

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 406 OF 2006

Dated the 13th November, 2007

CORAM:-

**HON'BLE SMT. SATHI NAIR, VICE CHAIRMAN
HON'BLE Dr. KBS RAJAN, JUDICIAL MEMBER**

1. Julian Xavier Fernandez,
Son of Xavier, Technician/Gr-I/
AC.S.Rly, Trivandrum Central,
Resident of Judith Bhavan,
Neendakara PO, Kollam.

2. V.K. Pradeep Kumar,
Son of KuttanPillai, Technician/Gr-I/
AC.S.Rly, Trivandrum Central,
Resident of Thamburu,
Melekalluvila, Parottukonam,
Nalanchira, PO,
Thiruvananthapuram.

3. K.Chandradathan,
Son of Kalidasan Pillai, Technician/Gr-I/
AC.S.Rly, Trivandrum Central,
Geetha Bhavan,
Thirumullavaram, Kollam.

... Applicants

[By Advocate: Mr MP Varkey)

-Versus-

1. Union of India,
Represented by General Manager,
Southern Railway,
Chennai-600 003.

2. Chief Personnel Officer,
Southern Railway,
Chennai-600 003.
3. Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum-695 014.

...Respondents

[By Advocates: Ms. Viji for Mr Sunil Jose]

This application having been heard on 31st October, 2007
the Tribunal delivered the following -

ORDER

(Smt. Sathi Nair, Vice Chairman):

This application has been filed by the applicants, who are presently working as Technicians, Grade-I in the pay scale of Rs.4500-7000/-in AC Wing of Electrical Department of Southern Railway at Trivandrum Central seeking the following reliefs:-

"(i) Declare that the cadre of AC Staff in Trivandrum Division includes the 109 ACCICS and the posts in the 4 grades of the cadre shall be redistributed as at A/1 with effect from 1.3.1993 or at least from 29.5.2003, the date on which the merger at A/1 was approved by the competent authority and, direct the respondents accordingly;

(ii) Declare that the cadre restructuring of AC staff of Trivandrum with effect from 1.11.2003 shall be done on the basis of the cadre strength and percentages as at A/3 and; direct the respondent accordingly;

(iii) Quash A/2, A/4 and A/5 to the above extents'

(iv) Declare that the applicants are eligible to have their grades and seniority revised as at A/1 and A/3 with attendant benefits with

effect from 1.3.93/29.5.2003 and 1.11.2003 respectively and direct the respondents accordingly; and

(v) Pass such other orders or direction as deem just fit and necessary in the facts and circumstances of the case."

2] Facts of the case briefly stated are that the Railways were running AC Coaches by drafting Technician Grade-III and Grade-II treating them as ex-cadre and keeping their lien in the parent posts, which practice was objected to by the Employees and the Unions and at last by order 31.5.2002 the Railway Board merged all the posts of AC In-charges with Technician Group-II. The said order was issued on 29.5.2003. Thereafter, by Annexure-A/1 order dated 25.9.2003 cadre strength of AC Staff was revised to 170 but the respondents did not implement this order fully. Later, the Railway Board by letter dated 9.10.2003 restructured all cadres in the AC Wing w.e.f. 1.11.2003 as per Memo dated 1.7.2004 (Annexure-A/3). This restructuring was also not fully implemented. It is further submitted that a joint representation submitted by the applicants and others in this connection has been rejected by Annexure-A/5 letter dated 28.7.2005 by the 3rd respondent. Hence, this Original application.

3] Per contra, Respondents have submitted that the applicants have not come up with any clear prayer as to their entitlement. Neither they have substantiated their claim by any document nor quoted any authority. The prayer of the applicants

is common for making all promotions in AC Wing w.e.f. 1.3.1993 or 29.5.2003 or 1.11.2003 and it is not known on what authority the present applicants had come up with such a general prayer. With reference to the particular contention, the respondents have submitted that the prayer for promotion from 1.3.1993 is wholly ill founded as no authority or documents have been produced by the applicants in support of their prayer. The merger of the posts was effected by the CPO, Madras letter dated 29.5.2003 and the benefits pursuant to the said order were to be allowed only on completion of administrative formalities like finalizing revised strength, trade testing the eligible senior employees etc. and hence, it may be appreciated that the time involved between Annexure-A/1 and Annexure-A/2 promotion order was perfectly justifiable and warranted. Due to implementation of restructuring w.e.f. 1.11.2003, the sanctioned posts which existed on 31.10.2003 was 170 which has further revised as 160 as per Circular No. PBC No.6/04 of the Railway Board, all vacancies arising out of the restructuring had to be filled up by senior employees who should be given benefit of the promotion w.e.f. 1.11.03. As such vacancies filled up due to restructuring can only be granted promotional benefits w.e.f. 1.11.2003. The applicants' statement as if the higher grade posts were not fully operated at any time and that they suffered irreparable recurring loss in grade, seniority ever since 1.3.1993 are not correct and not proved by any documents.

