

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 32 OF 2006

Dated the 13th DAY of November 2007

CORAM:-

HON'BLE SMT. SATHI NAIR, VICE CHAIRMAN
HON'BLE Dr. KBS' RAJAN, JUDICIAL MEMBER

1. K Raghavan,
Son of late E Narayana Menon,
Deputy Chief Yard Master, Southern Railway,
Control Office, Palaghat,
Residing at 'Charutha'
49, Rail Nagar, Palaghat-678 002.
2. M. Badaruddin,
Son of late M. Mohammed Sahib,
Deputy Chief Yard Master, Southern Railway,
Control Office, Palaghat,
Residing at 256 A,
Railway Colony, Palaghat-678 009.

.. Applicants

[By Advocate: Mr Shafik M.A.]

-Versus-

1. Union of India,
Represented by Secretary, Ministry of Railways,
Railbhavan, New Delhi.
2. The General Manager, Southern Railways,
Headquarters Office, Chennai-3.
3. The Divisional Railway Manager,
Southern Railway, Palghat Division, Palghat.
4. The Senior Divisional Personnel Officer,
Southern Railways, Palghat Division, Palghat.

.. Respondents

[By Advocates: Mr Varghese John for Mr. T.M.Nellimoottil)

This application having been heard on 24th October, 2007 the Tribunal delivered the following -

ORDER

(Smt. Sathi Nair, Vice Chairman):

The applicants were presently working as Deputy Chief Yard Managers (for short Dy.CYM). They were empanelled for promotion to the post by Annexure-A/4 orders issued by the 4th Respondent. The 1st applicant, who was on deputation, had received the order belatedly, therefore, he could join the post on 4.3.93 and the 2nd applicant joined on 11.2.93. While so, a seniority list of Yard Staff in the Cadre of DCYM, YM and AYM of the Palghat Division was published by Annexure-A/6 order dated 24.11.98 by the 4th Respondent and the position of the applicants has been shown therein on the basis of their seniority reflected in the order of empanelment. Thereafter, the Railway issued the Annexure-A/7 circular dated 9.10.2003 merging the cadre of Yard Managers and Station Masters alongwith other related categories like Traffic Inspectors etc. as part of restructuring taken in the Railways. The seniority of the candidates on the basis of their relative seniority in the respective cadres is fixed as per the provisional seniority list dated 26.11.04 (Annexure-A/1) published by the 4th Respondent below their juniors. The applicants' names were shown at Serial 21 and 22 respectively. The applicants have also aggrieved by Annexure-A/2 and A/3 orders of 4th Respondents rejecting the

claim for correction of seniority and placement of their names over Serial No.8 to 20 in the said seniority list.

2] The main grounds on which the applicants have challenged the provisional seniority list are that the persons from Serial No.8 to 20 have been empanelled with retrospective effect from 1.3.93 even though the panel was approved and issued only on 26.5.93, that too due to restructuring and on up-gradation of the posts. Para 306 of the Indian Railway Establishment Manual, Vol. I reads that- "*Candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the dates of posting except in the case covered by Paragraph 305 above.*" The length of service of the applicants, which are longer than their juniors shown at serial No.8 to 20, except Serial No. 15 and 20, all others have joined the Department much later than the applicants, who joined in 1980s. Since the applicants are inducted into the cadre of Deputy Yard Masters in the year 1985 itself, the Respondents ought to have placed them on the basis of the actual date of entry in the cadre, instead of refusing the seniority as claimed by the applicants. The following reliefs have been sought by the applicants in this original application:

"(i) To call for the records relating to Annexure-A/1 to A/10 and to quash Annexure-A/2, A/3 and A/1 to the extent it places juniors who have empanelled later above the applicants, being illegal and violative of the Rules;

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- (ii) To declare that the applicants are entitled to be placed in Annexure-A/1 provisional seniority list above persons at serial No.8 to 20 therein and to direct the respondents to place the applicants in Annexure-A/1 provisional seniority list above persons at serial No.8 to 20 with all consequential benefits of further promotions;
- (iii) To pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case; and
- (iv) To award costs of, and incidental to this allocation."

3] Reply statement and Additional reply have been filed by the Respondents. Rejoinder has also been filed by the applicants.

Learned counsel for the applicants has submitted that the applicants were selected for appointment by an earlier selection, prior to the persons at serial No.8 to 20 in Annexure-A/1, thereafter, as per para 306 of the Indian Railway Establishment Manual Vol. I they are seniors and liable to be placed in the seniority list above the persons at 8 to 20, who have been promoted with effect from 1.3.93. The respondents have furnished the service particulars of the applicants and admitted the promotion of the applicants as Dy. Chief Yard Master in the pay scale of Rs. 6500-10500/- vide Annexure-A/5 order. It is also admitted that though the 2nd applicant had joined on an earlier date, the 1st applicant is senior to him in the category of

Dy. CYM by virtue of his position in the panel (Annexure-A/4). It is also admitted that by Annexure-A/7, the cadre of Station Master (SM), Yard Master (YM) and Traffic Inspector (TI) have been merged into a unified cadre and according to the instructions these cadres have to be merged by integrating the seniority of the employees working in respective grades with reference to the length of non fortuitous service in the relative grade keeping the inter-se-seniority in the respective groups intact. This date of entry in the relevant grade on regular basis duly maintaining the inter-se-seniority of the respective group is the criterion for deciding the seniority. The grade of Dy. Yard Master is Rs. 5000-8000, whereas the bone of contention is the date of entry to grade of Rs. 6500-10500/. Therefore, the para 306 of the Indian Railway Establishment Manual is not applicable and persons at serial No.8 to 20 were promoted to the scale of Rs. 65000-10500/- w.e.f. 1.3.93, whereas the 1st applicant had assumed the responsibility as Dy.CYM in the pay scale of Rs.6500-10500/- on 4.3.93. Hence, serial No.8 to 20 were assigned the position above the applicants. Therefore, according to the Respondents, the seniority position granted to the applicant is fully in order. Further, the respondents have submitted that Annexure-A/1 seniority is a provisional one due to pendency of various cases before the Hon'ble Supreme Court, High Courts and Tribunal. However, there is no bar in operating the list for further promotion, but such promotions will be subject to the final outcome of the cases pending before the

Courts. The statement of the applicants that they were not considered for promotion in the pay scale of Rs. 7450-11500 is not fully correct as is clear from the Annexure-R/1 order dated 3.2.2006, where the Respondents have called for a list of persons in order of seniority eligible to take written test.

