

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 267/91

~~XXX X No.~~ 299

DATE OF DECISION 29.4.92.

K. Marthanda Varma, Applicant (s)  
Sweeper Cum Porter & 3 ors.

Mr. P. Siva Pillai Advocate for the Applicant (s)  
Versus

DOI., through the General Manager, Southern Railway, Madras-3 and 6 others. Respondent (s)

Smt. Sumathi Dandapani (R.1&2) Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV KRISHNAN

ADMINISTRATIVE MEMBER

The Hon'ble Mr. N DHARMADAN

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

SHRI N DHARMADAN, JUDICIAL MEMBER

The applicants are working as Sweeper-Cum-Porters/

Box Boy in the scale of Rs.750-940 in the Traffic

Department of the Trivandrum Division of Southern Railway.

They are challenging the absorption and promotion of

respondents 3 to 7 as per Annexure A3 proceedings,

dated 25.4.90.

except applicant-4

2. According to the applicants, they are senior to <sup>1/</sup> respondents 3 to 7 and applicant 4 is senior to respondents 4 to 7 only respondents 3 to 7 based on the number of days they

have worked under the Railway and their date of joining.

...2/-

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Annexure A1 produced alongwith the application shows that the applicants 1-3 were absorbed in the open line by office order No.V/P.677/11/SCP dated 22.6.83.

Annexure A2 further establish that applicant No.4 came to the Traffic Department alongwith respondents.

However, their contention is that they are entitled to be absorbed in the present post earlier to respondents 3 to 7. Ignoring the claims of the applicants, respondents 3 to 7 were given earlier absorption and seniority in service. When Annexure-A3 was issued the applicants' names were not included. Hence, they filed this application, with the following prayers:

"..(b)To call for the records leading to the issue of Annexure A3 and quash the same so far as it excludes the applicant from being considered on par with R.3 to R7.

(c) To direct the Respondents 1 and 2 to revise the date of empanelment and seniority of the applicants on par with R3 to 7 and assign them all consequential benefits like promotion to higher grades etc. as given to R3 to R.7"

3. At the time when the case was taken up for hearing the learned counsel for the applicants submitted that the applicants would be satisfied if they are given the benefit of earlier absorption in the category of Sweeper Cum Porter alongwith respondents 3 to 7

and grant them promotion on the basis of the number of days of their work and the date of joining in the Railway.

4. The respondents 1 and 2 in the counter affidavit submitted that R.3 to 7 filed OP-1830/84 before the High Court of Kerala for a direction to fix their seniority based on the total service rendered by them in the Traffic Department. The High Court directed the Railway to consider the claim and issue appropriate orders. The original petition was disposed of. Accordingly in compliance with the directions the Railway passed orders posting the respondents 3 to 7 in the Traffic Department during the period, 1984. The respondents 3 to 7 again filed OA-304/86 for a declaration of their seniority w.e.f. 8.4.81. The said OA was heard and allowed by this Tribunal as per ~~judgment~~ dated 10.11.89. In implementation of the directions of the Tribunal dated 10.1.89, Annexure A3 order had been passed. They further submitted that the applicants unlike Res.3 to 7 kept quiet and did not agitate the matter for getting an earlier observation and also seniority in the present category. Hence, they are not entitled to any relief.

5. The learned counsel for the applicants submitted that the applicants were initially engaged as casual labourers in the Construction Department and later they had been transferred to the Traffic Department. Applicants 1 & 3 have joined the Traffic Department in 1983 and the applicant No.4 in the year 1984. Applicant 1 to 3 joined the Traffic Department much earlier than respondents 3 to 7 and the 4th applicant joined the same department alongwith respondents 3 to 7 as per Annexure A2.

6. We have heard the arguments and considered the documents. In the course of the hearing the learned counsel for the respondents produced before us for our perusal the order of the Assistant Personnel Officer dated 28.2.87 which indicates that applicants 1-3 are senior to all the respondents, while applicant 4 is junior to respondent 3 and senior to other respondents.

7. However, this document clearly establishes that seniority position of the applicants and respondents 3 to 7 and the non-inclusion of the applicants in Annexure III is due to the failure of the Railway to

consider their case alongwith respondents 3 to 7.

There is no satisfactory explanation for the non-inclusion of the applicants in Annexure III. The only explanation given by the respondents 1 & 2 is that the applicants did not agitate the matter from 1981 onwards as in the case of respondents 3 to 7.

8. This explanation is not sound enough to be accepted because we are of the view that while implementing the directions and orders of the Tribunals and Courts it is incumbent upon the Railway to maintain the seniority position based on the date of entry in service and the number of days worked by the employees, *unless specific directions otherwise*. Invariably it is necessary for the department to examine the seniority position of the persons who filed the cases vis-a-vis others who joined the service alongwith or before their entry in the service or at least give notice to all affected persons. Otherwise, if the seniority position will be dislocated causing prejudice or injustice to persons who are not made parties in the cases filed before the Court or Tribunal. In fact the applicant came to know of the earlier promotion of the respondents 3 to 7 only when they <sup>4</sup> saw Annexure III. They immediately

approached this Tribunal. There is injustice to the applicant.

9. Viewing the matter in that line and considering

the records available <sup>with</sup> <sub>in</sub> the department which are

produced for our perusal we are of the view that the

applicant's claim for seniority cannot be ignored.

Had it been taken into consideration by the Railway

when Annexure AIII proceedings were issued they would

not have passed Annexure III order in this manner

without including the applicants also in the same <sup>list</sup> <sub>of</sub>

10. Having considered the matter in detail we

are of the opinion that applicant's claim for seniority

and earlier observation in the category of Sweeper-cum-

Porters/Box Boy was overlooked by the Department while

issuing Annexure III proceedings. Hence, the applicants

are entitled for the reliefs as claimed in the application.

11. Having regard the facts and circumstances

of the case we declare that respondents 1 & 2 are

bound to modify Annexure III proceedings by including

the applicants also in the list and assign them their

seniority alongwith respondents 3 to 7 taking into

account the number of days which they have put in as casual mazdoors and their date of original absorption <sup>by</sup> under the Railway. We issue the directions to respondents 1 and 2 to implement the declaration. They shall also be given consequential promotion, if any, due to them. This shall be done within a period of 4 months from the date of the receipt of the copy of the judgment.

12. The application is disposed of as above.

There will be no order as to costs.

N. Dharmadan

29.4.92

(N DHARMADAN)  
JUDICIAL MEMBER

N. V. Krishnan

29.4.92

(NV KRISHNAN)  
ADMINISTRATIVE MEMBER

29.4.92.