

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A. NO. 518 OF 2010**

Tuesday, this the 5<sup>th</sup> day of July, 2011

**CORAM:**

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

P.M.Balan  
Non Artizan Khalasi  
Office of the Section Engineer (Works)  
Southern Railway, Kozhikode  
Residing at Railway Quarters  
No.132-D, Trailway Colony, Kozhikode ... Applicant

(By Advocate Mr. R.Premchand )

versus

1. The General Manager  
Southern Railway  
Headquarters Office, Part Town PO  
Chennai
2. The Divisional Railway Manager  
Divisional Office, Southern Railway  
Palghat Division, Palakkad
3. The Senior Divisional Personnel Officer  
Divisional Office, Personnel Branch  
Southern Railway, Palghat Division, Palakkad
4. K.Shamsudeen  
Non Artisan Khalasi  
Office of the Section Engineer (Works)  
Mangalore, Southern Railway, Palakkad Division  
Through the Senior Divisional Personnel Officer  
Divisional Office, Personnel Branch  
Southern Railway, Palghat Division, Palakkad
5. T.Sethumadhavan  
Non Artisan Khalasi  
Office of the Section Engineer (Works)  
Palghat, Southern Railway, Palakkad Division  
Through the Senior Divisional Personnel Officer  
Divisional Office, Personnel Branch  
Southern Railway, Palghat Division, Palakkad

6. K.C.Chandran  
Non Artisan Khalasi  
Office of the Section Engineer (Works)  
Mangalore, Southern railway, Palakkad Division  
Through the Senior Divisional Personnel Officer  
Divisional Office, Personnel Branch  
Southern Railway, Palghat Division, Palakkad
7. C.Unnikrishnan  
Non Artisan Khalasi  
Office of the Section Engineer (Works)  
Palghat , Southern railway, Palakkad Division  
Through the Senior Divisional Personnel Officer  
Divisional Office, Personnel Branch  
Southern Railway, Palghat Division, Palakkad ... Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil )

The application having been heard on .05.07.2011, the Tribunal on the same day delivered the following:

### **ORDER**

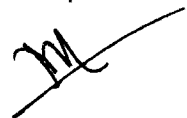
**HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER**

The applicant is a Non Artisan Khalasi with medical classification as ' Bee one'. Pursuant to Annexure A-7 notification calling for applications from regular serving employees working in Pay Band ₹ 5200-20200 plus Grade Pay ₹ 1800 for filling up the vacancies of Artisan Helper in Pay Band ₹ 5200-20200 plus Grade Pay ₹ 1800, the applicant also applied. His name did not figure in the select list published. It is evident from Annexure A-8 letter of the Divisional Office, Southern Railway dated 10.05.2010 that being a non selection post, promotions are made on the basis of seniority cum fitness and the concept of merit is not involved in such promotions. According to the applicant, Annexure A-2 seniority list, his SI.No is 15 and since the 14 persons above him, have not applied for the post, he should be deemed as first in the seniority list entitled to be appointed by way of promotion to fill up the vacancies of Artisan Helper pursuant to Annexure A-7. Instead of that, the respondents have promoted several juniors of the applicant. According to him: the four persons who are junior to the



applicant are arrayed as party respondents. Their names are shown at Sl.Nos.19,43,57 & 68 respectively. According to the applicant, there is no good reason as to why he is not promoted to the post of Artisan Helper, in preference to his juniors. He prays that appropriate direction be issued calling for the records leading to Annexure A-8 to the extent it denied the applicant promotion to the post of Helper / Plumber and to direct the respondents to consider his case for promotion in preference to his juniors

2. In the reply statement filed by the official respondents, it is contended that seniority is not only the criteria to fill up the vacancies and according to them suitability and seniority cum fitness is the criteria for promotion and the applicant was not empanelled as he was not found fit by the Selection Committee. Therefore, the only question as to whether the non promotion of the applicant for the reason that he is not found fit is valid arises for consideration. It is true that the criteria for promotion being seniority-cum-fitness, seniority by itself will not confer the right for promotion unless he is also found fit for promotion. But then in the absence of any guidelines to declare the person unfit at least the Selection Committee should record their findings as to why the applicant has been found to be unfit for promotion, since it affects his right of being considered for promotion a right guaranteed under the Constitution. Merely to state in the reply statement that he was found by the Selection committee as unfit for promotion by itself cannot be accepted in the absence of either any reason stated or at least the records disclosed some good reason to declare him unfit. Neither any reason nor records are made available and it is not the case of the applicant that any reason stated by the Selection Committee and recorded the same in the proceedings. In the



circumstances, we find that non promotion of the applicant is arbitrary and violation of Articles 14 and 16 of the Constitution of India.

3. Accordingly, we direct the respondents to reconsider the case of the applicant for promotion to the vacancies notified in Annexure A-7 and if found fit take such follow up steps, and if necessary, the junior most among those selected will have to be replaced, the respondents shall do so. However, it is open to the respondents to accommodate the applicant in any of the vacancies now available and to give him notional promotion without any monetary benefits but with all other consequential benefits. This exercise shall be done within two months from the date of receipt of a copy of this order.

4. OA is allowed as above. No costs.

Dated, the 5<sup>th</sup> July, 2011.



**K GEORGE JOSEPH**  
**ADMINISTRATIVE MEMBER**



**JUSTICE P.R.RAMAN**  
**JUDICIAL MEMBER**

vs