

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 442 OF 2007

Dated the 5th November, 2007

CORAM:-

HON'BLE SMT. SATHI NAIR, VICE CHAIRMAN
HON'BLE SRI GEORGE PARACKEN, JUDICIAL MEMBER

K Chandu, H.S.I,
Bridge Cadre, Cannanore(Retd),
Southern Railway,
Uppat House, Mannoor, PO,
Kadalundy, Calicut.

... Applicant

[By Advocate: Mr Siby J Monippally)

-Versus-

1. Union of India,
Represented by Senior Divisional
Personal Officer,
Southern Railway, Palghat.

... Respondent

[By Advocates: Ms P.K. Nandini)

This application having been heard on 5th November, 2007
the Tribunal on the same day delivered the following -

ORDER

(Smt. Sathi Nair, Vice Chairman):

This application has been filed against the denial of
fixation of pay to the applicant in HS-I in Bridge Wing Cadre of
Railways with effect from the date on which similarly placed
persons were granted promotion and fixation benefit. Following
are the specific reliefs sought by the applicant:-

"(a) To quash and set aside Annexure-A-3;

(b) To direct the respondent to grant notional promotion to the applicant with effect from 1.1.1984 (HS-II & HS-III) & 1.1.1990 (HS-1) in BRI cadre, fixation and consequential benefits thereof; and

(c) Grant such further and other reliefs as the nature and circumstance of the case may require"

2] The applicant has submitted that in the earlier OA 872/92 filed by the applicant and others, the applicants were declared to be entitled to get seniority and consequential promotion over the Gangmen who came on transfer to the Bridge Organisation. Sri C.Asokan, Sri P Narayanan, Sri A. Dharmalingam and Sri P Surendran who entered the BRI cadre on 13.12.80, 26.12.80, 4.2.81 and 16.1.81, who were Gangmen were granted promotion to HS-1 Grade on 13.01.90, 01.01.90 and 10.12.90 respectively. According to the applicant, there is no justifiable reason to deny the same benefit to him. In OA Nos. 639/05 and 697/05, this Tribunal directed that the applicants therein; P Balarajan and P Gangadharan, who are similarly placed are entitled to get promotion w.e.f. 01.01.84 and 01.01.90 respectively as Riveter HS Gr-II and Riveter HS Gr-I. But the prayer of the applicant was rejected by the Respondent vide Annexure-A/3 order stating that the benefit of fixation cannot be granted to the applicant as no such direction was given by this Tribunal to grant any financial benefit to the applicant in OA 872/92.

3] Per contra, the respondents in their reply statement have stated that in compliance of the directions in OA No.

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872/92 and subsequent directions in OA Nos. 1461/96 and 11019/97 of this Tribunal the seniority list of Bridge Staff was revised and finally settled by seniority list dated 6/12.6.2000 and if the applicant had a claim that he is eligible for promotion from 1984 and 1990 as now claimed, he should have approached this Tribunal soon after publication of the seniority list. Having remained silent for about 7 years, the applicant cannot claim for any relief. The seniority list as on 31.7.1983 was published on 28.11.1983 and based on this seniority list Bridge Khalasis were further promoted as Dollyman, Rivetter etc. The judgment in OA No. 872/92 was implemented by giving notional seniority from 9.12.80 to all the 15 casual labourers absorbed as Bridge Khalasis irrespective of whether they were applicant in the said application or not and the revised seniority list of Bridge Khalassi as on 1.3.1981 was published on 8.7.1994 duly placing these 15 employees above the 21 employees, who were Gangmen posted as Bridge Khalasis. One Sri Asokan, belonging to Gangmen category filed OA No.1299/96 challenging the seniority list dated 8.7.1994 claiming seniority over the respondents 4 to 7 (viz. MP Chandrasekaran, P Balan, P Mohanan and P Bhaskaran), who were not applicants in OA No. 872/92, but who were extended the benefit of notional seniority. This Tribunal partially allowed the OA by order dated 15.7.1998 holding that the inter-se-seniority of Gangman posted as Bridge Khalasis should be assigned on the basis of their date of joining as Bridge Khalasis. Sri Ashokan filed another OA No. 576/2001 claiming promotion to the post of

