

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 352/97

Monday, this the 6th day of December, 1999.

CORAM:

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

HON'BLE MR G RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. S. Silvester,
S/o.Simon,
Permanent Address:
Nirmala Bhawanam,
Post Velliman West,
Quilon. Officiating Diesel
Assistant, Southern
Railway, Palghat.
2. K.K. Rajan Nair,
S/o.K.Pydel Nair,
Permanent Address:
Kuyyal House,
Post Kariyad,
Cannanore District. - do -
3. S. Omanakuttan,
S/o.Sukumaran,
Permanent Address:
Mangad Post,
Quilon District. - do -

..Applicants ..

By Advocate Mr. T.C. Govindaswamy

Vs.

1. Union of India through
The General Manager,
Southern Railway,
Park Town P.O.,
Madras - 3.
2. The Chief Personnel Officer,
Southern Railway,
Headquarters Office,
Park Town P.O.,
Madras - 3.
3. The Divisional Mechanical Engineer,
Southern Railway,
Mysore Division,
Mysore.
4. The Senior Divisional Mechanical Engineer,
Southern Railway, Palghat Division,
Palghat.
5. The Divisional Railway Manager,
Southern Railway, Mysore.

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6. The Divisional Railway Manager,
Southern Railway,
Palghat Division,
Palghat.

..Respondents

By Advocate Mrs. Sumathi Dandapani

The application having been heard on 6.12.99, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

Applicants seek to direct the respondents to absorb them as Diesel Assistants in the Palghat Division of Southern Railway and also to fix and grant their pay in the scale of Rs.950-1500 in the post of Diesel Assistants from the date they have been continuously officiating in that post with consequential benefits.

2. The learned counsel appearing for the applicants submitted that since the filing of this Original Application, the applicants have been absorbed as Diesel Assistants in the Palghat Division of Southern Railway and hence, the 1st relief has now become infructuous.

3. What remains now is the question of fixation of their pay under paragraph 913 (1)(b) read with (iii) of the Indian Railway Establishment Manual (Vol.I).

4. The applicants while holding post of Fireman Grade-II on regular basis in the Mysore Division of Southern Railway were deployed/posted to officiate as Diesel Assistants in the scale of Rs.950-1500 since April, 1992. While thus officiating as Diesel Assistants in Mysore Division, applicants 2&3 were transferred to

contd..3/-

Palghat Division temporarily as Diesel Assistants as per A-1. By a similar order, the 1st applicant was also transferred temporarily as Diesel Assistant to Palghat Division. The 1st applicant joined the Palghat Division in March 1993 and applicants 2&3 joined the Palghat Division in February 1993. They have been continuously working as Diesel Assistants. They have been paid only as if they have been officiating for a period not exceeding 30 days while they have officiated for a period exceeding 30 days.

5. Respondents say that the applicants were not continuously working as Diesel Assistants as alleged in the Original Application. They were working as Diesel Assistants on relieving duty basis and their salary and other running allowances are claimed by the Mysore Division even now. They have been paid running allowance at the rate applicable to Diesel Assistants as they are performing the duties of Diesel Assistants temporarily. They have not been regularly selected as Diesel Assistants and hence they are not entitled for the scale of pay of Diesel Assistants as claimed by them. They have not been promoted as Diesel Assistants by the Mysore Division.

6. According to the respondents, the applicants were not continuously working as Diesel Assistants as alleged in the Original Application. If that is so, the respondents could have very well stated during what period they have worked as Diesel Assistants and during what period they have not worked as Diesel Assistants. It cannot be a matter without any document and the document in support of the same also could have been produced

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very easily. The respondents are happy by vaguely saying that the applicants were not continuously working as Diesel Assistants. The stand of the respondents that the applicants were not continuously working as Diesel Assistants as alleged in the Original Application is stoutly denied by the applicants in the rejoinder. Eventhough, an additional reply statement has been filed and certain documents have been produced along with the additional reply statement, the respondents have not produced any document in support of their plea that the applicants were not continuously working as Diesel Assistants as alleged in the Original Application.

7. Respondents also contend that the applicants have not been regularly selected as Diesel Assistants and hence are not entitled for the scale of pay of Diesel Assistants. If they are regularly selected as Diesel Assistants, no doubt, they are entitled for the scale of pay of Diesel Assistants. When not regularly selected as Diesel Assistants and officiating for a period exceeding 30 days, paragraph 913 (1)(b) & (iii) of IREM (Vol.I) will come into play. Rule 913 (iii) of IREM (Vol.I) says that in cases where the officiating arrangement is initially approved for periods exceeding 30 days, the normal rules of fixation of pay will apply; where the period is initially for 30 days, the enhanced kilometrage allowance drawn upto 30 days should be allowed to stand but payments for periods beyond 30 days should be in accordance with the rules for normal fixation of pay on promotion. If the plea raised by the respondents is accepted, paragraph 913 (iii) of IREM (Vol.I) becomes redundant.

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8. From A-1, it is seen that applicants 2&3 were sent to Palghat Division temporarily as Diesel Assistants. The case of the applicants that the 1st applicant was also identically sent to Palghat Division is not disputed. From A-3 dated 21.3.95, it is seen that all the applicants were working in Palghat Division as Diesel Assistants for the past 2 1/2 years. If they were not continuously working as Diesel Assistants, that would have found a place in A-3 in the normal course. There is no explanation for non-mentioning of any non-continuity of the officiating service of the applicants as Diesel Assistants in A-3. As per A-6, decision was taken by the Mysore Division to transfer the applicants to Palghat Division on permanent basis and they have sought the advice of Palghat Division as to whether the Palghat Division is agreeable to the said transfer.

9. In the light of the above, it is difficult to accept the stand of the respondents.

10. As there is no dispute that the applicants have been transferred to Palghat Division as Diesel Assistants and there is absolutely no material to show that they have not continuously worked as Diesel Assistants and there is only a vague plea in the reply statement that they have not continuously worked as Diesel Assistants, the applicants are entitled to fixation of their pay under paragraph 913 (1)(b) read with (iii) of IREM (Vol.I).

11. Accordingly, the respondents are directed to fix and grant the pay of the applicants as per paragraph 913 (1)(b) read with (iii) of IREM (Vol.I) and complete the exercise within a

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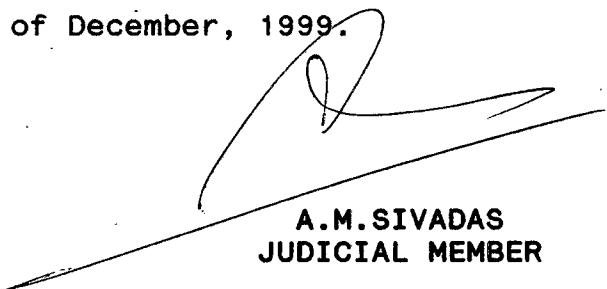
period of four months from the date of receipt of a copy of this order.

12. O.A. is disposed of as above. No costs.

Dated this the 6th day of December, 1999.



G.J.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M.SIVADAS
JUDICIAL MEMBER

nv/71299

LIST OF ANNEXURES REFERRED TO IN THIS ORDER

1. Annexure A-1: A true copy of the letter No.Y/M 135/P/II dated 9.2.93 issued by the third respondent.
2. Annexure A-3: A true copy of the letter No.Y/M 135/P/2 dated 21.3.95 issued by the third respondent.
3. Annexure A-6: A true copy of the letter No.Y/P 676/V/13-Vol.VII dated 7.3.96 issued by the fifth respondent.