

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 302 of 2005

Monday, this the 23rd day of October, 2006

C O R A M :


**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

1. Binu C, Assistant Driver,
Office of the Chief Crew Controller,
Southern Railway, Erode.
2. Sreedath P.K., Assistant Driver,
Office of the Chief Crew Controller,
Southern Railway, Erode.
3. T.P. Santhosh, Technical Grade III,
Electric Loco Shed,
Southern Railway., Erode.
4. Rajimon C.N., Assistant Driver,
Office of the Chief Crew Controller,
Southern Railway, Erode.
5. Ramesh P, Assistant Driver,
Office of the Chief Crew Controller,
Southern Railway, Erode.

... Applicants.

(By Advocate Mr. T.A. Rajan)

v e r s u s

1. Union of India represented by
The General Manager,
Southern Railway, Chennai - 3
 2. The Chief Personnel Officer,
Southern Railway, Chennai - 3
 3. The Divisional Railway Manager,
Southern Railway, Palghat.
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4. The Senior Divisional Personnel Officer,
Southern Railway, Palghat. ... Respondents.

(By Advocate Mrs. Sumathi Dandapani)

The Original Application having been heard on 6.10.06, this Tribunal on 23.10.06 delivered the following:

ORDER
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

A common competitive test, a common merit list on the basis of that common test but allocation of different Divisions at the discretion of the Railways and consequent confusion arising out of such allocation, as some juniors, allotted a different division, were sent for training and placement in the higher post earlier than the seniors, is the issue involved in this case.

2. A silhouette of the facts of the case is as under:-

- (a) By a notification (Annexure A-1) dated 09-04-2003, applications from regular group C and D employees were invited for participating under the 25% quota of General Departmental Competitive examination for the post of Assistant Station Master in the scale of Rs 4,500 – 7,000/-. The said notification, inter alia, contained the following stipulations:-

"The selection for filling up the vacancies of Asst. Station Master in Scale Rs. 4500 – 7000 under the scheme of General Departmental Competitive Examination will be conducted on all Railway basis and the employees who are selected are liable to be posted to any Division where vacancies

earmarked for General Departmental Competitive Examination exist and those who are not willing for promotion involving transfer need not apply."

"Panel will be formed strictly in the order of merit on the basis of marks obtained in the written examination."

"The employees selected for appointment as Asst. Station Master on the basis of the General Departmental Competitive Examination are required to undergo the prescribed training and pass the test held at the end of the training."

(b) The applicants participated in the above competitive examination and were successful in the same and a list of 28 employees was prepared vide Annexure A-5 order dated 12-03-2004 issued by the Personnel Branch of the Headquarters office addressed to DRM/P/MAS, TPJ & PGT. It has been stated therein as under:-

"The names of selected candidates in the list enclosed are arranged in the order of merit. The candidates may be offered appointment strictly in the order of merit assigned to them taking into consideration the roster points."

(c) The names of the applicant in the above list figured in at serial Nos. 2, 5, 14, 10 and 12 respectively. The applicants were sanguinely hoping that their being deputed for the Probationary Asst. Master training would be strictly on the basis of the merit list. However, the first batch sent for training from 28-05-2004 to 17-09-2004 vide annexure A-6 order dated 7-5-2004 contained the names of those who stood in the merit list at Serial No. 1, 4, 6, 7, 9, 11, 16 and 18. The applicants having found their juniors being sent for training to their exclusion, penned representations to the Senior Personnel Officer, (Traffic), Southern

Railway, Chennai requesting that they too be sent for the training commencing from 28-05-2004. Annexure A-7 refers. This representation evinced no response. The next batch consisted of only one individual at serial No. 21 of the select panel (Annexure A-5) who was asked to attend the training vide Annexure A-8 order dated 23-07-2004 for the training which had already commenced from 16.07.2004. The applicants again represented but without any response. And, by this way, save the applicants and two more, all others were sent for pre-promotional training. Thus, aggrieved by the above act of the respondents, the applicants have moved this OA seeking the following main reliefs:-

- (i) To declare that the non appointment of the applicants to the post of Assistant Station Masters in scale Rs. 4500-7000 as illegal.
- (ii) To declare that the applicants are entitled to get appointment to the post of Assistant Station Masters in scale Rs. 4500-7000 from the date of appointment of their respective juniors in Annexure A5 with all consequential benefits.
- (iii) To direct the respondents to appoint the applicants to the post of Assistant Station Master in scale Rs. 4500-7000 from the date of appointment of their respective juniors in Annexure A5 and also direct further to grant all the consequential benefits including the arrears of pay.
- (iv) Award costs of and incidental to this application.

3.

Respondents have resisted the OA. Their stand is that the applicants were allotted

Palghat Division and thus they are entitled to posting in the grade of Asst. Station Master as per the vacancy position in that division. If they had any grievance in regard to allocation of Palghat division, they could have given in writing. In any event, as they were sent for training commencing from 22nd August, 2005 vide Annexure R-1 order dated 16-08-2005, the application has become infructuous.


4. The applicants filed a rejoinder, in which they had stated -

(a) Issue of Annexure R-1 order does not make the application infructuous as the relief sought therein is not merely for a direction to the respondents to send the applicants for training but also for a declaration that their appointment in the grade of Rs 4500 – 7000 be from the date of appointment to that grade of their juniors in Annexure A-5 with all consequential benefits and also for a direction to the respondents for such appointment and grant of consequential benefits.

(b) That they were allotted Palghat Division was not made known to them at the time when the panel was published nor at the time thereafter and in fact such an allotment of division is also against the provisions of Annexure A-1 notification, in particular the stipulation as extracted in para 2 above.

