

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 72 OF 2008

Monday, this the 23rd day of March, 2009.

CORAM:

**HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

S.Jayaprakash
Retired Clock and Watch Repair Gr.I
Southern Railway/Telecommunication/Trivandrum Division
Residing at TC 24/911, Vattavilakam
Thycaud, PO Trivandrum ... Applicant

(By Advocate Mr.TCG Swamy)

versus

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, Trivandrum Division
Trivandrum - 14
3. The Divisional Personnel Officer
Southern Railway, Trivandrum Division
Trivandrum - 14
4. Shri Sam Varghese, Wireless Instrument Mechanic
(Master Craftsman), Signal & Telecommunication Department
Southern Railway, Ernakulam Junction
Ernakulam ... Respondents


(By Advocate Mr.Thomas Mathew Nellimoottil)

The application having been heard on 23.03.2009, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant has been working as a Clock & Watch Repairer
in the scale of Rs.4500-7000 of the Signal & Telecommunication (S&T)



Department in Trivandrum Division of Southern Railway and he retired from service on 31.07.2007. His next promotional post was Master Craftsman in the scale of Rs.5000-8000. His grievance is that his junior Shri Sam Varghese was promoted as Master Craftsman vide Annexure A-2 order dated 30.09.2004 but he has been ignored. He has, therefore, sought a direction to the respondents to consider and promote him as Master Craftsman in the scale of Rs.5000-8000 with retrospective effect from 01.01.2003 or from the date Shri Sam Varghese was promoted as Master Craftsman.

2. The applicant submitted the Annexure A-3 representation dated 14.01.2005 against the Annexure A-2 order of the respondents promoting his junior Shri Sam Varghese in preference to him. He has stated that in the Annexure A-1 seniority list, while he was at 4th position, Shri Sam Varghese was only at 5th position and therefore he was junior to him. The said representation was followed by the Annexure A-4 representation dated 16.05.2006, the A-5 representation dated 08.02.2007 and the A-6 representation dated 04.05.2007 but there was no response from the respondents. Therefore, he has approached this Tribunal by filing this OA on 04.02.2008.

3. The applicant has also filed MA 1121/08 for condonation of delay in filing the OA. He has stated that there was a delay of 569 days in filing the OA and it was not on account of any laches or negligence but because of reasons beyond his control. He has also stated that he was a low paid employee and he was at the fag end of his service. The Learned counsel for applicant has submitted that even though the



applicant has already retired from service on 31.07.2007, if he is found to be eligible for promotion from due date and ordered accordingly, he would be benefited with fixation of pay in higher scale and corresponding retiral benefits. He also argued the subject matter of this OA is a continuous cause of action and therefore, limitation would not apply.

4. Respondents in their reply has submitted that subsequent to the issuance of Annexure A- 1 seniority list on 18.04.1998, the cadre of Wireless Instrument Mechanic progressed due to increase in the activities in Railways and, accordingly, more number of posts were sanctioned. Hence they were no longer required to continue in the said cadre of miscellaneous categories grouped in Annexure A1 and they got separated to form an independent cadre of their own. When the cadre restructuring scheme was implemented with effect from 01.01.2003, vacancies have arisen in the cadre of Wireless Instrument Mechanic and the vacant posts of Master Craftsman therein was filled up vide Annexure A-2 order dated 30.09.2004 by promoting the 4th respondent who was the senior most Wireless Instrument Mechanic / Grade I. They have also submitted that the applicant is not entitled to be considered for promotion to the post of MCM in Wireless Instrument Mechanic cadre as he does not belong to that cadre and that the post of Clock & Watch Repairer continued to be grouped in the miscellaneous categories even after 01.11.2003. They have further submitted that if the post of Master Craftsman in Wireless Instrument Mechanic cadre were to be filled up from among the miscellaneous categories in Annexure A-1, then the persons on sl.nos. 2 & 3 namely,



Shri Rajamanickam and Shri M.Mohanan were to be promoted before the Applicant was considered for such promotion. However, neither of them has been considered for promotion as Master Craftsman as they do not belong to the category of Wireless Instrument Mechanic. They also do not have any similar grievance as the applicant has. As regards Shri S. Thyagarajan at Sl.No.1 of Annexure A-1 is concerned, he has been promoted as Blacksmith Master Craftsman on 30.01.1999 as he was the senior most Blacksmith Gr.I.

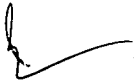
5. Counsel for applicant in his rejoinder has stated that respondents have not issued any orders regarding separation of the 4th respondent's category from the miscellaneous category on or before 31.10.2003. He has further submitted that in para 10 of RBE No.177/2003 referred to in Annexure A-2, it has been stated that while the revised percentage distribution of posts should be implemented in the unified cadres based on the integrated seniority list and therefore, the action of the official respondents in separating the 4th respondent from unified miscellaneous categories to form as a separate cadre was only for the purpose of promoting the 4th respondent in an arbitrary, discriminatory manner.

6. We have heard the counsel for the parties. The cause of action in this case arose when the Annexure A-2 order dated 30.09.2004 was issued promoting Shri Sam Varghese, who was junior to the applicant according to the Annexure A-1 seniority list dated 18.04.1998. The applicant made a representation against it only on 16.05.2006 (Annexure A-4). It was followed by the Annexure A-5



representation dated 08.02.2007 and the Annexure A-6 representation dated 04.05.2007. He had approached this Tribunal for redressal of his grievance only on 04.02.2008. The applicant himself has admitted that there is a delay of 569 days in filing the OA. The explanation given by him about the delay in filing this OA that it was not intentional and it was beyond his control is not satisfactory and hence it is not acceptable. Instead of approaching this Tribunal within the permissible period he went on making representations. It is a well settled law that repeated representations will not extend the period of limitation. We also do not agree with the Learned counsel for the Applicant that if he is granted promotion, then it would result in higher pensionary benefits and, therefore, he has a continuous cause of action and limitation will not apply. The prayer of the applicant is for promotion and it has to be settled within a reasonable period so that the settled position is not unsettled after several years.


7. We have also considered the matter on merit. Respondents has submitted that after issuance of Annexure A-1 seniority list, the cadre of Wireless Instrument Mechanic progressed due to increase in the activities in Railways and accordingly, more number of posts were sanctioned. Therefore, the cadre of Wireless Instrument Mechanic was withdrawn from the aforesaid seniority list and in terms of Railway Board's letter No.PC.III/2003/CRC/6 RBE.177/2003 dated 09.10.2003 and 06.01.2004 (RBE.187/2004) and the existing sanction as on 31.10.2003 has been revised. In the revised distribution also there was only one post of Master Craftsman and 4 posts of Wireless Instrument Mechanic, and accordingly only one person has been



promoted. Similarly, in the four other grades included in the miscellaneous category also, the senior most persons concerned have been promoted. Further it is seen that in the Annexure A-1 seniority list the Applicant is not the senior most person. The senior most person at Sl.No. 1 has been promoted as Master Craftsman in the cadre of Blacksmith and persons at Sl.Nos 2 & 3 are still waiting for promotion in their respective centers. The applicant is only at Sl.No.4.

8. In the facts and circumstances, this OA is dismissed both on limitation as well as on merits. There shall be no order as to costs.

Dated, the 23rd March, 2009.


K.NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

vs