4] The applicants have filed rejoinder reiterating that the Annexure-A/1 provisional seniority list has been prepared in violation of Para 306 of the Indian Railway Establishment Manual, which is *ex facie* arbitrary and illegal. The persons whose names have been placed at Serial 8 to 20 in the said provisional list were empanelled with retrospective effect from 1.3.1993 in the scale of Rs. 6500-10500/-, even though the panel was published on 26.05.93 due to restructuring and up-gradation of the posts. Hence, they cannot be shown seniors to the applicants, who are empanelled earlier.

5] We have heard Mr Shafik MA, learned counsel for the applicants and Mr. Varghese John, learned counsel for the respondents.

It is an admitted position that the Annexure-A/1, the impugned seniority list, is only a provisional seniority list and any promotion made on the basis of this would be subject to the outcome of the SLP pending before Hon'ble Supreme Court and Writ Petitions pending before Hon'ble High Courts and various benches of this Tribunal. Keeping aside the legal question, the short question for determination is the seniority of the applicants, *vis-a-viz.* the persons shown at serial 8 to 20 in the

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Annexure-A/1 and whether the list has been prepared correctly fixing the basis of the inter se-seniority. The method of fixing inter-se-seniority has been provided in the restructuring order of Annexure-A/7 issued by the Railway Board on 9.10.2003 in which various categories of Group-C and D have been merged or restructured in accordance with the revised percentages. This order also introduced the concept of multi skilling by merging different categories performing similar functions. Para 10 of the order relates to merger of Station Master/Assistant Station Masters, Yard Masters and Traffic Inspectors into one unified cadre of SM/ASM, which inter alia, provides for determination of seniority in the following manner:- *"The categories indicated herein will be merged by integrating the seniority of the employees working in respective grades with reference to length of non fortuitous service in the relevant grade keeping the inter-se-seniority in the respective group intact."* In pursuance of this instruction, the impugned seniority list of the restructured cadre of Station Master/Assistant Station Masters, Yard Masters and Traffic Inspectors into one unified cadre of SM/ASM in different scale as on 1.11.2003 has been issued. At the time of issue of this seniority list, the applicants, who were in the group of Dy. CYM in the scale of Rs. 6500-10500/- had entered in that grade, i.e. the first applicant on 4.3.93 and the second applicant on 11.3.93. However, the first applicant being senior by virtue of higher position in the empanelled list in accordance with the instructions quoted above, the inter-se-seniority between him and

the 2nd applicant has been maintained keeping their inter-se-seniority in their respective group intact. The applicants have no quarrel with this seniority though the respondents have elaborately referred to this point. In fact, their entire reply is devoted this aspect of the seniority of these two applicants, whereas this was not the issue under challenge at all. The main point under challenge is the inter-se-seniority of the persons, whose names appear from sl. Nos. 8 to 20, vis-à-vis., the applicants, on which the respondents have not dwelt at all, but in the Additional Reply they have briefly pointed out that these persons were given promotion with retrospective effect from 1.3.1993 due to restructuring even though the panel for promotion was published on 26.5.93. Hence, the seniority as per para 306 of the IREM cannot be made applicable in such cases. Even if para 306 is not applicable, the provisions of para 10 of Annexure-A/7 (quoted Supra) are clear on this aspect, according to which the applicants' seniority has to be fixed with reference to the length of non fortuitous service in the relevant grade keeping the inter-se-seniority in the respective group intact. Hence, the retrospective seniority granted to the employees due to restructuring or otherwise cannot be termed as non fortuitous service, as these employees had not worked in their respective cadre and have obtained this promotion on account of fortuitous circumstances, when the applicants herein have been regularly promoted to the post of Dy. CYM in the scale of Rs.6500-10500/- and had been working in this grade at the time of merger. Hence,

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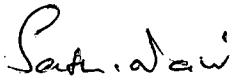
placing these employees at Sl.8 to 20, above the applicants, is prima facie irregular and not in conformity with the direction in para 10 of Annexure-A/7 orders.

6] In fact, the reply given to the Annexure-A/2 and A/3 impugned orders by the Respondents referred to only the inter se-seniority of the two applicants and it does not state anything about their claim vis-à-vis, group of Station Masters at serial Nos. 8 to 20. The respondents have conveniently glossed over the issue. Hence, we quash the Annexure-A/2 and A/3 orders with a direction to the Respondents to re-fix the seniority of the applicants in accordance with the observations made herein above, by following the prescribed procedure of giving show cause and notices etc. However, as Annexure-A/1 is still a provisional seniority list and subject to the outcome of the SLP before Hon'ble Supreme Court and writ petitions before Hon'ble High Courts and other various Benches of this Tribunal, we make it clear that this order and any further action on the basis of this seniority list will be subject to the outcome of the cases referred to above.

The original application is accordingly disposed of. No costs.



(Dr. KBS Rajan)
JUDICIAL MEMBER



(Sathi Nair)
VICE CHAIRMAN