

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 80 of 2011

Wednesday, this the 29th day of February, 2012

CORAM:

**HON'BLE MR. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

M. Sankarapandyan, S/o. Mandira Thevar
Retired Motor Vehicle Driver Gr. II
Southern Railway, Trivandrum Division
No. 2/401-PRC Nagar, Kovil Pappakudi
Podumbu (P.O), Madurai – 18.

... **Applicant**

[By Advocate Mr. T.C. Govindaswamy]

Versus

1. Union of India, represented by
The General Manager,
Southern Railway, HQ Office,
Park Town (P.O), Chennai – 3.
2. The Senior Divisional Personnel Officer,
Southern Railway, Thiruvananthapuram Division,
Thiruvananthapuram – 14.
3. The Senior Divisional Finance Officer,
Southern Railway, Thiruvananthapuram Division,
Thiruvananthapuram – 14.
4. Deputy Chief Engineer/ Construction/
Southern Railway, Madurai. ... **Respondents**

[By Advocate Mr. Thomas Mathew Nellimoottil]

This Application having been heard on 04.02.12, the Tribunal on 29.02.12
delivered the following :

ORDER

HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

This O.A. Has been filed by the applicant with a prayer to quash Annexure
A-1 order to the extent it shows the applicant's designation in the parent line/open
line as Colony Gangman/IOW/OL/Nagercoil Junction. He seeks a declaration that
he is entitled to be considered for promotion and granted the consequential benefits



in the cadre of Painter on par with his juniors in that cadre and for a further declaration that he is entitled to get promotion notionally as Painter Khalasi Helper, Painter Grade-II, Painter HS-II, Painter HS-I and as Master Craftsman etc. on par with his juniors. Alternatively, he seeks a declaration that he is entitled to be considered for further promotion in the cadre of Driver in the open line based on his regular appointment against a construction reserve post and for a further declaration that he is entitled to be considered for promotion on par with his juniors in that cadre. He also seeks all consequential benefits arising his from his promotion and a direction to the respondents to grant arrears of pay and allowances , arrears of pension and other terminal benefits.

2. The applicant was initially engaged in the Construction Organization of the Southern Railway as Casual jeep Driver with effect from 11.04.1973. He was granted temporary status on 01.01.1981. He was given lien in the Trivandrum Division in open line as Colony Gangman. His seniority was included in the seniority list of Colony Gangman as per letter No. V/P.536I/Engg/Vol.IX dated 30.03.90/19.04.90. Practically all through out his career, he worked as Driver on ad hoc basis in the project line. He retired from the post of Driver Grade-II on officiating capacity, on 31.08.2010, but he was never regularized as Driver till his retirement.

3. The applicant submitted that the cadre of Colony Gangman is different and distinct from that of Painter. As he was a Painter Khalasi in the open line organisation with effect from 02.06.1981as is evident from Annexures A-4, A-5 and A-6, granting lien as Colony Gangman is wrong. No seniority list of Gangman including his name was published; Nor was any factual position ever communicated to the applicant. He was not given any promotion in the cadre of Painter in the open line as was given to his juniors. He is entitled to have notional



promotion on par with them if his service in the Construction Organization was to be treated as an ex-cadre service. Alternatively, the applicant is entitled to the benefit of promotion as Motor Vehicle Drivers Gr.II and Gr.I in preference to his juniors in the cadre of Motor Vehicle Drivers.

4. The respondents in their reply statement submitted that the ad hoc arrangement in the post of Driver in the project does not confer him any right for seniority, continuance and pay fixation in the post. He was never regularised as Motor Vehicle Driver in his entire service career. He was given lien in Trivandrum Division (open line) as Colony Gangman and his seniority was included in the seniority list of Colony Gangman in Trivandrum Division as per letter dated 19.04.1990 issued by the Divisional Railway Manager, Trivandrum. He retired from the post of Driver Gr.II on officiating capacity without being regularised, in the officiating post of Motor Driver Grade-III. As such he has no right to claim the pay of officiating scale. He never volunteered/appeared in the selections conducted for filling up the post of Painter Grade-III, while his lien was maintained in the cadre of Colony Gangman, whereas his juniors appeared and got selected. On his own volition and for getting some monetary benefits in the ad hoc posting as Motor Vehicle Driver, he never appeared for selections in the open line. During his service period, he never bothered to claim promotion or seniority on par with his juniors. Annexure A-1 slip is about advice of provision of lien issued already. Even after knowing that some of the persons in the cadre of Painter were promoted, the applicant remained silent and had not represented before the respondents or filed any case before any Court. Since the applicant is not entitled for any promotion, there is no question of revision of his pension.

4. We have heard Mr. T.C. Govindaswamy, learned counsel for the applicant and Mr. Thomas Mathew Nellimoottil, learned counsel appearing for the



respondents and perused the records.

5. The impugned order at Annexure A-1 is the retirement order of the applicant from the Railway service on superannuation on 31.08.2010. It only mentions the provision of lien already issued separately. The applicant is, therefore, not justified in seeking the relief of changing his lien as Gangman challenging Annexure A-1.

6. The applicant has sought the benefit of promotion on par with his juniors either in the cadre of Painters or in the cadre of Drivers. He himself is not sure in which cadre he should seek promotion. He has not proved any illegality, if any, on the part of the respondents in not having promoted him alongwith his juniors. He was content with a posting as Driver on ad hoc basis without ever bothering about his promotion. He never claimed or agitated against the promotion of his juniors while he was in service. He never appeared in the selection process for promotion after passing the required trade test. He has no right to claim for the officiating pay scale as there is no rule permitting the same.

7. During his entire career, except for a short spell, he was officiating as a Driver on ad hoc basis. An ad hoc arrangement should not normally exceed one year. The fact that the applicant was officiating as Driver on ad hoc basis even without regular promotion for almost 3 decades does not give credit to the respondents. The respondents stated that he was given lien on the post of Colony Gangman and was included in the seniority list of Gangman. However, they have not proved that the applicant has been duly informed about the same.

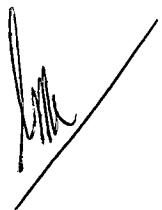
8. Notwithstanding the above shortcomings on the part of the respondents, the applicant has no right to make a stale claim in the eyes of law. For almost 30 years, he kept silent and did not move a little finger to get his officiating

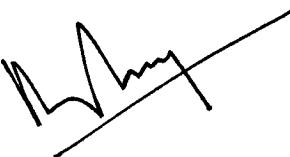
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arrangement as Driver regularised or to get promotion in the cadre of Painter. He was not concerned at all about his career prospects. After retirement only, he could think of his promotion and approached this Tribunal for the benefit of notional promotion and higher pension. As already held by the Apex Court in *Tridip Kumar Dingal & Ors. vs. State of West Bengal*, AISLJ 2009 (2) 196, "Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhume matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime". If the applicant was aggrieved, he should have come to this Tribunal at the earliest possible opportunity. Even in a case of an infringement of fundamental rights, stale claims are not entertained as held by the Hon'ble Supreme Court in *Trilokchand Motichand vs. H.B. Munshi*, (1969) 1 SCC 110.

9. The applicant's claim being too stale is not acceptable in the eyes of law. Hence, the O.A. is dismissed with no order as to costs.

(Dated, the 29th February, 2012)


K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE P.R. RAMAN
JUDICIAL MEMBER

CVR.