

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 556 of 2011

with

Original Application No. 886 of 2011

.....Thursday, this the 28th day of June, 2012

CORAM:

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

1. O.A. NO. 556/2011

P. Bhaskaran, HS-I,
Bridges Cadre, (Retd.), Palghat Division,
Southern Railway, aged 63 years,
S/o. Govindan,
Panaikkal House, Kadalundy,
Calicut.

.....
Applicant.

(By Advocate Mr. Siby J. Monippally)

versus

Union of India, represented by
Senior Divisional Personnel Officer,
Southern Railway, Palghat.

.....
Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

2. O.A. No. 886/2001

P. Balan, HS-1,
Bridges Cadre, (Retd.), Palghat Division,
Southern Railway, aged 64 years,
S/o. Appu, Pallakkal House,
Vettom P.O., Tirur, Malappuram.

.....
Applicant.

(By Advocate Mr. Siby J. Monippally)

versus

Union of India, represented by
Senior Divisional Personnel Officer,
Southern Railway, Palghat.

.....
Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)



These O.As having been heard on 21.06.2012, the Tribunal on 28-06-12 delivered the following:

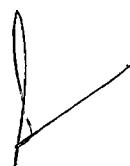
ORDER

Hon'ble Mr. K. George Joseph, Administrative Member -

Being identical, these O.As were heard together and are disposed of by this common order.

2. The applicants who were initially engaged as casual labourers were appointed as Bridge Khalasi with effect from 12.12.1980 (applicant in OA 886/11) and 19.12.1980 (applicant in OA No. 556/11). Subsequently, they were promoted as Bridge Khalasi Helper, Rivetter HS-III, Rivetter HS-II and Rivetter HS-I. The applicant in OA No. 556/11 retired on 31.08.2008 and the applicant in OA No. 886/11 retired on 31.05.2007. These OAs are filed by the applicants seeking notional promotion as Rivetter HS-II and HS-III with effect from 01.01.1984 and as Rivetter HS-I in BRI cadre with effect from 01.01.1990 with all consequential benefits.

3. The applicants submitted that in O.A. No. 872/1992, the applicants therein were granted seniority and consequential promotion. The persons who were similarly placed as the applicants in the OA mentioned above were granted notional promotion in HS Grade-I with effect from 1990 and actual promotion and fixation with effect from 29.03.1995. There is no reason to deny the same benefits to the applicants especially when their juniors, like Shri C. Asokan, P. Narayan , A. Dharmalingam and so on, were given the benefit of promotion. The applicants relied on the decisions of this Tribunal in

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O.A. Nos. 639/2006, 697/2005 and 442/2007 to support their contentions.

4. The respondents in their reply statement submitted that even though the applicants herein were not parties to O.A. No. 872/1992, they were granted the benefit of the said judgement. If they were aggrieved by not getting the notional promotion as Rivetter HS-III & HS-II from 1984 and Rivetter HS-I from 1990, they should have approached this Tribunal at least in the year 2001 when the seniority as on 15.03.2001 was published. Having remained silent for more than a decade, they are estopped from claiming the reliefs at this point of time. Their claims being stale should be rejected. At the time of their retirement, they were granted all the benefits based on the last pay drawn by them. Even at that time, they did not make any representation regarding disparity in the payments made to them. Having received the settlement amount without any objection, the applicants are estopped from claiming revision of the said benefits after a time lag of 3-4 years. During 1979, 36 posts of Bridge Khalasis were filled up by posting 21 regular employees working as Gangman, Trolleyman etc. who had previous service in the bridge wing and 15 screened casual labourers, including the applicants. In compliance with the order of this Tribunal in O.A. No. 872/1992, the applicants were given notional seniority with effect from 09.12.1980 and were placed senior to the regular employees and a revised seniority list was published. The aforesaid seniority was to be granted to them on their promotion to the next higher grade. The applicant in O.A. No. 886/11 was promoted to the post of Technician Grade-I (Rivetter) with effect from 20.06.1998 without promotion as Technician Grade-II (Rivetter). The applicant in O.A. No. 556/11 was promoted as Technician Grade-II (Rivetter) with effect from

