

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.440/03

Friday this the 7th day of October 2005

C O R A M :

**HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN
HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER**

C.P.Sebastian,
Chathiyalil House, Ullanad P.O.,
Anthinad (Via), Kottayam – 686 651.

...Applicant

(By Advocate Mr.K.Surendra Mohan)

Versus

1. Chief Personnel Officer,
Southern Railway, Park Town, Chennai – 3.
2. Senior Divisional Personnel Officer,
Southern Railway, Thycaud,
Thiruvananthapuram.
3. Divisional Railway Manager,
Southern Railway, Thycaud,
Thiruvananthapuram.
4. Union of India represented by Secretary,
Ministry of Railways, Rail Bhavan, New Delhi. ...Respondents

(By Advocate Mr.Sunil Jose)

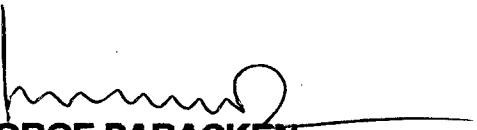
This application having been heard on 7th October 2005 the Tribunal on the same day delivered the following :

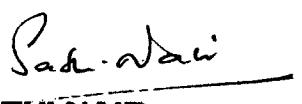
O R D E R

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

None for the applicant even on the second call. Counsel for the applicant was intimated on 23.9.05 the date of posting but still not chosen to appear. Counsel has been absent on several occasions in the past also. Therefore the case is dismissed for default.

(Dated the 7th day of October 2005)


**GEORGE PARACKEN
JUDICIAL MEMBER
asp**


**SATHI NAIR
VICE CHAIRMAN**

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 440/03

.....Friday.....this the 24th day of February, 2006

CORAM

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

C.P. Sebastian, Chathiyalil House,
Ullanad PO
Anthinad (Via)
Kottayam-686 651.

....Applicant

(By Advocate Mr. K. Surendra Mohan)

V.

- 1 Chief Personnel Officer,
Southern Railway, Park Town
Chennai.3.
- 2 Senior Divisional Personnel Officer
Southern Railway, Thycaud,
Thiruvananthapuram.
- 3 Divisional Railway Manager
Southern Railway, Thycaud
Thiruvananthapuram.
- 4 Union of India, represented by
Secretary, Ministry of Railways,
Rail Bhavan, New Delhi.Respondents

(By Advocate Mr. Sunil Jose)

The application having been heard on 14.2.2006, the Tribunal on 24.2.2006 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

This is the second round of litigation by the applicant. He had earlier filed OA 748/02 before this Tribunal seeking the following reliefs:

"1 To regularize the service of the applicant from the date of joining in servie ie., from 22.1.1981 so as to get benefits legally due to him.

2 To direct the respondents to consider and pass appropriate orders on Annexure.4 representation with a time frame as this Hon'ble Tribunal deemed fit and proper in the facts and circumstances of the case.

3 To pass such or other further orders or orders as this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case."

This Tribunal disposed of the aforesaid OA vide order dated 30.10.02 directing the chief Personnel Officer, Southern Railway, Madras (Respondent No.1) to consider the representation of the applicant and pass an appropriate order. In compliance of the aforesaid orders of this Tribunal dated 31.10.02 the respondents have passed the Annexure.A6 order dated 14.1.03 stating that the applicant was engaged as Commission Bearer on 22.1.81 after executing an agreement with the Railway Administration. As per the terms and conditions of the agreement, Commission Bearers were entitled to be paid only commission on the basis of the sale but they were not entitled for any other remuneration/benefits. The

Commission/Salaried Bearers are neither temporary/regular employees, nor casual labourers/substitute in the Railways. Their service are purely contractual and not governed by any code/manual/rules. However, he has been considered for regular absorption as per his seniority position and posted as Bearer/Server to Trivandrum Division in the scale of pay of Rs. 2610-3540 and he assumed charge on 8.7.99. In the circumstances the respondents have informed the applicant that his service will be counted for all purposes including retirement benefits from the date he joined as regular Bearer/Server ie., with effect from 8.7.99 only.

