

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 31/2009

Tuesday this the 3rd th day of March, 2009

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**HON'BLE DR K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

E. Rajendran, Adhoc Clerk
Southern Railway,
S.S.E. Office (C&W)
Kannur.

Applicant

By Advocate Mrs. Aysha Youseff

Vs

- 1 Senior Divisional Personnel Officer
Southern Railway, Palghat.
- 2 Chief Personnel Officer
Southern Railway, Chennai
- 3 Union of India represented by the General Manager
Southern Railway, Chennai.
- 4 Shri Kunjikrishnan T
Office Clerk
Office of the Senior Section Engineer Office (C&W)
Kanganadi, Mangalore
- 5 Sri Kumaran P.
Office Clerk
Office of the Senior Section Engineer Office(C&W)
Kanganadi, Mangalore
- 6 Shri Govinda B.
Office Clerk
Office of the Senior Section Engineer Office(C&W)
Kanganadi, Mangalore
- 7 Shri K.K. Nanu
Office Clerk
Office of the Senior Section Engineer (Electrical)
Mangalore

Respondents

By Advocate Mr.Thomas Mathew Nellimoottil for R 1-3

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The Application having been heard on 18.2.2009 the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant is aggrieved by Annexure A-7 and A-10 orders dated 29.4.2008 and 5.1.2009 by which the private respondents have been promoted as Office Clerks and the applicant was reverted ignoring his seniority/claim.

2 The facts in brief are as follows: The applicant entered service as a casual employee on 22.2.1979, conferred with temporary status on 22.12.1979. Later his service was regularised as Gangman in 1987. While so, along with the 7th respondent he was selected for promotion as Office Clerk against 33 1/3% promotion quota (A-1), posted in the Mechanical Department in the office of the Loco Foreman Diesel, Erode. While continuing there, the appointment of the applicant and similar persons as Office Clerk was challenged before this Tribunal in O.A. 600/91 and connected cases which were disposed of on 15.11.1993 holding that the applicants were not eligible to be considered under the 33 1/3% quota as they were Gangman with avenue for promotion. It was further observed therein that such persons may be allowed to continue in their present post until a decision is taken. The respondents decided to remove the applicant as well as other similarly situated persons from the panel. This was challenged in O.A. 1031/04 which was disposed of directing the respondents to consider waiver to appear in the test. In spite of the aforesaid observation the applicant and similarly situated persons were reverted. Against this the applicant and the 7th respondent filed O.A.

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752/06 which was disposed of directing to dispose of the representation of the applicants. In the meanwhile, another O.A was filed seeking exemption from appearing for the test again. As directed by the Tribunal the CPO permitted the applicant and 7th respondent to continue as Office Clerk on ad hoc basis and that they were deemed qualified in the subsequent selection held but they cannot claim seniority by virtue of their earlier promotion or continuance on ad hoc promotion. It so happened that no selection was held for more than a decade. So the applicant was requesting to promote him on a regular basis as Office Clerk. Subsequently A-6 notification for filling of vacancies of Works Branch Clerk were called for. As a matter of fact, it has been clearly stated that the applicant and the 7th respondent are deemed qualified. In spite of all these, applicant's name did not figure in the panel of selected employees whereas the respondents 4 to 7 have been included. Applicant submitted Annexure A-9 representation which were followed by reminders. While so on 12.1.2009 the applicant was reverted from the post of Ad hoc Clerk as Store Watchman (A-10). The applicant challenges the promotion of the party respondents and his reversion on the following grounds:

- (i) In view of A-4 order the applicant is considered as qualified and hence non-inclusion of his name in the panel for promotion is illegal.
- (ii) The respondents have not properly verified the service records of respondents 4 to 6 before empanelling them. The applicant acquired temporary status in 1979 while the respondents 4 to 6 acquired temporary status later. Therefore, non-inclusion of the applicant in the panel for promotion is arbitrary and discriminatory.

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(iii) In Annexure A-6 notification applications were called for from Trackman, Gatekeeper, etc. having SSLC and above for promotion to Work Branch Clerk against 33 1/3% quota. The 4th respondent who belongs to Store Chaser which is not a feeder category mentioned in A-6, is not eligible for promotion as Office Clerk.

(v) As per A-6 four vacancies of Office Clerks were notified in Works Branch but respondents 4 to 6 were posted in Mechanical Department and 7th respondent was posted in Electrical Department. So the vacancies in the Works Branch are still existing. The applicant was continuing on adhoc basis. Therefore the applicant was denied promotion.

(vi) When the applicant has requested for promotion the 1st respondent is not at all justified in ordering reversion.

(vii) Applicant has been continuing on adhoc basis from 1991 therefore, the reversion at this distance of time has caused serious prejudice to the applicant.

(viii) The regular selection was held only after more than 15 years. Viewed from this angle there is no possibility of conducting any selection before the retirement of the applicant. Therefore, after rendering service as Office Clerk for more than 17 years it is causing mental agony to the applicant.

