

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 307/90  
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199  
DATE OF DECISION 12.2.92

A Bhakthavatsalan

Applicant (s)

Mr Ashok M Cherian

Advocate for the Applicant (s)

Versus  
Chief Personnel Officer,  
Personnel Branch, Southern  
Railway, Madras, Tamil Nadu  
and others.

Respondent (s)

Mrs Sumathi Dandapani

Advocate for the Respondent (s) 1-3

CORAM :

The Hon'ble Mr. NV Krishnan, Administrative Member

and

The Hon'ble Mr. N Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. To be circulated to all Benches of the Tribunal? ✓

JUDGEMENT

Sh NV Krishnan, A.M

The applicant is now employed as a Senior Clerk in the Office of the Medical Superintendent Southern Railway, Trivandrum under Respondent-2. He is aggrieved by the fact that his seniority as Office Clerk has been fixed with reference to the assumed date (5.4.82) on his passing the examination at the end of the training course instead of from 13.11.80 from which date he was appointed as a Clerk after a regular selection.

2 The facts of the case are as follows:

2.1 The applicant started service as a casual labourer and was later regularised as Class IV employee in 1969 in the Medical Deptt. of the Southern Railway, Trivandrum. When applications were called

from Class IV employees for being considered for promotion as Office Clerk in Class III service, he applied and he was selected and empanelled for promotion to Class III service. Thereupon, he was promoted temporarily as Office Clerk against an existing vacancy from 13.11.80 by the Annexure A1 order of the Senior Divisional Personnel Officer, Trivandrum (Respondent-2) which made it clear that the promotion was purely on adhoc basis and that he would not have any claim for seniority etc.

2.2. Subsequently, by the Annexure A2 order dated 21.11.80, the Respondent-1 namely, the Chief Personnel Officer, Personnel Branch, Southern Railway, passed an order promoting the employees who had been empanelled for promotion to Class III service as Office Clerk against the prescribed promotional quota, purely on adhoc basis in their respective offices, making it clear that the promotions were adhoc and temporary and would not cover on them any claim for confirmation, seniority etc. It was also made clear that the <sup>above</sup> promotions were subject to the condition that the employees would undergo the promotional course at the Ministerial Staff Training Centre as and when deputed, failing which they were liable to be reverted to their parent office. The list includes 25 adhoc promotees of whom the applicant is at Sl.No.21.

2.3 The applicant was called for training and admittedly, he passed the training course in November, 1982 but as he not relieved for the earlier training course, the date of his passing the examination has been assumed to be 5.4.82

by the Department.

2.4 The applicant states that in the seniority list of 1981, the date of entry into Class III service was shown correctly in respect of the applicant as 13.11.80 and he was correctly assigned seniority on that basis. That seniority list has been produced by the respondents as Annexure R1 from which it is seen that the applicant is listed at Sl.No.66 with the remarks that he has been promoted on an adhoc basis.

2.5 However, in the seniority list as on 1.3.86, the extract of which has been filed as Annexure A3, the applicant is shown as Sl.No.8 in the category 'Clerks' and the date of entry into the grade has been shown as 25.10.82. In other words, he has not been given the seniority from the date of adhoc appointment as Clerk from 13.11.80.

2.6 He made a representation to which the Annexure A4 reply was given on 9th July, 86 wherein it was stated that his promotion on 13.11.80 was only on an adhoc basis which did not count for seniority. He could be treated as having been appointed regularly only on passing the examination after completion of his initial training. Though he passed the examination on 27.10.82, yet he has been given the assumed date 5.4.82 because he was not relieved for the earlier training course. Even after the revised date, his place in the Annexure A3 seniority as on 1.3.86 remained unchanged because his seniors also passed this examination on 5.4.82.

2.7 Not satisfied with this, he submitted representations, the last of which is Annexure A6 representation dated 9.5.88. This has been rejected by Respondent-1 on 12.1.89 by the impugned Annexure A7 letter.

2.8 The applicant contends that his seniority should be counted from 13.11.80, in which case, he would be senior as Clerk to the contesting Respondent 4 to 18, of whom, Respondents 16 to 18 have been placed above him in the category of Clerks in the Annexure A8 provisional seniority list as on 1.4.89 and Respondents 4 to 15 have been placed in the same list in the higher category of 'Senior Clerks' at Sl.No.24 to 35.

3 Aggrieved by the failure of Respondents 1 to 3 to give him a proper place in the seniority list, he has filed this application seeking the following reliefs:

- "(1) Call for records leading to Annexure A7 Letter No.P(S) 612/A/VIII/4/Vol.II dated 12.1.1989 and set aside the same;
- (ii) Declare that the applicant is entitled to get his seniority in the clerical cadre in Medical Branch of Southern Railway reckoned from 13.11.1980;
- (iii) Direct the respondents 1 to 3 to make necessary corrections in Annexure A-8 seniority list by ranking the applicant above the name of the 4th respondent.
- (iv) Direct respondents 1 to 3 to extend benefits to the applicant consequential to reckoning seniority with effect from 13.11.1980 in clerical cadre."

4 Respondents 1 to 3, the Department for short, have filed a reply. The contesting respondents have neither filed any reply nor did they appear before us in the final hearing.

5 The Department has stated in the reply that the adhoc promotion given to the applicant will not count for

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seniority because, according to the instructions of the Railway Board dated 28.5.81 (Exbt.R2), absorption on regular basis of both direct recruits and promotees will be only after they pass the necessary examination after training. Para 2(2) of that letter is reproduced below:

"(ii) The initial training will be both for directly recruited clerks and departmental promotees from Class IV. The absorption of directly recruited clerks would depend upon their passing the necessary examination. For this purpose they should be given a maximum of two chances. In case of promotee clerks, they will be treated as regular only on their passing the necessary examination after the initial training. It should further be made clear to such Class IV promotees that in case they would not qualify in two chances, their seniority in Class III would count only from the date of qualifying in the subsequent tests to be held for the purpose."

