

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 601 of 2007

TUESDAY..., this the 22ND day of September, 2009

CORAM :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. K.M. Venkatachalam,
S/o. Madatha Mudaliar,
Residing at 77/A, Sathy Road,
Kavindapady P.O.,
Erode : 683 455 ... Applicant.

(By Advocate Mr. M.R. Hariraj)

v e r s u s


1. Union of India represented by
The Secretary to the Deptt. of Railways,
Ministry of Railways, New Delhi.
2. General Manager, Southern Railway,
Chennai.
3. Chief Personnel Officer,
Southern Railway, Chennai.
4. Divisional Personnel Manager,
Palakkad Division, Palakkad. ... Respondents.

(By Advocate Ms. P.K. Nandini)

The Original Application having been heard on 8.9.09, this Tribunal on 22-09-09 delivered the following :

**O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

The applicant joined the Railways as Asst. Station Master in 1962, was promoted to higher grades of Rs. 425-640, 455-700, 550-750 and 700-900 respectively in 1980, 1982, 1987 and 1991. He superannuated on 31st May



1996. According to the applicant, he filed OA No. 375/1993 and the same was, along with a bunch of applications, disposed of with the following direction:-

"5. Shri M.C. Cherian appearing for the Railways submitted that this view is no longer good law in the light of the decision of a Full Bench in V. Lakshminarayanan vs. Union of India and Others, (1993) 24 ATC FB 420. We are unable to agree. Though the Full Bench expressed opinions on different issues, at the close of the order (paragraph 49), the Full Bench stated :

"... though we have discussed contentions urged by parties, we accept the request of the learned Additional Solicitor General Shri V.R. Reddy and refrain from expressing our final conclusion on the issues arising in this case. We shall await the decision of the Supreme Court in Malick's case."

It eludes comprehension, why learned counsel cited this decision as an authority for any proposition. Shri P.A. Mohammed, also appearing for the Railways, cited another decision of the Calcutta Bench (Full Bench) of the Tribunal in Durgacharan Halder & Others vs. Union of India and Others (O.A. 854/90). It was observed :

"as we have felt that this case should await the decision of the Supreme Court, we direct all the 5 cases to be listed for final hearing after the Supreme Court rendering its decision in C.A. 2017/78."

We read this, only as an order of adjournment and not as an order laying down any proposition.

6. Following the precedents, we hold :

- (a) that the principle of reservation operates on the cadre strength;
- (b) that seniority vis-a-vis reserved and unreserved categories of employees in the lower category will be reflected in the promoted category also notwithstanding the earlier promotion obtained on the basis of reservation.

Applying these principles, respondents-Railways will work out the reliefs. We are issuing the direction, as the Apex Court thought that the judgements in force should be implemented.

6. These directions shall be carried out within six months from today.

7. Applications are allowed. Parties will bear their costs."

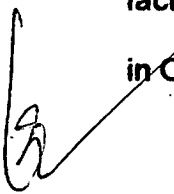


2. Special Leave Petition filed by the respondents did not prove fruitful, vide Annexure A-2.

3. The applicant has annexed a copy of order dated 30-0-9-2004 whereby certain officers were granted their seniority in accordance with the aforesaid order of the Tribunal and consequential benefits. Contending that the applicant is senior to those officers who are beneficiaries to the Annexure A-3 order this application has been filed seeking the following main relief:-

(i) Direct the respondents to recast the seniority list as directed by the Tribunal in Annexure A1 and revise the date of promotion of the applicant to each grade to the date of promotion of his juniors available in that grades on the date on which applicant is deemed to enter such grade and given him all the consequential benefits, including re-fixation of pay, pension and other monetary benefits, and arrears of such monetary benefits with interest.

4. Respondents have resisted the O.A. They have raised the point of limitation. Also it has been contended that at the time of retirement the applicant did not have any grievance. No grievance was ever spelt out when seniority lists were published. The claim of the applicant is 'stale'. Remedies have not been exhausted. The pleadings are thoroughly insufficient. The applicant has relied upon Annexure A-3 which is an off-shoot of O.P. No. 16893/98 which arose out of order in OA No. 282/98 filed in connection with the revision of seniority published on 27-01-1998 and further promotion to the post of SMR, while the applicant retired as early as in 2006. Thus, Annexure A-3 is not relevant to the facts of this case. Similar case was dismissed by the Madras Bench, vide order in OA No. 1130/04.




