

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

DATED THE 30TH DAY OF NOVEMBER ONE THOUSAND NINE HUNDRED  
AND EIGHTY NINE

PRESENT

HON'BLE SHRI N. V. KRISHNAN, ADMINISTRATIVE MEMBER

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O.A. 356/86

1. M. Alaxander David,
2. N. V. Ramanathan,
3. K. U. Sreedharan and
4. T. L. Xavier

Applicants

Vs.

1. Chief Personnel Officer, Southern  
Railway, Madras
2. The Divisional Railway Manager,  
Southern Railway, Palghat and
3. The Divisional Railway Manager,  
Southern Railway, Trivandrum

Respondents

M/s. K. Ramakumar, C. P. Ravindranath  
& E. M. Joseph

Counsel for the  
applicants

Smt. Sumathi Dandapani

Counsel for the  
respondents

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

The four applicants in this case, retired from the Southern Railway, approached this Tribunal under Section 19 of the Central Administrative Tribunals Act with the grievance that the respondents are not granting the privileges and financial benefits due to them counting their service in the Railway from assumed dates of

appointment in implementation of the orders of the Government of India.

2. The assumed dates of appointment to be counted for the grant of benefits as given in the application are as follows:

Sl. No.	Name	Date of appointment in Railways	Assumed date of appointment
1.	M. Alexander David	8.11.1946	1.6.1942
2.	T. L. Xavier	1.10.1948	3.6.1942
3.	N. V. Ramanathan	1.10.1948	26.12.1944
4.	K. U. Sreedharan	16.8.1948	16.6. 1944

In Annexure-A seniority list of HTCs/TTIs in the scale of Rs. 425-640 (R) Commercial Branch as on 1.12.1977 the respective dates of entry of the applicants in the cadre are shown. The relevant portion of Annexure-A reads as follows:

Sl. N.	Name	Division/ Unit	Date of birth	Date of appt. as T.C.	Date of entry to present grade	Remarks
62.	Alexander David	OJA	1.9.23	8.11.46	2.3.76	War service
95.	T. L. Xavier	OJA	13.8.20	1.10.48	2.3.76	candi- date
		-do-				-do-
98.	K.U. Sree- dharan	-do-	29.8.22	16.8.48	2.3.76	-do-
99.	N.V. Ramanathan	-do-	15.5.24	1.10.48	2.3.76	-do-

3. One Sri VenkataSubramanian, TTE, Southern Railway filed O.P. 4327/76 before the High Court challenging the seniority list on the ground that the person affected were not given the opportunity of hearing

before finalising the seniority of the TTEs. This case was disposed of as per Annexure-B judgment directing the disposal of the representation filed by the petitioner within two months. After the said judgment the applicants submitted similar representation. They also filed O.P. 3507/79 and 4521/79 before the High Court praying for a direction to Chief Personnel Officer, Southern Railway " to pass appropriate orders on the consequential benefit which are due to the applicants on the basis of their assumed date of appointment. The High Court passed Annexure-C judgment, the relevant portion of the judgment reads as follows:

" 2. The dates mentioned by the petitioners do not seem to have been disputed by the respondents. The only dispute is in regard to the question whether the petitioners have already received the consequential benefits. According to the petitioners only some benefits have been received and all. This is a matter which has to be determined by the concerned authority with reference to the relevant records.

3. In this connection the petitioners' counsel Shri K. Ramakumar refers to, what he calls an admission contained in para 5 of Ext. P-17 in O.P. No. 3507 of 1979 which is a communication sent by the D.R.M. Palghat, in February, 1980 to the second respondent, which reads:

"However, their assumed date of appointment has not been taken for the purpose of fixing seniority, as has been done in the case of commercial clerks. Based on the judgment of the same High Court of Kerala in O.P. 3315/70 the seniority of war service commercial clerks of this Division was revised in terms of O.P./MAS letter No. P(s) 612/III/II of 6.9.1973."

4. In the circumstances I direct the second respondent, the Chief Personnel Officer, Southern Railway, Madras to pass appropriate order within two months from the date of receipt of a copy of this judgment as to what consequential benefits, if any, are due to the petitioners on the basis of their assumed dates of appointment and grant them whatever benefits which may be found to be due without delay."

4. It appears that a review petition was also filed by one of the applicants in O.P. 3507/79 because he retired before the date of judgment. The review petition was allowed as per Annexure-D order in which there is reference about the assumed date of the applicants' in the following manner:

" The direction was made on the basis of the assumed date of appointment which was not in dispute. The direction was to compute the financial benefits due to the petitioners in these proceedings. In the present Review Petition, the petitioner in O.P. No. 3507 of 1979 submits that it was not clarified by this Court that the financial benefits which the second respondent was directed to compute ought to be determined with reference to the relative seniority of the petitioner vis a vis respondents 5 & 6 in O.P. NO. 3507 of 1979. The review petitioner therefore, submits that such a clarification should be made."

