

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. NO. 371/2008

Dated this the 19<sup>th</sup> day of March, 2010

C O R A M

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER  
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

V. Vasanthakumar S/o S.Vadivelu  
Keyman, Gang No. 7  
Southern Railway/Walayar  
residing at 13-D, Indira Nagar  
Vellalur Road, Podannur  
Coimbatore District.

Applicant

By Advocate Mr. T.C. Govindaswamy

Vs

- 1 Union of India represented by  
the General Manager Southern Railway  
Headquarters Officers, Park Town PO  
Chennai-3
- 2 The Section Engineer  
Permanent Way West  
Southern Railway, Podannur  
Coimbatore
- 3 The Additional Divisional Engineer  
Southern Railway  
Palghat Division  
Palghat.
- 4 The Divisional Personnel Officer  
Southern Railway, Salem Division  
Salem

5 V. Raman  
Keyman, Gang NO. DTM/III  
Southern Railway  
Podannur.

Respondents

By: Advocate Mr. Thomas Mathew Nellimoottil for R 1-4

*By Advocate Mr. T. H. Chacko for R-5*

The Application having been heard on 9.3.2010 the Tribunal delivered the following:

**ORDER**

**HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

The grievance of the applicant is that he has not been called for trade test and granted promotion to the post of Keyman when he alone responded <sup>to</sup> the notification for trade test.

2 According to the applicant, promotion to the post of Keyman is conducted by calling for willingness from eligible seniormost candidates in the ratio of 1:1 and conducting suitability test. Against one vacancy of Keyman, willingness was called for vide Annexure A-1. Only Shri C. Velusamy and the applicant responded, Shri Velusamy being the senior was selected. According to him there was no response to Annexure A-2 notification. When another vacancy arose, willingness was called for (A3), the applicant alone expressed willingness. While he was expecting call for trade test, the 5<sup>th</sup> respondent alone was invited for trade test in a clandestine manner vide A-4. On submission of objections by the applicant the trade test was stopped. Thereafter, another notice was issued (A-6) calling for trade test to be held for filling up three vacancies. It was inter alia stated that, trade test conducted against one vacancy earlier has been cancelled on administrative reasons. Finally, trade test was conducted on 21.8.2007, the 5<sup>th</sup> respondent, the

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applicant and another having been found suitable were promoted. (A-8). The applicant is challenging Annexure A-4 inviting 5<sup>th</sup> respondent for trade test in preference to the applicant as illegal, arbitrary and discriminatory, the applicant is entitled to be granted notional seniority being senior to 5<sup>th</sup> respondent, failure of the respondents to finalise the process of promotion initiated in terms of A-3 notification is arbitrary, discriminatory and contrary to law.

3 The respondents in the reply statement submitted that if the applicant was aggrieved by the action on the part of the respondents in cancelling A-3 notification, he should have challenged the subsequent notification. On the other hand, he participated in the subsequent trade test and and got selected. They submitted that the applicant is very much junior to the 5th respondent (Annexure R-1 and R-2). They submitted that the notification at Annexure A-3 was cancelled to enlarge the zone of consideration, to give a fair chance to all senior eligible employees, and due to increase in the number of vacancies. In the fresh notification, the applicant along with three other submitted their willingness. They denied that the earlier notification was cancelled to accommodate the 5<sup>th</sup> respondent at Podannur . They brought to our notice the judgment of the Apex Court in Om Prakash Shukla Vs. Akhilesh Kumar (AIR 1986 SC 1043) and University of Cochin Vs. N.S. Junjoonjamma & Others (1997 SCSC (L&S) 976) to the effect that once having participated in the selection the applicant is estopped to challenge the correctness of the procedure.

4 The applicant filed rejoinder stating that he alone responded to A-3 notification. He stated that, as there was no response to A-2, A-3 was issued. Therefore there was no need for cancelling A-3 on administrative ground and again giving chance to those who had not



responded to A-2 notification.

5 The respondents filed additional reply statement stating that seniormost candidates who submitted willingness are subjected for suitability/trade test on 1:1 basis only. They further stated that the posting of selected candidates are done based on a number of factors such as the place of occurrence of vacancies, request transfer of senior employees, etc..

