

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 394/2005

TUESDAY THIS THE 20th DAY OF MARCH, 2007

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

T.N. Karthikeyan S/o Velayuthan
Senior Trackman Grade-I
Aroor Railway Station
Residing at Planthodam
Erumapayam Karar, Erumapayam PO
Thalayolaparamba, Kottayam.

..Applicant

By Advocates M/s T.C. Govindaswamy, D. Heera, P.N. Pankajakshan Pillai
& Sumy P. Baby

Vs

- 1 Union of India represented by
the General Manager, Southern Railway
Headquarters Office, Park Town PO
Chennai-3
- 2 The Divisional Railway Manager
Southern Railway, Divisional Office
Trivandrum.
- 3 Assistant Divisional Engineer
Quilon Junction, Southern Railway
Quilon, Kerala.
- 4 The Section Engineer (Permanent Way)
Southern Railway
Alleppey R.S. & PO
Kerala.
- 5 Shri V. R. Ravi, Senior Gate Keeper Grade-I
Haripad Railway Station (through 4th Respondent)
Haripad.

..Respondents.

By Advocate Mrs. P.K. Nandini (R 1-4)

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant is a Senior Trackman Grade-I working under the 4th respondent. He is aggrieved by the promotion granted to the 5th respondent by Annexure A-2 order who is allegedly junior to him.

2 The applicant was initially appointed as a Casual Labourer in the Construction organisation of Southern Railway. He got temporary status w.e.f. 1.1.1981 and was regularised as Gangman/Trackman w.e.f. 27.2.1987. He was later promoted as Senior Gangman in the scale of Rs. 800-1150 and further promoted as Senior Trackman Grade-I in the scale of Rs. 2750-4400. According to him the 5th respondent Shri V. R. Ravi was working as Senior Gatekeeper Grade-I in the Haripad Railway Station under the 4th respondent which post is inter-changeable with that of Senior Trackman. A new unit of Section Engineer/Permanent Way with headquarters at Alleppey was constituted during the year 1994 after opening of the Ernakulam-Alleppey-Kayamkulam line by absorbing persons who were already working in the section and also by transfer from other units of Section Engineers/Permanent Way with full seniority. The respondents have not published any seniority list but promotions were being made from time to time. The applicant came across a manuscript seniority list maintained in the office of the 4th respondent and noticed that his date of appointment was

shown as 27.9.1990 as against the actual date of appointment i.e. 27.2.1987. Though he had submitted representations at Annexure A-1 and A2 nothing transpired. Now by Annexure A-3 order the 5th respondent whose date of appointment is 5.12.1988 i.e. one year and 10 months later than the applicant, has been promoted. The promotion to the post of Keyman is based on seniority cum-fitness being a non-selection post. Hence the applicant has submitted that the promotion of the 5th respondent in preference to the applicant is in negation of the right to equality guaranteed under Article 14 and 16 of the Constitution of India.

3 The following are the reliefs sought for:

(a) Call for the records leading to the issue of Annexure A3 and quash the same to the extent it relates to the 5th respondent.

(b) Declare that the official respondents are bound to record the applicant's date of appointment as 27.2.1987 as against 27.9.1990 as recorded in the manuscript seniority list maintained in the office of the 4th respondent and direct the said respondents accordingly.

© Direct the respondents to revise the applicant's seniority based on the date of his appointment as 27.2.1987 as against 27.9.1990 presently taken into consideration and direct further to grant consequential benefits emanating therefrom in accordance with the rules and instructions on the subject.

