

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.617/07

THURSDAY, this the 4th day of December, 2008

C O R A M :

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

N.Sankar,
S/o.N.Narayanan Namboodiri,
Ex-Senior Goods Driver,
Southern Railway, Trivandrum Division.
Residing at Shyamala Vilas,
Ancheri P.O., Trichur District.

...Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by the General Manager,
Southern Railway, Head Quarters Office,
Park Town P.O., Chennai – 3.
2. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum – 14.
3. The Senior Divisional Mechanical Engineer,
Southern Railway, Trivandrum Division,
Trivandrum – 14.
4. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum – 14.
5. The Deputy Chief Engineer,
System Operation Circle,
Kerala State Electricity Board,
Kanhirode Post, Kannur – 670 592.

...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil [R1-4])

This application having been heard on 24th November 2008 the
Tribunal on 04.12.2008 delivered the following :-

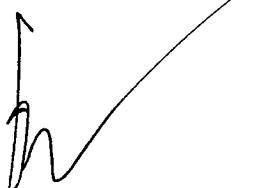
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ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant earlier employed in the Railways applied for a post in the Kerala State Electricity Board in May, 1994. According to him, Annexure A-1 is the letter to the Senior D.M.E, Trivandrum Central annexing in duplicate application for the said post. In the said annexure an endorsement was made on 20.5.1994 forwarding the application to the Senior D.M.E, Trivandrum for necessary action. Vide Annexure A-2 the Railways have asked the applicant certain clarification in regard to the notification with terms and conditions. Vide Annexure A-4 the Railways had given a No Objection Certificate to the applicant to appear for the proceedings with his application to K.S.E.B. On his being selected the applicant put forth his request for technical resignation vide Annexure A-5 letter dated 3.12.1999. This resignation of the applicant was accepted by the competent authority in the Railways vide Annexure A-6 and Annexure A-7 orders dated 9.12.1999. The applicant was relieved to enable him to join as Assistant Engineer, K.S.E.B.

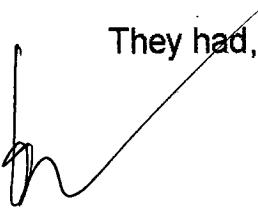
2. Vide Annexure A-8, the applicant has requested the Divisional Railway Manager, Trivandrum Division, for a service certificate and to forward his service documents to K.S.E.B so that he could earn the terminal benefits in full after his retirement in K.S.E.B. This was not responded to. It appears that the applicant had thereafter requested for payment of terminal benefits from the Railways itself. His request presumably is contained in his letter dated 20.3.2007. This was referred to



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in the impugned order dated 18.5.2007 vide Annexure A-9 wherein it was stated that his application to K.S.E.B was not forwarded by the Personnel Branch and based on his request for attending interview NOC was issued to him. The applicant has responded to the above communication vide Annexure A-10 letter dated 5.6.2007 stating that he applied only through proper channel and requested the Railways to deem him to have retired from service with effect from 9.12.1999. As no further communication was received the applicant has filed this O.A praying for a declaration that he is entitled to be granted pension and other retirement benefit with effect from 9.12.1999 duly deeming him to have retired from service with effect from that date and also for a direction to the respondents to grant him monthly pension and all other retirement benefits as if he had retired from the Railway Service with effect from 9.12.1999 with all consequential arrears of pension and other benefits.

3. Respondents have contested the O.A. According to them, the applicant has applied to the K.S.E.B directly without routing the application through the Railways. They have invited the attention of this Tribunal to Annexure A-3 application wherein the applicant himself stated that he had submitted the application to K.S.E.B due to anticipated delay. Annexure A-4 is only a NOC to attend the interview and it does not prove that the application for the post was earlier forwarded through proper channel. They had, therefore, prayed for the dismissal of the O.A.



