

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 578 OF 2007

Dated the 17th October, 2008

CORAM:-

HON'BLE Mr. GEORGE PARACKEN, MEMBER (JUDICIAL)
HON'BLE Dr. K.S.SUGATHAN, MEMBER (ADMINISTRATIVE)

T.N.Viswanathan Pillai,
S/o G Nanu Pillai,
(Retired Senior Goods Guard
S. Railway, Quilon),
Residing at Thunduvila Veedu,
Edavattom Vettimon, PO
Kundara-691 511.

....Applicant

[By Advocate: Mr MP Varkey]


-Versus-

1. Union of India, represented by General Manager,
Southern Railway, Chennai-600 003.
2. Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum-695 014.
3. Senior Divisional Accounts Officer,
Southern Railway,
Trivandrum-695 014.

...Respondents

[By Advocates: Mr Varghese John for Mr. TM Nellimoottil]


This application having been heard on 16th September, 2008 the Tribunal delivered the following -



ORDER

(Hon'ble Dr.KS Sugathan,AM)

The applicant retired from the post of Sr. Goods Guard of Southern Railway Trivandrum Division on 30.11.2006. Before his retirement he had received promotion from the post of Goods Guard to Sr. Goods Guard by order dated 13.12.2005 (A/5). He is aggrieved that the aforesaid promotion should have been given to him with retrospective effect from 1.11.2003, as sufficient vacancies were available then. There was a cadre restructuring in the Railways effective from 1.11.2003. The restructuring included the cadre of Guards also. As per the restructuring scheme, 27% of passenger guards, goods guards and assistant guards are to be placed in the next higher grade instead of the then existing 20%. It is the contention of the applicant that the said restructuring was not properly implemented in the Trivandrum Division. Most of those promoted were denied promotion with effect from the date of restructuring i.e.1.11.2003. The applicant is also aggrieved that after his promotion as Sr. Goods Guard his pay was not fixed under Rule 1313 (I)(a)(1). Instead the pay was fixed as per Rule 1313 (I)(a)(2). The applicant has sought the following relief in this OA:




"i) Declare that the applicant is entitled to be promoted as Passenger Guard in scale Rs.5000-8000 with effect from 1.11.2003 and proforma fixation of pay from 1.11.2003 to 30.11.2006 and consequential retirement benefits, duly setting aside A5, A7, A9 and A10 to that extent and; directing the respondents to issue A9 and A10 afresh accordingly.

ii) If the above prayer is not granted, declare that the applicant is entitled to be promoted as Senior Goods Guard in scale Rs.5000-

8000 with effect from 1.11.2003 and for fixation of pay from that date under Rule 1313(1) (a) (1), IREC, Vol. 2, duly setting aside A5, A7, A9 and A10 to that extent and directing the respondents to revise A9 and A10 accordingly with consequential benefits.


iii) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case."

[2] The respondents have contested the OA. In the reply statement filed by them, it is contended that the applicant has not established that he is the next senior-most person in the feeder category to be considered for promotion with effect from 1.11.2003. It can be seen from A/3 that there are 16 persons senior to the applicant to be considered for promotion ahead of the applicant. As per the orders on restructuring, only those vacancies that arose out of restructuring can be filled up with effect from date of re-structuring, i.e. 1.11.2003. In respect of vacancies that had already existed before restructuring, promotions can be effected only prospectively. Since only four additional vacancies arose out of re-structuring, only four could be given the benefit of promotion with effect from 1.11.2003. When two vacancies of Sr. Goods guard arose due to the promotion of R.Ramesh and V.Francis, the applicant along with K.Manoharan were promoted as Sr. Goods Guard. As regards pay fixation, it was erroneously mentioned in A/5 that pay fixation will be done Rule 1313 (I)(a)(1). The applicant is eligible for pay fixation under Rule 1311 (I)(a)(2) only.



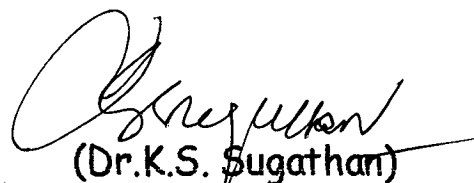
[3] We have heard the learned counsel for the applicant Shri M.P.Varkey and the learned counsel for the respondent Shri Varghese John. We have also perused the records carefully.

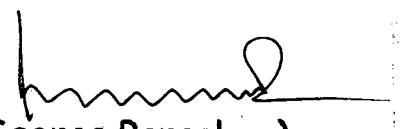
[4] The issue for consideration in this OA whether the applicant is entitled to promotion as Sr. Goods Guard/Passenger Guard with effect from 1.11.2003 the date on which the restructuring became effective. The respondents contend that promotion can be given with effect from 1.11.2003 only in respect of vacancies that arose out of restructuring, and not for all vacancies. Whereas the applicant's argument is that in respect of all vacancies including those that existed prior to restructuring, the promotion should be given with effect from 1.11.2003. In para 8 of the reply the respondents have stated that as per restructuring order of the Railways only in respect of vacancies that arose out of restructuring promotions can be given with effect from 1.11.2003. There is no reason to doubt this statement. In the rejoinder also the applicant has not specifically stated that the re-structuring order does not say so. There is also only a general denial in the rejoinder. It is also to be noted that in the promotion order dated 29.9.2004, only the first four Sr.Goods Guards have been given the benefit of retrospective from 1.11.2003. The principle of seniority has thus been well taken care of. Besides, it is not the case of the applicant that any of his seniors have been given the benefit of promotion with effect from 1.11.2003. That being the case it is not possible to grant the relief sought by the applicant for ante-



dating his promotion with effect from 1.11.2003. As regards the issue of pay of fixation, the applicant has a better case. In the order at A/5 by which the applicant was promoted it is clearly mentioned that the promotion will take effect from the date of shouldering "higher responsibilities". That would indicate the post of Sr.Goods Guard is one with higher responsibilities, and therefore the applicant is entitled to pay fixation under Rule 1313(I)(a)(1).

[5] For the reasons stated above, the OA is only partly allowed to the extent that the applicant is entitled to pay fixation under Rule 1313 (I)(a)(i) as mentioned in the promotion order at A/5. The respondents shall re-fix the pay of the applicant accordingly and grant all consequential benefits. No costs.


(Dr.K.S. Sugathan)
Member(Administrative)


(George Paracken)
Member (Judicial)