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18.10.2001 without promotion as Technician Grade-III (Rivetter). Meanwhile, one Shri Asokan was given revised seniority in conformity with the order in O.A. No. 1299/96. He was further promoted as Technician Grade-I (Rivetter) in deference to the order of this Tribunal in O.A. No. 576/2001 as modified by the Hon'ble High Court of Kerala. The applicants are estopped from raking up the issue of promotion from an anterior date and consequential revision of settlement benefits at this distant date.

5. We have heard Mr. Siby J. Monippally, learned counsel for the applicants and Mr. Thomas Mathew Nellimoottil, learned counsel for the respondents and perused the records.

6. The benefit of notional seniority for the casual employees was extended to the applicants herein also even though they were not parties to O.A.No. 872/1992. In the revised seniority list dated 15.03.2001, the applicants were placed above one P. Chandrasekharan, Rivetter Grade-I. However, the applicants were given promotion when vacancies arose as per their turn later. According to the respondents the applicants should have approached this Tribunal in 2001 and now they are estopped from claiming revision of benefits already settled on their retirement. The fact that the applicants are seniors is undisputed. The submission of the applicants in O.A. No. 872/1992 that they may be promoted notionally in the existing or future vacancies was accepted only to the extent of avoiding reversion of the private respondents therein, as observed by this Tribunal in the order dated 05.11.2007 in O.A. No. 442/2007.

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7. In compliance with the order of this Tribunal in O.A. No. 576/2001, one Shri Asokan, junior to the applicant, was granted promotion, fixation of pay and other benefits. Therefore, the applicants contend that they, who are seniors to Shri Asokan, are liable to get notional promotion. The contention of the respondents that the applicants are estopped from claiming the reliefs and that the OAs are barred by limitation is not acceptable for the reason that a fresh cause of action arises every month when pension is paid to them. It is advantageous to refer to the order of this Tribunal in O.A. Nos. 639/2006 and 697/2005. The relevant part of the order in the above OAs is extracted as under:

"5. Arguments were heard and documents perused. First as to limitation as contended in OA 697/05. Since the impugned order is the main attack, the contention of the respondents that the applicant should have agitated as early as when the seniority list was published does not merit consideration. Hence objection as to limitation is rejected. Three pairs are comparable in the cases. Vide the order of the High Court in the case of Asokan, the said Asokan was held to be senior to Shri Kurup. Asokan to Kurup in the High Court case, is Balarajan to Chandrasekharan (in OA 639/06) and similarly Asokan to Kurup is P. Gangadharan to Dharmalingam (in OA 697/05). Thus, the case of Asokan fits in all corners with reference to the case of the two applicants. As such, as and when the juniors were promoted, the seniors ought to have been considered. To this extent, there cannot be any doubt.

6. But what is to be seen is that when certain trade test is to be passed before considering one for promotion, whether the mere fact that the applicants in the OAs are seniors would suffice to consider their case for promotion on the criteria that they are seniors. Attention was invited to the following portion of the Judgment of the High Court in the case of Asokan.

" As on 16.1.1990 when he was temporarily promoted to that post, it should be deemed that he had been promoted as Riveter Grade II on 1.1.1984, fixation has to be done on 16.1.1990 appropriately and the arrears thereafter are to be worked out and paid, in respect thereof. Mr.Kurup had been promoted as Riveter Grade I but since it is not automatic promotion and Departmental Promotion Committee had to intervene, it may not be possible for us to declare that Shri



Asokan was entitled for promotion to the above category as of right. His promotability is to be assessed by a Committee within a period of three months. If he is qualified for such promotion, he has to be given the benefit which is long over due by virtue of his seniority. We do not think that the order requires any other clarification."