(c) The Annexure R-1 letter too was issued much later than the publishing of notification for the next Departmental Competitive Examination, vide Annexure A-12 order dated 08-04-2005!

(d) The respondents having not strictly followed their own notification, the same resulted in the juniors being promoted after training earlier than the applicants and thus the appointment of the applicants got delayed and even the seniority is affected.



5. The respondents in their additional reply annexed order dated 09.06.2005 (Annexure R-2) which is a letter offering appointment to the post of Asst. Station Master to the applicants, and order dated 20th January, 2006, as per which they were positioned in the post after training. Again, it has been stated in the additional reply that in so far as seniority for the post of Asst. Station Master is concerned, the same is on division basis as per Para 303 of the IREM and is strictly in the order of inter-se merit of the individuals posted in a particular division.

6. Counsel for the applicant argued that there must be a sanctity attached to the merit list. The applicants who were meritorious are the last appointees and the same has telescopically affected their career prospects. They should, therefore, be appointed to the post of Asst. Station Master from the date their juniors were appointed and consequential benefits afforded to them.

7. Per contra, the counsel for the respondents has submitted that now that the appointment has been made, the application in strict sense, has become infructuous.

8. Arguments were heard and documents perused. The notification is unambiguous and specific. *"Panel will be formed strictly in the order of merit on the basis of marks obtained in the written examination."* This means that the appointment shall be in the order of merit as per the panel, but as per the conditions attached, vide the Annexure A-1 notification *"the employees selected for appointment as Asst. Station Master on the basis of the General Departmental Competitive Examination are required to undergo the prescribed training and pass the test held at the end of the training."* Appointment

would, therefore, be subject to undergoing training and passing the test at the end of the training. Thus, training (and passing the qualifying test after training) being a pre-requisite for appointment, then sending the selected persons for training and subsequent positioning as Asst. Station Master should, if some sanctity is attached to the panel prepared strictly in the order of merit on the basis of marks obtained in the written examination, be strictly in the order of the panel. If it is not so, then apart from the fact that appointment of those who are at the top of the merit list but sent for training at a later date would be delayed, leading to their not drawing their legitimate higher pay and allowances during the period of such delay in their appointment, delayed appointment would telescopically delay their further promotion to the post of Station Master, Grade III, Grade II and Grade I, and thereafter as Station Manager (SMR). In the instant case, admittedly the applicants' position in the merit list^b as contained in para 2(c) above. Equally it is the admitted fact that the first batch of training consisted of at least two persons whose merit is lower than that of the applicants in the merit list of Annexure A-5. These persons would have been appointed much earlier than the applicants as Asst. Station Master, of course, in the division allotted to them. There is a stipulation of minimum 2 years of service as Asst. Station Master for promotion to the post of Station Master III, Thus, such individuals who were appointed first (though they were lower in the merit list) would complete their requisite years of experience earlier than those who were appointed later (though they were higher in merit list). The meritorious individuals, would then, not only not^{be} getting their pay at the higher post due to delay in their appointment, but telescopically their promotion to the higher grade is also affected.

Again, assuming that at Palghat there were no vacancies for a considerable time even till

the next batch exam is also conducted and persons qualifying therein are allotted some other division, what would then be the fate of such individuals who have been selected in the previous batch but posted to a division where vacancies did not arise? Such should not be the situation. Thus, the sanctity of merit list should be maintained. Reason for the situation as occurred in this case is obvious. Allocation of division of the selected candidates is not based on the availability of vacancies in the divisions. If the candidate ranking first in the merit list is allotted to the division where the vacancy arises first, obviously, he would be the first individual to be sent for training and accordingly, he would be the first to be appointed to the post of Asst. Station Master. This would undoubtedly maintain the sanctity of the merit list. This has not been followed by the respondents.

9. The question now is, 'What is the remedy?' In so far as the instant case is concerned, the applicants should be notionally appointed (but on regular basis) with retrospective date from the date their immediate juniors were appointed as Asst. Station Master, though in the different division and such a notional appointment should be taken into consideration both for the fixation of salary from the date they actually were appointed and also for seniority. The requisite experience of service for promotion to the post of Station Master Gr. III should in the case of the applicants be from the date of such notional fixation. This is permissible as held in the case of Union of India vs K.B. Rajoria, 2000(3) SCC 562, wherein the Apex Court has held,



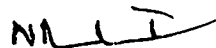
"12. The decision which is somewhat apposite is the case of K. Madhavan v. Union of India¹ where the eligibility requirement was eight years in the grade "on a regular basis". In that case it was held: (SCC p.575, para 10)

In our view, therefore, the expression 'on a regular basis' would mean the appointment to the post on a regular basis in contradistinction to appointment on ad hoc or stopgap or purely temporary basis."

10. Accordingly the OA is allowed. It is declared that the date of appointment of applicant as Asst. Station Master shall be the date from which each of the applicant's immediate junior has been appointed as ^{Asst} Station Master and such a notional appointment shall be taken into account to work out the next date of increment and their pay should be fixed actually from the date they had actually been positioned in the post of Asst. Station Master. Further, as a consequential relief, the applicants' seniority should also be effective from the date of notional promotion. Such a notional fixation of seniority would count for working out the requisite experience for higher promotion. Thus, the respondents are directed to pass suitable orders in regard to the date of appointment, fixation of pay actually and fixation of seniority on the above manner. This order shall be complied with, within a period of four months from the date of communication.

11. No costs.

(Dated, the 23rd October, 2006)



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K B S RAJAN
JUDICIAL MEMBER

cvt.