

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 370 of 1999

Tuesday, this the 24th day of April, 2001

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. P. Suresh,
AC Coach Attendant,
Southern Railway, Palghat.
2. A. Karunakarankutty,
AC Coach Attendant,
Southern Railway, Mangalore.
3. C.V. Subhash Chandran,
AC Coach Attendant,
Southern Railway, Mangalore.Applicants

[By Advocate Mr. P.K. Madhusoodhanan]

Versus

1. Senior Divisional Personnel Officer,
Southern Railway, Palghat.
2. Union of India represented by its
General Manager, Southern Railway,
Park Town, Madras-3
3. P. Sasi,
AC Coach Attendant,
Southern Railway, Mangalore.
4. M. Surendran,
AC Coach Attendant,
Southern Railway, Mangalore.Respondents

[By Advocate Mrs Sumathi Dandapani (R1&2)(rep.)]
[By Advocate M/s Santhosh & Rajan (R3&4)(rep.)]

The application having been heard on 24-4-2001,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

Applicants seek to declare that the process of promotion proposed and proceedings taken pursuant to A5 in so far as respondents 3 and 4 are concerned are bad in law, to direct the 1st respondent to consider them for promotion to the

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post of AC Mechanic III in preference to respondents 3 and 4 in accordance with law and to restrain the 1st respondent from proceeding with A5 to grant promotion to respondents 3 and 4 to the post of AC Mechanic III.

2. Applicants, three in number, are AC Coach Attendants. Even though various grounds are raised in the Original Application, the learned counsel appearing for the applicants submitted that the only ground pressed is Ground 'B', i.e. applicants were posted as AC Khalasis with effect from 5-6-1989 as is evident from A1, whereas respondents 3 and 4 were regularised as AC Khalasis even as per their contention as evidenced from para 14 of A4 order only on 22-4-1991 and promoted as AC Coach Attendant by A3.

3. The official respondents as well as the private respondents have filed detailed reply statements.

4. As far as the case of the applicants based on A4, i.e. the order of this Bench of the Tribunal in OA No. 38/96 is concerned, it is admitted by both sides that the said order was taken up before the High Court of Kerala and as per order in OP No. 1028/98 that order was set aside. So, the position is that A4 order is no longer in existence and based on A4 order the applicants cannot put forward any claim.

5. Applicants also take the stand that they were posted as AC Khalasis with effect from 5-6-1989 and were granted seniority in the AC side with effect from 1-3-1990 and 28-1-1991 respectively, whereas the private respondents were absorbed only on 22-4-1991 and promoted as AC Coach Attendants as per A3. R3(5) dated 25-2-1991 says that the staff mentioned therein working in the AC side for more than three years and

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who have been tested for the post of AC Khalasis and found suitable are absorbed as regular AC Khalasis and posted to stations noted against their names. The private respondents are shown as Serial Nos. 1 and 2 in R3(5). In R3(5), it is specifically stated thus:

"The seniority of the above employees in the AC side will be reckoned on obtaining clarification from CPO/MAS."

6. So, from R3(5) it is clear that the seniority of private respondents was yet to be fixed. The learned counsel for official respondents as well as the learned counsel for private respondents submitted that subsequently the department has issued a seniority list wherein the private respondents are placed above the applicants. The learned counsel for applicants submitted that against that seniority list objections have been filed by the applicants. No copy of the objection filed is produced. There is no challenge in this OA against the seniority list published as per which the private respondents are placed above the applicants. So, the position is that the seniority list published by the department placing the private respondents above applicants stands good. That being the position, applicants cannot seek for a direction to the 1st respondent to consider them for promotion to the post of AC Mechanic III in preference to respondents 3 and 4 on the ground that applicants are senior to respondents 3 and 4.

7. A5 says that the employees mentioned therein may be alerted to be in readiness to appear for the trade test. Respondents 3 and 4 are figuring as Serial Nos. 2 and 3 in A5. The declaration sought that the proceedings taken pursuant to A3 in so far as respondents 3 and 4 are concerned are bad in law is on the ground that applicants are senior to the private respondents. As that position cannot be accepted since the

seniority list published is not under challenge as per which the applicants are placed below private respondents, the applicants are not entitled to the declaration sought for.

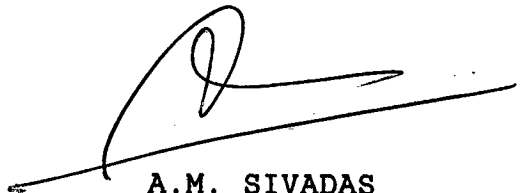
8. In the light of what we have found, the third relief sought to restrain the 1st respondent from proceeding with A5 to grant promotion to respondents 3 and 4 cannot be granted.

9. Accordingly, the Original Application is dismissed. No costs.

Tuesday, this the 24th day of April, 2001



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

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List of Annexure referred to in this order:

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| 1. | A1 | True copy of letter dated 6-6-89 of Electrical Foreman, Mangalore. |
| 2. | A3 | True copy of office order No. J/E.60/94 dated 30-10-94 of the 1st respondent. |
| 3. | A4 | True copy of order dated 7-11-97 in OA 38/96 of the Tribunal. |
| 4. | A5 | True copy of letter dated 10-3-99 of the 1st respondent. |
| 5. | R3(5) | True copy of Office Order No. J/E.10/91 dated 25-2-91 issued by the Sr. DPO/PGT. |