

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 432/2010

Friday, this the 21st day of December, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K.NOORJEHAN, ADMINISTRATIVE MEMBER

K.Natarajan,
J/E 566, Technician Gr.I,
Senior Section Engiener/Electrical Pump office,
Southern Railway, Palakkad Division,
Palakkad. - - - - - Applicant

(By Advocate Ms K.P.Geethamani)

v.

1. The Southern Railway rep. By its
Divisional Manager,
Palakkad Division, Palakkad.
2. The Senior Divisional Personnel Officer,
Divisional Office, Personnel Branch,
Olavakkode, Southern Railway,
Palakkad Division, Palakkad.
3. The Scrutiny Committee for verification of
Community Certificate r/b the Chairman and
Secretary to Government, Scheduled Caste and
Scheduled Tribes Development Department,
Secretariat, Trivandrum. - - - - - Respondents

(By Advocate Mr Thomas Mathew Nellimootttil for R.1 & 2)

(By Advocate Mr M Rajeev, G.P. for R.3)

This application having been finally heard on 18.12.2012, the Tribunal on
21.12.2012 delivered the following:



ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

The applicant belongs to "Kadaiyan" caste as admitted by both the sides. His service book also reflects the same. It is the case of the applicant that he had not derived any benefit out of his caste at the time of his initial appointment in the Railways as his induction was as a general candidate. While so, the District Collector, Palakkad had passed an order that the applicant does not belong to 'SC' Community, vide order dated 31-03-2001. Against the same, the applicant moved the High Court in OP No. 13334/2001 before the High Court of Kerala which had disposed of the matter making it clear that any further action in the matter shall be only after the matter is duly considered by the competent authority under the Act 11 of 1996 with notice to the applicant, vide Annexure A-3.

2. The applicant has since retired but the respondents have withheld his terminal benefits in view of the provisions of section 16A of the Kerala (SC/ST) Regulation of issue of Community Certificate Act, 1996. The respondents, vide their order dated 10-05-2010 at Annexure A-6 have stated that a final decision on the applicant's community status is yet to be received from the Chairman, Scrutiny Committee for verification of Community Certificate and the Secretary to the Government of Kerala. In view of the same, the applicant was informed that the competent authority has decided to defer and withhold, as per section 16A of the aforesaid Act, the pensionery benefits in his case pending the decision by the Government or the Scrutiny Committee.

3. The applicant has challenged the aforesaid order and claimed the following reliefs:-

(a) To set aside Annexure A6 letter issued by the 2nd respondent since the same is issued without jurisdiction, without authority of law, and in violation of the applicant's fundamental right under Articles 14, 16 and 21 of the Constitution.

(b) Direct the respondents to sanction and disburse of retirement benefits and settlement benefits due to the applicant as on the date of his retirement on 31.5.2010, and not to defer pensioner^{4y} benefits and settlement benefits due to the applicant based on the caste status report of the applicant prepared by the KIRTADS on 28.1.2008, and which was served on the application along with Annexure A4 show cause notice;

(c) Direct the respondents not to defer or withhold the retirement benefits and settlement benefits due to the applicant based on the report prepared by the KIRTADS regarding his caste status, based on the binding judgment (Annexure A3) rendered by the Hon'ble High Court of Kerala, since the Scheduled Caste status of the applicant is yet to be decided by the Scrutiny Committee and the Government;

(d) To declare that any decision taken by the authorities against the Scheduled Caste of the applicant under Act 11/1996 will not in any way affect the eligibility of the applicant to get all his service benefits including the retirement benefits and settlement benefits as on the date of his retirement on 31.5.2010;

(e) Direct the respondents to sanction and disburse the entire retirement benefits and settlement benefits to the applicant without any further delay from the date of his retirement.

4. Respondents have contested the OA. They have stated that the caste of the applicant as reflected in his records is Kadayan (Scheduled Caste) Community. He had been promoted as Welder Grade II against a SC shortfall vacancy. As the case is pending before the Scrutiny Committee, the applicant has to wait to get his terminal dues in view of the afore said provisions of the Act.

5. Applicant has filed his rejoinder, reiterating his contentions as contained in the OA. In the said rejoinder he had maintained that his posting to Group C

[Signature]

cadre post was in an ex-cadre post and not in the regular line of posting in the Parent cadre. His subsequent posting as Tinsmith Grade II in the scale of Rs 1200 – 2040 on 01-04-1985 was also in the Ex Cadre Post, created for a particular work of a particular period.

6. Respondents have filed Additional Reply to the same in which they have stated that Annexure A-8 would show that his promotion as Tinsmith Grade II in the scale of pay of Rs 1200 – 1800 which was on proforma basis was based on reservation.

