

Union of India vs N.Davidson

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Court : Kerala

Decided On : Mar-01-2023

Judge : Honourable Mr.Justice S.V.Bhatti,Honourable Mr.Justice Basant Balaji

Appeal No. : OP (CAT)/127/2016

Appellant : Union of India

Respondent : N.Davidson

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE HONOURABLE MR.JUSTICE BASANT BALAJI WEDNESDAY, THE 1ST DAY OF MARCH 2023 / 10TH PHALGUNA, 1944 OP (CAT) NO. 127 OF 2016 AGAINST THE ORDER OA 593/2012 & RA 14/2015 OF CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH PETITIONER/S: 1 UNION OF INDIA REPRESENTED BY THE GENERAL MANAGER, SOUTHERN RAILWAY, HEADQUARTERS OFFICE, PARK TOWN PO, CHEMMAO-600 003. 2 DIVISIONAL RAILWAY MANAGER, SOUTHERN RAILWAY, TRIVANDRUM DIVISION, TRIVANDRUM-695 014 3 SENIOR DIVISIONAL PERSONNEL OFFICER, SOUTHERN RAILWAY, TRIVANDRUM

DIVISION, TRIVANDRUM-695 014 BY ADVS.SRI.A.DINESH RAO, SC, RAILWAYS SREEJITH P. R RESPONDENT/S: 1 N. DAVIDSON, S/O. NESAN, MOTOR VEHICLE DRIVER GRADE 111), OFFICE OF THE SENIOR SECTION ENGINEER/ELECTRICAL POWER, SOUTHERN RAILWAY, TRIVANDRUM CENTRAL, TRIVANDRUM. RESIDING AT:POOVANKAVILA PUTHENVEEDU,NEDURKOLLA, AMARAVILA PO, TRIVANDRUM-695122

2 D. CHANDRAN, TECHNICIAN GRADE 11 (MOTOR VEHICLE DRIVER), OFFICE OF THE SENIOR DIVISIONAL ENGINEER, SOUTHERN RAILWAY, TRIVANDRUM DIVISION, TRIVANDRUM-695014 -2- 3 G. MURALEEDHARAN TECHNICIAN GRADE III (MOTOR VEHICLE DRIVER), OFFICE OF THE SENIOR DIVISIONAL ENGINEER, SOUTHERN RAILWAY, TRIVANDRUM DIVISION, TRIVANDRUM-695014 BY ADVS. AJIT G ANJARLEKAR, SRI.GOVIND PADMANAABHAN SRI.RAM MOHAN.G., SRI.G.P.SHINOD THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 01.03.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -3-

JUDGMENT

S.V. Bhatti, J.

Heard Adv P R Sreejith and Adv Ajith G Anjarlekar for the parties.

2. The respondents in O.A. No.593/2012 are the

petitioners, and the petition is filed against the order dated 18.05.2015 of the Central Administrative Tribunal (for short, the Tribunal). The issue arises under Rule 320 of the Indian Railway Establishment Manual. 2.1 The circumstances leading to the initiation of the Original Application are, by and large, undisputed, and the disputed area is the length of service that is considered for an employee who is transferred from Kottayam to Varkala -4- Division. The 1st respondent entered the service of Railways as Casual Labour in 1991. On 12.02.1996, the Railways regularised the workmans service as Gangman/Trackman. On

01.03.1998, the employee was promoted to Senior Trackman. The respondent worked under the Section Engineer/Permanent Way, Kottayam, from 1991 till the respondent was transferred to the control of Section Engineer/Permanent Way/Varkala. Notably, Section Engineer/Permanent Way, Kottayam and Section Engineer/ Permanent Way, Varkala, come under the Southern Railway, Trivandrum Division. The transfer was at the request of the workman. 2.3 The petitioners, through Annexure A1 dated 10.01.2011, have prepared the provisional seniority list of Motor Vehicle Drivers, TVC Division as on 01.01.2011. The operative portion of Annexure-A1 reads thus: -5-

