

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 312 of 2011

Tuesday, this the 20th day of December, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

P.S. Easwaran, aged 47 years,
S/o. P.L. Subramanian,
Technician Gr.I/Over Head Equipment/
Traction Distribution wing/Southern Railway,
Trichur Railway Station & P.O.,
Residing at : "New Village",
Kollengode, Palghat District,
Pin-678 506.

Applicant

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. Union of India, represented by the General Manager, Southern Railway, Headquarters Office, Park Town P.O., Chennai-600 003.
2. The Divisional Railway Manager, Southern Railway, Trivandrum Division, Thiruvananthapuram – 695 014.
3. The Sr. Divisional Personnel Officer, Southern Railway, Trivandrum Division, Thiruvananthapuram – 695 014.
4. The Chief Personnel Officer, Southern Railway, Headquarters Office, Park Town P.O., Chennai – 600 003.
5. Shri P. Haridas, Technician Gr. I, Over Head Equipment/Traction Distribution/ Southern Railway, Trichur RS & PO, Pin – 680 001.
6. Shri P.P. Kuriakose, Technician Gr.I, Over Head Equipment/Traction Distribution/

Southern Railway, Chalakudy RS & PO,
Pin – 680 307.

7. Shri K. Murali, Technician Gr.I/Power Supply
Installation/Southern Railway/Eranakulam Junction,
Cochin-682 016.

8. Shri A. Viswanathan, Technician Gr. I,
Over Head Equipment/Traction Distribution/
Southern Railway, Trichur RS & PO,
Pin – 680 001. **Respondents**

(By Advocate – Ms. P.K. Radhika)

This application having been heard on 20.12.2011, the Tribunal on the same day delivered the following:

ORDER

By Hon'ble Mr. Justice P.R. Raman, Judicial Member -

The dispute raised in the OA is regarding inter se seniority between the applicant and the party respondents 5 to 8. The applicant and party respondents were working as Commission Vendors. The applicant was appointed as a Commission Vendor by Annexure A-1 order dated 15.6.1982. His date of absorption is taken as 15.6.1982. Subsequently all the Commission Vendors were absorbed in the regular service of the Railway for which a screening test was conducted and those found suitable were arrayed in a list Annexure A-4. Annexure A-4 is a list of commission vendors and seniority is assigned on the basis of date of absorption. The applicant's date of initial absorption is shown as 15.6.1982, whereas the respondents were shown below that of the applicant since their date of initial absorption is subsequent to the date of absorption of the applicant. In Annexure A-3 seniority list also the applicant is shown as against serial No.



245, whereas respondents 5 to 7 have been assigned serial Nos. 292, 257 and 272 respectively whereas respondent No. 8's name is not included in the list since he was appointed later. Subsequently, vide Annexure A-5 order subject noticed as appointment and posting as Electrical Khalasi in TRD organization, wherein reference is also made to Annexure A-4 letter dated 24.12.2000, the applicant is shown at serial No. 5 and respondents are shown at serial Nos. 1 to 4. When reference is admittedly made on 24.12.2000 and the applicant is arrayed at serial No. 5 it is something which is to be explained by the respondents. According to the applicant he being senior going by the date of absorption the respondents could not have been arrayed as senior to the applicant. He filed representations/objections to Annexure A-5 but no fruitful results yielded out of the same. Subsequently, a provisional seniority list is also published in tune with Annexure A-5. Since no orders have been passed considering the representations/objections of the applicant, he approached this Tribunal by filing this OA.

2. In the reply statement the respondents have specifically averred that Rule 304 of IREM Volume-I is applicable in the case of the applicant. Rule 304 of IREM Volume-I is reproduced below:-

“304. When two or more candidates are declared to be of equal merit at one and the same examination/selection, their relative seniority is determined by the date of birth, the older candidate being the senior.”

3. It is pointed out by the applicant that Rule 304 has no application in his case as this rule stipulates that when two or more candidates are declared to be of equal merit at one and the same examination/selection, their inter se seniority is to be determined by this rule. Here admittedly based on the

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screening test their suitability was determined and the list is prepared based on the date of absorption. Thus, the applicant contends that in his case Rule 303B is applicable. The same is extracted below:-

“303(b) In the case of candidate who do not have to undergo any training in training school, the seniority should be determined on the basis of the merit order assigned by the Railway Recruitment Board or other recruiting authority.”

4. We do not think that Rule 303(b) also got any strict application because here also the seniority is determined not based on the merit order assigned but based on the date of initial absorption. In the absence of any other thing, the date of absorption should be the criteria for determining the inter se seniority between the applicant and the party respondents unless the case is governed by any other specific rules provided in the IREM. As we have already found that the rule which the respondents heavily rely i.e. Rule 304, has no application and in the absence of any other criteria to be followed and the respondents themselves having chosen to prepare the seniority on the basis of date of initial absorption on which there is no dispute, it is contended by the applicant that he should be declared as senior to the party respondents.

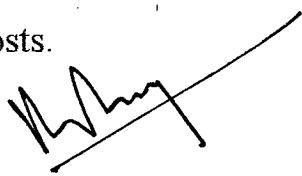
5. In so far as Rule 304 is held to be inapplicable to the factual situation and in the absence of any other specific rule the preparation of the seniority based on the date of initial absorption as commission vendor though at that time they have not been absorbed in Railway cannot be rejected in toto. Annexure A-5 list has been prepared in tune with Annexure A-4 list. Hence, there is no scope for considering that their initial appointment has no relevance in deciding the seniority. The respondents prepared the list

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Annexure A-3 and A-4 based on the date of their initial absorption as commission vendors. Thus, the same should be the very basis for fixing the inter se seniority. If that be so there is no other good grounds to change the basis of seniority i.e. the date of their initial absorption as commission vendors. In the absence of any other material, we declare that the applicant is senior to respondents Nos. 5 to 8. The official respondents shall take the follow up action accordingly.

6. Original Application is allowed. No order as to costs.


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

“SA”