

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 438 OF 2011

Tuesday....., this the 19th day of June 2012

CORAM:

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

Cherry Ittoop, Aged 45 years
S/o Ittoop K.C
Supervisor (Works)
Office of the Deputy Chief Engineer (Construction)
Ernakulam Junction, Cochin – 682 016
residing at Quarter No.132-A
Railway Quarters
Ernakulam Junction, Cochin – 682 016 - Applicants

(By Advocate Mr.T.C Govindaswamy)

Versus

1. Union of India represented by the General Manager, Southern Railway Headquarters Office, Park Town P.O Chennai – 600 003
2. The Chief Personnel Officer Southern Railway, Headquarters Office Park town P.O, Chennai – 600 003
3. The Sr.Divisional Personnel Officer Southern Railway, Trivandrum Division Thiruvananthapuram-695 014
4. The Deputy Chief Engineer/Construction Southern Railway, Ernakulam Junction Cochin – 682 016.

(By Advocate Mr.Sunil Jacob Jose, SCGSC)

The application having been heard on 11.06.2012, the Tribunal

on 19.06.2012, delivered the following:

ORDER

HON'BLE Ms.K NOORJEHAN, ADMINISTRATIVE MEMBER

1. The applicant is aggrieved by the inaction on the part of the respondents in providing him lien in Trivandrum Division even after 19 years of his appointment.

2. The applicant's father who was working as an Inspector of Works at Thrissur Railway Station in Trivandrum Division of Southern Railway passed away on 03.09.1991, while in service. The applicant being eligible for appointment on compassionate ground was subjected to the necessary written test. He was approved for appointment in a post in Group C Cadre. He was recommended for appointment in the post of Skilled Artisan with a pay scale of Rs.950-1500 in the office of Deputy Chief Engineer/Construction/Thrissur (Annexure A1-5). The applicant was issued with an appointment order vide Annexure A-6 dated 12.06.92 to post him as Works Mate in the office of Executive Engineer/Construction/Thrissur. According to the applicant, in the endorsement to Divisional Railway Manager/Personnel, Trivandrum Central Division in Annexure A-6 appointment order, it was clearly noted to provide the applicant lien in Trivandrum Division. When the applicant was working as Works Mate in the scale of pay of Rs.950-1500, he was promoted as Supervisor (Works) in the scale of pay of Rs.4000-6000 on ad-hoc basis and granted the scale of pay of Rs.4500-7000 with effect from 01.10.2000. On re-fixation of pay scales as per the recommendations of 6th CPC, he was placed in P.B-I of Rs.5200-20200 with a grade pay of Rs.2800/- with effect from 01.01.2006. Since the applicant was not provided lien in Trivandrum Division he sent a representation to the Dy.CPO and to the Chief Personal Officer (Annexure A-7 to 9). Since his repeated representations did not elicit



any reply he obtained information through RTI Act that no action was taken either in Trivandrum Division or in Palghat Division to give him a lien. Non-provision of lien has caused him substantial prejudice and irreparable injury. He therefore moved this Original Application with a prayer to direct the respondents to provide him with lien in the cadre of Works Mate/Supervisor(Works) in Trivandrum Division.

3. During the pendency of this Original Application the Chief Administrative Officer/Construction, Madras issued an office order to the effect that the ad-hoc promotion to Supervisor(Works) given to the applicant will be terminated with effect from 30.06.2011 without any further notice and pay on higher scale will not be sanctioned for such ad-hoc promotion vide para 3 & 4 of the aforesaid order. In the wake of this letter the applicant has moved M.A 565/11 seeking a stay of operation of paragraphs 3 & 4 of the said letter. The Tribunal directed the counsel for the respondents to seek instructions. As no instruction could be obtained by the counsel the operation of paras 3 & 4 of Annexure M.A-1 was stayed as far as it relates to the applicant.

4. The respondents contested the Original Application and filed reply statement. According to them the Original Application is barred by limitation. To drive home the fact they relied on the following judgments of the Hon'ble Supreme Court and orders of Central Administrative Tribunal:-

(i) Tridip Kumar Dingal & Ors. Vs. State of West Bengal & Ors. SLJ 2009(2) Page 209, 210

(ii) Ramesh Chand Sharma Vs. Udhamp Singh Kamal & Ors and State of H.P. Vs. Udhamp Singh Kamal & Ors. reported in 1999 8 SCC 304-308.

(iii) Noharlal Verma V. District Co-operative Central Bank

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Limited

(iv) Mohan Dass & Ors Vs. UOI & Ors. AISLA VI-2009 (2)
(CAT) Principal Bench, New Delhi

(v) Francis Singh Vs. Union of India & Others (OA No.328/2005
decided on 06.03.2007)

5. Regarding the facts narrated in the original Application the respondents submitted that there is no post of Skilled Artisan in Trivandrum Division to provide the applicant a lien against that post and this was intimated to the second respondent vide Annexure R-1. However, the second respondent directed the third respondent to provide lien in favour of the applicant in any one of the trades of Skilled Artisan/Grade III in Engineering Department of Trivandrum Division with effect from 12.06.1992. In the wake of such intimation from R2 the applicant was asked to attend the trade test for the post of Blacksmith. They alleged that the applicant did not appear for the trade test and informed that he had filed this Original Application to get a direction from the Tribunal for provision of lien in his favour in the post of Works Mate/Supervisor(Works). Therefore the third respondent states that he is unable to take further action in the matter because of the unhelpful attitude of the applicant. However, they do concede that the applicant was appointed as Works Mate in the pay scale of Rs.950-1500 with effect from 12.06.1992 and Rs.3050-4590 with effect from 01.01.1996. They further added that the second respondent has not specifically instructed the third respondent to maintain lien for the applicant. This was informed to the second respondent from 2002 onwards.

