

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.275/98

Friday, this the 15th day of October, 1999.

CORAM:

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

HON'BLE MR J.L.NEGI, ADMINISTRATIVE MEMBER

1. S.Ratheesh Kumar,
Leave Reserve Ticket Collector,
Southern Railway,
Quilon.
2. Benny Johny,
Leave Reserve Ticket Collector,
Southern Railway,
Ernakulam Junction,
Ernakulam.
3. S.Jaffer Hussain,
Travelling Ticket Examiner,
Southern Railway,
Trivandrum Central. - Applicants

By Advocate Mr TC Govindaswamy

Vs

1. Union of India represened by
the General Manager,
Southern Railway,
Headquarters Office,
Park Town.P.O.
Madras-3.
2. Divisional Personnel Officer,
Southern Railway,
Trivandrum Division,
Trivandrum-14.
3. Sujatha Sudarshanam,
Travelling Ticket Examiner,
Southern Railway,
Ernakulam Junction,
Ernakulam.
4. Suryakumari,
Senior Ticket Collector,
Southern Railway,
Cochin Harbour Terminus Railway Station,
Cochin.
5. The Divisional Railway Manager,
Southern Railway,
Trivandrum Division,
Trivandrum-14. - Respondents

By Advocate Mrs Sumathi Dandapani(for R.1,2&5)

By Advocate Mr P Ramakrishnan(for R.3&4)

The application having been heard on 8.10.99, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR J.L.NEGI, ADMINISTRATIVE MEMBER

The applicants three in number have sought the following reliefs:

"(a) Declare that the applicants are liable to be placed senior to the respondents 3 and 4 in the seniority list of Ticket Collectors of Trivandrum Division in the scale of pay of Rs.950-1500.

(b) Declare that the grant of seniority to the respondents 3 and 4 from a date prior to that of A-8 is arbitrary and unconstitutional.

(c) Call for the records leading to the issue of A-5 and quash the same to the extent it promotes the respondents 3&4 to the next higher scale of Rs.1200-2040 in preference to applicants.

(d) Direct the respondents to consider the applicants for promotion to the next higher scale of Rs.1200-2040 in preference to the respondents 3 and 4 and to grant the applicants 1 and 2 the benefit of such promotion with effect from the date of A-5 with consequential benefits thereof including arrears of pay."

2. Applicants 1&2 are presently working as Ticket Collectors in the scale of Rs.950-1500 in the Trivandrum Division of Southern Railway. The third applicant is presently working as Travelling Ticket Examiner in the scale of pay of Rs.1200-2040 in the same Division. The applicants are aggrieved by the alleged erroneous assignment of their seniority in the cadre of Ticket Collectors vis-a-vis the respondents 3&4 and the consequent denial of their promotion to the next higher scale of Rs.1200-2040 in preference to the said respondents.

3. Learned counsel for the applicants submitted that the applicants were initially appointed as Ticket Collectors on compassionate grounds on 15.5.90 against direct recruitment quota. They were absorbed against regular post with effect from 16.7.90. The respondents 3&4 were Group 'D' employees entitled to be promoted against 33 1/3% quota in the cadre of Ticket Collectors earmarked for them.

4. The respondent-Railways conducted a selection from Group 'D' employees in the year 1990 for filling up the vacancies in the cadre pertaining to the years 1984 to March 1989. In the said selection panel the respondents 3&4 were not originally included and one Shri Ashokan who was not selected approached this Tribunal in O.A.440/90 challenging the same and the said O.A. was disposed of directing the respondents therein to publish an yearwise panel. Consequent on the publication of the yearwise panel, two of those who were duly selected, were deleted from the panel on the ground of wrong seniority and it resulted in the inclusion of respondents 3&4 in the panel. This panel was again challenged before this Tribunal in O.A.646/92 and O.A.647/92 which were disposed of in favour of the affected employees. As a consequence to the result of these O.A.s the names of respondents 3&4 were excluded being juniors, for want of vacancies. The said respondents along with 5 others approached this Tribunal in O.A.231/92 which was dismissed by judgement dated 24.8.94(A-1). Consequent upon the judgement in A-1, the 2nd respondent published the revised panel by a letter dated 12.12.94(A-2) in which the name of respondents 3&4 from the earlier panel was specifically deleted. Since A-2 was never under challenge, it became final. Meanwhile, a provisional seniority list of Ticket Collectors was published dated 13.1.94 which is A-3. In this seniority list, the applicants were placed at Sl.No.28,29 and 27 respectively, whereas the respondents 3&4 were shown at Sl.No.25 and 26.

5. Learned counsel for the applicants further stated that the applicant No.1 submitted representations being aggrieved by the patent illegality in the assignment of seniority. It is further stated that A-2 revised panel deleting the names of respondents 3&4 was issued much after A-3 seniority list and thus the applicants were under the bonafide belief that the applicants grievance with reference to the assignment of their seniority has come to an end. Because only after an order dated 7.10.97 the applicants noticed that the respondents 3&4 have been promoted to the next higher scale of Rs.1200-2040 A-5 and the first applicant immediately submitted a representation dated 27.10.97 to the Divisional Railway Manager (A-7). Similar representations were sent by the applicants 2&3. While making enquiries as to how the respondents 3&4 could be promoted, the applicants have come across a memorandum dated 17.10.95 issued by the 2nd respondent(A-8) which reads as follows:

"..The names of the following employees which were deleted from the panel for promotion from Group'D' to Group'C' for the year 1988-89 vide this office letter No.V/P.531/III/Vol.3 of 12.12.94 is now included in the panel as approved by the competent authority since there are vacancies to accommodate them."

