

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. Nos.1533/92, 323/93 & 1240/93

Friday, this the 14th day of January 1994

SHRI N. DHARMADAN, MEMBER (J)
SHRI S.KASIPANDIAN, MEMBER(A)

1. O.A. 1533/92

T.Alavi,
Black Smith II,
O/o CWS, Southern Railway,
Shornur.

.. Applicant

By Advocate Shri P.Sivan Pillai

V/s

1. The Chief Personnel Officer,
SR, Madras-3.

2. The Divnl. Per. Officer,
SR, Palghat.

3. Sr. Divnl. Mech. Engineer,
SR, Palghat.

.. Respondents

By Advocate Shri T.P.M.Ibrahim Khan, ACGSC.

2. O.A.No.323/93

1. V.Balasubramanian,
Diesal Assistant,
SR, Erode.

2. U. Aravindakshan, -do-

.. Applicants

By Advocate Shri M.R.Rajendran Nair.

V/s

1. Sr. Divnl. Per. Officer,
SR, Palakkad.

2. Chief Personnel Officer,
SR, Madras.

3. Sr. Divnl. Mech. Engineer,
SR, Palakkad.

.. Respondents

By Advocate Shri Thomas Mathew Nellimoottil, ACGSC.

3. O.A.No. 1240/93

K.Rajendra,
Diesel Assistant,
SR, Erode.

.. Applicant

By Advocate Shri M.R.Rajendran Nair

v/s

1. The Sr. Divnl. Per. Officer,
SR, Palakkad.
2. The Chief Personnel Officer,
SR, Madras.
3. The Sr. Divnl. Mech. Engineer,
SR, Palakkad. .. Respondents

By Advocate Shri Thomas Mathew Nellimoottil, ACGSC

ORDER

N.DHARMADAN

All these cases are heard together on consent of parties. The facts in these cases are similar and issue arising for consideration is also same. Hence, we are disposing of these cases by this common order.

2. The facts in OA 1533/92 alone need be discussed for disposing of all the three cases by the common judgment.

3. The applicant is a Blacksmith-II working in the scale of Rs.1200-1800. His pay at the time when the impugned order, Annexure-A2, was passed was Rs.1350/-. He is aggrieved by Annexure-A2 order by which he has been reverted as Loco Khalasi in the lower scale of pay of Rs.700-940 and then promoted as Diesel Assistant in the scale of Rs.950-1500. This process of placing in the lower scale and then effecting promotion, according to the applicant, is an unusual procedure adopted only in Palghat Division and it is discriminatory and adopted only on account of filing of a Contempt Petition against the Railway.

4. Earlier, the applicant along with others filed OA 633/91 which was disposed of as per Annexure-A1 judgment dated 16.3.92. The operative portion of the judgment is extracted below:-

"10. In the conspectus of facts and circumstances we allow the application to the extent of directing that the applicants before us should also be sent for diesel conversion course in accordance with the Railway Board's circular dated 15.3.1990 at Annexure-A6 so long as any

person junior to them whether absorbed or not is sent for diesel conversion course. The applicants should be absorbed as Diesel Assistant thereafter on the basis of their seniority and successful completion of the diesel conversion course. The respondents will be at liberty to redeploy their juniors who are held against the supernumerary posts, against the posts vacated by the applicants on their absorption as Diesel Assistant. Action on the above lines should be completed as early as possible preferably within three months from the date of communication of this order. There will be no order as to costs."

5. When the Railways delayed the implementation of the judgment, the applicant initiated steps for proceedings against the Railway under the Contempt of Court Act. During the pendency of the said proceedings the impugned order, Annexure-A2, was issued. According to the applicant, the reversion of the applicant to the post of Loco Khalasi is unwarranted and issued only due to extraneous consideration. Hence, the order is malafide. According to the applicant, he could have been posted directly as Diesel Assistant considering his seniority and successful completion of the training of Diesel Assistant course. He further submitted that he is senior enough to be promoted directly. He produced Annexure-A3 proceedings issued by the APO, Trivandrum, by which ten persons were appointed by the Railways, posting them directly as Diesel Assistant in implementation of the judgment after completion of the Diesel Assistant Training Course. According to the applicant, the same procedure could have been followed in the Palghat Division also so far as the posting of the applicant as Diesel Assistant.

