

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 568/2005

WEDNESDAY THIS THE 25TH JANUARY 2006

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

K. Govindaraji S/o Kuppuswamy
Technician Grade-I, Power Supply Installation,
Southern Railway, Sular Road R.S.,
residing at No.19-A, Railway Quarters
Muthugoundan Pudur PO, Sular Road,
Railway Station, Coimbatore District.

Applicant

By Advocate MR. TC Govindaswamy

Vs.

1 Union of India represented by
the General Manager, Headquarters Office
Park Town PO
Chennai-03

2 The Sr. Divisional Personnel Officer
Southern Railway
Palghat Division
Palghat.

Respondents

By Advocate Mr. P. Haridas

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant in this O.A. is working as a Technician Grade-I in the scale of 4500-7000 in the Power Supply Installation Wing of the Traction Distribution Unit of the Southern Railway, Palghat Division and is aggrieved by the refusal of the respondents to fix his pay in the promoted post of Technician Grade-I w.e.f. 1.11.2003. The applicant has submitted that he was working as a Technician Grade-II in the scale of Rs. 4000-6000 when by the office order dated 31.8.2004 (Annexure A1) he and 16 others were promoted as Technician Grade-I in the scale of Rs. 4000-7000. The applicant is at Sl.No. 16 in the above order. He also exercised his option on 22.9.04 for fixation of pay in the

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promoted post and took over the responsibility of the higher post on 31.8.2004 itself. The respondents ought to have fixed the pay of the applicant in the promoted post w.e.f. 1.11.03 and granted him consequential arrears of pay and allowances. Though he made a representation as in Annexure A2 no action was taken. Instead he received a letter dated 29.12.2004 proposing revision of his seniority and placing him below some of his juniors for which he submitted a reply dated 10.1.2005 but no action was taken on that too. Such refusal to take action on the part of the respondents is highly arbitrary, discriminatory and unconstitutional. Hence he has filed this OA seeking the following reliefs:

- a) Declare that non-feasance on the part of the Respondents to fix the Applicant's pay in the promoted post of Technician Grade-I in scale Rs. 4500- 7000 with effect from 1.11.2003 is, arbitrary, discriminatory and illegal.
- b) Direct the respondents to fix applicant's pay in scale Rs. 4500-7000 in terms of Rule 1313 of the Indian Railway Establishment Code Vol.II and direct further to grant him all consequential benefits including arrears of pay and allowances and other service benefits arising therefrom.
- c. Award costs of and incidental to this application
- d. Pass such other orders or directions as deemed just, fit and necessary by this Hon'ble Tribunal, in the facts and circumstances of the case.

2 The respondents have submitted that they received a representation dated 1.9.04 from the Southern Railway Mazdoor Union stating that one Shri E. Ramakrishnan, Technician Grade-II/PSI/Salem is senior to the applicant and that he has not been considered for promotion. A detailed examination was conducted and it came to light that the applicant is junior to Sri E. Ramakrishnan and hence the said Ramakrishnan should have been promoted instead of the applicant. Therefore a show cause notice was issued on 29.12.2004 proposing to revert the applicant and the reply of the applicant has been received which is under examination. They have also furnished the service particulars of both the applicant and Sri Ramakrishnan and have stated that Shri Ramakrishnan had been representing the matter but the office had not taken any action on the same. Since the entire matter is under review the applicant's pay could not be fixed in the promoted post.

3 The applicant has filed a rejoinder stating that it was not for the trade union to represent for revision of seniority of any employee under the rules and in terms of Rule 1313(1)(a)(1) of the Indian Railway Establishment Code Vo..II any representation by the affected employee must be submitted within one year for revision of seniority. The union is now seeking revision of the seniority from the initial date of the recruitment grade of Khalasis from the year 1992. The seniority which has remained settled for the last 11 years cannot now be unsettled in this manner. It was also pointed out that the date of appointment of Shri Ramakrishnan was earlier to the applicant. The respondents have not taken any final decision regarding the applicant's seniority even now. He has also enclosed the seniority list of Sr. Technicians . Grade-II of TRD Unit of PGT Division as on 1.3.1999 in which he is shown as senior to Shri Ramakrishnan.

4 The respondents have therefore filed additional reply statement indicating that under the provisions of the IREM if the employee is erroneously promoted he can be brought down after issuing show cause and disposal of the representation submitted if any. Shri Ramakrishnan had submitted representations way back in the year 1996 and they have produced copies of same marked as Annexures R-4 to R-6 and averred that it is not correct to say that the action is initiated on the behest of the Union. Hence the respondents are not trying to grant any undue benefit to any persons and the OA lacks any merit.

5 We have gone through the records and have heard the learned counsel on both sides. The short question before us is whether the applicant herein is entitled to the pay in the post of Technician Grade-I to which he has been promoted by Annexure A1 order. Our answer to the question is in the affirmative as the facts of the applicant's promotion and joining and his continuous discharging of the duties of the post, are undisputed. The only ground taken by the respondents is that the question of seniority of the applicant vis-a-vis one Sri Ramakrishnan is under review for which they have also issued a show cause notice to the applicant and Sri Ramakrishnan and the reply is under consideration. The respondents are certainly at liberty to take such action if a

representation has been received and for revision of seniority, elaborate procedures have been prescribed and the respondents have taken the initial step of issuing a show cause notice. Since the respondents themselves have admitted that the representations of Shri Ramakrishnan are pending from 1996 and the matter relates to unsettling the seniority position which has got settled in the last 10 years and the parties there too have also obtained promotion in the interregnum, this matter would have to be decided by the respondents after taking into account the submissions made by both sides and of all those affected and also the relevant records. Whereas this process has been undertaken simultaneously the respondent have not reverted the applicant from the higher post or cancelled his promotion. Till that happened the applicant is entitled to continue in the post and also to the scale attached to the post. Hence as the applicant is discharging the duties of the higher post of Technician Grade-I he cannot be denied the fixation of pay in the scale of Rs. 4500-7000. The question of determination of the seniority of the applicant vis-a-vis Sri Ramakrishnan is not pertinent as far as the prayer in this OA is concerned. The respondents are at liberty to take action as per rules to settle the seniority and to review the promotion after a final decision is taken on the question of seniority. Till then they cannot deny the benefit of pay fixation in the scale of the promoted post which the applicant is holding.

6 In this view of the matter the OA is allowed with direction to the respondents to fix the applicant's pay in the promoted post in the scale of 4500-7000 and to continue to grant him the benefit as long as he is continuing in the higher post. The OA is allowed as above. No costs.

Dated 25.1.06


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN