

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 269 of 2011

Wednesday, this the 02nd day of November, 2011.

CORAM:

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. Jayakumar. J.
Station Master – II,
Tikkodi Railway Station,
Southern Railway, Calicut.
2. Vamanan Namboothiri,
Station Master – II,
Cheruvathur Railway Station,
Southern Railway, Cheruvathur.
3. Jaffar Sadiq M.
Station Master – II,
Walayar Railway Station,
Southern Railway, Walayar ... Applicants.

(By Advocate Mr. P.K. Madhusoodhanan)

v e r s u s

1. Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Divisional Office, Personnel Branch,
Palakkad : 678 002
2. The Chairman,
Railway Board, Government of India,
Ministry of Railways (Railway Board),
New Delhi – 110 001
3. Union of India through
The General Manager,
Southern Railway, Park Town,
Chennai : 600 003 ... Respondents.

(By Advocate Mr. K.M. Anthru)

The application having been heard on 17.10.2011, the Tribunal on 02-11-11 delivered the following:

ORDER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicants in this O.A are Station Masters Grade-II of the Palghat Division of Southern Railway. In a Limited Departmental Competitive Examination (LDCE) held pursuant to Annexure A/1 letter, they were selected for the post of Station Master Grade-II (Traffic Apprentice). They underwent 2 years training in the Zonal Railway Training Institute, Thiruchirappalli. On clearing the final suitability test held on 26.06.2009 at Palghat, they were appointed as Station Master Grade-II in the Palghat Division vide Annexure A-4 dated 03.07.2009. But in the provisional seniority list of Station Master Grade-II and Grade-III as on 01.01.2010 at Annexure A-5 dated 24.03.2010, the applicants were shown below those Station Masters Grade-III, who had competed alongwith the applicants and failed in the selection for Station Master Grade-II under the 10% LDCE quota. As they were not granted their due seniority, they had filed representations. Without considering the objections and without finalising the final seniority list, the applicants apprehend that promotions based on Annexure A-5 seniority list, are going to be made. Aggrieved, they have filed this O.A. for the following reliefs:

(i) Issue necessary directions to the respondent No.1 to publish the final seniority of Station Masters Grade-II and III in accordance with law after considering all the objections received by him, including Annexures A6 to A-10 submitted by the applicants, within a time limit to be fixed by this Hon'ble Tribunal;

(ii) Issue necessary directions to the respondent No.1 restraining him from granting promotions on the basis of Annexure A-5 provisional seniority list, before considering Annexure A-6 to A-10 and similar objections and without publishing the final seniority list;

(iii) Issue necessary directions to the 1st respondent to consider and pass orders on Annexure A-6 to A-10 in accordance with law within a time limit to be fixed by this Hon'ble Tribunal;

(iv) Award costs of these proceedings; and

(v) Grant such other and further reliefs as this Hon'ble Tribunal deem fit and proper.

2. The applicants contended that the inaction on the part of the first respondent in not finalising Annexure A-5 and not publishing the final seniority list is negation of duty cast upon him. Without considering the representations Annexures A-6 to A-10 and without publishing a final seniority list, the attempt of the first respondent to grant promotion to higher posts on the basis of Annexure A-5 is arbitrary, discriminatory, unjust and illegal. The VI Pay Commission scales have been introduced as per Railway Board's letter No. PC-VI/2008/I/RSRP/I dated 11.09.2008 by which the pay scales of Station Masters Grade-II and Grade-III were only merged. It has no impact on the seniority of SM-II and SM-III, SM-II being higher post to SM-III in the hierarchy of posts. The settled seniority and service conditions and hierarchy of posts in the Railways cannot be taken away by the 1st respondent arbitrarily and erroneously. The 1st respondent should have considered Annexures A-6 to A-10 and passed orders on them in accordance with law and finalized the seniority list before considering to grant promotion from the provisional seniority list.