3 The respondents have filed reply statement resisting the claim of the applicant. They have submitted that the applicant along with others had participated in the selection notified for the post of Office Clerks against 33 1/3% promotion quota earmarked for promotion of Group-D employees to Group-C post in 1991 and they were selected (A1). Against the above selection affected employees filed O.A.600/91 which was allowed and the select panel dated 10.4.1991 was quashed. Challenging the showcause

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notice, the applicant and others filed O.A. 1031/94 which was allowed stating that if the applicants are otherwise eligible they may be considered for promotion on the basis of the test already passed by them in 1991. The respondents have disposed of their representations holding that the applicants are ineligible persons who were empanelled and till such time regularly selected person is posted they were allowed to continue as ad hoc Clerk and they were also permitted to participate in the selection to be held in 1996 as qualified candidate and they will be directly considered for empanelment based on the inter se seniority among the qualified personnel. After 1996 the selection for the post of Clerk against 33 1/3% promotion quota was notified on 6.12.2006 for four vacancies. The applicant and the 7th respondents were considered along with other qualified personnel. The applicant against the notified vacancy of two stood at No.3 against UR post could not get replacement (R1). As regards promotion of Shri T. Kunhikrishnan Sr. Trackman to Clerk in the Works Branch, they have submitted that Shri T. Kunhikrishnan was working as Stores Chaser on ex cadre post applied for the selection and stood at No.1 Since employees participating in the said selection are from different grades, the common scale of Group-D employee i.e. Rs. 2650-4000 was fixed for reckoning inter-se seniority among the qualified candidates and accordingly Shri T. Kunhikrishnan who entered on 25.6.1984 was placed at No. 1 and Shri Nanu who has entered on 6.8.1986 as No.2, the applicant who entered on 15.7.1989 stood at No. 3. As there were only two UR vacancies, the applicant could not be selected. They submitted the contention of the applicant that the date of entry in the service shall be taken into account for assigning seniority for placing in the panel is against the principle laid down in Para 320 of IREM Vol.I. As the regularly selected persons are available, the continuance of the applicant on ad hoc

74

basis is against the rules. Hence he was reverted.

4 The applicant in his rejoinder submitted that he has already been declared as deemed qualified and there are still vacancies available to accommodate him. Therefore, the reversion of the applicant who was continuing on adhoc basis for more than 17 years is absolutely illegal and arbitrary. He also reiterated the averments in the O.A.

5 We have heard the learned counsel for the parties and have gone through the pleadings.

6 The learned counsel for the applicant submitted that the applicant along with similarly situated persons were selected and appointed on promotion as Office Clerk w.e.f. 17.7.1991. When it was decided to revert the applicant he filed O.A. 1031/94 and the Tribunal directed not to penalise the applicants by making them to appear in the same test again. In spite of the aforesaid observation, the respondents decided to revert them. The applicant has been continuing as Office Clerk on adhoc basis for the last 17 years. The counsel submitted that had the applicant been informed about the possibility of his reversion, he would have opted for Salem Division. Therefore, the counsel argued that the applicant could not be reverted when vacancies of Office Clerk are available.

7 The learned counsel for the respondents on the other hand argued that the applicant being appointed on ad hoc basis has no indefeasible right to continue on adhoc service. More over there is no regular vacancy to accommodate him.

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8 This is the fourth time that the applicant is approaching this Tribunal for redressal of his grievance. We notice that though the applicant being a regular Gangman has separate avenue of promotion, the respondents themselves allowed the applicant to participate in the selection notified for the post of Office Clerk against 33 1/3% promotion quota earmarked for Group-D employees. *Prima facie*, we are of the opinion that the respondents were sure that Gangmen are eligible to appear for the examination. Their stand has changed because of the orders of this Tribunal in O.A.600/1991. The applicant was deemed to have qualified in the examination, exempted from passing the examination and also permitted to continue in the post on ad hoc basis and that his future empanelment based on deemed qualification will be permissible according to his seniority among qualified personnel to be placed in the panel. Therefore, according to us the applicant could continue in the post of Office Clerk as long as there is vacant post and there is shortage of qualified hands and he cannot be replaced by another ad hoc hand. Therefore, the first thing is to ascertain whether there is a vacancy of Office Clerk as intimated by the applicant.

9 The applicant has filed M.A. 121/2009 to direct the respondents not to fill up the vacancy of Office Clerk that has arisen consequent to the reversion of applicant. According to the applicant there are vacancies in Work Branch etc. and that there are new offices opened in various places in Palghat Division like office of Permanent Way Inspector, Tirur, Crew Booking Office, Kozhikode etc. A few of which are managed by technical staff. The respondents have not denied this averment, even though a mention was made about reduction in number of posts at Kannur.

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10 In this view of the matter, after careful consideration of the pleading and after hearing the both sides, we are of the opinion that this O.A can be disposed of with direction to the second respondent to locate a post of Office Clerk lying vacant or managed by technical hands anywhere in Palghat Division and in the event of such a vacancy, ^{being available} ^{the second} ^h respondent shall look into the matter afresh and consider the appointment of the applicant to the vacant post of Office Clerk. Till such a decision is taken and communicated to the applicant, Annexure A-10 reversion order shall be kept in abeyance. The O.A is disposed of as above. There shall be no order as to costs.

Dated 3rd March, 2009.


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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DR. K.B.S. RAJAN
JUDICIAL MEMBER