6. Learned counsel for the applicants further submitted that the applicants are unable to understand under what provision of law in a panel, which consist of vacancies upto 1989, a person who could not be excluded for want of vacancies would later be included by accommodating him in the vacancies which are in existence as on 17.10.95. The applicants were persons who were appointed against direct recruitment quota and the respondents 3&4 by no stretch of imagination claim seniority over the applicants, who were already in the cadre with effect from 1990. Thus they

are entitled to a declaration that they are liable to be placed above the respondents 3&4 in the seniority list of Ticket Collectors. Learned counsel for the applicants placed reliance in Ram Ganesh Tripathi and others Vs State of U.P. and others, 1997 SCC(L&S), 186, N.Nagaraja Vs Vasant K.Gudodagi and others, 1990 SCC(L&S), 430 and Ex.Capt.K.Balasubramanian and others Vs State of Tamil Nadu and another, 1991 SCC(L&S), 792.

7. Learned counsel for the official respondents oppose the O.A. and submitted that the seniority given to respondents 3&4 cannot be upset since the same is done in accordance with the seniority position settled in 1993. The mistake that was committed has been corrected and proper seniority has been assigned to respondents 3&4 and on this ground, A-5 cannot be set at right. He further submitted that the applicants claim cannot be entertained on the ground of limitation. If the contention that for all material purposes, the date of appointment is to be reckoned from 15.5.90, persons who are figuring at Sl.No.1 to 23 in the A-3 are to be brought on the party array. In fact A-3 list was prepared as on 1.12.93 and objections were invited on or before 15.2.94. Regarding this list no objection has been raised by the applicants. A claim of seniority which was settled in 1993 cannot be resettled as it would create a sense of insecurity among other staff and on the ground of limitation alone, the claim of the applicants are to be dismissed. He further stated that in order to fill up the 33 1/3% of the vacancies of Commercial Clerks, Train Clerks and Ticket Collectors that had occurred during the period from 1.4.82 to 31.3.84, volunteers were called for from the employees belonging to Class IV categories of Commercial and Traffic Department. In view of certain administrative reasons, the selection was cancelled and the list of the panel was not published. Thereafter, Shri T.V.Harindran and 3 others who were working as Porters and Gate

Keepers filed O.A.235/87 before this Tribunal and as per order dated 24.6.88, the Tribunal directed the respondents to complete the process of drawing up the panel based on the selection which was initiated in 1984. In compliance of that judgement, 15 employees' names were published in the panel. Out of the 4 applicants in the above O.A., the 1st and 2nd applicants had already been included in the panel of 15 employees. In order to accommodate the 3rd and 4th applicants, another employee who was senior to the 4th applicant, the then existing panel had to be enlarged from 15 to 18. To facilitate this, 3 more vacancies arose against 33 1/3% quota of the subsequent year i.e. 1.4.84 to 31.3.85 and in view of the directions of this Tribunal, those persons were included.

8. As per the directions of this Tribunal in O.A.367/90 and O.A.440/90, when panels were prepared yearwise and published vide letter dated 21.4.92, 3 employees who were not in the earlier panel happened to be included in the revised panel. Shri T.Vijayan, the applicant in O.A.646/92 and Shri R.Gopalakrishna Pillai and Shri M Sasidharan Pillai, the applicants in O.A.647/92 are the ones who got excluded and the respondents 3&4 are those who got included as per the formation of the revised panel in the letter dated 21.4.92. At that time the applicants had not raised any objection. Hence they are estopped from raising such an objection at this distance of time and they cannot raise this contention on the ground of resjudicata also.

9. Later on verification, it was found that there was no necessity to take 3 vacancies under 33 1/3% quota of the period from 1.4.84 to 31.3.85 for accommodating the applicants and another one in O.A.235/87 and to add these 3 vacancies along with the vacancies for the period from 1.4.83 to 31.3.84 because of the fact that the employees placed in the said panel had already been

promoted as Assistant Guard and 2 employees as Train Clerks. Thus the above vacancies occurred as a result of promotion of incumbents to other different categories were mistakenly not taken into account with the result there was a reduction in the number of vacancies assessed for the period from 1.4.83 to 31.3.84 and also in the total vacancies for the entire period from 1.4.84 to 31.3.89. This short assessment of vacancies lead to the exclusion of the respondents 3 and 4 from the panel published as per A-2. This mistake had to be rectified when pointed out and the respondent-department assigned rightful places to the respondents 3&4 in the panel for promotion to the post of Ticket Collector. The respondents 3&4 cannot be denied the promotion which was actually due to them as they were entitled to be promoted along with those employees in the panel of 5 against vacancies available. They cannot be deprived of their seniority which was legitimately available to them, for no fault of theirs, even though they entered the grade of Ticket Collectors on 26.12.92 and 27.12.92. No rights of the applicants have been infringed by the assignment of seniority to the respondents 3 & 4.

