

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No. 594 of 2012**

**TUESDAY, this the 16<sup>th</sup> day of July, 2013**

**C O R A M :**

**HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

K.K.Basheer, aged 50 years,  
S/o late Kunjooran Kutty,  
Trackman, (Office of the Section Engineer/  
P.Way/SR/Palakkad, Working at Kanjikode),  
Residing at Manikampattu Peedika House,  
Kamba, Kinavallloor P.O., (Via) Paroli,  
Palakkad District.

.....Applicant

(By Advocate Mr. T.C.Govindaswamy)

v e r s u s

1 Union of India, represented by the  
General Manager, Southern Railway,  
Headquarters Office, Park Town PO  
Chennai : 3

2 The Divisional Railway Manager,  
Southern Railway, Palghat Division,  
Palghat : 678 002

3 The Senior Divisional Personnel Officer,  
Southern Railway, Palghat Division,  
Palghat : 678 002

.....Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

This application having been heard on 11.07.13, this Tribunal on  
16-07-13 delivered the following :-

**ORDER**

**HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

The applicant, a retrenched casual labourer of Southern Railway, on  
the strength of the order of this Tribunal dated 01.08.2007 in O.A. No.



30/2006 and connected cases, was absorbed as Group-D employee with notional seniority from the date of absorption of his junior, without payment of arrears of pay and allowances, vide order dated 04.04.2008. For the benefit of fitment of seniority with effect from 25.11.1998, he submitted a representation dated 22.03.2009. Meanwhile, his Headquarters was transferred from Kollengode to Palakkad East on account of the closure of the section on gauge conversion work. He submitted another representation on 25.06.2011. The applicant was erroneously included in the new Contributory Pension Scheme and on that basis, recovery from his salary is being made. Repeated representations against the same did not yield any result. Aggrieved, the applicant has filed this O.A for the following reliefs:

- (i) Declare that the non-feasance on the part of the respondents to grant the benefit of notional appointment with effect from 25.11.1998 (except arrears of pay and allowances) for the period upto 16.04.2008 is illegal, arbitrary, discriminatory, contrary to law and hence unconstitutional;
- (ii) Direct the respondent to treat the applicant as having been appointed on 25.11.1998 with all consequential benefits except arrears of pay and allowances for the period upto 16.04.2008 and direct further to grant all the benefits arising therefrom;
- (iii) Declare that the non-feasance on the part of the respondents to include he applicant under the Railway Services (Pension) Rules, 1993 is illegal and unconstitutional;
- (iv) Direct the respondents to include the applicant under the pension scheme as it existed prior to 01.01.2004 and direct further to grant the consequential benefits arising therefrom;
- (v) Award costs of and incidental to this application;
- (vi) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.



2. The applicant contended that in terms of Annexures A-1/A-3, the date of appointment of the applicant is 25.11.1998. He is entitled to fixation of pay, seniority and all other benefits except the arrears of pay and allowances for the period from 25.11.1998 to 16.04.2008, which includes the benefit of being included under the previous Railway Service (Pension) Rules, 1993.

3. The respondents contested the claim of the applicant. It was submitted on their behalf that the applicant was appointed as Temporary Trackman on 16.04.2008. The new Contributory Pension Scheme came into force with effect from 01.01.2004. Since the applicant joined the duty in 2008, he was included in the new Contributory Pension Scheme. If he was aggrieved, he should have approached this Tribunal in 2008 itself. But he filed the instant O.A only in 2012, after a lapse of 04 years. The representations at Annexures A-4 to A-6 said to have been submitted by the applicant have not been received. The Hon'ble Apex Court has in AIR 1990 SC 10 held that repeated unsuccessful representations would not enlarge the period of limitation. Therefore, the O.A. is liable to be dismissed in limine as barred by limitation. It can be seen from condition No. 14 of Annexure A-2 order that the appointment of the applicant will be governed by the new restructured contribution pension system introduced with effect from 01.01.2004. As per the new restructured contribution pension system 10% of salary and D.A will be recovered from the employee as monthly contribution towards pension which will be matched by the Government. The applicant had accepted the condition contained in



