

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. No. 274 of 1995

Monday, this the 11th day of November, 1996

CORAM

HON'BLE MR P V VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR A M SIVADAS, JUDICIAL MEMBER

1. K.S. Kunjachan, S/o K.D. Xavier,  
Diesel Assistant, Southern Railway,  
Ernakulam.
2. Jose V. Abraham, S/o Abraham Vadakkedath,  
Diesel Assistant, Southern Railway,  
Quilon.
3. C.K. Babu, S/o Kesavan,  
Diesel Assistant, Southern Railway,  
Ernakulam.
4. G. Jayaprakasan Nair, S/o Gopalakrishnan Nair,  
Diesel Assistant, Southern Railway,  
Ernakulam.

... Applicants

By Advocate Mr P. Ramakrishnan.

Vs

1. Union of India represented by  
the General Manager,  
Southern Railway, Madras.
2. The Divisional Personnel Officer,  
Southern Railway, Trivandrum.
3. P.K. Shaji, Diesel Assistant, Southern Railway,  
Ernakulam.
4. N. Srinivasan Nair -do- Ernakulam.
5. Joseph Sebastian -do- Ernakulam
6. S. Ravichandran -do- Quilon
7. V.M. Sajeev Roy -do- Ernakulam
8. N. Gopakumar -do- Quilon
9. G.S. Abraham -do- Quilon
10. Suresh K. Nair -do- Ernakulam
11. N. Jayakumar -do- Quilon
12. N. Karunakara Bhasker -do- Trivandrum Central

13. C.S. Vijayakumar, Diesel Assistant, Southern Railway,  
Trivandrum Central.

14. M.V. Chacko -do- Ernakulam Marshalling Yard.

15. J. Venugopal -do- Ernakulam.

16. A.K. Suresh Kumar -do- Quilon.

17. K.V. Devassy -do- Ernakulam.

18. N. Sasidharan -do- Ernakulam.

19. B. Kuttappan Unnithan -do- Quilon.

20. K.M. Mathew -do- Ernakulam.

21. B. Subash Basi -do- Quilon.

22. Santhosh Philip -do- Ernakulam.

23. K.A. Vijayakumar, Goods Driver, Southern Railway,  
Ernakulam Marshalling Yard.

24. P.N. Rajendra Prasad -do- -do-

25. K.A. Sivan -do- -do-

26. S. Sakthivel, Line Inspector, Southern Railway, Madurai.

By Advocate Mr Mathews J. Nedumpara for Respondents 1 & 2  
(represented).

By Advocate Mr T.C.G. Swamy for Respondents 3 to 5, 7 to 11,  
15 to 17 and 19 to 22.

The application having been heard on 29.10.1996,  
the Tribunal delivered the following on 11.11.1996.

O R D E R

A.M.SIVADAS, JUDICIAL MEMBER

Applicants seek to quash A-4 seniority list in so far as it assigns Respondents 3 to 26 seniority over the applicants and consequently to quash A-5 as one issued on the basis of wrong seniority assigned to Respondents 3 to 26 and also to direct Respondent-2 to assign the applicants seniority over Respondents 3 to 26.

2. Applicants are Railway servants, working as Diesel Assistants in Trivandrum Division of Southern Railway. They were recruited by the Railways in the year 1984/85

and had initially joined in Madras Division. Applicants came over to Trivandrum Division on request transfer and all of them joined their respective posts on 9.10.87. Respondents 3 to 26 were recruited in the years 1987 and 1988. When the applicants joined Trivandrum Division, respondents 3 to 26 were only Trainee Diesel Assistants as they had not completed the required training of 10 months duration. When the applicants joined Trivandrum Division on 9.10.87, respondents 3 to 26 were not confirmed, temporary or officiating Railway servants, as they were trainees who were yet to complete their training period. In the provisional seniority list of Diesel Assistants published on 8.3.1990, the applicants were shown as juniors to respondents 3 to 26. In the final revised seniority list published also there is no change in respect of the applicants seniority position vis-a-vis respondents 3 to 26. Diesel Assistants have avenue of promotion to the post of Shunters. By virtue of the final seniority list, respondents 3 to 26 have not been promoted as Shunters. Promotion to the post of Shunters was to be made on the basis of seniority-cum-suitability.

