

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 318 OF 2010

Tuesday, this the 11th day of October, 2011

CORAM:

**HON'BLE Dr.K.B.S RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

R.T Busharamani
Senior Sweeper-cum-Porter
Southern Railway
Varkala Railway Station - Applicant

(By Advocate Mr.P.K Madhusoodhanan)

Versus

1. Senior Divisional Personnel Officer
Southern Railway
Divisional Office
Personnel Branch
Trivandrum – 14
2. The Chief Personnel Officer
Southern Railway
Park Town, Chennai – 3
3. Union of India through the General Manager
Southern Railway, Park Town, Chennai-3 - Respondents

(By Advocate - Mrs.Sumathi Dandapani, Sr. & Mr.Thomas Mathew Nellimoottil)

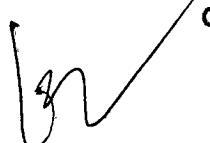
The application having been heard on 26.09.2011, the Tribunal on 11.10.2011 delivered the following:



ORDERHON'BLE Dr.K.B.S RAJAN, JUDICIAL MEMBER

1. The applicant is a Group D employee in the Railways who was eligible for taking part in the competitive examination for Group C post of Ticket Collector. Steps were initiated by the first respondent on 27.11.2002 to conduct selection to fill up 13 Group C posts of Ticket Collectors and two posts of Train Clerks in the scale of pay of Rs.3050-4590 against 1/3 promotion quota from eligible group D employees. Subsequently there had been some change in the number of posts to be filled up as notified on 03.07.2003 vide Annexure A-1. The applicant secured 68.50% but had not been empaneled for promotion. This resulted in the applicant's filing the O.A 146/06, which was disposed of on 08.02.2007 vide Annexure A-2. Para 11 of the said order reads as under:-

“ 11. Accordingly, we quash and set aside the impugned Annexure A4 letter dated 9.4.2005 by which the Respondent Railways has selected the respondent employees and placed them in the panel for the post of TC/TNC in the scale of Rs. 3050-4590 against 33 1/3rd quota from Group-D from Traffic and Commercial Department of Trivandrum Division as recommended by the selection board. The respondents 1 to 3 are directed in the first instance to prepare the seniority list/eligibility list of the Group-D Staff entitled to be considered for selection to the post of TC/TNC in the scale of Rs. 3050-4590 of the 33 1/3rd quota vacancies and thereafter prepare the year wise separate panels for the year wise vacancies. For preparing the year-wise panels, only those vacancies which have arisen during that year alone should be taken into account and only those candidates who were eligible during that year should only be considered and the confidential reports subsequent to



that year should not be taken into account in their case. The marks obtained by the candidates in the written test and interview shall remain the same. In the present facts and circumstances of the cases the employees who have already been selected and or promoted shall be allowed to continue till the annual panels are prepared and published on the above lines. However, any of the candidates who are not included in any of the panels should be reverted to give place to the empanelled officials. The respondents are at liberty to allow such reverted employees to continue on adhoc basis, if necessary till the vacancies in the subsequent years are filled. They would also be entitled to participate in the selection if they are not disqualified otherwise. The respondents shall prepare and publish the seniority/eligibility list as directed above within a period of one month from the date of receipt of this order granting time for another one month for the employees concerned to raise objections, if any. After considering all the objections received within the stipulated time, the respondents shall publish the seniority/eligibility list within fifteen days thereafter. Based on the said list, the year-wise panels of candidates for consideration for promotion shall be prepared and the list of selected candidates on the basis of the marks already secured by them shall be published within a period of one month thereafter.

OA 146/06: As the issue raised in this OA is identical as noted above, this OA is also allowed in the same manner as in OA 875/05. “

2. Through communication dated 30.05.2007 the first respondent has invited objections to the integrated seniority list of Group D staff. The applicant submitted her representation dated 20.06.2007. This was replied to by the respondents vide letter dated 12.10.2007. As the applicant was not satisfied, she filed another representation dated 01.11.2007. There was however, no favorable response to the above representation.

