

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 4 of 1995

Monday, this the 11th day of March, 1996.

CORAM

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR P V VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

- 1 K D Mathew, Diesel Assistant,
Southern Railway,
Ernakulam Marshelling Yard,
Ernakulam.
- 2 Suresh Kumar Uppalakkal,
Diesel Assistant, Southern Railway,
Ernakulam Marshelling Yard,
Ernakulam.
- 3 P D Jose, Diesel Assistant, (Expired on 2.6.1995)
Southern Railway,
Ernakulam Marshelling Yard,
Ernakulam. ..Applicants

By Advocate Mr T.C.G Swamy.

Vs

- 1 Union of India through
the Secretary, Ministry of Railways,
Railway Board, New Delhi.
- 2 The Divisional Personnel Officer,
Southern Railway,
Trivandrum- 14.
- 3 The Senior Divisional Mechanical Engineer,
Southern Railway,
Trivandrum -14.
- 4 Jenson Thomas, Diesel Assistant,
Southern Railway,
Ernakulam South Railway Junction,
Ernakulam.
- 5 B Anwar Basha,
Diesel Assistant, Southern Railway,
Quilon Railway Station,
Quilon.
- 6 Ninachen Joseph, Diesel Assistant,
Southern Railway,
Ernakulam South Railway Junction,
Ernakulam.
- 7 T U Binoy, Diesel Assistant,
Southern Railway,
Ernakulam South Railway Station,
Ernakulam.

(Contd..p/2)

8 G R Mahesh, Diesel Assistant,
Southen Railway,
Quilon Railway Station,
Quilon.

..Respondents

By Advocate Mr James Kurian for Respondents 1-3.

By Advocate M/s M Ramachandran & P Ramakrishnan for R 4 - 8.

The application having been heard on 6th March 1996,
the Tribunal delivered the following on 11th March, 1996:

O R D E R

P V VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicants are Diesel Assistants in the Trivandrum Division of the Southern Railway. According to them, their juniors are being sent for the LM 16 course ignoring seniority of the applicants. This would cause prejudice to the applicants since the juniors so sent would be allowed to officiate and become eligible for promotion as Drivers/Shunters. Applicants contend that according to a provisional seniority list A1 dated 8.3.90, they are shown senior to the party respondents. However, respondent Railways issued a final seniority list A2 dated 19.5.92 in which the party respondents are shown senior to the applicants. The first applicant had represented against A2 and the respondent Railways by A3 letter dated 25.9.92 rejected the representation stating that in all cases of direct recruits, the date of joining the working post has been reckoned based on the note under para 302 of the IREM (1989 Edition), which reads as under:

"In case the training period of a direct recruit is curtailed in the exigencies of service, the date of joining the working post in case of such a direct recruit shall be the date he would have normally come to a working post, after completion of the prescribed period of training".

2 Applicants challenge the seniority list A2 and the reply A3 given to the representation of the first applicant mainly on the ground that the note under para 302 referred to in the impugned letter A3 was not brought into force in the Southern Railway. Applicants pray that they may be assigned seniority over the party respondents.

3 Respondent Railways state that the note under para 302 was brought into force from the date of issue in 1982. They further state that the party respondents came on transfer on 8.7.1989 and that they were placed at the bottom of the seniority list as on that date. According to respondent Railways applicants have been given the correct position in the seniority list applying the note under para 302 of the Indian Railway Establishment Manual (IREM for short).

4 Notices to Respondents 4,6 and 8 have been deemed to have been served under Rule 25(c) of the Central Administrative Tribunal Rules of Practice.

5 Respondent-7 has filed a reply on behalf of himself and other party respondents. He contends that applicants have challenged the A2 seniority list dated 19.5.92 and the reply given by the respondent Railways A3 dated 25.9.92 to the first applicant only now, after a long lapse of several years and that the application is, therefore, barred by limitation.

6 Before we examine the other contentions raised, we may consider the contention regarding limitation. Learned counsel for applicants contended that the applicants have approached the Tribunal when they were being superseded by their juniors and that the Supreme Court has held in Kuldip Chand Vs. Union of India and others - 1995 SCC (L&S) 1318 that in such a case, limitation would not arise. That was a case in which the

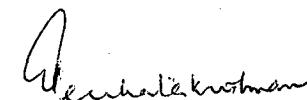
appellant claimed seniority over one Ashok Kumar on the ground that he was posted as a Store Keeper whereas the said Ashok Kumar had continued as a Clerk. The Supreme Court stated that the High Court was right in concluding that the fortuitous circumstance of the appellant working as Store Keeper cannot permit appellant to steal a march over the fourth respondent, Ashok Kumar. The Supreme Court further noted that the said Ashok Kumar disputed the correctness of the seniority ordered on 23.12.1982 in his representations dated 10.1.1983 and 1.8.1983 which were rejected. After that the said Ashok Kumar allowed it to become final as he did not challenge the same till the post of Accountant became vacant. Thus, there is considerable delay in claiming seniority over the appellant. The Supreme Court noticed that after the preparation of the seniority list no vacancy had arisen. The Supreme Court also noticed that the preparation of the seniority list per se was illegal. Therefore, the mere fact that he did not challenge the seniority list which was illegally prepared till he was aggrieved for non-consideration of the claim to the post of Accountant would not imply that his legitimate right to be considered can be denied. The Supreme Court stated that in those circumstances the delay is of no consequence for considering the claim of Ashok Kumar for the post of Accountant.

7. In this case, the applicants have not shown that after the preparation of the A2 seniority list no senior has been sent for LM-16 course based on A2 seniority list. This was an essential ingredient in deciding the case cited above. Further, there is no question of promotion involved in the case before us. What is involved is only deputation to LM-16 course and there is no element of 'supersession' involved in such deputation. A mere deputation for training does not confer any right for promotion which is to be made only in accordance with

the rules. Under these circumstances, the case relied upon by the learned counsel for applicants will not be of any assistance to applicants. The fact remains that the seniority list published as early as 19.5.92 against which the first applicant had preferred a representation and which representation had been disposed of as early as 25.9.92 cannot be challenged now after the lapse of several years.

8 On the short ground of limitation, we dismiss the application. Under these circumstances, we do not consider it necessary to go into the other contentions raised by the applicants. No costs.

Dated the 11th March, 1996.



P V VENKATAKRISHNAN
ADMINISTRATIVE MEMBER



CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN

List of Annexures:

1. Annexure A1: A true copy of the seniority list bearing No. V/P 6/21/VI RG dated 8/3/90 issued by the 2nd respondent
2. Annexure A2: A true extract of revised seniority list bearing No:V/P612/VI/RG dated 19/5/92 issued by the second respondent
3. Annexure A3: A true copy of letter No.V/P 612/VI/RG II(2) dated 25/9/92 issued by the 2nd respondent