The provisional seniority 1st of Motor Vehicle Drivers, TVC Divn. as 01-01-2011 is enclosed for circulation among the staff concerned. Representations if any received from the staff against the position assigned to them in the cadre should also be submitted within a month from the date of issue of this letter. Representation should be self-explanatory indicating the factual reasons advanced against the position assigned to the representationist vis--vis to the other. If no representation is received within the stipulated period, it will be assumed that the seniority list is in order and the provisional list would become the final list thereafter. *** **

IV M V Drivers Gr.III in PB-1 Rs.5200-20200+1900 GP 1 04234492 K Anilan Sr.DEE(TRD)/O/TVC 20.01.1958 05.12.1988 09.02.2009 2 00429190 D Chandran Sr.DEN/O/TVC 05.12.1952 16.02.1997 04.02.2009 3 00429426 G Muraleedharan S.DOM/O/TVC 24.11.1956 03.06.1999 05.02.2009 4 04220171 N Davidson Sr.SE(P) Ele/O/TVC 09.12.1956 12.02.1996 09.02.2009 From the above provisional seniority list, it appears the petitioners have fixed the seniority of the respondent below the -6- junior in the same category. The respondents case is that his transfer from Kottayam to Varkala is within the Division. Ignoring the length of service rendered at Kottayam is illegal and contrary to the Rules.

3. The Tribunal did not accept the reply of the

petitioners herein. By referring to the reasons of the Tribunal, one would appreciate the tenor and text of the petitioners objections herein on the respondents claim for refixing the seniority above D Chandran in O.A. No.643/2011 filed by the respondent. The operative portion of the Order in O.A. No.643/2011 reads thus:

5. The short question that arises for consideration is as to whether the applicant is senior to respondents 4 & 5. Going by the date of appointment in the service applicant is senior but the fact remains that the applicant was transferred from one unit to another on his request on loss of seniority where he worked till his transfer. This is highlighted by the respondents -7-

in the counter affidavit to deny the seniority to the applicant. But according to the applicant when promotions are made division wise the unit wise seniority has no role to play and it is irrelevant. It is the original seniority based on the initial appointment that is material for the purpose of reckoning the seniority when promotion is effected division wise. In the absence of any clear cut rules regarding as to how seniority has to be fixed and in the light of the fact that the applicant's representations made against the provisional seniority list having been not considered by the official respondents before effecting the promotion to the 4th respondent, we adopt the following course:- We direct the 2nd respondent to consider Annexure A-4 followed by Annexure A-5 representations and dispose of these representations as expeditiously as possible after hearing respondents 4 & 5 also. The authority will state as to whether the seniority has to be determined with reference to the date of entry into service or otherwise with reference to any rule if any in force. The position that may arise after VIth Pay Commission recommendations accepted may also be looked into while disposing of the representations. Further promotions of respondents 4 & 5 will not be made before considering and disposing of the -8-

representations filed by the applicant as directed above. The promotion of the 4th respondent will be provisional and subject to the outcome of the order that may be passed by the 2nd respondent on the representations of the applicant. Let the applicant produce a copy of the

order before the 2nd respondent for timely compliance of

the order. In view of the fact that further promotion of respondents 4 & 5 has been directed to be kept in abeyance, it is only appropriate that there should not be any delay in the matter of considering the representations of the applicant and accordingly we fix a time limit of two months for the purpose of disposal of the representations Annexures A-4 and A-5 and communicate the order to the applicant.

