

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.417 of 2013,
Original Application No.419 of 2013,
Original Application No.469 of 2013
&
Original Application No.780 of 2013

Wednesday this the 4th day of June, 2014

C O R A M :

HON'BLE Mr.JUSTICE A.K.BASHEER, JUDICIAL MEMBER

ORIGINAL APPLICATION No.417 of 2013

1. V.S.Syed Ali (Retd.),
Khalasi Helper,
Office of the Deputy Chief Materials Manager,
Southern Railway.
14/822, Sawab Nagar,
1st Street, Main Road, Alathoor, Palghat.
2. S.Dhasthagiri (Retd.),
Khalasi Helper,
Office of the Deputy Chief Materials Manager,
Southern Railway.
Parayil House, Kamba, Parli, Palghat.
3. P.M.Selvaraj (Retd.),
Khalasi Helper,
Office of the Deputy Chief Materials Manager,
Southern Railway.
Vijaya Illam, Vandithavalam, Palghat.

...Applicants

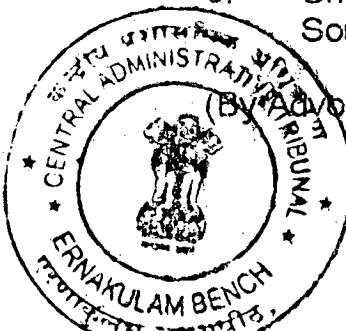
(By Advocate Mr.Siby J Monippally)

V e r s u s

1. Union of India rep. by Deputy Chief Materials Manager,
Southern Railway, General Stores Depot,
Perambur, Chennai.
2. Senior Materials Manager,
Southern Railway, Stores Depot, Erode, Chennai.
3. Chief Personnel Officer,
Southern Railway, Chennai.

...Respondents

(By Advocate Mr.K.M.Anthru)



2.

ORIGINAL APPLICATION No.419 of 2013

1. D.Narayanan,
Khalasi Helper,
Senior Materials Manager's Office,
Southern Railway, Division Stores Depot, Palghat.
2. P.Assainar,
Khalasi Helper,
Senior Materials Manager's Office,
Southern Railway, Division Stores Depot, Erode.Applicants

(By Advocate Mr.Siby J Monippally)

V e r s u s

1. Union of India rep. by Deputy Chief Materials Manager,
Southern Railway, General Stores Depot,
Perambur, Chennai.
2. Senior Materials Manager,
Southern Railway, Stores Depot, Erode, Chennai.
3. Chief Personnel Officer,
Southern Railway, Chennai.Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

ORIGINAL APPLICATION No.469 of 2013

1. M.V.Krishnamoorthy (Retd.),
Relieving Porter,
Southern Railway, Palghat Division.
Residing at 75, Main Road,
Pothannoor, Coimbatore.
2. K.Parameswaran (Retd.),
Khalasi Helper,
Office of the Materials Manager, Southern Railway.
Residing at 35 D, MGR Nagar, Pothannoor,
Coimbatore.Applicants

(By Advocate Mr.Siby J Monippally)

V e r s u s

1. Union of India rep. by Deputy Chief Materials Manager,
Southern Railway, General Stores Depot,
Perambur, Chennai.
- Senior Materials Manager,
Southern Railway, Stores Depot, Erode, Chennai.



3. Chief Personnel Officer,
Southern Railway, Chennai.

...Respondents

(By Advocate Ms.P.K.Radhika)

ORIGINAL APPLICATION No.780 of 2013

1. T.Unnikrishnan,
Server, Southern Railway, Trivandrum Division.
2. K.N.Anandan,
Server, Southern Railway, Trivandrum Division.
3. N.Sreedharan,
Server, Southern Railway, Trivandrum Division.
4. K.Vidyadharan,
Server, Southern Railway, Trivandrum Division.
5. K.Sivankutty,
Server, Southern Railway, Trivandrum Division.
6. V.Rajan,
Server, Southern Railway, Trivandrum Division.
7. D.Chandran,
Server, Southern Railway, Trivandrum Division.
8. M.Moideen Abdul Khader,
Server, Southern Railway, Trivandrum Division.
9. N.Prabhakaran,
Server, Southern Railway, Trivandrum Division.
10. K.M.Ramakrishnan,
Server, Southern Railway, Trivandrum Division.
11. K.Sukumaran,
Server, Southern Railway, Trivandrum Division.
12. A.Ramachandran,
Server, Southern Railway, Trivandrum Division.
13. C.Viswanathan,
Server, Southern Railway, Trivandrum Division.
14. T.Vasudevan,
Server, Southern Railway, Trivandrum Division.
- T.Ummer,
Server, Southern Railway, Trivandrum Division.



- 4.
16. M.Venugopalan,
Server, Southern Railway, Palghat Division.
 17. M.Narayanan Kutty,
Server, Southern Railway, Palghat Division.
 18. M.R.Hari,
Store Khalasi Helper,
Office of Deputy Chief Materials Manager,
Signal Stores Depot, S & T Workshop,
Podanoor, Southern Railway, Coimbatore.
 19. Abdul Suban.A.,
Store Khalasi Helper,
Office of Deputy Chief Materials Manager,
Signal Stores Depot, S & T Workshop,
Podanoor, Southern Railway, Coimbatore.
 20. S.Xavier,
Store Khalasi Helper,
Office of Deputy Chief Materials Manager,
Signal Stores Depot, S & T Workshop,
Podanoor, Southern Railway, Coimbatore.
 21. U.Sivaraman,
W.5.IRCTC Stores, Southern Railway,
Trivandrum Division.