7. Counsel for the respondents submitted that due to the above observation, especially, that promotability has to be assessed by a committee, mere seniority is not enough. The counsel for respondents has relied upon the decision of the Apex Court in the case of **Indian Council of Agricultural Research v. T.K. Suryanarayan, (1997) 6 SCC 766** wherein the Apex Court has held as under:-

"Even if in some cases, erroneous promotions had been given contrary to the said Service Rules and consequently such employees have been allowed to enjoy the fruits of improper promotion, an employee cannot base his claim for promotion contrary to the statutory service rules in law courts. Incorrect promotion either given erroneously by the Department by misreading the said Service Rules or such promotion given pursuant to judicial orders contrary to Service Rules cannot be a ground to claim erroneous promotion by perpetrating infringement of statutory service rules.

8. Counsel for the applicant, however, referred to certain other rules of the Railways, such as Rule 228 of the IREM and stated that the Committee shall consider the case of the applicants and once it has found themselves to be suitable for promotion, the logical consequence is to hold as if they were found suitable from the date their juniors stood promoted. We agree. In respect of promotion to the post of HS II, their suitability having already been subjected to test and they having been found suitable, their dates of promotion shall be advanced to the dates when their respective juniors stood promoted. As regards HS Grade I, their suitability should be ascertained and if found suitable, they should be deemed to have been promoted w.e.f. their juniors.

9. As regards the apex Court's judgment, the counsel submitted that there has been no erroneous promotion against statutory rules on the basis of which the applicants claim promotion. Their claim is based on the statutory rules and on the precedent of Asokan, which is a case, which has been upheld by the Hon'ble High Court. There is substance in the submission of the counsel for the applicants in regard to this aspect too.

10. In view of the above, the OAs succeed. It is declared that the applicants in the two OAs, should be deemed to have been promoted to the following posts from the dates as indicated as 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

Though the applicants had served in the grade of HS II actually from 11-07-06 and 12-02-2004 respectively, since their promotion, on being found suitable to the grade of HS Grade I being effective w.e.f. 01-01-1990, all the promotions shall be notional and no arrears of pay and allowances shall be payable. In the case of Applicant in OA 697/05, however, who is still in service, his pay in the scale of Riveter Gr. I shall be actual from the date he ensholders higher responsibility as HS Gr. I.

11. This order shall be complied with, within a period of six months from the date of communication of this order. In case the respondents need further time, as the case warrants promotion being granted dating back from 01-01-1984, before the expiry of six months, they may move an M.A. indicating therein the extent of action already taken, action to be taken and time needed for the same, in which event, the same shall be considered and further time granted. As one of the applicants has already retired, it is fairly expected that the respondents shall keep in mind the same while applying for further time.

12. Under the circumstances, there shall be no orders as to cost."

8. Following the above decision of this Tribunal, O.A. No. 442/2007 was allowed as under:

"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 arrear 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. 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."

We find that these O.As are fully covered by the decisions of this Tribunal in the O.As referred to above.

9. Following the above decisions of this Tribunal, we hold that the applicants in these O.As are entitled to get notional promotion from the date of promotions of their junior. Accordingly, it is ordered as under:

10. The respondents are directed to grant the applicant notional promotion with effect from 01.01.1984 as Rivetter Grade-II and Rivetter Grade-I and from 01.01.1990 as Rivetter Grade-I in BRI cadre for the purpose of fixation of pension only. The arrears of pension will be payable only for the period from 3 years prior to the date of filing of this O.A till date. Appropriate orders in this regard should be issued within a period of 60 days from the date of receipt of a copy of this order. No costs.

(Dated, the 28th June, 2012)


K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE P.R. RAMAN
JUDICIAL MEMBER

cvr.

Correction

In the place of " Rivetter Grade-II and Grade-I" appearing in Para 10 of the judgement, the word " Rivetter Grade-II and III be substituted.

(vide order dated 14.9.12 in M.A. 921/2012 & M.A. 922/2012)

By order

Bairwa
Deputy Registrar