

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A 173/03

MONDAY THIS THE 27th DAY OF MARCH, 2006

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HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

- 1 C.Nallamuthu, Khalasi Helper
Carriage & Wagon Department,
Southern Railway, Palghat Division.
- 2 K.C.Bhaskaran, Khalasi Helper
Carriage & Wagon Department,
Southern Railway, Palghat Division.
- 3 C.Easan, Khalasi Helper,
Carriage & Wagon Department
Southern Railway, Palghat Division.
- 4 S.Sunderraj, Khalasi Helper,
Carriage & Wagon Department,
Southern Railway,
Palghat Division.
- 5 M.Arogya Swamy, Khalasi Helper
Carriage & Wagon Department
Southern Railway, Palghat Division.Applicants

(By Advocate Mr. Siby J Monipally)

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- 1 Union of India, represented by
General Manager, Southern Railway,
Chennai.
- 2 Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.

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3 Senior Divisional Mechanical Engineer,
Diesel Shed, Southern Railway,
Palghat Division, Erode.

4 Chief Personnel Officer,
Southern Railway,
Chennai.

.....Respondents

(By Advocate Ms. Deepa G. Pal proxy counsel for Advocate Mr. P. Haridas.

The application having been heard on 15.3.2006, the Tribunal on 27.3.2006 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicants 1 to 5 have filed this joint Application under Section 19 of the Administrative Tribunals Act, 1985 read with Rule 15(2) of the Central Administrative Tribunal (Procedure) Rules, 1987. They are working as Khalasi Helpers in Carriage and Wagons Wing (C&W Wing for short), Erode in Palakkad Division with effect from 1.3.93, 20.8.93, 2.12.93, 20.8.93 and 1.6.93 respectively. Earlier they were working as Loco Khalasis on regular basis with effect from 29.5.73, 9.5.75, 11.3.74, 11.3.74 and 26.10.79 respectively. With the phasing in of diesel locos and phasing out of steam locos in 1980, the applicants who were working as Loco Staff were rendered surplus but they were kept till 1987 against supernumerary posts. During this period some of them were absorbed in the same division and some were transferred to other divisions wherever vacancies became available. The remaining staff

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continued to be adjusted against the supernumerary posts. In 1985, vacancies in Group D posts arose in C&W Wing and vide Annexure.R.1 Circular dated 7.6.85 the surplus staff were asked to volunteer themselves for absorption against those posts, if they are willing. The absorption was subject to the following conditions:

"(1) In the new unit the seniority to be assigned to the steam surplus staff will be below the existing permanent and temporary staff and including such of the substitutes who are to be empanelled in the screening now in hand for these departments.

(2) They will be provisionally absorbed in the new unit on the above basis. If and when additional posts are created for the work connected with Corrosion Repair/IOH/ROH activities, these surplus staff will have the first claim to be absorbed in such posts, in which case they will have the full benefit of their seniority in the steam side, unlike in the case of absorption in C&W traffic departments."

Except applicant No.5, others opted not to respond to the said letter and they were continuing against the supernumerary posts. Again vide Annexure.R.2 circular dated 13.7.87 similar offers were made for absorption as C&W Khalasis subject to same conditions of bottom seniority. This time, rest of the applicants also volunteered for C&W Khalasis post on bottom seniority and they were posted to MAQ in C&W side in the scale Rs. 750-940. Thus they were all absorbed in the C&W Wing on bottom seniority basis. But the claim of the applicants in this OA is for grant of seniority from the respective dates of their substantive absorption in the Railways and they challenged its denial stating that it was against equity and good conscience. They have also submitted that the Indian Railway

Establishment Manual clearly stipulates that the date of substantive appointment in the Railways is the date that is to be reckoned for all service purpose of an employee. Therefore, the refusal of the respondents to count the past service is illegal. They have also submitted that the applicants were working as Khalasis in the Steam Loco Shed and they were re-deployed in Carriage and Wagon Department in the same grade. Therefore, they are entitled to count their service in the Steam Loco Shed in the re-deployed grade also.

2 The respondents have, however, contended that the applicants were absorbed in the C&W Wing on the specific condition of bottom seniority and any contention contrary to the same was wrong and it cannot be entertained. In the notification and order of appointment it was made clear that the optees will be ranking junior even to the substitutes in the C&W Wing. Hence the applicants are estopped from turning round and claim their seniority from the date of their regular absorption in the Railways. They have also submitted that the service rendered by the applicants in the Steam Loco Shed has been considered for all purposes such as pay fixation, pass, leave, pension and gratuity except seniority. According to Rule 2005(a) Para II of Indian Railway establishment Manual Vol.II, full service of the employees from the date of their temporary status will be counted for the purpose of entitlement of pass. Similarly half the service rendered by them from the date of temporary status will be counted for the purpose of pension. Hence the contention of the Applicants



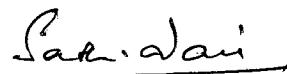
that the service rendered by them in Steam Loco Shed were not considered for any purpose is absolutely without any basis.

3 We have heard Mr.Siby J Monipally for the applicants and Ms. Deep G.Pal appearing for the Respondents. We have also perused the pleadings and materials placed on record. Once the applicants have accepted their absorption in C&W Wing in a Group 'D' post on bottom seniority condition, it would be unfair on their part to turn around and challenge the said condition to the disadvantage of many others and claim seniority from the date of their regular absorption in the Loco Wing. The principles of estoppel would clearly apply in this case. We, therefore, find no reason to interfere in the matter and the Original Application is dismissed. There is no order as to costs.

Dated this the 27th day of March, 2006


GEORGE PARACKEN
JUDICIAL MEMBER

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SATHI NAIR
VICE CHAIRMAN