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3. The applicant was constrained to file CP(C) 24/2008 for non-compliance of the order of the Tribunal extracted above. It was only thereafter that the first respondent issued year-wise eligibility list of Group D staff vide Annexure A-3 dated 05.06.2008. This list, according to the applicant, is again incorrect as it included Junior Assistant Cooks who are not even eligible to apply as per the notification dated 03.07.2003. Hence the applicant filed O.A 504/2008 which was disposed of on 14.09.2009 vide Annexure A-4 order which reads as under:-

“ The issue involved in this case is identical to that in OA 92/06 in which the Tribunal has held as under:-

“ Arguments were heard and documents perused. By virtue of Annexure R-1 (2) and R-1 (3), it is clear that there is no exemption among the Group 'D' employees with regard to promotion to the cadre of Ticket Collectors/Train Clerks. True, in the notification issued vide Annexure A-1 and A-2 the cadres of staff in the Catering Department that are eligible to apply has been specified as Servers, Head Server/ Head Waiters of Catering Department. The contention of the counsel for applicants was that the exclusion of Assistant Cooks is based on the fact that such Assistant Cooks have got promotional avenues as Cooks / Head Cooks etc. It has been stated by the Senior Counsel for the respondents that promotion of Assistant Cooks as Ticket Collectors / Train Clerks has been in existence as a matter of practice for a substantial period which would go to show that Annexure R-1 (2) and R-1 (3) have been kept in tact though Annexure A-1 and A-2 did not contain Assistant Cooks as an eligible category. We agree with the submissions made by the Senior counsel for the respondents.

While inclusion of Assistant Cooks by the respondents as a category for promotion as Ticket Collector / Train Clerks does not suffer from any legal infirmity, another aspect to be seen is whether their promotion was based on proper seniority. According to the decision by the Hon'ble High Court in W.P No.14500/2003 seniority shall be based on length of service and not on the scale of pay. If so, it is to be seen whether the applicants are actually senior to the private respondents. Though the counsel for applicants substantiates



the same, the same is to be properly verified with the records held by the respondents organisation. If the respondents noticed that seniority prepared was in accordance with the law laid down by the Hon'ble High Court, the applicants may be suitably informed accordingly. Instead, if the seniority list has been prepared in violation of the judgment of the Hon'ble High Court in W.P.No.14500/03, the same is to be duly rectified and if the applicants who already stand qualified, are found to be senior enough to be accommodated against the 23 notified vacancies, they should be accordingly considered for promotion from the date their juniors had been so promoted. In view of the limited number of vacancies, if any other person who stands junior to the applicants and who has to be reverted, the same may be carried out in accordance with law and after giving an opportunity of being heard. If provision exists for creation of supernumerary post whereby such reversion could be avoided, the same be also considered as by now such persons facing reversion would have served in the promotional quota for a substantial period.

OA is allowed to the above extent. This order may be complied with, within a period of four months from the date of communication of this order. No costs."

2. As in the above case, this **OA is also allowed to the above extent as stated above. Time calendered for implementation of this order is four months from the date of communication of a copy of this order. No costs.** "

4. The applicant submitted a letter to the respondents in this regard vide Annexure A-5 dated 24.09.2009 which was followed by lawyer notice dated 18.2.2010. No action has been taken on the above said communication.

5. It was under such circumstances that the applicant came across notification dated 08.03.2010 vide Annexure A-6 for conducting selection for promotion of Group D against 1/3 promotional quota in the category of Ticket Examiner. According to the applicant without complying with specific directions in Annexure A-4 in respect of selection for the years 1998-99 to 2002-03, holding selection for the vacancies of 2006 is illegal. Thus the

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applicant served a lawyer notice on 15.03.2010 requesting the respondents to comply with Annexure A-4 order first (Annexure A-7 refers). As no action has been taken, this O.A has been filed seeking following relief:-

“ a) Issue necessary directions to the respondents not to proceed with Annexure A-6 till the specific directions in Annexure A-4 are complied with and grant promotion and posting to the candidates selected to working posts of Ticket Collector pursuant to Annexure A-1 proceedings as directed in Annexure A-4.

b) Issue necessary directions to the respondents to complete the process of selection as directed in Annexure A-4 and grant promotion and posting to the applicant as Ticket Collector in accordance with law.

c) Declare that the selectees in pursuance of the directions in Annexure A-4 is entitled to seniority over those in pursuance of Annexure A-6 selection proceedings and are eligible and entitled to get all monetary benefits and arrears arising therefrom as granted and paid to other selectees appointed in pursuance of Annexure A-1. ”

6. The respondents have contested the O.A. According to them Annexure A-4 order in O.A 504/08 is for revision of seniority in tune with the judgment of the Honorable High Court of Kerala in Writ Petition 14500/03 and for taking further consequent action thereon. The said writ petition 14500/03 is under appeal before the Apex Court vide SLP 17164/08. This matter of seniority has become sub judice before the Apex Court. The respondents have referred to another order dated 21.1.2010 in O.A 706/08 which also concerns with seniority matter. Keeping in view the ground reality that the matter is sub judice, the said O.A 706/08 was dismissed. Accordingly the respondents have prayed for dismissal of this O.A.