Rivetter HS-1 from the date of promotion of his immediate junior with all consequential benefit and this Tribunal by order dated 24.6.03 allowed the OA stating that the persons already promoted in the Grade should not be reverted. On confirmation of this order by the Hon'ble High Court in WPC No.2404/05, the judgment of this Tribunal was complied with and Sri Ashokan was given promotion as Rivetter-II w.e.f. 1.1.1984 and Rivetter-I w.e.f. 13.1.90 at par with his junior. It is further submitted that the promotions were granted to the employees according to their seniority position in the original seniority list dated 28.11.1983. It is true that juniors to the applicant in the revised seniority list, Sri Dharmalingam and Sri P Surendran have been promoted to the post of Technician Grade-I/Rivetter during 1990 and Sri P Narayanan to the post of Technician Gr-II / Rivetter during 1991, based on the original seniority list much before the judgment in OA 872/92.

4] At the time of hearing of OA No.872/92 it was submitted by the applicants therein that they are agreeable ^{to} ~~may~~ be promoted in the existing vacancy or future vacancy in the higher grade retaining them in the present post and they may be assigned the due seniority so as to enable them to progress further. Such submissions were made by the applicants as a good gesture to avoid reversion of the respondents. Orders were passed by the Tribunal on the basis of the submissions made by the learned counsel for the applicants. In view of the said order, the party respondents could not be reverted by the Railway

Administration even though they had become juniors in the revised seniority list and were not entitled to continue in the promoted posts as per the revised list. This paved the way for the erstwhile juniors who became seniors by revision of seniority, to claim promotion on par with their juniors in the revised seniority list, involving promotion in excess of sanctioned posts and unnecessary heavy financial burden on the Railway Administration. The respondents further contended that the claim of the applicant is barred by acquiescence made by way of the submission in OA No. 872/92. No rejoinder has been filed by the applicant.

5] We have heard Mr. Mr Siby J Monippally, counsel for the applicant and Ms PK Nandini, counsel for the Respondents.

Learned counsel for the applicant has stated that the prayer of the applicant in this OA is covered by the decision in OA 639/2006 and Ors. rendered by this Tribunal, as they were similarly placed employees. Learned counsel for the respondents has reiterated the averments made in the reply statement.

We have perused the record. We have perused also the common order dated 25.4.2007 of this Tribunal in OA No. 639/06 and OA No. 697/05 filed by Sri P. Balarajan and Sri P.Gangadharan. The factual situation has been described in detail by the respondents in their reply statement and it is also admitted that the applicant was one of the applicants in OA No. 872/92 and that judgment of this Tribunal has been implemented by the Respondents not only to the applicant therein but to all the 15 casual labourers, who were absorbed as Bridge Khalasis

above the 21 employees appointed on transfer. In the revised seniority list published on 8.7.94, due seniority was assigned to them in the higher grade on notional basis from 9.12.1980. This is also borne out by Annexure-A/2 seniority list produced in OA No. 639/2006. Now the dispute is only with reference to the further promotion to the grade of Technician Gr-I and Gr-II. The dispute has mainly arisen due to the interpretation given to the order of the Tribunal, as mentioned in para 7 in OA 872/92, which runs as follows:-

"7. In the result, we quash Annexure-A4, A12, A14 and A15 as prayed for. However we make it clear that applicants shall be given notional seniority from 9.12.1980, if on that date they were working as casual labourers in the Bridge Organisation. Seniority as aforesaid will be granted to them on their promotion to the next higher grade. The above direction is in consonance with the submission of the learned counsel for applicants and will avoid reversion of the party-respondents. "

