

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 149 of 2007

Friday, this the 26th day of October, 2007

C O R A M :

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

K.R. Sasidharan Nair,
S/o. N. Ramakrishna Pillai,
(Retired Khalasi Helper Grade I,
Southern Railway, Trivandrum),
Residing at Pandaravilakathu Veedu,
Menankulam, Chittattumukku P.O.,
Trivandrum District

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Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India represented by the
General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai : 3
2. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Thiruvananthapuram.
3. The Divisional Finance Manager,
Southern Railway, Trivandrum Division,
Thiruvananthapuram.

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Respondents.

(By Advocate Mr. Sunil Jose, ACGSC)

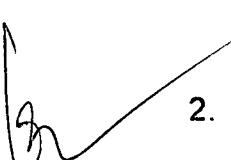
O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant a retired Khalasi Helper superannuated from service on 31-03-2006. Earlier he filed OA No. 1453/96 challenging the order of the Appellate Authority, who had, while modifying the Disciplinary Authority's order of removal from service, though reinstated the applicant into service, treated the reinstatement as one of a fresh entrant at the bottom of the time scale as a



Carriage and Wagon Khalasi. The said order of the Appellate Authority had been quashed to the extent the order treated the applicant as a fresh entrant and hence, the applicant was made entitled to all the consequential benefits. Annexure A-2 order dated 9th September, 1998 refers. Against this order of the Tribunal, the respondents preferred O.P. No. 8911/1999 which was decided on 10th August, 2005, holding that there was no direction for payment of any back wages or such similar reliefs and that the High Court did not interfere with the order of the Tribunal. Annexure A-3 refers. In the wake of the same, the respondents have issued Annexure A-1 pension payment order, which according to the applicant is not proper implementation of the Tribunal's order as modified by the High Court. Hence this OA with the following prayer:-

- (i) Call for the records leading to the issue of Annexure A/1 and quash the same to the extent it does not fix the applicant's pension correctly duly taking into consideration the promotional/ACP benefits due to the applicant in implementation of Annexure A/2 / A3.;
- (ii) Declare that the applicant is entitled to be considered for promotion / fitment benefits on the strength of seniority to be assigned duly taking into consideration the entire service rendered prior to the date of removal from service and direct the respondents to grant such benefits for purpose of fixation of the applicant's pension and other retirement benefits; or in the alternative to (ii) ;
- (iii) Declare that the respondents are bound to count the entire service of the applicant for the purpose of ACP and direct the respondents to grant the 2nd financial upgradation under the Assured Career Progression Scheme with effect from 1.10.1999 and to determine the applicant's pension and other retirement/terminal benefits on that basis and to grant the same accordingly.



2. The respondents have contested the O.A. According to them, the

applicant was entitled only to count the earlier period as qualifying for pension and that he is not entitled to seniority on the cadre of Carriage and Wagon Khalasi taking into consideration his length of service from the date of his initial appointment as Khalasi. Accordingly he cannot seek entitlement to promotion as Khalasi Helper, Technician on par with his juniors with lesser number of years of service than him. The applicant has not obtained any orders exempting his case to be considered for promotion to such posts without undergoing the trade tests mentioned for the said posts. The applicant never represented for implementation of the Tribunal's order. As such, the applicant is not entitled to any relief i.e. ACP or counting of his past service from the date of termination till the date of his superannuation, as claimed.

3. The applicant has filed his rejoinder in which he had stated that passing of trade test for ACP purposes has been dispensed with vide order dated 9th October 2003 of the Railway Board (Annexure A-6).

4. Counsel for the respondents reiterated the contents of counter.

5. Arguments were heard and documents perused. The order of the Tribunal is specific. It holds, "*In the light of the discussion above, we allow the application and quash A-2 to the extent that it directs the applicant on reinstatement to be deemed to be a fresh entrant. As a consequence, A-7 also stands quashed. Applicant will be entitled to the consequential benefits in accordance with the rules.*" When the above order was taken up in appeal, the Hon'ble High Court declined to interfere with the same. The operative portion of the High Court's order states, "*In the aforesaid circumstances, we decline to interfere with the matter. There was no stay in operation at any time and it*



has to be presumed that the orders might have been implemented. If not, the petitioner may be granted the benefit of a proper fixation of pension, and that alone, without delay." This direction clearly means that it was expected of the Respondents that the order of the Tribunal was implemented. If not, all that the applicant was to lose was his back wages. And, the petitioner was to be given the benefit of a "proper fixation of pension". In other words, the period of service from the date of termination till the date of superannuation shall count for the purpose of working out the qualifying service. Otherwise, the meaning of the term 'consequential benefits' as contained in the Tribunal's order loses all the significance. Thus, when no back wages have been provided for, all that is not available to the applicant was the back wages and nothing more. He is entitled to other consequential benefits. In a recent case (OA No. 79/07) decided on 10th October, 2007, a Division Bench, of which the undersigned is one of the Members, held as under:-

"In so far as consequential benefits are concerned, certain benefits were not linked with the actual duties while certain aspects are directly related to the duties performed. For example, bonus is directly related to the number of days of work performed. If there was no pay for any period in a year, then, obviously, there would be no bonus for the period the individual did not participate in the working of the organization. Save such concessions/benefits which are directly related to duty/pay, the applicant is entitled to get all other benefits by virtue of the earlier order of this Tribunal. Any interpretation other than this of the said order dated 04-12-1989 in OA K No. 84/1988, would be erroneous. Viewed from the same, the period from 03-06-1987 to 11-02-1990 qualifies to be treated as period of regular service, consequent to which, the applicant is entitled to have the same treated for the purpose of working out 12 years of service for ACP purposes."

6. In view of the above, the OA is allowed. It is declared that the applicant is entitled to have the period from the date of removal to date of reinstatement counted as qualifying service with the benefit of fitment at par



with his juniors. Thus, he is entitled to count his service from the initial date of entry in service till the date of superannuation as qualifying service, save the period spent as casual service and in so far as temporary status service is concerned, the same shall also count in accordance with the Rules. Respondents are directed to work out the same and grant the applicant due fitment and fix the pay notionally and on the basis of such pay and qualifying service, the pension and other terminal benefits of the applicant be worked out and difference between the amount due and paid be disbursed to him. This drill be conducted within a period of three months from the date of communication of this order.

7. No order as to costs.

(Dated, the 26th October, 2007)



DR. K B S RAJAN
JUDICIAL MEMBER

cvr.