5. It is seen that the fourth applicant filed a C.M.P. for review of the judgment passed in the case O.P. 4521/79. The said C.M.P. was disposed by Annexure-I order with the following observation:

" 3. I express no view on the merits and demerits of these contentions based on disputed facts. The controversy arising from these facts cannot be resolved in the present proceeding. It is, however, open to the petitioner to forward to the respondents his specific claim calculated with reference to what, according to him, arises from his relative seniority vis-a-vis respondents 5 & 6.

4. Counsel for the respondents tells me that the petitioner's claim will be duly considered and an appropriate order will be passed thereon hearing in mind the principle that the petitioner's benefits have to be computed with reference to his relative seniority vis-a-vis respondents 5 & 6. "

6. Thereafter Annexure-J order has been passed by the Railway and communicated it to the fourth applicant informing him that he is not entitled to any further benefits financial and or otherwise. He filed Annexure-K

representation before the General Manager. The other applicants also claimed the benefits. Since they did not get the relief they filed this application.

7. We have heard the arguments. The learned counsel appearing on behalf of the applicants vehemently contended that they are entitled to the benefit of assumed dates of appointment and consequential benefits. But this is not granted to them in spite of directions by the High Court and repeated representations. <sup>From ~~h~~</sup> /the portions extracted from the Judgment Annexure-C and order Annexure-I, it can be seen that the grievance of the applicants that they are entitled to take into consideration the assumed dates of appointment as claimed by them were not taken ~~in~~ to consideration, does not survive for our consideration.

After the judgment and order of the High Court, it is not available to them for further agitation <sup>of this issue ~~h~~</sup> /in this application because it has been a settled issue between parties in the earlier proceedings by their conduct. The only question which the applicants raised seriously before the High Court was the consequential benefits due from the Railway from the admitted assumed dates of appointment and according to us that alone can be considered. The other question regarding the dispute about the correction of assumed date of appointment, though vehemently argued by the counsel, we feel that the applicants cannot once again raise this issue which has been decided and settled by the High Court in its proceedings, after the judgment Annexure-C and order I.

8. The respondents 1 to 3 in the counter affidavit stated that the first applicant was appointed as a temporary Ticket Collector against the vacancy on 8.11.1946 in the pay of Rs. 40/- but it was refixed in 1951 and he was paid the arrears. Again the pay was refixed taking into account the assumed date as per order of Government of India and the arrears were paid. Similarly the second applicant was provisionally appointed in the pay scale of Rs. 55-130 on 1.10.1958. His pay was also refixed taking into account of assumed date of appointment and he was also paid the pay and arrears as per refixation. In the case of the third applicant, he was taken as a trainee on 16.8.48 in the pay scale of Rs. 55-130. His pay was refixed from assumed date of appointment as per order. The fourth applicant was appointed on 1.10.1948 in the pay scale of Rs. 55/- but he was also given increase of the pay on the basis of refixation taking into account the assumed dates of appointment.

9. When the above statement with regard to the payments of financial benefits due to the applicants was objected to by the applicants we directed the applicants to file a detailed statements with supporting documents so as to enable us to take a decision about the quantum of amount eligible to the applicants in the light of their claim on the basis of the admitted assumed dates of appointment. Accordingly, the applicants filed a statement

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on 13th October, 1989 in which the respective claims for the estimated arrears due to the applicants are as follows:

1st applicant	Rs. 99,000
2nd applicant	Rs. 97,000
3rd applicant	Rs. 88,000
4th applicant	Rs. 82,000

10. But the applicants did not furnish any details about the calculation nor did they give any materials or evidence to support their claims for this huge amount. The respondents on the other hand filed a second additional counter affidavit dated 6th November, 1989 in which they have reiterated that the dispute as to the assumed dates of appointment have been settled on the basis of agreement of parties in the light of the statement in Annexure-C Judgment. The only further dispute surviving for consideration is whether the applicants had accepted the consequential benefits on the basis of the admitted date of appointment. The admitted assumed dates of the applicants are given in Annexure-2 and they are as follows:-

	<u>date of appointment</u>	<u>assumed date</u>
1st applicant	8.11.46	1.6.42
2nd applicant	1.10.48	26.12.44
3rd applicant	16.8.48	16.6.44
4th applicant	1.10.48	3.6.42

11. As indicated above, we have already decided that in view of the judgment of the High Court of Kerala, we are not in a position to go into the dispute regarding the assumed dates of appointment of the

applicants. But we are inclined to examine the dispute with regard to the financial claim of benefits as stated in the application and in the statement subsequently filed by them.