7. Counsel for the applicant argued that the applicant was inducted only as a general candidate and he was on an ex cadre post in the higher pay scales and as such, no benefit had been availed of by him on the basis of the caste certificate. Again, according to the counsel for the applicant, provisions of section 16 A of the Kerala (SC/ST) Regulation of issue of Community Certificate Act, 1996 is not applicable in his case in view of the fact that the same applies to those cases wherein a person had by fraudulent means of furnishing caste certificate availed of the benefits of reservation. Here is a case, where the community of the applicant as maintained right from the beginning is only Kadayan and the only doubt that arose with the respondents is whether the same be treated as Scheduled Caste or not. The mischief of fraud is not present in the instant case and hence, there is no question of withholding of pensionery benefits invoking the provisions of Section 16 of the afore said Act.

8. Counsel for the respondents maintained that the promotion granted to the applicant was on the basis of his caste and against a reserved vacancy. Hence, the applicant on account of his declaration that he belonged to S.C. Community, derived the benefits of reservation.

[Signature]

9. Arguments were heard and documents perused. Admittedly, it is not the case of the respondents that the applicant has played any fraud in securing a caste certificate. Section 16 A of the aforesaid Kerala (SC/ST) Regulation of issue of Community Certificate Act, 1996 reads as under:-

"Deferment of pensionery benefits – Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force or in any judgment, decree or order of any court, where a person secures any appointment in the Government or any Government Undertaking or local authority or any other authority against a post reserved for Scheduled Caste or Scheduled Tribe, by producing a fraudulent Community Certificate, and if on an enquiry by the Expert Agency it is found that his claim is not genuine and if the incumbent retires while the enquiry by the Government or the Scrutiny Committee is pending, the Government or the Government Undertaking or local authority or any other authority as the case may be, shall be power to defer and withhold the pensionery benefits of the incumbent pending decision by the government or the Scrutiny Committee."

10. The above provision clearly shows that it is only when an individual secures any appointment by producing a fraudulent Community Certificate the Government can defer and withhold the pensionery benefits of the incumbent pending decision by the Government or the Scrutiny Committee.

11. In the instant case, the above provision cannot be applied as his case is not one of fraud. Thus, his terminal/pensionery benefits are necessarily to be released without being withheld.

12. The applicant's counsel argued that the above provisions do talk of securing "any appointment ..." on the basis of the caste certificate and the applicant did not avail of the caste certificate as he was inducted as a general candidate. Hence, the Act does not apply to his case. There is no denial to the fact that the applicant's initial appointment was not against any SC vacancy, though his promotions have been stated to be so. According to the

✓

respondents, appointment includes promotion, as appointment by way of promotion has been an accepted mode of appointment. Where the issue of seniority of Direct Recruits and the promotees arises, the promotion of the promotees is taken only as appointment by (or on) promotion. (See *State of Haryana vs Vijay Singh (2012) 8 SCC 633, Arun Kumar vs Union of India (2007) 5 SCC 580, SS Bola vs B.D. Sardana (1997) 8 SCC 522, Union of India vs SS Uppal (1996) 2 SCC 168, Keshav Chandra Joshi vs Union of India (1992) Supp (1) SCC 272, SS Moghe vs Union of India (1981) 3 SCC 271, Bishan Sarup Gupta vs Union of India (1975) 3 SCC 116*) Hence, though nothing could affect the applicant's initial appointment, what we have to see is whether his appointment on promotion was against any reserved vacancy. For, in case the Scrutiny Committee holds that the applicant does not belong to SC community, the unintended benefits cannot be allowed to perpetuate. In the instant case, the applicant claims that he had been inducted in a higher post which is an ex-cadre post. Service book of the applicant reveals that the applicant was initially engaged as a Khalasi in 1977 and on completion of four months' continuous service, he was granted temporary status and placed in a regular pay scale. This is purely by way of his having been inducted as a general candidate, and not against any reserved vacancy, . His first promotion was to the post of Tinsmith III in the scale of Rs 260 – 400, which according to the applicant is an ex cadre post. According to the applicant, this post he held was not on account of any concession afforded to him on the basis of caste. Thus, even this promotion in the ex cadre had been obtained by him without any influence of his caste. The applicant was thereafter promoted as Tinsmith Grade II in 1992 in his parent cadre on proforma basis, vide Annexure A-8 dated 03-11-1992. Reference to SC in this order is indicative of the fact that this proforma promotion in the parent department was against a reserved vacancy. His further promotion beyond Tinsmith II was not considered in the parent cadre as by the

time his case came up for consideration in 2009, his case was referred to the Scrutiny Committee to verify the status of the caste Kadaiyan.

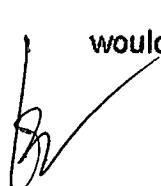
13. The situation thus, is that if the applicant's initial appointment and further promotions are all against general category and no concession under the S.C. Category had been afforded to him, there is no problem in holding that notwithstanding the fact that his caste is under investigation, he would have been entitled to receive the pension and other terminal benefits without any hitch or hesitation. That the applicant's initial appointment was against the general category vacancy is not disputed. While his promotion also was granted in the ex cadre post, after some time, in the parent department as well, he was, promoted on proforma basis against a SC vacancy. Here arises the issue. Promotion against SC quota normally is ahead of promotion against a general quota. Thus, had the applicant not been so promoted under SC category and had he been promoted against the unreserved quota, the date he became entitled to normal promotion would have been at a later date in which event, the applicant would not suffer from this constraint. Hence, it is to be ascertained as to when from the applicant would have been afforded promotion under the normal rules and on the basis of the same, what would have been his pay last drawn under such situation has to be worked out. For this purpose, the records have been scrutinized and comparison as given in respect of some general candidates vide statement appended to para 12 of the reply has also been taken into account.