6. The applicant moved M.A.45/12 with a request to stay the operation of Annexure M.A-2 wherein he was asked to attend a Trade Test for Tech Grade III (Blacksmith) on 10.01.2012. The M.A was filed after the date of conduct of Trade Test

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and it was treated as infructuous. The applicant averred in the M.A 45/12 that he was not served with a copy of Annexure M.A-2.

7. The respondents filed reply to M.A 545/12 and submitted that the applicant is delaying the process of provision of lien to the applicant.

8. Arguments were heard and documents perused.

9. The undisputed fact is that the applicant was appointed as temporary Works Mate in the scale of pay of Rs.950-1500 vide Annexure A-6 and he joined the post in the office of the Executive Engineer Construction Thrissur on 12.06.1992. On implementation of 5th CPC his pay scale was re-fixed as Rs.3050-4590. On 01.10.2000, he was promoted on ad-hoc basis as Supervisor(Works) in the scale of pay of Rs.4500-7000. Consequent on implementation of 6th CPC his pay re-fixation was done in P.B I with a grade pay of Rs.2800/. In the reply statement the respondents have denied any information about the lien to be provided for the applicant in Trivandrum Division. A perusal of Annexure A-6 shows that in the endorsement to the DRM Trivandrum Division, there is a specific instruction to provide him with lien. Now the respondents are coming up with an administrative problem of not having the post of Works Mate in the Civil Engineering Department of the Division. The applicant's counsel stated that the post of Gang Mate carrying the equivalent pay scale of Works Mate is available in the Chief Engineering Department of Trivandrum Division. However, this post is to be filled up only on promotion and hence no recruitment on Compassionate Ground can be made against this post as there is no element of direct recruitment. On enquiry about the nature of duties being discharged by the applicant now, the counsel for the applicant averred that right from the commencement of his service he is working as Store Keeper and hence the nature of his duty is clerical rather than technical in nature. It was informed that there are posts of Store Keeper

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carrying the pay scale of Works Mate in the civil Engineering Department of Trivandrum Division. The fact is that there are no permanent post in the construction organization as only temporary posts are created as when the same is demanded by the work in connection with the project. Only because of this reason the applicant was to be given a lien in the open line for the purpose of maintenance of his service conditions like seniority, future promotions etc. So according to the counsel for the applicant it is more or less a paper lien since the employees in the Construction organization continue to work there and earn promotions there without ever reverting back to open line organization. The applicant was promoted as Supervisor (Works) on 01.10.2000. The applicant avers that he has not been given any financial up gradations like ACP or MACP due to non-provision of lien by the third respondent.

10. A perusal of Annexure A-2 shows that the applicant was one among the 13 wards who were approved for appointment on compassionate grounds. The candidates at Serial No.1,2,3 etc. were allotted to Madras and Palghat Divisions straight away against the post of ECRC & Junior Shroff respectively. However, in respect of others who were allotted to the office of the Dy.Chief Engineer, their posts are shown as Skilled Artisan except one and they were allotted to EWS/AJJ. Only the applicant was allotted to the office of the Dy.Chief Engineer Construction, Thrissur. In Annexure A-6 there was a specific instruction to the DRM Trivandrum Division to provide lien for the applicant in Trivandrum Division. So, we have no hesitation to point out that it is the administrative lapse which has landed the applicant in this spot. His repeated representations fell on deaf ears till 2002, when finally the matter came to the attention of the third respondent. However, in the absence of the post of Skilled Artisan, no further decision was taken by the third respondent. Since Civil Engineering Department of Trivandrum Division does not have the post of Skilled Artisan the only practical solution would be to provide him with a lien in an equivalent post of Store Keeper carrying the 1992 pay scale of Rs.950-1500. The third respondent will create

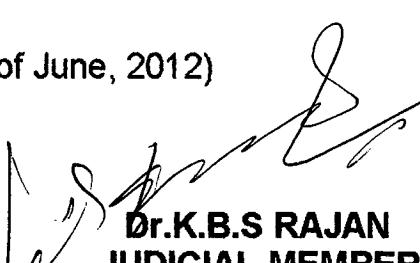
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supernumerary post for this purpose if necessary. Any way the pay and allowances of the applicant are being paid by the Construction Organisation from 1992 onwards. The applicant's representation for grant of ACP/MACP will be considered in due course. During hearing, the applicant's counsel brought to our notice an order of this Tribunal dealing with an identical issue in O.A No.784/99. In the aforesaid O.A the applicant was appointed in 1987 in Group D Cadre on compassionate grounds. He approached this Tribunal when permission to appear for the test for promotion to the post of office clerk was denied to him. He sought a direction to the respondents to provide him lien in the Civil Engineering Department of Southern Railway in the absence of which he was not being considered for further promotion. The O.A was allowed with a direction to the respondents to provide him lien and permit him to appear for the test for the post of office clerk.

11. In view of the foregoing, the third respondent is directed to initiate action to provide the applicant with lien in the Civil Engineering Department of Trivandrum Division preferably in the post of Store Keeper at the earliest at any rate within three months from the date of receipt of this order. The applicant is directed to submit his representation for ACP/MACP after he receives the necessary order about provision of lien from the third respondent. The latter will consider the applicant's representation and take suitable action in the matter expeditiously. Accordingly, the Original Application is allowed. No costs.

(Dated, this the 19th day of June, 2012)


K. NOORJEHAN
ADMINISTRATIVE MEMBER


Dr. K.B.S. RAJAN
JUDICIAL MEMBER