

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO. 198 OF 2006

Monday. this, the 3rd day of March, 2008.

CORAM :

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Dr.K.S.SUGATHAN, ADMINISTRATIVE MEMBER**

K.S.Sreedharan Pandaran
Retired Station Master
Southern Railway
Trichur - RS & PO
Residing at : No.XIII/627/1
Behind Metropolitan Hospital
Koorkenchery, Trichur - 7

: Applicant

(By Advocate Mr. T.C.Govindaswamy

vs.

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 Senior Divisional Operations Manager
Southern Railway
Trivandrum Division, Trivandrum - 14 : Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

The application having been heard on 03.03.2008, the Tribunal on the same day delivered the following :

ORDER

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

The applicant entered the Railway service in April, 1964 and while working as Station Master, Grade I in the revised pay scale of Rs.5000-8000, on account of certain allegations of misconduct he was removed from service with effect from 01.04.1993.


However, on appeal the penalty of removal from service was

modified as one of reinstatement in the pre revised pay scale of Rs.1400-2300 at the stage of Rs. 1600 for a period of 5 years with recurring effect. Annexure A-1 refers. This penalty order (Annexure A-1) was challenged by filing O.A 236/97. During the pendency of this petition the applicant's currency of penalty having expired, he was promoted to the scale of Rs.5500-9000 with effect from 01.04.1998. OA 236/97 was finally allowed by Annexure A-2 order dated 25.01.2000 setting aside the impugned orders of penalty and appellate order with liberty to take further action as the respondents might deem fit in accordance with law. During the pendency of the case certain juniors to the applicant were promoted retrospectively with effect from 01.03.1993 in the pay scale of Rs.5500-9000. As such, the applicant had preferred a representation after Annexure A-2 order dated 25.01.2000 in OA 236/97 was passed. Annexure A-3 representation dated 20.03.2000 refers. The next promotional post carries the pay scale of Rs.6500-105000 which is a selection post. In 2000 the applicant was called for the test and though he had appeared in the test, he did not qualify in the same. This has resulted in the applicant's not having been promoted in the higher pay scale of Rs. 6500-10500. However, when restructuring took place on 01.11.2003 the applicant was upgraded to the aforesaid pay scale of Rs.6500-10500 vide Annexure A-4 memo dated 09.12.2004.

2. Respondents had taken up the decision of this Tribunal vide Annexure A-2 order dated 25.01.2000 in OA 236/97 to the Hon'ble High Court but the Writ Petition No.17706/00 came to be dismissed

vide order dated 04.09.2003. This has resulted in the respondents' passing order dated 19.07.2004 (Annexure A-5) whereby the penalty advice dated 23.03.1993 stood cancelled. By Annexure A-6 order dated 12.01.2005 the applicant's pay was fixed right from July, 1992 till his date of superannuation on 31.12.2003. In the said order the applicant was shown to have been promoted to the erstwhile pay scale of Rs. 5000-9000 with effect from 01.03.1993 and in the scale of Rs.6500-10500 with effect from 01.11.2003 under restructuring. The applicant was satisfied with the pay fixation except that in so far as promotion in the pay scale of Rs.6500-10500 was concerned, according to the applicant the same should be with effect from the date his immediate junior had been placed in the higher pay scale of Rs. 6500-10500 and thereafter Rs.7450-115000. The applicant therefore has claimed that the respondents should be directed to consider the applicant for promotion in the pay scale of Rs.6500-10500 and Rs.7450-11500 at par with his immediate junior, Shri K.C.Varghese.

3. Respondents have contested the O.A. They have stated that the applicant participated in the test held in 2000 for promotion to the post of Station Master, Grade I in the pay scale of Rs.6500-10500 but did not qualify in the said exam. Though opportunity was given to him during the next year as well, he had chosen not to appear in the exam. As the post of Station Master, Grade I in a selection post he could not be promoted as long as he did not qualify in the test. However, when restructuring took place with effect from 01.11.2003, under the modified selection procedure the




applicant was promoted with effect from 01.11.2003. According to the respondents, the applicant is not entitled to the relief sought for.

4. Applicant has filed his rejoinder reiterating his earlier contentions in the OA.

5.. Counsel for applicant argued that initially the applicant was not promoted due to the fact that he was in such a pay scale which was below the pay scale attached to the feeder grade for promotion as Station Master, Grade I. In 2000 the applicant, no doubt appeared for the examination but could not qualify. This reason was not given for rejecting his claim but has been provided only in the reply. The applicant should have been considered for promotion in the grade of Rs.6500-10500 and thereafter in the pay scale of Rs.7450-11500 at par with his juniors as the penalty imposed upon him, was quashed.

5. Counsel for respondents submitted that the applicant having not qualified in the selection there is no question of his case been considered for promotion at par with his juniors.

6. Arguments were heard and documents perused. The admitted fact is that in the year 2000 the applicant had participated in the selection test for promotion to the post of Station Master, Grade I (6500-10500) . He had zealously availed of the same but could not qualify in the exam. This fact is admitted. Once an individual fails to qualify in the requisite exam, he is not eligible for

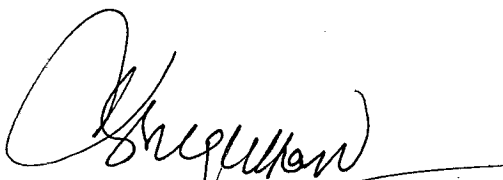


being considered for promotion. In 2001 when call letter was issued the applicant chose not to appear in the exam. Thus, the applicant has to be blamed for his non selection during the past period. Had he qualified in the exam, then and there his pay scale could have been revised at par with his junior; that is not the case here. However, in November, 2003 under restructuring, which did not involve the rigorous selection procedure, the applicant was placed in the pay scale of Rs.6500-10500.

7. As rejection of the applicant's case for promotion at par with his junior was on account of the applicant's failure to qualify in the selection examination, no vested right for promotion at par with his junior has been infringed. .

8. OA is thus devoid of merit and is therefore **dismissed**. No costs.

Dated, the 3rd March, 2008.


K.S.SUGATHAN
ADMINISTRATIVE MEMBER


K.B.S.RAJAN
JUDICIAL MEMBER

vs