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Applicants have filed rejoinder reiterating their averments made in the original application.

4] We have heard Mr. MP Varkey, learned counsel for the applicants and Ms. Viji, learned counsel for the respondents. The learned counsel for the respondents has stated that the plea in Original Application lack clarity and are not supported by any facts on record. The reply statement and rejoinder filed after considerable delay and after adverse comments made by the Court and also imposing a deterrent cost, sadly has not added anything to the quality of the pleadings.

5] First of all, we agree with the respondents that the reliefs prayed by the applicants in the original application are not specific to them and seeking general policy directives. The applicants are seeking retrospective promotion challenging the orders of promotion issued in Annexure-A/2 and A/4, ^{which} in only the second applicant figures, the names of the other applicants are conspicuously absent. Even in support of the second applicant there is no specific plea as to how he is entitled to the retrospective promotion. The relief is claimed against Annexure-A/5 letter which is a reply to the joint representation submitted by 40 Technicians working at AC Depot, but the contents of the representation is not known nor a copy of the representation has been produced before this Tribunal. Hence, the application appears to be in the nature of public interest litigation.

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5] From what we is discernible from the record before us the sequence of the events that have taken place in respect of the AC Staff originated from the decision of the Railways to merge the posts of ACC.IC, which had been operated on ex-cadre basis with the posts of AC Technicians. The merger was ordered by Annexure-A/1 order dated 25.9.03. The merger could actually become effective only after cadre review and completing the percentage distribution of posts as prescribed by the Railway Board. These exercises were actually initiated by the Division Office on the basis of Chief Personnel Officer, Southern Railway, Madras letter dated 29.5.2003. Again in this letter it was stipulated that any benefit arising out of this merger would be given only on passing trade test for suitability. Thereafter restructuring took place in the Railway from 1.11.2003 in the AC Wing and in pursuance thereof the revised sanction strength was notified by Annexure-A/3. Consequently, Annexure-A/4 order for promotion was issued in the restructured vacancies w.e.f. 1.11.2003. The prayer of the applicants to give retrospective effect to the promotions granted by Annexure-A/4 has to be viewed in the light of this sequence of the events as narrated above. There was some delay between the decision to merge the cadres and the actual fixation to revise the strength in tune with the merger. This was of course necessitated by the cadre review and the consequent revision of the sanctioned strength in the

respective grades. This was finally communicated by the Chief Personnel Officer's letter dated 29.5.2003 and notified by the Division by Annexure-A/1 order dated 25.9.2003. At best even if the merger could be deemed to have come into effect from 29.5.2003, the promotions were to be granted only after conducting suitability test and other formalities. Nothing has been averred regarding passing of the suitability test etc. by the applicants in this application to enable us to come to the conclusion that if the merger is given effect from 29.5.2003, the applicants would have been eligible for earlier promotion.

6] As regards the second relief, we find that the Annexure-A/3 had already taken into consideration the percentage as made effective by Annexure-A/1 for determining the sanctioned strength as on 1.11.2003, as per column 5 thereof. Promotions to the restructured posts can be given to the senior employees only w.e.f. 1.11.2003 and to the Junior employees in the normal vacancies existed on 1.11.2003 from the date of taking over the posts. Thus, the question of antedating the promotion arising out of the restructuring to any date prior to 1.11.2003 does not arise at all.

7] In the result, we do not find any merit in the claims made by the applicants in the instant application and the general prayers sought by them. If the applicants are aggrieved by any

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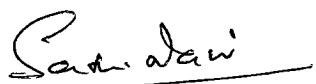
specific order they should approach the Court with specific prayer on that behalf duly following the prescribed procedure. Normally, we should impose heavy costs on the applicants for coming forward with such vague pleas, however, considering they are low paid employees, we refrain from doing so.

The Original application is devoid of merit and is dismissed.

[Dated the 13th November, 2007]



(Dr. KBS Rajan)
JUDICIAL MEMBER



(Smt. Sathi Nair)
VICE CHAIRMAN

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