2 The issue involved in this OA was already under consideration of the Hon'ble Supreme Court of India in a Writ Petition filed by Shri T.I.Madhavan on behalf of 397 Commission Bearers of Southern Railway (1988 Supp. SCC 437; 1988 SCC L&S 872). When the aforesaid Writ Petition came up before the Hon'ble Supreme Court on 10.3.86 the following orders were passed :

"Issue rule NISI pending the hearing and final disposal of the Writ Petition all the employees covered by this Writ Petition shall be paid salary in the same rate with effect from December,1, 1983 as salaried bearers of the Railway catering are being paid to be tagged with writ petition No.4401-4416 of 1985"

Accordingly the Southern Railway had issued necessary orders on 4.12.86 (Annexure A9 of the OA) granting the regular scale of pay of Rs. 200-250 with effect from 1.12.83 and Rs.775-1025 with effect

effect from 1.1.86 to all the petitioners in the aforesaid Writ Petition and further stating that since the petitioners therein were not Railway employees and there was no direction from the Hon'ble Supreme Court to treat them so, they will not be entitled to other privileges which are admissible to the regular Railway servers. Instructions were also issued to the concerned units to maintain separate muster rolls for the aforementioned Bearers and it shall not be clubbed with the regular Bearers. However, the Commission/Salaried Bearers have disputed the decision of the respondents in not granting any other privileges which are admissible to the regular Railway Servers and filed OA 980/02 – Southern Railway Mazdoor Union Catering Branch,Chennai Vs. The Chairman, Railway Board and another before the Madras Bench of this Tribunal. This Tribunal considered the counting of past service of those who have commenced their service initially as Commission Bearers and later became Salaried Bearers and absorbed as Group D on regular basis. Considering the provisions made in the Indian Railway Establishment Code (IREC for short) that in case of casual labourers who have joined on temporary status, half the service rendered after joining on temporary status till regular absorption on the post shall be taken into account for retiral benefits and also the ruling of the Apex Court in Writ Petition No.171/86, this Tribunal directed the Railway Administration to

consider the issue regarding claim of the applicants for counting the service rendered by them prior to absorption on Group D posts keeping in view of the fact that the applicants have served for a long time prior to such absorption. In another OA 689/02 - N.P.Ouseph Vs. Union of India and others , this Tribunal has again held that according to the Payment of Gratuity Act, a casual labourer is entitled to gratuity for his casual service till the date of his temporary status if he opts for half the period of service on temporary status counted as qualifying service for pension and therefore, the applicant therein was entitled for payment of gratuity for the period of casual service from 21.8.64 to 21.12.64. The respondents were accordingly directed to recalculate the terminal benefits of the said applicant reckoning half the period from 21.12.64 to 11.10.77 also as qualifying service for pension, to revise his terminal benefits and to make available to him the resultant arrears.

3 The respondents in their additional reply statement filed a copy of the judgment of the Supreme Court in T.I.Madhavan's case. On the submission of the Railway authorities the Apex Court has modified its earlier order dated 10.3.86 and directed that the Vendors/Bearers absorbed in the Railway Catering Service shall be entitled to salary from the date of their absorption and not from 1.12.83. The Apex Court has also made it clear that all the persons

working as Commission Bearers and Vendors on various Railway platforms belonging to the Central Railway and South Central Railway would be absorbed progressively as members of the permanent Railway Catering Service as and when vacancies of Bearers in the Railway Catering service occurred. The Railway Administration would first absorb all the Bearers who have registered in accordance with the aforesaid memorandum,. The respondents have also relied upon the judgment of the Supreme Court in Union of India and others Vs. KV Baby and another (1998) 9 SCC 252. In this case the respondents were Commission Bearers/Vendors appointed on contract basis by the Southern Railway. They were not paid any salary by the Southern Railway but were given a commission on the business transacted by them. The Apex Court held that the benefits as granted to the Commission Bearers/Vendors working in the platforms of Central Railway and South Central Railway will be applicable to the similarly placed persons working in the Southern Railway also. The Hon'ble Supreme Court further held that the respondents therein were entitled for absorption in the same manner as directed in TI Madhavan's case (supra) and will be entitled for salary on regular basis from the date of their absorption.

4 We have heard Shri K.Surendra Mohan for the Applicant and Shri Sunil Jose for the respondents. We have also perused the documents available on record and considered the arguments put

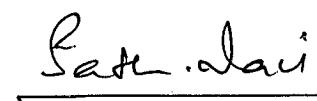
forth by both the counsels. In our considered opinion, this OA can be disposed of by directing the Respondents to count half the service rendered by the Applicant as Commission/Salaried Bearer before his regular absorption for the purpose of pension and other terminal benefits on the analogy of the provisions contained in IREC 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. Accordingly, the Applicant is entitled to count half the period of his service as Commission Bearer from 22.1.81 till his absorption on 8.7.99. The Respondents shall pass appropriate orders granting the above benefit to the applicant within a period of three months from the date of receipt of this order. The actual monetary benefits shall be made available to him within one month thereafter. There is no order as to costs.

Dated this the 24th day of February, 2006



GEORGE PARACKEN
JUDICIAL MEMBER

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Sathi Nair
SATHI NAIR
VICE CHAIRMAN