...Applicants

(By Advocate Mr.Siby J Monippally)

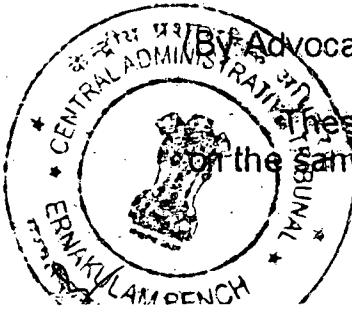
V e r s u s

1. Union of India rep. by Deputy Chief Materials Manager,
General Stores Depot, Southern Railway,
Perambur, Chennai.
2. Senior Divisional Personal Officer,
Southern Railway, Trivandrum Division,
Trivandrum.
3. Senior Divisional Personal Officer,
Southern Railway, Palghat Division, Palghat.
4. Chief Personnel Officer,
Southern Railway, Chennai.

...Respondents

(By Advocate Mr.Sunil Jacob Jose)

These applications having been heard on 4th June 2014 this Tribunal
on the same day delivered the following :-



ORDER

HON'BLE Mr.JUSTICE A.K.BASHEER, JUDICIAL MEMBER

Since a common issue is involved in these four Original Applications, they are being disposed of by this common order.

2. The pivotal issue that has cropped up for consideration in these Original Applications is whether the applicants are entitled to count 50% of their service as Commission Bearer/Vendor from the initial date of their engagement till their regular absorption in service, for the purpose of calculation of pension and gratuity. The above issue is no longer res-integra in view of a series of orders passed by two Benches of this Tribunal and confirmed by jurisdictional High Courts.

3. In Original Application No.440 of 2003 (C.P.Sebastian Vs. Chief Personnel Officer & Ors.) a Division Bench of this Tribunal issued a direction to the Railway Administration "to count half the service rendered by the applicant in the above case as Commission/Salaried Bearer before his regular absorption for the purpose of pension and other terminal benefits on the analogy of the provisions contained in Indian Railway Establishment Code that half the service rendered by the casual labourers who have joined on temporary status till regular absorption on the post are entitled to count for pensionary purposes." The above order was confirmed by a Division Bench of the Kerala High Court in Writ Petition (C) No.15756

of 2006.



6.

4. Still later, in Original Application No.311 of 2010 (V.Lawrence & anr. Vs. Union of India & anr.) a similar view was taken by this Tribunal following the decision in Original Application No.440 of 2003. It is also on record that the Madras Bench of this Tribunal in Original Application No.360 of 2011 (P.Sampath & ors. Vs. Union of India & ors.) took the same view following the decision of this Tribunal in Original Application No.440 of 2003 (supra). It is the admitted position that a Division Bench of the Madras High Court has dismissed Writ Petition (C) No.10422 of 2013 filed by the Administration against the above order.

5. Shri.Siby J Monipally, who appears for the applicants, points out that in all the above cases the Administration has already implemented the orders passed by the Tribunals and confirmed by the High Courts. In this context, he has also invited my attention to a communication dated February 25, 2014 issued by the Headquarters' Office, Personnel Branch, Chennai. In this communication/order the entire previous history of the above litigations had been elaborately dealt with and the Headquarters Office had issued the following directions :-

Therefore, it is requested to take urgent necessary action to count half of the commission Bearer service from the date of initial engagement on commission basis till the date of regular absorption based on the date mentioned/recorded in the Security Deposit Cash Receipt for initial engagement and SR entry for regular absorption of each applicants and further to take action for computing pensionary benefits as under :-



For retired staff	: Immediate action should be taken.
For serving employees	: Action to be taken at the time of retirement

The direction of the Hon'ble Central Administrative Tribunal/Ernakulam Bench in O.A.No.440/2003 (C.P.Sebastian case) (relied by the Hon'ble Tribunal/Madras Bench and Hon'ble High Court of Madras in the present case) is to count half the period of service as commission Bearer from initial engagement to regular absorption for calculation of pension and other terminal benefits only. Therefore any relief claimed beyond the above court verdict may be rejected/contested accordingly duly producing order copy in O.A.No.440/2003, W.P.No.15756/2006 and S.L.P.No.17410/2010.

6. Learned counsel submits that in view of the settled legal position and also the fact that the Administration has implemented the earlier orders passed by the Tribunal in the cases of several other similarly placed employees, the Administration is not justified in refusing to extend similar benefits to the applicants as well. There is considerable force in the above contention.

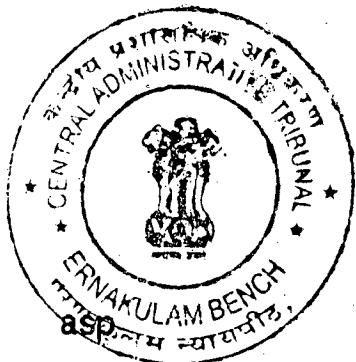
7. It is brought to my notice that the applicants in Original Application Nos.417 of 2013 and 469 of 2013 have already retired from service. Applicants in the other cases are still in service. Learned counsel for the applicants points out that in Original Application No.780 of 2013 the claim made by the applicants seeking the above relief was rejected by the respondents as could be seen from Annexure A-1(a) to Annexure A-1(k) orders. For the reasons aforesaid the above orders passed by the Administration cannot be sustained. Accordingly, Annexure A-1(a) to Annexure A-1(k) orders are quashed.



.8.

8. Keeping in view the entire facts and circumstances, I am satisfied that the respondents have to necessarily extend similar benefits as those which were granted to the applicants in the cases referred to above to the applicants also. Appropriate orders in this regard shall be issued by the Administration within two months from the date of receipt of a copy of this order.

(Dated this the 4th day of June 2014)



sdl-
JUSTICE A.K.BASHEER
JUDICIAL MEMBER

CERTIFIED TRUE COPY

Date 9/6/2014

RedhalanishandR

Section Officer (Judl)