3. Respondents 1 & 2 in the reply statement have raised the following contentions. The seniority of employees who have to undergo the prescribed training will be assigned seniority from the date of absorption. As per para 303(a) of the Indian Railway Establishment Manual (IREM for short), those who join against a working post first will rank senior to those who join for any other reason whatsoever and those who pass the examination in the earlier course. In almost all the cases, the direct recruits were given a condensed course



and put on working post before undergoing 10 months training. In terms of para 302 (Note) of the IREM, if the training period of a direct recruitee is curtailed in the exigencies of service, the date of joining the working post shall be the date, he would have come to the working post after completion of the prescribed training. A seniority list of Diesel Assistants was published as per letter dated 8.3.1990 wherein the seniority position of the directly recruited Diesel Assistants was assigned based on the merit order of the Railway Recruitment Board. Hence, the seniority of the applicants was assigned below respondents 3 to 26.

4. In the reply statement filed by respondents 3 & 17 the contentions raised are thus. Respondents 3 to 26 completed their training well before the date of joining of the applicants. So it is clear that these respondents joined against working posts much earlier than the applicants. There is no rule or order which states that the period of training for Diesel Assistants is 10 months. Respondents having completed their training successfully and having qualified for the same were absorbed against working posts. Therefore, the applicants cannot claim seniority over these respondents.

5. The question is regarding the seniority of the applicants. In order to arrive at a conclusion whether the applicants are to be assigned seniority over Respondents 3 to 26 or not, it is necessary to consider whether the training period can be reckoned for seniority.

6. Applicants while working as Diesel Assistants in Madras Division were transferred on their request to Trivandrum Division and joined in Trivandrum Division on 9.10.87. Respondents 3 to 26 were recruited in the years 1987 and 1988.

7. Learned counsel for Respondents 3 & 17 argued that there is no rule of 10 months training period for Diesel Assistants. In O.A. 2109/93 a Division Bench of this Tribunal while dealing with the same question to which one of us was a party (Hon'ble Mr P V Venkatakrishnan, Administrative Member) has held that the fact that no training period is mentioned in para 137 of the IREM does not bar the Railway Administration from stipulating a period of training for Diesel Assistants and the applicants were Apprentices who had to undergo 10 months training. Following the finding in the said O.A., the contention of the learned counsel for respondents 3 & 17 that there is no rule of 10 months training for Diesel Assistants cannot be accepted and it is to be held that there is 10 months training for Diesel Assistants.

8. In the statement filed by Respondent-2 as per directions of this Tribunal it is stated that the Chief Personnel Officer, Southern Railway Madras has by letter No.P(S) 535/VI/4 Dsl. Asst./DR dated 22.6.1984 prescribed a ten months period training for Diesel Assistants. The details of training are also given in the statement. Learned counsel for Respondents 3 & 17 argued that the Chief Personnel Officer is not competent to issue any order prescribing the period of training. According to him, the power to curtail the period also is vested with the Railway Board only and not with the General Manager or others. Para 114 of the IREM says:

"The General Manager or the Chief Administrative Officer, may in special circumstances and for reasons to be recorded in writing, relax or modify these rules in specific individual cases. They can also issue orders for deviations from these rules in respect of certain categories or on certain occasions provided such relaxations are purely on a temporary basis. Railway

Board's prior approval is however, required to long term or permanent alteration of the rules.

This power should be exercised by the General Manager or his Chief Personnel Officer personally; but it shall not be otherwise redelegated."

In this case R-1 prescribed 10 months training for Diesel Assistants which is issued by the Chief Personnel Officer. As per para -114 of the IREM, the Chief Personnel Officer is competent to issue the same. Hence, the argument advanced by the learned counsel for Respondents 3 & 17 on this aspect cannot be accepted.

9. Learned counsel for Respondents 3 & 17 basing on the note to para 301 of the IREM argued that R-4 has not come into effect. R-4 is Advance Correction Slip No.132. Note to para 301 of the IREM says that:

"Such of the rules in this Chapter as are not already extent shall apply from such dates as may be fixed by the Railway Administrations. The seniority of the staff already determined under the extent rules or orders of the respective railway administrations shall not be altered."

So according to learned counsel for Respondents 3 & 17, R-4 has not come into effect as the date from which it shall apply is not fixed. This argument cannot be accepted since the 'Advance Correction Slip No.132 (R-4)' has been published in the Southern Railway Supplementary No. 13/82 to Fortnightly Gazette, Vol.XXXII, No.13 of 1st July, 1982. In O.A. 2109/93 a Division Bench of this Tribunal has held that note under para 302 of IREM is in force, R-4 is the note to para 302 of IREM. Counsel for Respondents 3 & 17 argued that no period of training is specified in R-3 and R-4. That does not mean that there is no training at all. With regard to the 10 months

period of training mention is already made.

