

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.397/93

Tuesday, this the first day of February, 1994.

CORAM: SHRI N DHARMADAN, MEMBER(J)  
SHRI S KASIPANDIAN, MEMBER(A)

G Manikantan Pillai,  
Lascar,  
Office of the Inspector of Works,  
Southern Railway,  
Quilon.

- Applicant

By Advocate Mr P Sivan Pillai

Vs.

1. Union of India through  
General Manager,  
Southern Railway,  
Madras-3.
2. The Divisional Personnel Officer,  
Southern Railway,  
Trivandrum.14.
3. The senior Divisional Engineer(II)  
Southern Railway, Trivandrum-14. - Respondents

By Advocate Mr PA Mohamed

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N DHARMADAN, MEMBER

Applicant is aggrieved by the denial of inclusion of his name in Annexure-A3 list of Class-IV staff for promotion to Class-III against the 33 and 1/3% vacancies.

2. According to the applicant, he joined as a Casual Employee on 15.5.1973. He was granted temporary status with effect from 23.10.1978. He was promoted as Gangman in the scale of Rs.775-1025 with effect from 6.8.1985. By Annexure-A1

order, on administrative ground, the applicant has been transferred and posted as a Lascar under the IOW, Quilon in the lower scale of Rs. 196-232. This order was passed by the Senior Divisional Engineer, Trivandrum Division. The applicant opted to come to the lower post with the object of contesting for promotion to Class-III post. When vacancies of Class-III post arose within the 33 and 1/3% quota, the applicant submitted Annexure-A4 application, but he was not called for the test and the interview. Later Annexure-A3 list of persons eligible for promotion was issued by the DPO on 13.12.1992. Even though number of others working as Lascars were included, the applicant was neither included <sup>in the list</sup> nor called for the test. Hence aggrieved by the failure of the respondents to include him in the list of candidates for the test and interview, he filed this application mainly for a direction to consider him for promotion and inclusion in Annexure-A3.

3. While admitting the application on 5.3.1993, we passed an interim order making it clear that the appointment to the post of office clerk pursuant to Annexure-A3 shall be subject to the outcome of the application and the appointees should be informed specifically about it.

4. The only objection raised by the respondents for denying the benefit of promotion and inclusion in Annexure-A3 is that the applicant's posting as Lascar was made by an incompetent authority and hence he has not been treated as

a regular Lascar to be considered for promotion to Class-III post. According to the respondents, the post of Lascar is being filled up by the second respondent, who is the competent authority to pass postings and transfers of Lascars.

5. The applicant denied this by filing a rejoinder. He has also produced the appointment order in Annexure-A5, by which 44 persons were appointed as Gangmen in the year 1985. The order dated 23.7.1985 has been signed by the AE, Quilon, who is the appointing authority being the head in the Engineering Section in that Unit. He has also stated that since the applicant is working in the Engineering department in Trivandrum Division, the Senior Divisional Engineer is the head of the department to issue orders of posting of Lascars in the Division. Divisional Personnel Officer is only a communicating authority in regard to orders of postings and transfers issued by the competent authority.

6. Even though the learned counsel for the respondents asserted that the DPO is the authority as stated in the reply he has not supported the statement with any document or letters to establish that the DPO is the competent authority for postings and transfers of Lascars. On the other hand, the records produced by the applicant would establish beyond any doubt that the applicant is working in the Engineering department and the orders are being issued by the Assistant Engineer and

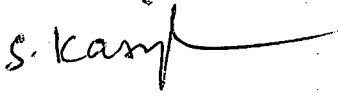
Senior Divisional Engineer. These orders are even now in force. If these orders are issued by incompetent authority, the respondents ought to have cancelled the same. So far they have not been cancelled. Hence we are inclined to accept the contention of the applicant that the order at Annexure-A1 has been validly issued by the competent authority. This order conferred legal rights on the applicant which cannot be denied accepting the technical plea now raised by the respondents in the reply.


7. It is the case of the applicant that he opted to work as a Lascar in lower scale with the object of getting further promotion in Class-III post. Accordingly he worked in the lower scale from 26.11.1985 onwards. Even now he is working as a Lascar. So long as this Annexure-A1 has not been cancelled on the ground that it has not been issued by the competent authority we have to uphold this order and declare that the benefit of inclusion of the applicant in Annexure-A3 after conducting necessary test and interview in this behalf in accordance with the rules and regulations.

8. In this view of the matter, we allow the application, and declare that the applicant is entitled to be considered for selection to the post of Class-III within the 33 and 1/3% quota of vacancy along with persons included in Annexure-A3. If any test and interview is to be conducted for complying

with the above direction, it goes without saying that the respondents are bound to hold the same to find out the suitability of the applicant. The direction shall be complied with within a period of four months from the date of receipt of a copy of this order.

9. The OA is allowed as above. No costs.

  
(S KASIPANDIAN)  
MEMBER(A)

  
(N DHARMADAN)  
MEMBER(J)  
1.2.94.

TRS