

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**ORIGINAL APPLICATION NO.514/2008.
DATED THE 23rd DAY OF SEPTEMBER, 2009.**

CORAM:

**HON'BLE Mr GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms K NOORJEHAN, ADMINISTRATIVE MEMBER**

Elizabeth Mathew
Ad-hoc Clerk/Typist,
Office of the Deputy Chief Engineer/Construction/
Southern Railway/Ernakulam Junction,
Residing at Railway Quarters No.117-C,
Chavara Cultural Centre Road,
Ernakulam South, Cochin-682 016.Applicant

By Advocate Mr T C G Swamy

V/s

- 1 Union of India represented by the
General Manager, Southern Railway,
Head Quarters Office, Park Town P.O.,
Chennai-3.
- 2 The Chief Administrative Officer,
Southern Railway/Construction,
Egmore, Chennai-8.
- 3 The Deputy Chief Engineer/Construction/
Southern Railway/Ernakulam Junction,
Ernakulam- 682 016.
- 4 The Deputy Chief Personnel Officer/Construction,
Southern Railway, Egmore, Chennai-8.
- 5 Shri P Chandiran,
Deputy Chief Personnel Officer/Construction,
Southern Railway, Egmore, Chennai-8.

By Advocate Mr Sunil Jose (R 1-4)



This application having been heard on 23.09.2009 the Tribunal on the same day delivered the following

(ORDER)

HON'BLE Mr GEORGE PARACKEN, JUDICIAL MEMBER

- 1 The applicant is aggrieved by the fact that she has not been paid the salary in the scale of Rs.3050-4590 attached to the post of Clerk/Typist while she was actually working against that post on adhoc basis w.e.f. 1.12.1999 till date.
- 2 The brief facts of this case are that the applicant was initially appointed as a casual labourer in the year 1985, on compassionate ground. However, her service has always been utilised as a Clerk/Typist. She was empaneled as a Trackwoman in 1993 under the Permanent Way Inspector/Kottayam. On her request and on administrative exigencies, she was transferred to Construction Organisation during September 1993 as a Khalasi in scale Rs.750-940 (pre revised) but she was continued to work as a Clerk/Typist as before. Later, vide Annexure A-2, the respondents themselves promoted her as a clerk/typist on adhoc basis for the period 1.3.1996 to 31.10.1996 in the scale of pay of Rs.3050-4590. Thereafter, after a gap of three years, she was again promoted on adhoc basis as a clerk/typist in the scale of pay of Rs.3050-4590 from 1.12.1999 to 31.12.1999. According to the applicant, the said adhoc appointment as clerk/typist has been continued from time to time though no order has been passed by the Respondents. She has also been paid the salary in the scale of Rs.3050-4590 attached to the post of clerk/typist for all these



years. Thereafter, the respondents have also fixed her pay in the scale of pay of Rs3050-4590 w.e.f. 1.12.1999 vide Annexure A-3 order dated 18.2.2005/26.3.2005. Meanwhile, the respondents have also promoted her as a Sr Trackwoman Gr.I in scale of Rs.2750-4400 w.e.f. 1.10.2006 in her substantive cadre. Thereafter, the respondents have issued the Annexure A-5 order dated 21.11.2006 retrospectively reducing her pay from 1.12.1999 i.e. the date from she has been appointed on adhoc promotion as clerk/typist in the scale of pay of Rs.3050-4590 vide Annexure A-2 order. The applicant aggrieved by the aforesaid reduction in salary approached this Tribunal vide OA 172/07 and this Tribunal vide order dated 26.11.2007 allowed the OA and quashed and set aside the reduction in her pay. The respondents were also directed to allow the applicant to continue existing fixation/promotion benefits, as if the Annexure A-9 order in that OA (Annexure A-8 in this OA) was not issued. In other words, respondents were directed to continue to treat the applicant as covered by Annexure A-6 memorandum dated 18.2.2006 in the said OA. The recovery, if any, made on account of the said Annexure A-9 order was also directed to be refunded to her immediately. The respondents filed a Review against the aforesaid order of this Tribunal but the same was dismissed. Thereafter, they filed a Writ Petition (C) No.11836/08 challenging the aforesaid orders of this Tribunal in OA as well as order in the Review Application before Hon'ble High Court of Kerala and the same is still pending.