6] The Tribunal granted notional seniority from 9.12.1980, from the date they were working as casual labourers. Further seniority would be granted to them on their promotion to the next higher grade. This is made clear in para 6(b).1. The submission of the applicants that they may be promoted only in the existing or future vacancies was accepted only to the extent of avoiding reversion of the private-respondents to enable them to continue in the present post. But the Respondents have interpreted this order to mean that the applicants could get the

benefit of seniority only in accordance with their promotions in future vacancies. This was not the intention of the Tribunal at all, if that is so, there were no need to grant their prayer for seniority, and only status quo was to be continued. The respondents have granted them notional seniority in the entry cadre and placed them above the respondents in the seniority list of 1999 according to their own admission only implementing part of the order. Meanwhile, the party respondents in OA No.872/92 who had become juniors, viz. Sri Asokan and others as some of them were allowed to continue in the higher post have taken advantage of this situation by filing subsequent OAs claiming promotion on par with their juniors and have got their notional promotion on that basis. This has worsened the situation for the applicants. In fact, all the original applications filed by such juniors, referred to by the respondents in their reply statement belong to the cadre of Gangman-Khalasi, who were placed below the applicant and others in the seniority after the judgment of this Tribunal in OA No.872/92. Therefore, the determination of the inter-se-seniority and their proforma promotion at par with their juniors amongst themselves should not have in any way affected the applicants and others, who belonged to the senior category, and who were already granted the notional seniority as above in the entry cadre. Thereby, not giving notional seniority in the promoted cadre on the basis of their revised notional seniority in the entry cadre to the applicant and others (seniors) and by giving such benefit to the juniors in the category of the party respondents in Original Application No. 872/92

against whom the OA was already allowed by this Tribunal has caused injustice to this category of employees. In other words, though the OA 872/92 was allowed in favour of the applicants, the benefits have flowed to the respondents in that OA, all because of a good gesture shown allowing them to continue in the higher posts.

7] Further it is not known on what basis the 2001 seniority list was issued, a copy of the said seniority list produced in OA 639/06 carries a general remark that the applicants and others have been granted placement above one Sri P Chandrasekaran as per judgment in OA 872/92 in the Grade of HS-I. In accordance with this remark, the applicants and others should have been shown above Sri P Chandrasekaran. In fact, it is seen that they should have been even above Sri P Balan, who was one of the party-Respondents in OA 872/92. Had this position been incorporated in the seniority list the applicant would have been promoted with effect from the date i.e. 1.1.1990, which is the date given to Sri P Chandrasekaran. No such remarks have been made in HS Grade-II and Grade-III categories. The seniority list has not been properly prepared and deserves to be reviewed placing all the persons at the appropriate places following various orders of the Tribunal in clear terms. There is also no indication whether the provisional list had been published earlier and circulated amongst the staff members. The respondents have to remedy this situation and prepare the seniority list indicating the correct positions as per

various orders and placing them under the different categories i.e. HS-I, II and III etc. after due notice to all. Then only the seniority disputes can be settled finally.

8] While the respondents may initiate action in this regard separately in the light of the facts discussed above, we are of the view that the case of the applicant has not been properly considered in accordance with the orders of this Tribunal in OA No. 872/92 and the prayer of the applicant for granting notional seniority, as granted to many of his juniors has to be allowed.

9] We have also taken note of the order of this Tribunal in OA 639/06 and 697/05. The applicant in OA 639/06 was a co-applicant in OA No.872/92 along with the applicant in this OA. According to the revised seniority list, he is shown as junior to this applicant, therefore, the applicant is all the more entitled to the benefit granted to the applicants in OA 639/06.


10] We, therefore, consider that the prayer of the applicant is genuine and he is entitled to get the relief as prayed for. We accordingly quash the impugned order at Annexure-A/3 and direct the Respondents to grant notional promotion to the applicant w.e.f. 01.01.84 as HS-II and HS-III and w.e.f.01.01.90 as HS-I in the BRI cadre on the lines granted to the applicant in OA 639/06. However, we make it clear that all the promotions shall be notional and no arrears of pay and allowance shall be payable. Since the applicant has already retired from service, the terminal benefits and pension will be re-fixed accordingly.

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This exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

11] With the above directions, the OA is allowed. No order as to costs.

[Dated the 5th November, 2007]


(GEORGE PARACKEN)
JUDICIAL MEMBER


(Smt. Sathi Nair)
VICE CHAIRMAN

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