subclassification on the basis of pay scales is violative of Article 14 of the Constitution of India and such classification does not bear any nexus to the objectives sought to be achieved. In support of this contention the learned counsel of the applicant referred us to the ruling of the Apex Court in State of Mysore vs. Krishna Murthy & Others [AIR 1973 SC 1146], wherein it was observed that:

"11. Other cases mentioned by the Mysore High Court i.e. State of Punjab v. Joginder Singh, AIR 1963 SC 913 and K.M. Bakshi v. Union of India, 1965 Supp (2) SCR 169, also show that inequality of opportunity of promotion, though not unconstitutional per se, must be justified on the strength of rational criteria correlated to the object for which the difference is made. In the case of Government servants, the object of such a difference must be presumed to be a selection of the most competent from amongst those possessing qualifications and backgrounds entitling them to be considered as members of one class. In some cases, quotas may have to be fixed between what are different classes or sources for promotion on grounds of public policy. If, on the facts of a particular case, the classes to be considered are really different, inequality of opportunity in promotional chances may be justifiable. On the contrary, if the facts of a particular case disclose no such rational distinction between members of what is found to be really a single class no class distinctions can be made in selecting the best. Articles 14 and 16(1) of the Constitution must be held to be violated when members of one class are not even considered for promotion. The case before

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us falls, in our opinion, in the latter type of cases where the difference in promotional opportunities of those who were wrongly divided into two classes for this purpose only could not be justified on any rational grounds. Learned Counsel for the State was unable to indicate any such ground to us. We, therefore, think that the Mysore High Court rightly held that the impugned notifications were unconstitutional."

7. The Standing Counsel for the Railways, Shri Thomas Mathew Nellimoottil, and Shri P.N. Purushothama Kaimal, learned counsel appearing for the 4th respondent, on the other hand, contended that the method of reckoning seniority of persons appearing for examination to a higher post from various and different streams is covered by a specific provision in the Indian Railway Establishment Manual, viz. Paragraph 320, which reads as follows:-

"320. RELATIVE SENIORITY OF EMPLOYEES IN AN INTERMEDIATE GRADE BELONGING TO DIFFERENT SENIORITY UNITS APPEARING FOR A SELECTION/NON-SELECTION POST IN HIGHER GRADE.

When a post (selection as well as non-selection) is filled by considering staff of different seniority units, the total length of continuous service in the same or equivalent grade held by the employees shall be the determining factor for assigning inter-seniority irrespective of the date of confirmation of an employee with lesser length of continuous service as compared to another unconfirmed employee with longer length of continuous service. This is subject to the proviso that only non-fortuitious service should be taken into account for this purpose.

Note:- Non-fortuitious service means the service rendered after the date of regular promotion after due process."

8. In the light of the above specific provision in the Manual, the learned counsel for official respondents argued that as there is no indication to the contrary in paragraphs 180 and 189 of the Manual, the length of service in the equivalent grade should govern the seniority and therefore, the point formulated is to be answered as; the criteria for

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seniority should be the length of service in the same or equivalent grade and not the total length of service in Group 'D' post.

9. We have carefully gone through the materials placed on record, the ruling of the Jabalpur Bench of the Tribunal, the ruling of the Ernakulam Bench of the Tribunal in OA No.1761/98 as also the decision of the Apex Court in B.Ram Mohan & Another vs. Union of India & Others [JT 2001 (5) SC 575]. Though facts of the case in B.Ram Mohan & Another vs. Union of India & Others cannot be considered as identical to the facts of the present case, the point considered by the Apex Court essentially was the same. The point formulated in the said ruling of the Apex Court was "the question for consideration there is whether the people from different trade are brought into and appointments are made in a grade or post, as in the present case of Junior Planner, what would be the principle for determination of their inter se seniority". It was held that the total length of service in the same or equivalent grade would govern the seniority. We find that the issue in this case has been fully covered by the ruling of the Apex Court in Ram Mohan & Another vs. Union of India & Others. The facts situation in State of Mysore vs. Krishna Murthy & Others [AIR 1973 SC 1146] is totally different from the facts of this case and what has been held in that case was ^{that} there should be equality of opportunities for promotion. The said ruling does not state anything with regard to the method in which the seniority is to be reckoned. Regarding the method of reckoning seniority, as there is no indication to the contrary either in paragraph 180 or in paragraph 189 of the Manual, the position is covered by paragraph 320 of the Indian Railway Establishment Manual.