Annexure A-2 as evident from his signature in Annexure A-2. Having accepted the said condition, after a lapse of 04 years the applicant cannot turn around and claim that he is eligible to be included in the Pension Scheme that existed prior to 01.01.2004. The relief granted to applicant in O.A. No. 30/2006 for the limited purpose of granting seniority will not entail him to claim any exclusive right for other benefits. As per Annexure A-1 order, the seniority of the applicant has been assigned on notional basis with effect from 25.11.1998. He has also been granted fixation of pay from 25.11.1998 on proforma basis and on actual basis from 16.04.2008. The claim of the applicant for inclusion in the Pension Scheme which existed prior to 01.01.2004 is without substance.

4. I have heard Mr. T.C. Govindaswamy, learned counsel for the applicant and Mr. Thomas Mathew Nellimoottil, learned counsel for the respondents and perused the records.

5. O.A. No. 30/2006 filed by the applicant was disposed of along with connected cases by this Tribunal vide order dated 01.08.2007, as under :


"12 In view of the aforesaid facts and circumstances of the case, I condone the delay in filing these O.As and allow them. It is declared that the applicants are entitled to be considered for re-engagement/absorption as Group 'D' employees under the respondents in preference to their juniors borne in the Live Register of retrenched casual labourers. The respondents are, therefore, directed to call the applicants for verification of their documents within one month from the date of receipt of this order. If applicants are found fulfilling the necessary requirements for absorption, they should be absorbed as Group 'D' staff on regular basis. The applicants shall also be entitled for notional fixation of their seniority from the date similarly placed person with same or lesser number of days of



service than them has been absorbed as a Group 'D' employee. However, they shall not be entitled for arrears of pay and allowances. There shall be no order as to costs."

6. Complying with the above order, the respondents have appointed the applicant as Temporary Trackman with notional seniority with effect from 25.11.1998, vide order dated 04.04.2008. He was granted fixation of pay from 25.11.1998 on proforma basis. What has been specifically denied to him is the benefit of arrears of pay and allowances. The contention of the respondents that the relief granted to the applicant in the aforesaid O.A was for the limited purpose of seniority, is not correct. Seniority is counted from the date of entry in regular service. By granting notional seniority and fixation of pay on proforma basis with effect from 25.11.1998, the applicant is granted deemed regularisation with effect from that date. Notionality of seniority and proforma basis of salary fixation result in the denial of payment of arrears of pay and allowances for the period from 25.11.1998 to 16.04.2008 only. For the purpose of pension, his regular service is to be counted from 25.11.1998. It was a mistake on the part of the respondents to have brought him under the new restructured contribution pension system which came into force with effect from 01.01.2004, on the ground that he was appointed in the year 2008, ignoring the fact that he was entitled for notional fixation of seniority with effect from 25.11.1998.

7. The issue in question can be seen from another angle too. As per Annexure R-1, the Railway Services (Pension) Rules, 1993 and other related rules shall not be applicable to the new recruits entering into Railway Service from 01.01.2004. The applicant is not a new recruit, who



is recruited as per the Recruitment Rules on or after 01.01.2004. He is absorbed into the Railway Service with notional seniority from 25.11.1998. His pay is also fixed on proforma basis from that date. Therefore, he is not a new recruit to be brought under the new restructured contribution pension system which came into force on 01.01.2004. Though he is appointed on 16.04.2008, he is not a new recruit. The respondents have no case that the applicant is a new recruit. Hence he falls under the old pension scheme.

8. The delay in filing this O.A by the applicant is condoned as the mistake on the part of the respondents gives rise to continuing cause of action every month when deduction is made from his salary towards pension. Non-feasance on the part of the respondents to include him under the Railway Services (Pension) Rules, 1993 is declared illegal. The respondents are directed to include the applicant under the old Pension Scheme as it existed prior to 01.01.2004 and further directed to grant all consequential benefits arising therefrom.

9. The O.A is allowed as above with no order as to costs.

(Dated, the 16<sup>th</sup> July, 2013)



**(K. GEORGE JOSEPH)**  
**ADMINISTRATIVE MEMBER**

cvr.