3. The respondents contested the O.A. In their reply statement, it was

submitted that on successful completion of the training, the applicants were found suitable for absorption in the post of Station Master Grade-II in the scale of Rs. 5000-8000. The applicants are presently working as Station Masters in Tikkodi, Cheruvathur and Walayar respectively in the Palghat Division. As per Note (3) to letter No. PC-VI/2008/I/RSRP/1 dated 11.09.2008 from the Railway Board, the posts in the existing scales of Rs. 5000-8000, 5500-9000 and Rs. 6500-10500 stood merged in Pay Band 2 with Grade Pay of Rs. 4200/- alongwith functions. Separate orders are to be issued regarding rationalization of functions, new designations, recruitment rules etc. As per Railway Board letter No. E(NG)I/2008/PM I/15 dated 24.04.2009, the selections and promotions from the existing lower scale(s) to the existing higher scale (s) should not be made. Promotions from existing lower scales to the existing Scale 'A' should likewise cease. Further, in such cases, action on selections, etc. already in process should be stayed and the panels/suitability lists already existing should also not be operated. In view of these instructions, the promotions of the applicants as Station Master Grade-II cease to exist. Therefore, the applicants date of entry into the Grade Pay of Rs. 4200/- would be the date of promotion as Station Master Grade-III. The merger of SM-II and SM-III is a policy decision taken by the VI Central Pay Commission.

4. In the rejoinder statement filed by the applicant, it was submitted that so far no directions have been issued by the Railway Board as to whether the seniority is to be merged, how it is to be merged, the criteria to be followed, common designation is to be awarded and from which date it is to be made etc. Only the pay scale of SM-II and SM-III have been merged by the

implementation of the VI CPC recommendation by the Railways. A policy decision cannot alter and take away arbitrarily, unilaterally and against natural justice the settled service conditions of hierarchy of posts, seniority etc. of the employees retrospectively in the guise of merger of pay scales. It is the common knowledge that the rules relating to seniority of non-gazetted Railway servants are governed by Chapter III of Volume I of the Indian Railway Establishment Manual and, therefore, the seniority of the applicants are to be governed by the said rules, so far the said rules have not been amended, repealed or modified. As held by the Hon'ble High Court of Kerala in **Radhakrishnan vs. State of Kerala**, 1999 (2) KLT 465, the persons holding inferior posts should be placed below the last person holding the higher time scale post when integration is brought in.

5. We have heard Mr. P.K. Madhusoodhanan, learned counsel for the applicant and Mr. K.M. Anthru, learned counsel for the respondents and perused the records.

6. The provisional seniority list of SM-II and SM-III cadres as on 01.01.2010 was circulated by letter dated 24.03.2010 (Annexure A-5) inviting representations from staff within one month from the date of issue of the said list with material in support of the individual claim. The applicants have filed their objections. The objections have not been considered by the respondents as yet. It is improper and illegal to make promotion on the basis of the provisional seniority list without considering the objection to the provisional seniority list and without making the final seniority list.

7. In Annexure R-2 dated 03.09.2009, it has been stated that "it has been decided that as a one time exemption promotion to all vacancies existed as on 31.08.2009 may be made as indicated in the enclosed statement" wherein all categories of Station Masters are also included. By order dated 03.07.2009 at Annexure A-4, the applicants have been promoted as SM-II in the Pay Band Rs. 9300-34800 with Grade Pay of Rs. 4200/- against the vacancies earmarked for 10% of the departmental quota. The order dated 03.09.2009 has been issued subsequent to the clarification dated 24.04.2009, wherein it was stated that selections and promotions from the existing lower scales to the existing higher scales should not be made and promotions from existing lower scales to the existing Scale 'A' should likewise cease. Likewise, the promotions granted to the applicants could be protected by granting exemption, if need be, having regard to the fact that they were duly selected through LDCE and that they have successfully completed the training and cleared the final suitability test and they have already been appointed as SM-II.

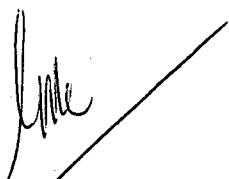
8. The applicants have been promoted as per the Recruitment Rules which have not been cancelled or amended. A promotion that is granted as per the Recruitment Rules cannot be nullified arbitrarily. Hon'ble High Court of Kerala in the case of in Radhakrishnan vs. State of Kerala, 1999 (2) KLT 465, has held that the persons holding inferior posts should be placed below the last person holding the higher time scale post when integration is brought in.

9. In the light of the above discussion, the O.A is allowed as under.

10. The respondent No. 1 is directed to publish the final seniority list of SM-II and SM-III in accordance with law after considering all objections received by him including Annexures A-6 to A-10 submitted by the applicants within a period of 60 days from the date of receipt of a copy of this order. The respondent No. 1 is further restrained from granting promotion based on Annexure A-5 provisional seniority list without publishing the final seniority list.

11. No order as to costs.

(Dated, 2nd November, 2011)


K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE P.R. RAMAN
JUDICIAL MEMBER

CVR.