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4. The applicant has filed his rejoinder wherein he has annexed a copy of letter dated 8.11.2006 issued by the Southern Railway to one Shri.O.Mohanan. According to this communication as per the rules, an ex-employee has to be deemed to have retired from service from the date his resignation is accepted and is eligible to receive pro-rata retirement benefits for the service rendered in the Railways. Rule 53 of Indian Railway Pension Rules, 1993 refers. The applicant has also annexed yet another order dated 18.2.2006 addressed to one Shri.G.Pradeep Kumar which also talks of Rule 53 of the Railway Service (Pension) Rules, 1993 stating that a railway servant absorbed in a body where there is a pension scheme shall be entitled to exercise option either to count the service rendered under the Railways in that body for pension or to receive pro-rata retirement benefits for the service rendered under the Railways.

5. In their additional reply the respondents have stated that Annexure A-11 and Annexure A-12 cannot come to the rescue of the applicant as it is not proved in the said annexures that persons mentioned therein had left the department on resignation on their own volition and thereafter their cases were considered by the authorities as technical resignation.

6. Counsel for the applicant referred to all the annexures to hammer home the point that the applicant did apply through proper channel as could be evidenced from the endorsement vide Annexure A-1, followed by

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calling for better particulars vide Annexure A-2, issue of No Objection Certificate vide Annexure A-4 and acceptance of technical resignation vide Annexure A-6. Lastly the applicant was relieved "to enable him to join as Assistant Engineer, K.S.E.B of Kerala State." These documents are adequate enough to prove that the applicant did apply through proper channel.

7. Counsel for the respondents submitted that Annexure A-4 is only a No Objection Certificate and the same cannot be construed to mean that the application was forwarded by the Railways. He has also referred to Annexure A-3 wherein it was stated that the applicant has send the application directly to K.S.E.B.

8. Arguments were heard and documents considered. First, as to contention raised, relating to Annexure A-3 : Vide Annexure A-1, the applicant has clearly indicated while enclosing a copy of the duplicate application form, that original application in the prescribed form had been sent to the Under Secretary, Co-operation Wing, KPSC, Trivandrum, to avoid delay in further proceedings. This clearly shows that the applicant had made known to the respondents of his application to KPSC. This is normally permissible. The purpose of his filing duplicate application is only to seek permission for application. This permission has not been refused as could be seen from Annexure A-4 whereby the applicant was permitted to appear for the interview. This permission was not given without being satisfied that the applicant acted within the



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framework of the rules and regulations. Annexure A-2 is a communication asking for certain details from the applicant in response to which only the applicant had submitted Annexure A-3 letter. Thus, at every stage, the applicant has kept the Railways informed and ultimately on his selection he had applied only for technical resignation which was also accepted and the applicant relieved, to enable him to join K.S.E.B vide Annexure A-7. All these things would go to show that the applicant has acted in accordance with the extant instructions. Under these circumstances to contend that the applicant had not applied through proper channel is nothing but a futile attempt to deny him all the benefits which otherwise he is entitled to.

9. In so far as Annexure A-11 and Annexure A-12 are concerned, these can be taken to support the case of the applicant that the applicant is entitled to pro-rata terminal benefits in accordance with Rule 53 of the Pension Rules, for, once a finding has been rendered that the applicant had applied through proper channel, Annexure A-11 and Annexure A-12 fully support the case of the applicant.

10. The applicant has put in 13 years of service in the Railways which could be reckoned for working out the terminal benefits as per the extant rules. If the applicant is eligible for gratuity and monthly pension with 13 years of qualifying service, according to rules, he cannot be denied the same.

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11. In view of the above, the O.A is allowed. It is declared that the applicant had applied through proper channel when he wanted to join K.S.E.B. His services for 13 years in the Railways if adequate enough for qualifying for terminal benefits, the applicant shall be paid his dues in accordance with the rules. This order shall be complied with, within a period of four months from the date of receipt of a copy of this order. No costs.

(Dated this the 4th day of December, 2008)


K.NOORJEHAN
ADMINISTRATIVE MEMBER


K.B.S.RAJAN
JUDICIAL MEMBER

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