6. Respondents have no convincing answer to the contention of the applicant based on Annexure-A3. The only submission made by the respondents in the reply is that the applicant has not been regularly promoted as Diesel Assistant so far since he is not senior enough to be promoted considering his position in the seniority list of Loco Khalasies. They also submitted that Annexure-A3 order

has been issued by another division and that the respondents are not aware of the circumstances under which the said order has been passed.

7. The statement of the respondents that they are not aware of the circumstances under which Annexure-A3 was issued since it was issued by another Division of the same Railway cannot be appreciated. When the applicant has raised the above plea of discrimination and based his case on Annexure-A3, the respondents ought to have verified the position and submitted the correct details for distinguishing the case in order to sustain their contention that the applicant has not made out a case for posting him directly as Diesel Assistant.

8. In the light of Annexure-A3, admittedly there is discriminatory treatment. The absorption of persons in the Trivandrum and Palghat Divisions is made in different manner and it is clear from Annexure-A3. If persons who have completed the training course in Trivandrum Division can be posted directly as Diesel Assistant without being reverted to the grade of Loco Khalasi, very same procedure should have been adopted in the Palghat Division also unless the Railway has some special reason for adopting a different procedure in Palghat Division. No such reason has been stated by the Railway in their reply. Because of the fact that in Palghat Division a different procedure was adopted, the applicant was deprived of the benefit of higher scale which he was drawing prior to the completion of the training and posting. The applicant asserted that he is senior enough in the post of Blacksmith and he was getting the scale of Rs.1200-1800. His pay was fixed at Rs.1350/- at the relevant time. This pay which was accrued in his favour has to be protected unless there is direction in the earlier OA filed by the applicant along with others^{to deny the same.} The direction in the earlier OA does not provide for posting the applicant to a lower scale for giving posting as Diesel Assistant so as to deny him the benefit of pay.

9. In the light of the clear direction in the earlier OA there is no justification for the respondents to reduce the pay of the applicant while posting him as Diesel Assistant. The explanation given by the respondents for posting the applicant in the lower post does not appear to be satisfactory and convincing for accepting the same. The reason stated by the respondents is that after completion of training, all Loco Khalasis are to be brought within one seniority and in the cadre so as to enable the Railway to give them posting as Diesel Assistant. First of all there is no such seniority list of Loco Khalasis prepared after completion of training. Secondly, no such procedure was followed in other Divisions. Annexure-A3 shows that the postings can be made without placing officers in the lower scale before promoting as Diesel Assistant. Hence, according to us, it is not necessary to fix the pay of the applicant in the post of Loco Khalasi as contended by the Railway. We reject this contention of the Railway particularly when the respondents have not pointed out any specific case of any person who will be adversely affected on account of the posting of the applicant, who is senior enough in the category of Khalasis for being posted directly as Diesel Assistant protecting his pay which he was getting at the relevant time. The respondents are free to prepare a common seniority list and implement the direction in Annexure-A1 judgment strictly in accordance with the terms and conditions prescribed thereof. But they cannot place the applicant in a lower grade for implementing the direction for no such provision was made in the judgment.

10. In this view of the matter, we are satisfied that without going into the legality of the impugned order, Annexure-A2, the application can be disposed of directing the respondent No.2 to implement Annexure-A1 judgment in

the light of the review order passed by this Tribunal protecting the applicant's pay of Rs.1350/- as a special case personal to him.

11. We dispose of the three applications with the aforesaid observation/direction.

12. There will be no order as to costs.

(S.KASIPANDIAN)
MEMBER (A)

(N.DHARMADAN)
MEMBER (J)

v/-