10. The learned counsel for respondents 3&4 submitted that the respondents 3&4 had commenced^{as} Group'D' employees in the Traffic Department and they had appeared for a written examination for promotion to Group'C' cadre against 33 1/3% quota set for them. The vacancies pertaining to the years 1984 to 1989(R4(A)). In the meanwhile, certain employees who were selected originally, but whose names were later removed from the panel had approached this Tribunal and consequent to the disposal of their cases, orders were issued on 12.12.94 by the respondents removing the names of respondents 3&4 from the panel and they represented against the reversion. On a reconsideration of the issue, it was found that vacancies were available and removal from the panel was

absolutely not necessary, which was subsequently rectified by inducting them in their original position vide R-4(c). It was further contended that the applicants had not so far challenged A-5 order and it has become final. The seniority position assigned to these respondents have been settled for long and the applicants O.A. is liable to be rejected as the applicants have not approached this Tribunal within the limitation period prescribed.

11. We have given our anxious thoughts and also perused the records. It is an admitted fact that respondent No.2 had circulated a provisional seniority list of LRTCs/Ticket Collectors in the scale of Rs.950-1500 as on 1.12.93 vide letter dated 13.1.94. In the said seniority list, respondents 3&4 were shown at Sl.No.25 and 26 respectively, whereas the applicants were placed at Sl.No.28, 29 and 27 respectively. While circulating the provisional seniority list, it was specifically mentioned that representation, if any, against the position assigned to them should be submitted to the office of respondent No.2 before 15.2.94 and any representation received after the due date would not be entertained. No such representations were made against the said provisional seniority list by the applicants within the stipulated date. The respondents 3&4 were shown senior to the applicants in view of the said provisional seniority list and their promotion at this stage cannot be challenged.

12. Learned counsel for the applicants relied on the following judgements of the Apex Court:

1997 SCC(L&S) 186
1991 SCC(L&S) 712
1990 SCC(L&S) 206
1994 SCC(L&S) 574
1985 SCC (L&S) 465

The learned counsel has relied only those paragraphs which were in connection with the seniority, vis-a-vis date of entry in service

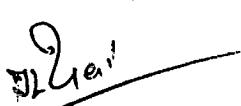
etc. In none of the above decisions of the Apex Court there is a cause for related challenge to the seniority assigned and the rulings of the Apex Court in the above cases will not help the applicants' case. The applicants should have objected to the provisional seniority ^{list} within the stipulated time by making representations and subsequently taking recourse to the judicial forum.

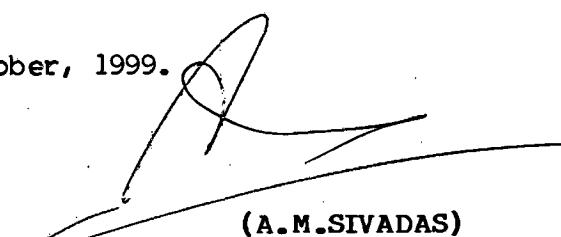
13. The respondents on the other hand relied on the decision of Apex Court in B.S.Bajwa and another Vs State of Punjab and others, (1998) 2 SCC 523 vide which the Civil Appeals and SLPs were dismissed by the Hon'ble Supreme Court by observing:

"It is well settled that in service matters the question of seniority should not be re-opened in such situation after a lapse of a reasonable period because that results in disturbing the settled position which is not justifiable."

14. Considering the above facts and circumstances, we are of the opinion that the applicants request for restoration of their seniority over the respondents 3&4 is belated and they cannot raise this contention on the ground of resjudicata. The O.A. is dismissed. No costs.

Dated, the 15th of October, 1999.


(J.L. NEGI)
ADMINISTRATIVE MEMBER


(A.M. SIVADAS)
JUDICIAL MEMBER

trs/141099

List of Annexures referred to in the Order:

1. A-1: True copy of the judgement in O.A.231/92 dated 24.8.94 of this Tribunal.
2. A-2: True copy of the letter No.V/P-31/III/Vol.3 of 12.12.94 issued by the 2nd respondent.

3. A-3: True copy of the letter No.V/P-612/III/TTE/TC/Vol.3 dated 13.1.94 issued by the 2nd respondent.
4. A-5: True copy of the office order No.V/P 535/III/TC/TTE/Vol.8 dated 17.11.97 issued by the 2nd respondent.
5. A-7: True copy of the letter addressed to the 2nd respondent by the applicant.
6. A8: True copy of the Memorandum No.V/P 531/III/Vol.3 dated 17.10.95 issued by the 2nd respondent.
7. R4(a): True copy of order No.V/P 531/III/Vol.3 dated 21.4.92 issued by the 2nd respondent.
8. R4(c): True copy of Memorandum No.V/P.531/III/Vol.3 dated 17.10.95 issued by the 2nd respondent.