6 The 5<sup>th</sup> respondent filed separate reply statement contending that the applicant has not raised any complaint against A-4 notification and that he participated in the trade test. Therefore, the applicant has given up his claim over A-3 notification. He stated that though he was senior to the applicant, as his name was not included in the list in A-3 notification, he complained, and hence the list was not operated.

7 The grievance of the applicant is that he has not been called for trade test for promotion to the post of Keyman pursuant to A-3 notification when he was the only willing employee. Hence, he seeks timely promotion to the post in preference to the 5<sup>th</sup> respondent and consequential placement above the 5<sup>th</sup> respondent in the promoted post. The respondent Department cancelled A-3 notification as the number of willing candidates was less. The applicant is challenging the cancellation on the ground that he had offered his willingness for the trade test and that the 5<sup>th</sup> respondent did not submit his willingness.

8 In order to peruse any available documentary proof relating to the willingness expressed by the 5<sup>th</sup> respondent to Annexure A-2, the Assistant Divisional Engineer was summoned to bring records and assist the Tribunal. He appeared before us on 9.3.2010 and explained the position and filed an additional affidavit. It is seen from the affidavit that the willingness of the 5<sup>th</sup> respondent in response to Annexure A-2

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was noted in File No. W/PTJ/46 as Folio No. 136. It was submitted that the 5<sup>th</sup> respondent was called for the Trade Test against the vacancy which fell vacant with effect from 30.4.2007 and compatible with Annexure A-2 and that one more vacancy of Keyman was anticipated from 31.8.2007 due to retirement of Shri M. Krishnan. There were already two vacancies against which two notices were issued resulting in communication of willingness by two candidates. Considering the above aspects, it was decided to call for fresh willingness from all eligible senior employees cancelling the earlier notices at Annexures A-2 and A3. Accordingly A-6 fresh notice was issued to 57 seniormost candidates, 10 employees including the 5<sup>th</sup> respondent and the applicant submitted their willingness. A combined trade test for these two notifications was conducted. In the seniority list of Senior Trackman, the name of the 5<sup>th</sup> respondent figures at Sl. No. 24 while that of the applicant is at Sl. No. 44.

9 The applicant was under the misapprehension that there was no response to A-2 notification, that he alone responded to Annexure A-2 notification and that, had he been called for trade test, he would have been selected, in that event he would have become senior to the 5<sup>th</sup> respondent in the cadre of Keyman. It is a fact that the applicant is junior to the 5<sup>th</sup> respondent in the feeder cadre of Sr. Trackman. The allegation of the applicant is that the respondent Department took decision to conduct combined trade test deliberately to help the 5<sup>th</sup> respondent. This is only wishful thinking on the part of the applicant. The respondents are the best authorities to decide when the trade test is to be conducted and promotion effected. When it is brought to their notice that there was inadequate response from the senior employees, it



was their prerogative to cancel the notification or to conduct a combined trade test. More over, the applicant participated in the trade test and passed. At that time, he had not complained about the non-conduct of trade test for the vacancy notified by A-3. After participating in the trade test and accepting the promotion then turning around and challenging the action of the respondents in cancelling the A3 notification is hit by the principle of "estoppel". Again the contention of the applicant that he alone responded to the A-3 notification is contested by the respondents. The 5<sup>th</sup> respondent had complained about the non-inclusion of his name for the trade test. We do not find any loss to the applicant nor any junior had overtaken him by virtue of not conducting the trade test as per A-3 notification.

10 The promotion to the cadre of Keyman is strictly made on the basis of seniority. Therefore, the applicant cannot have a grievance about the promotion of the 5<sup>th</sup> respondent, who is admittedly senior to him in the cadre of Sr. Trackman, and who passed the trade test. We do not find any ground to interfere with the action of the respondents in cancelling the trade test pursuant to Annexure A-3 notification which is the prerogative of the respondents Department to do so in the interest of the Department. Accordingly, we do not find any merit in the O.A, it is dismissed. No costs.

Dated 19<sup>th</sup> March, 2010

  
K. NOORJEHAN  
ADMINISTRATIVE MEMBER

  
GEORGE PARACKEN  
JUDICIAL MEMBER

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