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10. In the light of what is stated above, the point referred to the Full Bench, i.e. "while applying Para 321 of the Indian Railway Establishment Manual, the inter se seniority is to be determined by taking the total length of service in the equivalent grade held by the employees or the total length of service", is answered as under:

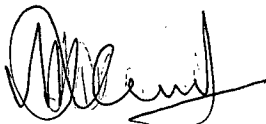
11. While applying Paragraph 321 of the Indian Railway Establishment Manual, the inter se seniority is to be determined by taking the length of service in the same or equivalent grade and not the total length of service in Group 'D' post.

12. The Original Application may now be placed before the Division Bench for disposal accordingly.

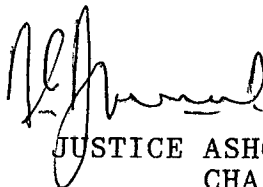
Friday, this the 9th day of November, 2001



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN



JUSTICE ASHOK AGARWAL
CHAIRMAN

ak.

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 262 of 1999

Wednesday, this the 21st day of November, 2001

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HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. K. Padmanabhan,
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General Manager, Southern Railway,
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Southern Railway, Trivandrum Division,
Trivandrum-14Respondents

[By Advocate Mr. Thomas Mathew Nellimoottil (R1 to R3)(rep.)]
[By Advocate Mr. P.N. Purushothama Kaimal (R4)]

The application having been heard on 21-11-2001, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant who started service as a Traffic Porter
in the Traffic Department in the scale of Rs.750-940 and the
4th respondent who started service as a Server in the Catering
Department in the scale of Rs.775-1025 participated in the
selection for appointment to the Group 'C' post of Commercial
Clerks against 33 1/3% quota. After the selection process

which involved a written test and viva voce, a panel was prepared in which the 4th respondent who is junior to the applicant by the total length of service was included, while the applicant's name was not included. Aggrieved, the applicant made a representation which as per directions contained in the order of this Tribunal in OA No.1740/98 was disposed of by Annexure A6 order dated 18-2-1999 turning down the representation of the applicant and justifying the inclusion of the name of the 4th respondent on the ground that the 4th respondent was holding a higher post than the applicant and therefore was considered senior to the applicant. A6 order as also the order (Annexure A3) by which the 4th respondent has been appointed are under challenge in this application. It is alleged in the application that while making promotion from Group 'D' to Group 'C', the total length of service in Group 'D' is to be taken as the criteria and not the difference in pay scales as has been held by the Jabalpur Bench of the Central Administrative Tribunal in 1998 (2) SLJ-CAT 201. The only point that arise for consideration is:

"While applying Para 321 of the Indian Railway Establishment Manual, the inter se seniority is to be determined by taking the total length of service in the equivalent grade held by the employees or the total length of service."

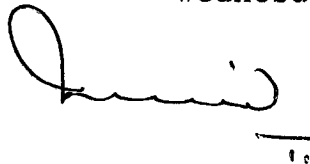
2. The issue has now been settled by the decision of the Full Bench in this case dated 9th of November, 2001. The Full Bench has answered the query as follows:-

"While applying Paragraph 321 of the Indian Railway Establishment Manual, the inter se seniority is to be determined by taking the length of service in the same or equivalent grade and not the total length of service in Group 'D' post."

3. Since the applicant was holding the post of Traffic Porter in the scale of pay of Rs.750-940 and the 4th respondent was holding the post of Server in the scale of pay of Rs.775-1025 (both pre-revised), the applicant's service cannot be treated as equal to that of the 4th respondent. Since the applicant has never held the grade Rs.775-1025 which is a higher grade, as per the point clarified by the Full Bench, the 4th respondent is senior to the applicant. The impugned orders Annexure A3 and A6 are therefore perfectly in order.

4. In the result, the original application is dismissed.
No costs.

Wednesday, this the 21st day of November, 2001



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

ak.