(d) Direct the respondents to consider the applicant for promotion to the post of Keyman and to promote him accordingly, with consequential benefits of fixation of pay and arrears thereof with effect from the date of Annexure A-3

(e) Award costs of and incidental to this Application

(f) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

4 Per contra, the respondents have averred that the applicant's entry in the service of the Southern Railway was as a Casual Labourer, that after being treated as temporary mazdoor he was removed from service during the period from 19.12.1983 to 27.10.1986 pursuant to disciplinary proceedings and the period was treated as dies non. Subsequently he was empanelled as regular Gangman in the scale of Rs.775-1025 in PWI Kottayam w.e.f. 1.4.1987 and the empanelment was approved by the DRM on 27.2.1987. He was transferred from PWI, Kottayam to PWI Ernakulam at his own request vide DPO/TVC/ Office order No. 70/90/WP(V/P 564/1/Empl/TVC Divn. dated 24.7.90 on condition that he would be ranked juniormost to all regular employees in the new seniority unit. He reported for duty in Ernakulam section on 27.9.1990 and his date of appointment at PWI Ernakulam was taken as 27.9.1990. As per the seniority list maintained in Alleppey Section the applicant's seniority position is 124 and that of the 5th respondent is 82. As per the seniority list, the applicant's date of appointment is shown as 27.9.1990 whereas that of the 5th respondent is shown as 5.12.1988.

5 The applicant filed a rejoinder denying the averments of the respondents and stating that when the unit at Alleppey was

constituted during the year 1994, the persons joining there from different PWIs were given seniority from the date of their initial appointment and irrespective of their date of joining the new unit. The applicant was transferred to the new unit, he has to be given identical treatment at par with many others.

6 In the additional reply statement, the respondents reiterated their earlier contentions and reiterated that the PW Alleppey section was formed taking over the existing employees working in PWI Ernakulam Section and PWI Alleppey staff working between Alleppey and Kayamkulam. Since the applicant has reported for duty at PWI Ernakulam on 27.9.90 in the seniority list maintained in Alleppey section the applicant's date of appointment for seniority purpose was shown as 27.9.1990 and thus the 5th respondent is senior to him in the seniority maintained in the Alleppey Section. The applicant is at 124 whereas the 5th respondent is at 82 as stated before. They have further mentioned that as per order of cadre restructuring dated 28.6.1994 the employees had been promoted to the scale of Rs. 800-1150.1993 and in the said promotion list the 5th respondent is at Sl.No. 32 and the applicant is at Sl. No. 76. The applicant had accepted the promotion without any complaint or objection. The said seniority list is continuing in the Section under the 4th respondent and further promotions are being effected from the same seniority. Thus the averments in the O.A. and the rejoinder are without any merit.

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7 We have heard Ms Heera appearing for the applicant and Ms P.K. Nandini appearing for the respondents 1 to 4.

8 The learned counsel for the applicant submitted that even if the applicant's transfer to Ernakulam Section is considered for the purpose of seniority many other who joined the Alleppey Section in 1990 had been placed above the applicant and there is no seniority list published by the 4th respondent . The applicant came to know about his seniority only from the manuscript seniority list maintained in the office. The counsel for the respondents reiterated the contentions in the reply statement.

9 The short question here is whether the 5th respondent is senior to the applicant in the seniority list of Gangmen in Alleppey Section which was constituted in the year 1994. It is clear from the averments of the respondents that the applicant who originally belonged to PWI Kottayam came on request transfer to Ernakulam Section on condition that he would be juniormost in the Ernakulam section. As he had reported for duty on 24.7.1990, his seniority at PWI Ernakulam was granted only from that date. Subsequently a new PWI Section at Alleppey was formed in 1994 by calling for volunteers from various Sections and also from the existing employees in the unit. Since the applicant was working in the PWI Ernakulam Section he carried the same seniority while he was absorbed in the Alleppey unit. Similarly, those who had come from

other Sections would carry their seniority in the unit to which they had belonged as on that date. It is noticed that the applicant has conveniently not made any reference to his transfer from Kottayam section to Ernakulam Section in the year 1990 on request. Other averments regarding seniority of others who have been placed above the applicant at the time of transfer to Alleppey section are vague and generalised. Since the applicant has lost his seniority on account of his request transfer from Kottayam to Ernakulam and his seniority in Ernakulam unit was settled as on that date, he cannot retrieve the seniority from the original date of entry just because a new Section was formed in 1994. We do not find any merit in the O.A. The OA is dismissed. No costs.

Dated 20.3.2007


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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