

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.269/97

Tuesday, this the 2nd day of November, 1999.

CORAM:

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

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K.V.Pradeep Kumar,
Section Controller,
Control Office,
Southern Railway,
Thiruvananthapuram.

- Applicant

By Advocate Mr P.B.Sureshkumar

Vs

1. Southern Railway represented by
the General Manager,
Southern Railway,
Madras.
2. The Chief Personnel Officer,
Southern Railway,
Madras.
3. The Divisional Railway Manager,
Southern Railway,
Thiruvananthapuram.
4. The Senior Divisional Operating Superintendent,
Southern Railway,
Thiruvananthapuram.
5. A.Shanmughavelu,
Deputy Chief Controller,
Southern Railway,
Thiruvananthapuram.
6. S.Arulselvam,
Deputy Chief Controller,
Southern Railway,
Thiruvananthapuram.
7. K.G.Sasikumar,
Deputy Chief Controller,
Southern Railway,
Thiruvananthapuram.
8. K.J.Unnikrishnan,
Deputy Chief Controller,
Southern Railway,
Thiruvananthapuram.

- Respondents

9. P.J.Rajan,
Section Controller,
Southern Railway,
Thiruvananthapuram.
10. S.Sudhakaran Nair,
Section Controller,
Southern Railway,
Thiruvananthapuram.
11. R.Dinesh,
Section Controller,
Southern Railway,
Thiruvananthapuram.
12. V.Thulasidasan Nair,
Section Controller,
Southern Railway,
Thiruvananthapuram.

- Respondents

By Advocate Mrs Sumathi Dandapani(for R.1 to 4)

By Advocate MrTC Govindaswamy(for R.5 to 12)

The application having been heard on 2.11.99, the
Tribunal on the same day delivered the following:

O R D E R

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

On 21.10.99 when the matter came up for hearing, an adjournment was granted till 26.10.99, making it clearly understood that no further adjournment would be granted. When the matter came up on 26.10.99, at the joint request of the learned counsel on either side, the case was adjourned to 28.10.99. On 28.10.99, a further request was made on behalf of the applicant as a last chance, and the case was posted for hearing today. Even today none appears for the applicant even on the second call. It appears that the applicant is no more interested in prosecuting the case further. The application is therefore dismissed for default and non-prosecution. No costs.

Dated, the 2nd of November, 1999.



(G.RAMAKRISHNAN)
ADMINISTRATIVE MEMBER



(A.V.HARIDASAN)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.269/97

Friday, this the 10th day of December, 1999.

CORAM:

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

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K.V.Pradeep Kumar,
Section Controller,
Control Office,
Southern Railway,
Thiruvananthapuram.

- Applicant

By Advocate Mr P.B.Sureshkumar

Vs

1. Southern Railway represented by
the General Manager,
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- Respondents

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Section Controller,
Southern Railway,
Thiruvananthapuram.
12. V.Thulasidasan Nair,
Section Controller,
Southern Railway,
Thiruvananthapuram.

- Respondents

By Advocate Mrs Sumathi Dandapani(for R.1 to 4)

By Advocate MrTC Govindaswamy(for R.5 to 12)

The application having been heard on 10.12.99, the Tribunal on the same day delivered the following:

O R D E R

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

The applicant and the 8th respondent along with others participated in a selection by the Railway Recruitment Board for recruitment as Traffic Apprentices. As per the panel position, the applicant was placed senior to the 8th respondent. After three years training, Traffic Apprentices could be appointed either as Section Controllers or as Assistant Station Masters or Assistant Yard Masters. While the applicant and the 8th respondent were undergoing training, the training of the applicant was cut short and he was absorbed as Yard Master with effect from 16.8.89. The training of the 8th respondent was also cut short and he was absorbed as Section Controller on 11.10.89. A Section Controller was entitled to be promoted to the next higher grade of Deputy Chief Controller in the scale of pay Rs.2000-3200 on completion of 2 to 4 years of service as Section Controller, contend the applicant. For the

