

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 122 of 2006

Wednesday, this the 25th day of July, 2007

C O R A M :

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

R. Sreekumaran Nair,
S/o. V.R. Ramachandran Nair,
Travelling Ticket Inspector,
Divisional Anti Fraud Squad,
Southern Railway, Trivandrum,
Residing at TC 68/2326,
Sree Lakshmi, Venkara,
Thiruvallom, Trivandrum-27 ... Applicant.

(By Advocate M/s. Santhosh & Rajan)

v e r s u s

1. Union of India represented by
The Secretary, Ministry of Railways,
Rail Bhavan, New Delhi.
2. The General Manager,
Southern Railway,
Park Town P.O., Chennai – 3 ... Respondents.

(By Advocate Mr. P. Haridas)

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

The facts as contained in the O.A. are as under:-

(a) The applicant working as Travelling Ticket Inspector at Trivandrum Central, Southern Railway. He was initially appointed as L.R. Porter on 9.12.1983 in the Sports quota in Madras Division of Southern Railway. While joining the Railways, he had achievements in swimming at National and State levels. Though considering the above achievements and also his educational qualification

(Matriculation), the applicant could have been appointed in Group-C post, he was appointed only in a Group 'D' post of LR Porter in the scale of pay of Rs. 196-232 with basic pay of Rs. 232/-. Several Matriculates with lesser achievements in the field of Sports have been appointed in Group 'C' post with maximum pay in the time scale. Thus, the applicant was discriminated in the matter of appointment. Later, by virtue of seniority, the applicant was promoted as Junior Clerk and thereafter, promoted to the post of Senior Clerk from 20.3.1986.

(b) After joining the service, the applicant had brought many laurels for the Railways by excelling himself in both National and International levels. He had created a National Record in the year 1985 in 200 m breaststroke. His representations in the international level are that (i) during December, 1985, he represented India in South Asian Federation Games held at Dhaka and won silver medal; (ii) during September, 1985, he represented India in second Asian Age Group Swimming Championship held at Bombay and won Bronze Medal, in 200 m Breaststroke and (iii) during July, 1986, he represented India in World Railway Aquatic Championship held at Poland and won 7th place in 200 m Breaststroke and 4th position in 4 x 100 m medley relay. The applicant was entitled to out of turn promotion and incentive, increments for his outstanding performance in the field of swimming. However, no such benefit was granted to him due to non recommendation by Shri M.K. Mukundan, the then Coach and Welfare Inspector of Sports, Southern Railway Sports Association, with malafide intention and ulterior motive.

(c) At the instigation of the above said coach, an order was issued to the applicant transferring him from Madras to Tiruchchirapally. The applicant challenged the said transfer order in O.A. No. 730/1987 before the Madras Bench of this Tribunal. The Coach was personally impleaded as 5th respondent in the said O.A. The Madras Bench of this Tribunal by a common judgment

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dated 18.4.88 set aside the transfer order of the applicant duly holding that the transfer of the individual is nothing but a colourable exercise of power and the transfer order had been issued not with any bonafide reason. It was also held that the 5th respondent had developed some ill will against the applicant and the transfer was only at the castigation of the 5th respondent and that the 5th respondent should have taken a leading part in excluding the applicants from the team even though they had expressed a desire to acquire the required training under the Coach.

(d) Finding it impossible to stay in Madras Division owing to the prosecution and humiliation, the applicant was constrained to seek a transfer to his native place by applying for an inter divisional transfer to Trivandrum Division with loss of seniority and pay. Accordingly, the applicant was reverted and transferred to Trivandrum Division as junior most in the category of Ticket Collector.

(e) Based on the sports at various levels, the applicant was entitled to get out of turn promotion and incentives, increments. Representations by the applicant in this regard were not considered by the respondents. Hence, the applicant approached this Tribunal in O.A. No. 565/03 which was disposed of by order dated 11.07.03 (Annexure A/3) directing the second respondent to consider the pending representations of the applicant. In purported compliance of the order of this Tribunal, the 2nd respondent had passed Annexure A/4 order dated 17.10.03 rejecting the claim of the applicant on unsustainable grounds. Challenging the said order, the applicant had again approached this Tribunal in O.A. No. 997/03 inter-alia seeking a direction that he is entitled to be granted out of turn promotions with higher initial pay and increments in view of his meritorious achievements in National and International sports and for a direction to grant the same. This Tribunal by Annexure A/5 order dated 17.05.05 disposed of the said O.A. directing the

second respondent to reconsider his decision in the light of the principle laid down in the preceding paragraph of the order and grant the benefit of two/three additional increments from 1987 to 1990 within a time span of two months from the date of receipt of a copy of this order. The second respondent again rejected the claim of the applicant by order dated 28.07.05 vide Annexure A/6.

(f) The applicant submitted a representation (Annexure A/7) before the first respondent against Annexure A/6 order of the second respondent. The second respondent has neither considered the representations nor granted the benefits to the applicant and hence this original Application. The applicant has mainly prayed for a direction to the respondents to grant the benefit of two/three additional increments from 1987 to 1990 to the applicant as directed in Annexure A/5 order and also direct to grant consequential arrears at the earliest.

