

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.444/11

Thursday this the 24th day of November 2011

C O R A M :

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

P.Gangadharan,
S/o.P.Appu,
Retd. Sr. Technician (Revetter),
Office of the Senior Section Engineer/
Bridges/Southern Railway/Palghat Division.
Residing at C/o.Shri.Kathikeyan,
Kallery House, Nirmarudoor Post,
(Via) Tirur, Malappuram District, Kerala – 676 109. ...Applicant

(By Advocate Mr.T.C.Govindaswamy)

V e r s u s

1. Union of India represented by the General Manager,
Southern Railway, Headquarters Office,
Park Town PO, Chennai – 3.
2. The Sr. Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat – 678 002. ...Respondents

(By Advocates Mr.Thomas Mathew Nellimoottil)

This application having been heard on 24th November 2011 this Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The applicant superannuated from the Railway service on 31.3.2011 as a Senior Technician (Revetter) of the Southern Railway, Palghat Division. He is aggrieved by the refusal on the part of the respondents to grant him the arrears of pay and allowances for the period during which the applicant had actually shouldered the higher responsibilities though the



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promotions were granted to the applicant from the notional dates with retrospective effect. The applicant was initially appointed as a Khalasi with effect from 6.8.1971 and was defacto promoted as a Khalasi Helper with effect from 1.1.1984 in the then pay scale of Rs.210-270 (3rd CPC/Rs.800-1150 (4th CPC) (semi skilled). The applicant was again defacto promoted as a Revetter Gr.III, Revetter Gr.II and as Revetter Gr.I with effect from 16.12.1992, 11.7.2006 and 19.2.2009 respectively. The scale of pay of Revetter Gr.III was Rs.3050-4590 and prior to revision Rs.950-1500. The scale of pay of Revetter Gr.II was Rs.4000-6000 (5th CPC) and Rs.5200-20200 plus Grade Pay of Rs.2000/- (6th CPC). As regards Technician Gr.I the scale of pay was Rs.4500-7000 (5th CPC) and Rs.5200-20200 plus Grade Pay of Rs.2800 (6th CPC). The applicant had approached this Tribunal earlier by filing O.A.697/05 claiming more or less similar reliefs including promotion to Revetter Gr.I. According to him, even though he was promoted to Revetter Gr.I defacto with effect from 19.2.2009 he had been paid the arrears only from that date onwards. It is contended by him that the earlier O.A was disposed of on 25.4.2007 and the respondents were granted six months time for implementation of the order which expired on 4.11.2007. If the order was implemented promoting him to the posts of Revetter Gr.III, Gr.II and Gr.I, he would have been paid the arrears of pay attached with those posts effective from 4.11.2007. But instead the respondents filed W.P before the Hon'ble High Court of Kerala as W.P.(C) No.34689/07. Though initially there was an interim stay subsequently the WP(C) was dismissed on 17.5.2010 and the interim relief was also dismissed on that date. According to the applicant, he is entitled for arrears of salary from the respective dates he shouldered higher

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responsibilities in the respective post of Gr.III, Gr.II and Gr.I and confining the arrears of pay from 19.2.2009 is wrong and illegal. At any rate, according to him, at least from the date on which six months time period expired, he ought to have been paid the arrears of salary, since non implementation of the order cannot adversely affect the rights of the applicant in getting the arrears as he would have been benefitted, had the order been implemented in time.

2. Respondents would contend that in the earlier O.A the Tribunal confined the arrears to be paid in H.S.Gr.I only, that too, from the date on which he shouldered the higher responsibilities. Though the order of this Tribunal was dated 25.4.2007, the correctness of the order was canvassed before the High Court and there was an interim stay and finally the WP(C) was dismissed on 17.5.2010. In the meantime, in normal course he was promoted to Gr.I with effect from 19.2.2009 and all the benefits due to him had been paid from the actual date on which he shouldered the higher responsibilities in Gr.I. As such, according to them, there is no merit in the O.A and the same is liable to be dismissed.

3. We have heard Shri.T.C.Govindaswamy, counsel appearing for the applicant and Shri.Thomas Mathew Nellimoottil, counsel appearing for the respondents. The applicant had earlier filed O.A.697/05 and this Tribunal along with O.A.639/06 disposed of the O.A by a common order dated 25.4.2007, a copy of which is exhibited as Annexure A-1. In para 3 of the order the necessary facts are stated in respect of the applicant in O.A.697/05. This Court took notice of the fact that at the time when he,

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filed the O.A he was working as a Revetter Technician Gr.III and his initial appointment was as Khalasi. Subsequently he was promoted as Khalasi Helper and thereafter promoted as Revetter Technician Gr.III. The Tribunal also noticed that notwithstanding the revision of the applicant's seniority above one Shri.Dharmalingam, the applicant was not granted the benefit of consideration for promotion and fitment at par with Dharmalingam as provided for in Rule 228 of the Indian Railway Establishment Manual, Chapter II. Representations made by the applicant was also noticed. The applicant's prayer was that he is entitled to be treated at par with one Shri.Asokan. His specific contention was that he is entitled to be considered and promoted as Revetter Technician Gr.III and Gr.II with effect from 1.1.1984 and Technician Gr.I with effect from 1.1.1990 at par with Dharmalingam, who is junior to the applicant. The denial of the benefit to the applicant is, therefore, arbitrary and discriminatory. The above was the specific contentions raised before this Tribunal. He sought the following reliefs as extracted in para 3.5 of the Annexure A-1 order which are as follows :-