3 Respondents, in the meanwhile, have issued the Annexure A-

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10 order dated 6.5.2008 according sanction for continuance of a number of adhoc promotees including some of the trackmen and women juniors to the applicant for the period from 1.7.2007 to 30.6.2008. The contention of Shri T C G Swamy, learned counsel for the applicant is that the respondents have discriminated in the matter of four persons namely, the applicant, Shri K P Chandran, Shri K Chandran and Shri K K Gopalakrishnan, in granting sanction for continuance of adhoc promotion. All these persons have approached this Tribunal at one point or the other for redressal of their grievance. Shri Swamy has therefore contented that the discrimination has been meted out to them only because they have approached this Tribunal. In this regard he has pointed out to the Annexure A-12 letter of the respondents dated 12.5.2008 whereby it has been stated that the contention of adhoc promotion in favour of the applicant, Sr.Track woman as Clerk/Typist and Shri K P Chandran as Ferro Printer will be examined after finalisation of the fixation anomaly which has been the subject matter before this Tribunal in OA 172/07 (Annexure A-9). He has also pointed out to Annexure A-13 letter dated 13.5.2008 written by the Dy CE/C/ERS. to the DY.CPO/CN/MS Construction, Madras stating that his office is under staffed and the necessary justification for supplementing sufficient staff has been sent to them for which decision was yet to be taken and the office work of his office is being managed with the assistance of the existing staff, granting them adhoc promotion as a fillip for shouldering higher responsibilities. They have been working against the sanctioned vide letter dated 28.11.2007. However, the adhoc



promotion to Shri K Chandran, Sr.Steno, who retired on 30.4.2008, Smt. Elizabeth Mathew Clerk/Typist (applicant herein) and Shri K P Chandran, Ferro Printer have not been communicated so far. The Dy CE/C/ERS has also informed the DY.CPO/CN/MS that the applicant is handling the works in the Account Section viz. Preparation of the Contractors bill, typing out of various statements on computer and other official correspondence, her continuance as Clerk/Typist is most essentially required, for want of regular incumbent to the post. He has, therefore, requested the DY.CPO/CN/MS to convey the sanction of adhoc promotion of the aforesaid persons.

4 The respondents in their reply has countered the submissions by the applicant and submitted that there was no venegence on the part of the respondents towards the applicant and other persons in the OA. They have also submitted that Trackman post is a sensitive post and there is always a demand from open line to relieve Trackman working in Construction Organisation for better utilisation. Further adhoc promotion to employes is periodically reviewed by appropriate authorities to minimise the expenditure on establishment charges. Apart from the applicant, several other employees working in Construction Organisation, namely, Shri T T Sounderarajan, Telephone Operator, Shri C Kalappan, Worksmate, Shri K P Sethumadhavan, Clerk, Shri Sivarama Joga Rao, Sr.Clerk, Shri K R Kailasanathan, Sr Clerk, Shri V Rengaraj, Driver II, Shri R Thiagarajan, Fitter, Shri N Vijayakumar, Fitter, etc also the sanction for adhoc promotion was not granted by the competent authority.



5 The applicant in her rejoinder has refuted the contention of the respondents that the post of Trackman/Woman is a sensitive post and there is no such declaration by Railway Authorities.

6 We have heard Advocate Mr T C Govindswamy, counsel for the applicant and Advocate Mr Sunil Jose, counsel for the respondents. We have also perused the entire records before us. The question is pure discrimination. As the applicant is an adhoc clerk/typist, undoubtedly, she has no right to continue in service indefinitely. However, the fact of the matter in this OA is that respondents have not reverted her to her substantive post of Sr. Trackwoman Gr I after adhoc promotion to the post of Clerk/Typist has expired from 30.6.2007. Admittedly, there is severe shortage of clerks/typists in the Office of the Dy CE/C/ERS where the applicant is at present employed and he himself vide Annexure A-13 letter has submitted that the applicant's service was being utilised and in the absence of regular employees, her presence in the office is highly essential. Therefore, if the applicant is not reverted to her substantive post after her adhoc appointment has expired and her service is continued to be utilised as clerk/typist, the respondents are bound to pay her the salary attached to the post of clerk/typist. This position was considered by this Tribunal in the case of Shri K Chandran who is one of the persons who had approached this Tribunal seeking continuation of adhoc promotion. Shri Chandran was working as a Sr. Stenographer and he retired from service also in the said capacity. Even though his services were continuously utilised as Sr. Stenographer and since the respondents had not extended



the adhoc promotion granted to him, he approached this Tribunal vide OA 346/08. Vide order dated 23.4.2009, this Tribunal allowed the OA relying upon a series of decisions of Apex Court in Selvaraj v. Lt. Governor of Island, Port Blair (1998) 4 SCC 291, Jeet Singh v. M.C.D 1986 Supp SCC 560 and Jaswant Singh v. Punjab Poultry Field Staff Assn (2002) 1 SCC 261.