10. Para 312 of the IREM says:

"The seniority of railway servants transferred at their own request from one railway to another should be allotted below that of the existing confirmed, temporary and officiating railway servants in the relevant grade in the promotion group in the new establishment irrespective of the date of confirmation or length of officiating or temporary service of the transferred railway servants.

Note (i) to para 312 says:

"This applies also to cases of transfer on request from one cadre/division to another cadre/division on the same railway."

Applicants have come on request transfer from Madras Division to Trivandrum Division of the same railway. So, para 312 of IREM apply to the applicants. Admittedly, Respondents-3 onwards do not come within the purview of 312 of IREM.

11. As per para 303(a) of IREM, the seniority of candidates recruited through the Railway Recruitment Board or by any other recruiting authority should be determined as the candidates who are sent for initial training to Training Schools will rank in seniority in the relevant grade in the order of merit obtained at the examination held at the end of the training period before being posted against working posts. Those who join the subsequent course for any reason whatsoever and those who pass the examination in subsequent chances, will rank junior to those who had passed the examination in earlier course. So, respondent-3 onwards can only come as juniors to the applicants.

12. As per definition (iv) in para 103 of the IREM an 'apprentice' or a 'trainee' means a person undergoing training with a view to employment in railway service, who draws pay, leave salary, subsistence allowance or

stipend during such training but is not employed in or against a substantive vacancy in the cadre of a branch of deptt. On satisfactory completion of his training he is eligible for appointment on probation in substantive vacancy but no guarantee of such appointment is given.

13. A railway servant who is required to undergo the prescribed training and is eligible for appointment in substantive vacancy to a working post only on satisfactory completion of training. The seniority of railway servant in the initial recruitment grade is governed by the date of appointment to the grade as provided in para 302 of the IREM.

14. A-2 clarifies the position that those who come on request transfer are to be assigned seniority over the trainees.

15. R-3(d) dated 22.5.87 says that Respondents 3 to 13, except respondents 5 & 11, on successful completion of their training at DTS/TPGY as Apprentice Diesel Assistants are absorbed as temporary trainee Diesel Assistants on Rs 1200 /- in the scale of Rs 950 - Rs 1500 and posted to various stations and they will be on probation for a period of one year from the date of their absorption in the working posts. So, from R-3(d) it is clear that the respondents were posted to a particular station only as temporary trainees. R-3(e) dated 21.7.87 is also of the same effect. So also R-3(f). So, the seniority of Respondents 3 onwards could be counted only from the absorption to the working posts.

16. There is nothing to show that on 9.10.87 when the applicants joined Trivandrum Division, Respondents-3 to 26 were confirmed, temporary or officiating railway servants. They were only trainees during that period. A trainee is eligible for appointment only on satisfactory completion of his training. As per para 104 of the IREM for trainees or apprentices appointed to a working post after the conclusion of their training, the probationary period commences on the date of such appointment.

17. As 10 months training period was prescribed for Respondents-3 onwards and even if there was curtailment of the training period as per note to para 302 of IREM, the date of their joining to the working posts shall be the date they were normally come to working posts after completion of the prescribed 10 months period of training. As per para 312 of the IREM, applicants are to be allotted seniority below that of the existing confirmed, temporary and officiating Diesel Assistants in Trivandrum Division and as Respondent-3 onwards were only trainees as on 9.10.87 the date on which applicants joined in Trivandrum Division. the applicants are to be assigned seniority above Respondents-3 onwards.

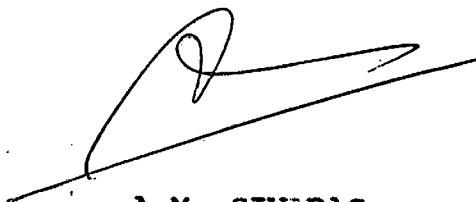
18. From the above discussion what emerges is that the period of training cannot be counted or reckoned for seniority.

19. In the result, we allow the Original Application quashing A-4 seniority list in so far as it assigns



respondents 3 to 26 seniority over the applicants, and consequently quash A-5 as one issued on the basis of assigning seniority wrongly to Respondents 3 to 26, and direct Respondent-2 to assign applicants' seniority over respondents 3 to 26. There will be no order as to costs.

Dated the 11th November, 1996.



A M SIVADAS  
JUDICIAL MEMBER

  
enhatakrishnan  
P V VENKATAKRISHNAN  
ADMINISTRATIVE MEMBER

P/8-11