- (i) Call for the records leading to the issue of Annexure A-3 and quash the same.
- (ii) Declare that the applicant is entitled to be granted the benefit of promotion as Revetter (Technician Gr.III) in the then scale of Rs.260-400/- and Revetter (Technician Gr.II) in the scale of Rs.1200-1800/- with effect from 1.1.1984 and as Revetter (Technician Gr.I) in the scale of Rs.1320-2040 (Rs.4500-7000) with effect from 1.1.1990 with all consequential benefits emanating therefrom on par with Shri.Dharmalingam referred to in Annexure A-3.



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4. But the Tribunal after considering the entire matter declared that the applicants in O.A.697/05 and O.A.639/06 are deemed to have been promoted to the following posts on the dates as indicated under :-

Applicant in OA 639/06:

Bridge Khalasi Helper (SS)	w.e.f. 13-11-1982.
Riveter – Sk Gr. III	w.e.f. 01-01-1984
Riveter HS Gr. II	w.e.f. 01-01-1984 notionally
Riveter HS Gr. I	w.e.f. 01-01-1990 subject to their being found suitable for the post of HS Grade I, subject to DPC clearance, notional

Terminal benefits and pension to be refixed accordingly.

Applicant in OA 697/05

Bridge Khalasi Helper (SS)	w.e.f. 13-11-1982.
Riveter – Sk Gr. III	w.e.f. 01-01-1984
Riveter HS Gr. II	w.e.f. 01-01-1984 notional
Riveter HS Gr. I	w.e.f. 01-01-1990 subject to their being found suitable for the post of HS Grade I, subject to DPC clearance notional

5. In the case of the applicant in O.A.697/05 he was deemed to have been promoted as Bridge Khalasi Helper (SS) with effect from 13.11.2982, Revetter SK Gr.III with effect from 1.1.1984, Revetter HS Gr.II with effect from 1.1.1984 notional and Revetter HS Gr.I with effect from 1.1.1990 subject to their being found suitable for the post of HS Gr.I, subject to DPC clearance notional. Though the applicant has served in HS Gr.II actually from 11.7.2006 and 12.2.2004 respectively, since their promotion, on being found suitable to the grade of HS Gr.I being effective with effect from 1.1.1990, all the promotions shall be notional and no arrears of pay and allowances shall be payable. However, in the case of the applicant in



O.A.697/06, who is still in service, his pay in the scale of Revetter Gr.I shall be actual from the date he shouldered higher responsibilities as HS Gr.I. (emphasis given). There was a further direction to comply with the order within a period of six months and in case the respondents need further time, as the case warrants promotion being granted dating back from 1.1.1984, before the expiry of six months they were given liberty to move an M.A indicating the extent of action already taken and to be taken and time needed for the same, in which event, the same shall be considered and further time granted.

6. Thus the Tribunal noticed the various dates on which notional promotion was effected as Revetter Gr.III and also as Gr.II but did not find eligible for any arrears of pay except in the case of the applicant for whom arrears of pay was also ordered to be paid from the date on which he shoulders higher responsibilities as HS Gr.I. Therefore, the present contention that he is entitled for arrears of pay in the every post, namely, Revetter Gr.II and Gr.III with retrospective effect having been specifically not granted, it must be presumed that the same has been rejected. It is well settled law that when a prayer is specifically raised and not granted it implies that the Court has not granted the relief. Even otherwise, the Court has specifically directed the arrears to be paid only in Gr.I from the date on which he shoulders higher responsibilities. Thus, what has not been granted by the previous order in Annexure A-1, cannot be re-agitated in the present O.A and is estopped from contending so as it is barred by the principle of res-judicata. However, the Tribunal has directed the payment of pay attached to Gr.I from the date on which he shoulders higher



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responsibilities and six months time was granted for complying with the order. Even though the Tribunal was considerate in reserving the right on the part of the respondents to move an application in case further time is required, the respondents obviously did not come for any such extension possibly because the order was stayed by the High Court. It is a cardinal principle that no order of the Court shall prejudice the right of either parties. It is respondents who invited the Court for an interim stay which was eventually dismissed. Therefore, merely because the WP(C) was pending by itself is no reason to deny the legitimate claim of the applicant for difference in the arrears of pay in Gr.I with effect from the expiry of six months from the date of receipt of a copy of the order, namely, with effect from 4.11.2007 (six months time being calculated from the date on which the order was obtained). Therefore, the only relief the applicant is entitled to is for difference in the pay in Gr.I less what is paid with effect from 4.11.2007 till 19.2.2009. The O.A is allowed partly as above. The order shall be complied with, within a period of three months from the date of receipt of a copy of this order. The parties shall bear the respective costs.

(Dated this the 24th day of November 2011)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

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