7 The operative part of the aforesaid judgments are reproduced as under:-

(a) *Selvaraj v. Lt. Governor of Island, Port Blair, (1998) 4 SCC 291*, wherein the Apex Court has held as under:-

3. It is not in dispute that the appellant looked after the duties of Secretary (Scouts) from the date of the order and his salary was to be drawn against the post of Secretary (Scouts) under GFR 77. Still he was not paid the said salary for the work done by him as Secretary (Scouts). It is of course true that the appellant was not regularly promoted to the said post. It is also true as stated in the counter-affidavit of Deputy Resident Commissioner, Andaman & Nicobar Administration that the appellant was regularly posted in the pay scale of Rs. 1200-2040 and he was asked to look after the duties of Secretary (Scouts) as per the order aforesaid. It is also true that had this arrangement not been done, he would have to be transferred to the interior islands where the post of PST was available, but the appellant was keen to stay in Port Blair as averred in the said counter. However, in our view, these averments in the counter will not change the real position. Fact remains that the appellant has worked on the higher post though temporarily and in an officiating capacity pursuant to the aforesaid order and his salary was to be drawn during that time against the post of Secretary (Scouts). It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay scale of 1640-2900. Consequently, on the principle of quantum meruit the respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee. This limited relief is required to be given to the appellant only on this ground.



(b) *Jeet Singh v. M.C.D.*, 1986 Supp SCC 560 : In this case, the Apex Court has held as under:-

"We understand that the services of the petitioners have been regularised recently. Petitioners claim that they have been in continuous employment ever since the year 1979 and that they are entitled to the salary and allowances are paid to regular and permanent employees on the principles of equal pay for equal work. Following the order made in the Writ Petition Nos. 3077-3111 of 1985 we direct that these petitioners shall be entitled to the salary and allowances on the same basis are paid to regular and permanent employees from the date of their continuous employment. Respondent will ascertain the date of their continuous employment and payment as aforesaid will be made to the petitioner within 3 months from today. The matter is disposed of accordingly."

(c) *Jaswant Singh v. Punjab Poultry Field Staff Assn.*, (2002) 1 SCC 261: Here again, the Apex Court has held as under:-

".. Therefore, while the appellant's promotion to the post of Chick Sexer cannot be upheld, given the fact that the appellant had discharged the duties of a Chick Sexer, he was at least entitled to the pay and other allowances attributable to that post during the period he carried out such duties.

12. We accordingly allow the appeal in part. While upholding the order of the High Court, setting aside the order of the appellant's promotion, we direct the respondent Authorities to pay the appellant for the period he rendered service as a Chick Sexer at the scales of pay together with all allowances to which Chick Sexers were entitled at the relevant time. However, this relief is limited to the period commencing from three years prior to the filing of the suit by the appellant up to the time he continued to discharge duties as a Chick Sexer. All dues in terms of this order must be paid to the appellant within a period of six months from the date of this judgment after adjustment of payments already made to the appellant by the respondent Authorities. The appeal is disposed of accordingly without any order as to costs."

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14. Thus, under either of the proposition, the applicant would become entitled to higher pay and allowance as of Senior Stenographer till the date of his superannuation.

15. In view of the above, the O.A. is allowed to the extent that the respondents shall maintain the pay scale of the applicant at Rs 5000 – 8000 (pre-revised) till the date of his superannuation or protect his pay in drawn in the above scale and fix his pension in accordance with the rules of pension. Time calendared for compliance of this order is two months from the date of communication of this order.

16. Under the circumstances, there shall be no orders as to costs.

8 In this case, we also notice that the respondents in the reply have stated without any basis that the post of Trackwoman is a sensitive post. On the other hand, from their own Annexure A-10 order dated 6.5.2008, it is seen that a number of Trackmen like M.J.George, P K Kuttappan, K Dasan, Babu Cherian, V Mohammed Sheriff, K Samuel, H Romeo, C M Samuel, T.L.Joseph, etc have been allowed to continue on adhoc basis. Most of these persons have been given adhoc promotion in their substantive cadres but they are allowed to continue in the Construction Organisation. In the case of K Samuel, Lascar, he has been allowed to continue as Typist with payscale of Rs.3050-4590. It is also seen that all those persons are utilised in the office work rather than the post against which they have been promoted.

9 In the above facts and circumstances of the case, we allow this OA and quash and set aside the Annexure A-1 impugned order dated 29.8.2008. The respondents shall continue to pay the salary and allowances to the applicant in the scale of pay of Rs.3050-4590 so long as



her service is being utilised as clerk/typist. The respondents shall, therefore, issue necessary orders in this case sanctioning her the payscale of Rs.3050-4590 for the period w.e.f. 1.4.2007 onwards. The arrears of salary and allowances to the applicant shall also be paid within two months from the date of receipt of copy of this order. There shall be no orders as to costs.

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K NOORJEHAN
ADMINISTRATIVE MEMBER

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GEORGE PARACKEN
JUDICIAL MEMBER

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