2. The respondents have contested the O.A. and their version is as under:

(a) The applicant was given out of turn promotion for his performance in the year 1984. The system of granting additional increments for excellence at National and International level came into effect from 2.2.1988 (Annexure R/1). Since the applicant has no concrete achievements after 1986, no additional increment can be granted for his earlier performance notionally extending the performance to the period in question. The reasons stated by the applicant for the denial of incentives/ benefits to him was that the Coach and Welfare Inspector of Sports had not recommended his name is not correct as at the relevant point of time, the Scheme of granting incentives by way of increments was not in existence and for considering him for out of turn promotion, the applicant should have put in at least 3 years service in the existing grade.

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(b) The Tribunal directed the General Manager, Southern Railway, to consider the possibility of granting increments from 1986 to 1990. The Board's letter No. E(Sports)88/RSO/Policy dated 2.2.88 on which the applicant makes his claim for grant of increment is having prospective effect only. Subsequently, it was clarified by Railway Board vide their letter dated 12.12.88 (Annexure R/2) that the Railway Administration may finalize the case of incentives in terms of Board's letter dated 2.2.88 in respect of Sports person with excellence with individual events on their own for performance from the years 1987-88 (even before 2.2.88) onwards. Even according to the applicant, he has performed only upto 1986. On considering his performance for the relevant period, i.e. 1986 to 1990 (Annexure R/3) it was found there are no concrete achievements which warrants grant of increment. Further, the Railway Board has not granted any powers to the General Manager to relax the conditions for grant of increments.

3. The applicant has filed rejoinder/additional rejoinder to the reply/additional reply filed by the respondents reiterating his stand taken .

4. Counsel for the applicant submitted that right from the beginning the respondents had been viewing the case of the applicant with coloured glass. At the instigation of applicant's coach, the applicant was transferred from Chennai to Tiruchchirapally which forced the the applicant to move O.A. 730/87 before the Madras Bench to get the transfer order quashed. The applicant has brought name and fame to the Railways by participating in various sports events both at National and International level. His initial induction in the Railways was at the sports quota taking into account his participation and achievements in various sports events till 1983. The decision by the Tribunal vide order dated 17.5.2005 in OA No. 997 of 2003

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directing the respondents to reconsider the decision of the Railways in the light of the principles laid down in para 6 of the said order for grant of benefit of 2 to 3 additional increments from 1987 to 1990 cannot be stultified by stating that the Railway Board's circular came into existence only in 1988, as the same was in the full knowledge of this Tribunal when the above said order came to be passed..

5. Counsel for the respondents submitted that the applicant's performance was considered and the decision taken was on the basis of such performance that there are no concrete achievements made by the applicant after 1986.

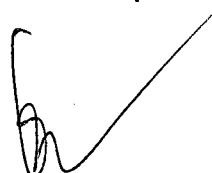
6. Arguments were heard and documents perused. From the pleadings available, it is observed that the respondents' contention is that on considering the applicant's performance from 1986 to 1990, as tabulated in Annexure R/3, there has been no achievement from 1987 to 1990. The statement was given by the applicant himself. In response thereto, the applicant has stated in para 10 of the rejoinder as under :-

"10. Regarding para 9 of the reply statement it is submitted that the second respondent has issued Annexure A6 order without properly considering the observation and findings of this Tribunal in Annexure A5 order. The applicant is entitled to get two/three additional increments from 1987 to 1990. It is submitted that in July, 1986 the applicant represented India in World Railway Championship at Poland. In August 1986, he represented Indian Railway in Junior National Championship at Bangalore and won gold medal. In November, 1986, he represented Indian Railway in Senior National Championship held at Ahamedabad and won bronze medal. In October, 1986, he won a silver and 2 bronze medals. Thereafter, he could not participate in any competition as he was arbitrarily and illegally not included in the team. The sports career of the applicant was thus abruptly stopped by the Coach and the



same has to be compensated by granting additional increments as directed by the Tribunal. The denial of the additional increments to the applicant is unjust, illegal and also against the directions in Annexure A5 order. It is submitted that on the basis of the complaints of the applicant, the Railway Vigilance has enquired the matter and directed to take action against Shri K.K. Mukundan. However, instead of taking action against Shri K.K. Mukundan, he was allowed to voluntarily retire from service on 1.10.2006. At the same time, despite the directions of the Tribunal, the applicant was not given the additional increments which are arbitrary and illegal."

7. Annexure A/8 attached to the rejoinder also relates to testimonials of 1986 and not beyond. The decision by the Tribunal was to be construed that the applicant should be considered for grant of additional increment if there were any commendable performances from 1987 to 1990. Applicant not being able to show any such achievement from 1987 to 1990, notwithstanding the above order of the Tribunal, he has not brought himself eligible or entitled to additional increment. The applicant could be held to have made out a case only when he satisfies the respondents that there have been achievements during the period from 1987 - 1990. In case the applicant could satisfy the authority that he has at his credit certain achievements during the period from 1987 to 1990, the same may be submitted to the 2nd respondent in which event, the second respondent may consider the same in the light of the Tribunal's order dated 17.5.2005 in O.A. No. 997 of 2003 and pass suitable orders accordingly. For this purpose, the applicant should make proper representation manifesting his achievements with documentary evidence within a period of one month from the date of communication of this order and the same shall be considered by the respondents within 2 months thereafter.

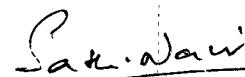


8. With the above observation, the O.A. is disposed of. No costs.

(Dated, the 25th July, 2007)



Dr. K B S RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

CVT.