7. Applicant has filed his rejoinder stating that there being no stay by the

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Apex Court, it is only appropriate that this O.A is considered independent of the pendency of seniority matter before the Apex Court.

Arguments were heard and documents perused. Annexure A-4 order relates to vacancies of a particular year and it is independent of the issue involved in the present O.A. The facts in the present O.A. appear to be identical to that of in OA No. 706 of 2008 which had been decided vide order dated 21st January, 2010 wherein it has been held as under:-

“ 7. The grievance of the applicant is that he was denied inclusion in the panel despite qualifying in the selection based on an erroneous policy of determining inter-se seniority of the persons belonging to the feeder cadres. He drew our attention to the judgment of the High Court of Kerala in OP No.14500/2003 and the decision of the Tribunal in OA No. 1761/98. The learned counsel for the respondents submitted that the Department moved SLP 17164/2008 before the Apex Court and the matter is pending before the Apex Court and that the applicants in O.A. 1761/98 have not been granted the reliefs following the order in that O.A. and that as and when the SLP is decided, the case of the applicant will be considered accordingly.

8. In this view of the matter, we do not think it proper to adjudicate on the matter any further. Accordingly, we record the submission of the learned counsel for the respondents and close the O.A. with the direction to the respondents to consider the case of the applicant in the light of the judgment of the Apex Court in the SLP 17164/2008. With these remarks, the O.A is closed. No costs.
“

8. It is trite law that the decision of a coordinate bench is to be followed. Hon'ble Apex Court in the case of ***Sub-Inspector Rooplal v. Lt. Governor, (2000) 1 SCC 644***, held as under:-

12. At the outset, we must express our serious dissatisfaction in regard to the manner in which a Coordinate Bench of the Tribunal has overruled, in



effect, an earlier judgment of another Coordinate Bench of the same Tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the Tribunal was of the opinion that the earlier view taken by the Coordinate Bench of the same Tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two Coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every presiding officer of a judicial forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again that precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. A Coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement. This Court in the case of *Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel* while dealing with a case in which a Judge of the High Court had failed to follow the earlier judgment of a larger Bench of the same Court observed thus:

The judgment of the Full Bench of the Gujarat High Court was binding upon Raju, J. If the learned Judge was of the view that the decision of Bhagwati, J., in *Pinjare Karimbhai* case and of Macleod, C.J., in *Haridas* case did not lay down the correct law or rule of practice, it was open to him to recommend to the Chief Justice that the question be considered by a larger Bench. Judicial decorum, propriety and discipline required that he should not ignore it. Our system of administration of justice aims at certainty in the law and that can be achieved only if Judges do not ignore decisions by courts of coordinate authority or of superior authority. Gajendragadkar, C.J., observed in *Bhagwan v. Ram Chand* :

'It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that inquiry sitting as a Single Judge, but should refer the matter to a Division Bench, or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety.'

9. We respectfully follow the above judgment. Again, if the order in OA no. 504 of 2008 is implemented, this OA would be rendered infructuous for the vacancy concerned in the other OA would pertain to a period anterior to



the one in the present OA and unless otherwise provided for in any statutory rule or executive instructions, a person appointed in the previous batch would be held senior to those appointed in a subsequent batch.

10. We have in Contempt Petition No. 45 of 2010 in the above OA No. 504 of 2008 directed the respondents to comply with the order dated 14-09-2009 and the same on compliance would redress the grievance of the applicant.

11. In view of the above, this OA is dismissed on the ground as mentioned in the order dated 21-01-2010 in OA No. 706 of 2008.

(Dated, this the 11th day of October, 2011.)


K. NOORJEHAN
ADMINISTRATIVE MEMBER


DR.K.B.S RAJAN
JUDICIAL MEMBER

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