12. The claim of the applicants in the statement filed in this case is answered by the respondents in the second additional counter affidavit submitted as follows:

"It is also submitted that the amount claimed by the applicants in the statement is without any basis and how they have arrived at that figure is not known. Since the amount was not settled as stated in Annexure D & I, the applicants are estopped from further making exaggerated claim at this belated stage. The applicants have no locus standi or right to claim any benefits since all of them have been granted the benefits and the arrears of wages have also been given to them."

13. The case was finally heard on 10.11.89 and taken up for orders. But the applicant's counsel filed a fresh ~~xxxxxxx~~ statement on 17.11.89 having break up and details showing the amounts due to the applicants on various heads. According to the applicants, they are entitled for the following amounts:

1st application	Rs. 105069/-
2nd applicant	Rs. 105405/-
3rd applicant	Rs. 89169/-
4th applicant	Rs. 89812/-

The amount claimed in the statement appears to have been increased considerably and that also strengthen our view that the claim is <sup>a</sup>disputed one which cannot be easily settled and finalised in a petition under section 19 of the Central Administrative Tribunals Act, 1985 without taking evidence in this behalf. We would have ventured to take evidence in this case had the applicants



produced evidence in support of their claims of these huge amounts and prima facie satisfied us that justice requires that such course should have been adopted rather than disposing the matter with appropriate directions. No such attempt was ever made by the applicants in this case, which was admitted as early as on 20.6.1986. Even the statement filed on 17.11.89 does not appear to have been prepared after carefully considering the details furnished by the respondents in their counter affidavit in paragraphs 5 to 7 furnishing the complete details of the re-fixation of pay taking into account the assumed dates of appointment of the applicants. We are therefore prima facie of the view that this statement cannot be accepted for supporting the claims of the applicant, but we are not expressing any final view of the matter in this connection.

14. In a case where an unquantified, unsettled, and disputed amount of financial claim arises, the court or tribunal would not grant any relief to the claimant unless such court or tribunal is satisfied that the amount is actually due and payable. The Supreme Court in Union of India Vs. Raman Iron Foundry (AIR 1974 SC 1265) held as follows:

"Now, the law is well settled that a claim for unliquidated damages does not give rise to a debt until the liability is adjudicated and damages assessed by a decree or order of court or other adjudicatory authority."

with a  
In connection with a claim under section 33 C (2) of I.D.  
Act, the Supreme Court, in Namor Ali Vs. C.I.W.T.  
Corporation ( AIR 1978 SC 275), again stressed this  
aspect and observed as follows:

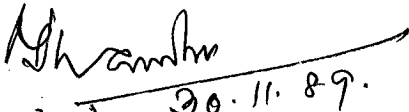
"If the right to get the money on the basis  
of the settlement or the award not established,  
no amount of money will be due .....

A dispute as to all such questions or any of them  
would attract the provisions of Section 33 C (2)  
of the Act and make the remedy available to the  
workman concerned (AIR 1964 SC 743, AIR 1972  
SC 452 and AIR 1975 SC 1745."


15. Presumably the applicants are claiming this  
huge amounts on the basis of the promotion and  
consequential benefits given by the respondents to  
M/s. Seshadri and Sounder Rajan, who retired, according  
to the applicants, as Chief Travelling Ticket Inspectors.  
With regard to this aspect also the respondents have stated  
in the additional affidavit, that the applicants were  
not eligible for consideration for promotion in the  
selection conducted in the year 1982. But all the  
financial benefits due to the applicants on the basis  
of the assumed dates of appointment had already  
been granted and hence they are not eligible for  
any further amount by way of arrears of wages.  
However, this being a disputed question and parties  
have not produced any clear, clinching and convincing  
evidence before us in support of rival contentions

so as to enable us to take a decision either way, we are unable to take a final decision about the claim and the entitlement of financial or other benefits alleged to be due to the applicants. Hence, we are not deciding this question finally. The applicants may file a representation before the first respondent with all details taking into account the materials furnished by the respondents in paragraphs 5 to 7 of the counter affidavit of Respondents 1 to 3 for getting the financial benefits, if any, due to them producing satisfactory and convincing evidence in support of their claim, within a period of one month from the receipt of this judgment. The respondents shall consider and dispose of the same in accordance with law within a period of three months from the date of receipt of such representation. Accordingly, this Original Application is disposed of with the above directions.

16. There will be no order as to costs.

  
(N. Dharmadan)  
Judicial Member

30.11.89.

  
(N. V. Krishnan)  
Administrative Member

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