14. It is true that the applicant was in an ex-cadre post when he was afforded the post of Tin Smith III, in the pay scale of Rs 260 – 400 and later on also as he was given proforma promotion in his parent department, the same goes to show that he was afforded the next promotion of Tinsmith Gr. II also in the ex cadre



post. However, so far as pension entitlement is concerned, as the promotion and pay scale enjoyed by the applicant in the parent cadre alone would be considered, we have to examine whether the applicant's first promotion was under reserved quota or general quota. The first proforma promotion of Tinsmith Gr. III (pay scale of Rs 1200 – 1800) was given to the applicant in his parent cadre w.e.f. 01-04-1983 with actual payment from 01-04-1984 and again he was promoted to Grade I in the pay scale of Rs 1320 – 2040 w.e.f. 01-07-1985 against the reclassified posts and retained at RD/PGT. (Entry in the Service book at page 6 refers). He was promoted as Tech I in the scale of Rs 4500 – 7000 w.e.f. 26-05-1999 and was retained in the very same place where he was functioning. His pay was revised in the scale of Rs 5200 – 20200 with grade pay of Rs 2800 in the wake of the implementation of the VI Pay Commission Recommendations and pay fixed at Rs 13,710/- plus grade pay of Rs 2800/-. The applicant superannuated on 31-05-2010 and his pensionary benefits have been withheld due to the investigation by the Scrutiny Committee.

15. Applicant's junior, one Mr K. Balan, general candidate had his promotion from group D to Group C with effect from 25.09.86. Again this individual got his next promotion in the grade of Rs 1200 – 1800 on 09. 11. 93. The individual was accorded another promotion as Tech I, w.e.f. 28-11-02 in the grade of Rs 4500 – 7000 and later on he superannuated. On comparison between the promotion afforded to the applicant as SC candidate and that afforded to the junior General Candidate, it is evident that certain concessions have been afforded to the applicant on account of his having been considered as SC. It is this benefit that has to be discounted for the purpose of working out the pensionery benefit to be disbursed to the applicant, as in that event, no benefit would be stated to have been afforded to the applicant due to his caste.



16. In view of the above, ends of justice would be met if the respondents are directed to treat the applicant as a general candidate and work out the amount of last pay that the applicant would have drawn had he been promoted as a general candidate along with his junior Balan and the terminal and pensionary benefits on the basis of the same could be granted to him. For, this amount is certainly the undisputed amount. It is pertinent to mention here that even if the Scrutiny Committee comes to hold that the community Kadaian is not one falling under Reserved Category, then also, the applicant would have to be treated as a general candidate as his entry in the department is only as a general candidate.

17. In view of the above the OA partly succeeds. It is declared that the applicant is entitled to draw the terminal benefits treating him as a general candidate all through without any influence or impact of his caste Kadaian. For this purpose, his pay scale at various stages should be compared with that drawn by his junior in the General Category Shri Balan and his pay and allowances can be presumed as of the applicant and accordingly, his pay last drawn as on 31-05-2010 worked out. On the basis of such a last pay drawn, his terminal benefits should be worked out and that amount shall be paid to the applicant. In case the applicant comes out victoriously in the scrutiny Committee case, needless to mention that his terminal benefits shall be worked out treating all his promotions on the dates actually afforded to him and the difference between the amount due and paid shall become payable at that time. The applicant shall take steps accordingly in the event of the decision of the Scrutiny Committee going in favour of the applicant. In case it is otherwise, no revision shall take place in respect of terminal benefits, but if the respondents desire, the extent of pension would be worked out and the amount admissible to him shall be paid to him. Here again, no recovery shall be effected in respect of the past pensions sanctioned and drawn in view of the fact that the case would fall within

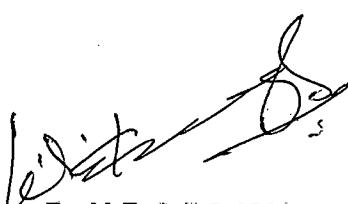


the exempted category as held by the Apex court in the case of **Chanid Prasad Uniyal vs State of Uttarkhand (2012) 8 SCC 417.**

18. This order shall be complied with in full including disbursement of the withheld terminal benefits, within a period of four months from the date of communication of this order. No costs.



K. NOORJEHAN
ADMINISTRATIVE MEMBER



Dr K.B.S. RAJAN
JUDICIAL MEMBER

trs