Assistant Station Master/Assistant Yard Master, the next higher grade is Station Master Grade.II/Yard Master Grade.II which carries a pay scale of Rs.1600-2660. Therefore, for a person who has been recruited as a Traffic Apprentice, the appointment as Section Controller is more advantageous for career advancement, according to the applicant. One Shri P.T.Xavier recruited as Traffic Apprentice was given appointment as Station Master while persons junior to him were absorbed as Section Controllers, he approached the Tribunal filing O.A.828/89 before the Madras Bench of the Tribunal, claiming that on the basis of his placement in the panel, he should have been appointed as Section Controller with effect from the date on which a person who was placed lower in the panel was so appointed. The claim of the applicant in that case was accepted by the Tribunal and necessary directions were issued. However, the applicant continued as a Yard Master and the 8th respondent continued as Section Controller. In the year 1994, the applicant made A-1 representation claiming absorption in the cadre of Section Controller with effect from the date on which the 8th respondent was so appointed. This representation was forwarded by the DRM, Trivandrum with due recommendation vide A-2 letter. The representation was rejected by A-4 order. Applicant aggrieved by the rejection of his claim for absorption with effect from the date on which 8th respondent was appointed as Section Controller, filed O.A.257/96 which was disposed of permitting the applicant to make a further representation and directing the respondents to re-consider the issue. On the representation made pursuant to the above judgement of the Tribunal, the impugned order has been issued turning down the claim of the applicant. It is aggrieved by this

order that the applicant has filed this application. In addition to respondent No.8 who was placed below him in the select panel of Traffic Apprentices, the applicant has impleaded respondents 5 to 7 and 9 to 12 who were inducted into the cadre of Section Controllers. The applicant has prayed that the impugned order may be set aside declaring that he is entitled to be absorbed as Section Controller with effect from the date on which the 8th respondent was absorbed in the cadre of Section Controller in the Thiruvananthapuram Division and to direct the respondents 1&2 to refix the seniority of the applicant in the cadre of Section Controller over respondents 5 to 12 and disburse to him all consequential benefits. While the applicant was working as Yard Master, he had claimed absorption as Section Controller against 25% quota earmarked for Yard Master, but his claim was rejected on the ground that he was at that time drawing a higher pay scale than that of Section Controller. However, prior to the date of filing of this O.A., the applicant was appointed as Section Controller against the quota for Yard Master.

2. The respondents 1 to 4 have filed a detailed reply statement and respondents 5 to 12 have also filed a reply statement. The claim of the applicant is mainly resisted on the ground of limitation, in view of the principles of constructive res judicata in view of the decision in O.A.2294/93 and on the ground that the applicant has suppressed the material facts that he was working as Yard Master and had claimed the benefit of absorption as a Section Controller in the quota available for Yard Master.

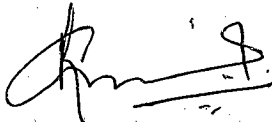
3. We have heard the learned counsel on both sides.

4. It is a fact which cannot be disputed that the fact situation in O.A.828/89 and the present O.A. are almost identical and that the principle enunciated in that ruling would have application to the facts of this case also. The question is whether the applicant is entitled to claim seniority over respondents 5 to 12 after such a long lapse of time. The applicant was appointed as Assistant Yard Master on 16.8.89 and the 8th respondent was appointed as Section Controller on 11.10.89. By appointment as a Section Controller in 1989, the 8th respondent has acquired a right to hold the post and holding it beyond the period of limitation to challenge the appointment under the Administrative Tribunals Act, he has also acquired a right to continue there undisturbed and unchallenged thereafter. As the applicant has not challenged the appointment of the 8th respondent as Section Controller with effect from 11.10.89, we are of the considered view that the claim of the applicant if any, has been lost by limitation. The applicant has become a Section Controller only in the year 1997 by virtue of an appointment in the quota earmarked for Yard Master. He therefore, would count his seniority with effect from that date only. Since the appointment of the 8th respondent as Section Controller in 1989 has not been challenged, there is no basis for the claim of the applicant for seniority above him. The case of the respondents that the applicant apart from being guilty of delay and laches is estopped from claiming a position as Section Controller with effect from 1989.

5. It is well settled by now that the law comes to the aid of those who are vigilant of their rights. In this

case, the applicant has not been vigilant of his right when a wrong was done to him in the year 1989. We therefore, find that the applicant is not entitled to the reliefs which he has sought in this application. Application is therefore, dismissed, leaving the parties to bear their own costs.

Dated, the 10th of December, 1999.



(G. RAMAKRISHNAN)
ADMINISTRATIVE MEMBER



(A.V. HARIDASAN)
VICE CHAIRMAN

trs/141299

List of Annexures referred to in the Order:

1. A-1: True copy of the representation sent by the applicant to the 3rd respondent dated 8.8.94.
2. A-2: True copy of the recommendation forwarded by the 3rd respondent to the 2nd respondent dated 6.10.95.
3. A-4: True copy of the communication issued by the 2nd respondent to the 3rd respondent dated 13.1.95.