Therefore, it is on the basis of this circular that the regular service of the applicant as Senior Clerk has been counted from 5.4.82 which is the assumed date on which he has passed the examination.

6 In the circumstance, the Deptt. contends that the application has no merit and has to be rejected.

7 We have heard the counsel on both sides and perused the records. Obviously, the only question is whether the applicant can stake a claim that his seniority should be given from the date of his adhoc promotion. In this regard, the learned counsel for the applicant states that this is not an adhoc promotion as ordinarily understood. He was first regularly selected and empanelled, which is a fact admitted by the respondents in their reply. Therefore, though it is termed as adhoc promotion it is as good as a regular promotion, the subsequent training being only a formality.

8 We notice that at the relevant time, the applicant was in the Trivandrum Division. The seniority lists of the clerical staff of the Medical Branch as on 1.8.81 (Annexure R1), 1.3.86 (Annexure A3) and as on 1.4.89 (Annexure A8) are not in respect of the clerical staff of the Medical branch of a particular Railway Division only, but it is the seniority list of the clerical staff of the entire zonal railway. If there was a separate seniority list prepared for the Trivandrum Division only, perhaps, the applicant could have had claim that having been regularly empanelled by Respondent-1, he should be given weightage for the adhoc promotion from 13.11.80. That is not the case here. The seniority list includes clerical staff of the entire southern Railway which includes various Divisions, like Trivandrum, Palghat, Madras and Mysore etc. There is no guarantee that in each of the Divisions, vacancies were similarly available to accommodate the empanelled persons on an adhoc basis, according to their own rank. It could happen that while the applicant, having been selected, got the benefit of adhoc appointment from 13.11.80 in Trivandrum Division, his senior in the empanelled seniority list and working in some other Division, would not have been so fortunate due to the absence of such a vacancy for adhoc appointment. In fact, the Annexure A2 order of the Respondent-1 promoting on an adhoc basis, some of the employees regularly empanelled as a Clerks does not include,

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for example, the Respondent 4 & 5 and many others.

Therefore, purely on rational considerations, no weightage can be given to the adhoc appointment, because such an opportunity was not available to all the empanelled persons according to the order in which they were empanelled and it will be highly inequitable to take the date of adhoc promotion for seniority in these circumstances.

9 It, therefore, stands to reason that to have uniformity, the seniority should be based on the date on which the empanelled persons passed the training examination. Therefore, this condition stipulated by the Railway Board that seniority will count only from the date of passing examination appears to be quite correct.

10 However, the learned counsel for the applicant points out that this claim has no basis if the provisions at Exbt. R2 extracted in para-5 above are examined carefully. The extract makes it clear in case of direct recruits that their absorption after the initial training will depend upon their passing the necessary examination for which they will be given two chances. In the case of promotee clerks also it is stated that they will be treated as a regular only after passing the necessary examination after the initial training. A further provision is that in case they do not qualify in two chances, their seniority will count 'from the date of qualifying in the subsequent test' to be held for the purpose. Thus, if they miss the first

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two chances, it is made ~~very~~<sup>clear</sup> clear that, thereafter, the date on which they passed examination in future will alone be taken for reckoning seniority. The point made by the learned counsel is that if they pass the examination in the first or second attempts, the instruction does not unequivocally state that it is the date of examination that will count for seniority. Therefore, he wants us to infer from this apparent omission that even the Railway Board's circular does not state that seniority should be counted from the date of passing the examination.

11 We have considered this ingenious plea. We find that it is without any substance. Both in the case of direct recruits and promotees two chances have been given for passing the examination and their regularisation would depend on their passing the examination. Though there is no specific directions that they will be regularised from the date of passing the examination, that is the effect of this circular. The only difference is that if direct recruits do not pass the examination in two chances, perhaps, they will be discharged from the probation for, there is no provision for allowing them any additional chances. In the case of promotees, there is a provision for additional chances. This is the only difference. The absence of a stipulation, that promotees who pass the examination in the first two chances will be regularised from the date on which they pass the examination, is not to be mistaken for a direction that they would be regularised from the date of their adhoc

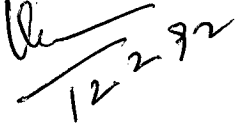


appointment, if any, preceeding such passing.

12 For the aforesaid reasons we find no merit in  
this application which is dismissed.

  
(N Dharmadan)  
Judicial Member

12.2.92

  
(NV Krishnan)  
Administrative Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. RA 42/92 189  
P. A. No.

in OA 307/90

DATE OF DECISION 6-4-92

Mr. Bhakthavaisalan Applicant (s)

Mr. Ashok M. Cherian Advocate for the Applicant (s)

Versus

Chief Personnel Officer, Respondent (s)  
Southern Railway and another

Smt. Sumathi Dandapani Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.V. Krishnan, Administrative Member

The Hon'ble Mr. N. Dharmadan, Judicial Member

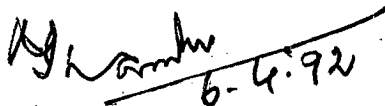
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JUDGEMENT

We have seen the R.A. We are satisfied that it can be disposed of by circulation.

We do not see any ground raised pointing to an error apparent on the face of the record.

The R.A. deserves to be dismissed and we do so.

  
(N. Dharmadan)  
Judicial Member

  
(N.V. Krishnan)  
Administrative Member