6. Accordingly, the Original Application is disposed of. No order

as to costs. The petitioners, pointing out a few alleged errors, filed Review Application No.180/00014/15 in O.A. No.593/2012, and the Review Application was dismissed by pointing out the incorrect understanding of the original order of the Tribunal. Hence the Original Petition. -9-

4. The party respondents did not question the order of

the Tribunal in O.A. No.593/2012. The Railways contend that the respondent shall be deemed to have been in Varkala Controlling Authority from 2001, and therefore the seniority fixed is valid and legal. Except for the solitary ground, no other ground is urged against the order under review. The sole objection raised against the order of the Tribunal is that the

order pales into complete insignificance by reading Rule 320 of

Rules Regulating Seniority of Railway Servants:

320. RELATIVE SENIORITY OF EMPLOYEES IN AN INTERMEDIATE GRADE BELONGING TO DIFFERENT SENIORITY UNITS APPEARING

FOR A SELECTION/NON-SELECTION POST IN HIGHER GRADE. When a post (selection as well as non-selection) is filled by considering staff of different seniority units, the total length of continuous service in the same or equivalent grade held by the employees shall be the determining factor for assigning inter- seniority irrespective of the date of confirmation of an -10-

employee with lesser length of continuous service as compared to another unconfirmed employee with longer length of continuous service. This is subject to the proviso that only non- fortuitous service should be taken into account for this purpose. Note:-Non-fortuitous service means the service rendered after the date of regular promotion after due process.

4.1 Firstly, the seniority list is prepared in Thiruvananthapuram Division. Secondly, Rule 320 emphasises that the total length of continuous service in the same or equivalent Grade shall be the determining factor for assigning the inter se seniority irrespective of the date of confirmation of an employee with a lesser length of continuous service as compared to another unconfirmed employee with longer length of continuous service. The only rider is that non-fortuitous service is taken into consideration. Reverting to the case on hand, we hold that ignoring the length of service rendered at -11- Kottayam and Varkala by respondent no.1 is illegal. The Tribunal, for very valid and cogent reasons, allowed the prayer of the 1st respondent. No ground is made out warranting interference. The Original Petition fails. Hence dismissed. Sd/- S.V.BHATTI JUDGE Sd/- BASANT BALAJI JUDGE jjf -12- APPENDIX OF OP (CAT) 127/2016 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE OA 593/12 ON THE FILES OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH. Annexure A1 TRUE COPY OF THE SENIORITY LIST BEARING NO.V/P.612/XII/PG/VOL.IV DATED 10.01.2011 ISSUED BY THE 3RD RESPONDENT. Annexure A2 TRUE COPY OF THE OFFICE ORDER NO.29/2011/PG DATED 24.06.2011 ISSUED BY THE 3RD RESPONDENT. Annexure A8 TRUE COPY OF THE LETTER BEARING NO.V/P.612/XII/PG/VOL.IV DATED 11.06.2012 ISSUED BY THE 2ND

RESPONDENT. Annexure A3 TRUE COPY OF THE OFFICE ORDER BEARING NO.05/2009/PG DATED 13.02.2009 ISSUED BY THE 3RD RESPONDENT. Annexure A4 TRUE COPY OF THE ORDER NO.VAK/6/RELIEVING OF STAFF DATED 06.02.2009 ISSUED BY THE SECTION ENGINEER/PERMANENT WAY. Annexure A5 TRUE COPY OF THE REPRESENTATION DATED 02.02.2011 SUBMITTED BY THE APPLICANT TO THE RESPONDENTS. Annexure A6 TRUE COPY OF THE REPRESENTATION DATED 16.06.2011 SUBMITTED BY THE APPLICANT BEFORE THE 3RD RESPONDENT. -13- Annexure A7 TRUE COPY OF THE ORDER DATED 23.01.2012 IN O.A.NO.643/2011 RENDERED BY THE CAT (ERNAKULAM BENCH). Exhibit P2 TRUE COPY OF THE REPLY STATEMENT FILED BY THE

PETITIONERS HEREIN IN O.A. 593/12 ON THE FILES OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

Exhibit P3 TRUE COPY OF THE ORDER OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH DT. 18TH MAY 2015 IN O..593/12. Exhibit P4 TRUE COPY OF THE P.B. CIRCULAR NO. 56/06 FORWARDING RAILWAY BOARD'S LETTER RB(ESTT.)NO.34/16 Exhibit P5 A TRUE COPY OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH IN RA/180/00014/15 IN OA NO. 593/12 DT. 1ST OCTOBER 2015

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