5. Counsel for the applicant argued that Annexure A-3 order has been issued in respect of officers who are juniors to the applicant and these were the culmination of the order dated 6th September 1994 in a bunch of cases in which the applicant is one of the parties. As such, a like order as in the case of Annexure A-3 should be passed by the Respondents.

6. Counsel for the respondent submitted that the case is pathetically time barred and the applicant had no grievance at the time when seniority list was published from time to time and also when he retired. The entire application has been vague without giving any particulars of juniors at par with whom the applicants seeks promotion to higher grades. Hence, the O.A. is liable to be rejected.

7. Arguments were heard and documents perused. The applicant claims that just as in the case of Somanathan Nair and others, in respect of whom Annexure A-3 orders were passed, similar action ought to have been taken by the respondents, by preparing the seniority, comparing the junior promoted prior to the date of promotion of the applicant in various grades and granting promotion from the date of promotion of the junior. According to the counsel for the applicant, the applicant is similarly situated as the officers referred to in Annexure A-3 order, and hence non grant of promotions and consequential benefits to the applicant is violative of Art. 14 and 16 of the Constitution of India.

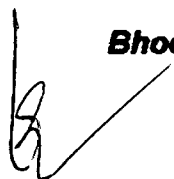
8. Though both the applicant and the officers in Annexure A-3 had initially filed O.As before this Tribunal, which culminated in the passing of Annexure A-1 order dated 6th September 1994, the applicant has chosen not to pursue the same after the said order, whereas the officers in Annexure A-3 order had taken timely steps to have the order implemented. For example, the very issue of



Annexure A-3 is in compliance of the directions contained in the order dated 10-10-2000 in OP No. 16893/98, which was filed by the officers in Annexure A-3. That OP was filed against the order dated 09-07-1998 in OA 282/98 which was filed by the said officers in Annexure A-3. After the judgment was passed in the aforesaid OP, as compliance was not forthcoming, the officers in Annexure A-3 promptly moved the High Court in contempt proceedings. Thus, all through the officers in Annexure A-3 had been vigil while the applicant indolent. Law is settled in this regard. If there is a failure in the implementation of the order of this Tribunal vide Annexure A-1 which was passed as early as in 1994, then the applicant who was a party before the Tribunal in the said OA, should have pursued the case fully and ensured its compliance. Normally the time limit for execution or contempt is only one year as held by the Apex Court in the case of **Hukam Raj Khinvsarav vs Union of India (1997) 4 SCC 284** wherein the Apex Court has held as under-

"8. Thus it could be seen that the final order passed by the Tribunal is executable under Section 27 of the Act within one year from the date of its becoming final. Admittedly, the final order was passed on 13-3-1992. Consequently, the appellant was required to file the execution application within one year from the said date unless the order of the Tribunal was suspended by this Court in a special leave petition/appeal which is not the case herein. Admittedly, the application came to be filed by the appellant on 13-12-1994 which is well beyond one year. Under these circumstances, the Tribunal was right in its conclusion that the application was barred by limitation".

9. The applicant has not approached within any reasonable time. Even if a latitude is given, SLP filed against the said order having been dismissed on 30th August 1996, vide Annexure A-2 within a reasonable time thereafter, the applicant ought to have moved the matter. It has been held in the case of **Bhoop Singh v. Union of India, (1992) 3 SCC 136 :**



"Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that belief. This is more so in service matters where vacancies are required to be filled promptly."

10. Counsel for the applicant submitted that the applicant superannuated in May 1996. That itself cannot be an excuse. Again, from the pleadings, as rightly pointed out by the respondents in their reply, no details of the juniors etc., have been furnished.

11. In view of the above, the OA fails being hopelessly time barred and is dismissed. No costs.

(Dated, the 22nd September, 2009)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



Dr. K B S RAJAN
JUDICIAL MEMBER

cvr.