

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.204/95

Thursday, this the 11th day of September, 1997.

CORAM:

HON'BLE MR AV HARIDASAN, VICE CHAIRMAN

HON'BLE MR SK GHOSAL, ADMINISTRATIVE MEMBER

KK Dasan,
Fitter Grade-III,
Office of the Carriage and
Wagon Superintendent,
Southern Railway,
Trivandrum Central.

- Applicant

By Advocate Mr TC Govindaswamy

Vs

1. Union of India through
the General Manager,
Southern Railway,
Madras-3.
2. The Divisional Personnel Officer,
Southern Railway,
Trivandrum-14.
3. The Chief Personnel officer,
Southern Railway,
Madras-3.
4. The Chairman,
Railway Board,
New Delhi.

- Respondents

By Advocate Mr James Kurian, ACGSC

The application having been heard on 22.8.97 the
Tribunal on 11.9.97 delivered the following:

O R D E R

HON'BLE MR SK GHOSAL, ADMINISTRATIVE MEMBER

The applicant in this case is working as Fitter
Skilled Grade-III in the office of the Carriage and
Wagon Superintendent, Southern Railway, Trivandrum. His

grievance is that when he was working in the skilled grade after being promoted to that grade by Memorandum No.E/CW/839/13 dated 21.7.80, with the intervention of the Railway Board he was relieved of his post as Painter(Skilled) in the Western Railways and transferred to the Southern Railways; but he was compelled to accept a posting as an unskilled Khalasi in the lower scale of R.196-232 under the latter Railways. Even though he had continuously submitted representations right from 17.6.81 i.e. immediately on his posting as an unskilled Khalasi, no relief has been granted to him.

2. The applicant has further stated that subsequently he came to know that one Shri MV Rajan, Skilled Grade-III was transferred from Mysore Division to Trivandrum Division through an order dated 9.4.90 on the same grade i.e. Skilled Grade-III. Therefore, the applicant made another representation to the authorities including the respondent No.3 to treat his case on par with Shri Rajan's case. Again he did not receive any favourable response. Failing to elicit such a response, the applicant filed Original Application No.560/92 before this Tribunal which was disposed of on 5.1.94 holding inter alia that the contention of limitation made by the respondents was untenable and that the

transfer of Shri Rajan from Mysore Division and the fact of his absorption in the Trivandrum Division on 9.4.90 and given a cause of action to the applicant. In the said order the Tribunal also observed that the fourth respondent in that Original Application namely, the Chairman, Railway Board had not yet considered the case of the applicant even though the representation made by the applicant had been pending since 20.10.90. With a direction that the Chairman, Railway Board should consider the representation of the applicant as expeditiously as possible and at any rate within four months from the date of receipt of a copy of the judgement in that Original Application, the o.A. was disposed of.

3. The impugned order at Annexure A-12 conveyed the decision of the fourth respondent namely, the Chairman, Railway Board, New Delhi. In the said impugned order dated 19.5.94 addressed to the applicant and communicated to him from the Divisional office, Personnel Branch, Trivandrum, the representation dated 20.10.90 of the applicant has been rejected on the ground that though the Railway Board had accorded approval for the transfer of the applicant as Painter Skilled Grade-III from the Western Railway to the



Southern Railway, it was found difficult by the Southern Railway to accommodate the applicant in the same grade and at the same level. Further, the applicant in the face of that situation had voluntarily and expressly accepted the transfer from Western Railway to the Southern Railway with bottom seniority as a Khalasi. Subsequently, the applicant based on his seniority in the lower grade and scale as Khalasi in the Southern Railways had advanced to become a Fitter in the Skilled Grade-III. The impugned order also states, rather laconically, that Shri Rajan's case stood on a different footing, without mentioning any convincing ground whatsoever for granting such a different treatment, except that Shri Rajan never accepted his transfer on bottom seniority as Khalasi. The impugned order is silent on the significant aspect of Shri Rajan's case as to whether he was compelled to make any such choice or not.

4. None of the above facts has been disputed by either side.

5. The questions that arise for our consideration are whether the Southern Railway was justified in 1981 in refusing to accommodate the applicant on transfer at the Skilled Grade-III at which level he was working already in the Western Railways and from where he had sought transfer and whether the specific plea of estoppel advanced by the learned counsel for the respondents holds good against the applicant.



6. At the penultimate stage of hearing, we had called upon the learned counsel for the applicant to clarify whether when a transfer on request is sought between two Railways there were rules or instructions of the Railway Board to accommodate such a request and at the same grade and level. On the final day of hearing i.e. on 22.8.97, the learned counsel appearing for the applicant specifically brought to our notice quoting from the Railway Establishment Manual an instruction that even when a transfer is sought on request, subject to the provisions for direct recruitment to the concerned post, an inter Railway transfer at the same scale and grade was permissible. Para 312 of the Indian Railway Established Manual relied on by the learned counsel for the applicant states as follows:

"Transfer on request: The seniority of railway servants transferred at their own request from one railway to another should be allotted below that of the existing confirmed, temporary and officiating railway servants in the relevant grade in the promotion group in the new establishment irrespective of the date of confirmation or length of officiating or temporary service of the transferred railway servants.

Note: (i) This applies also to cases of transfer on request from one cadre/division to another cadre/division on the same railway (Rly Bd No.E(NG)I-85 SR 6/14 of 21.1.86)



ii) The expression 'relevant grade' applies to grade where there is an element of direct recruitment. Transfers on request from Railway employees working in such grades may be accepted in such grades. No such transfers should be allowed in the intermediate grades in which all the posts are filled entirely by promotion of staff from the lower grade(s) and there is no element of direct recruitment. (No.E(NG) 169 SR 6/15 dated 24.6.69) ACS 14)."

7. In the reply and at the stage of arguments, the learned counsel for Respondents has mentioned the ground of non-availability of a post at the level of Skilled Grade-III in the Southern Railway in 1981 for that Railway not having been able to accommodate the request of the applicant. However, on a careful consideration of the documents placed before us, particularly the letters dated 24.3.81 and 8.5.81 from the Personnel Branch of the Headquarters office of the Southern Railways at Annexures A13 and A14 respectively, we are constrained to observe that the ground mentioned by the Southern Railways at the relevant point of time was not the absence of a provision for direct recruitment in the skilled grade. The only ground reiterated was the strong opposition to the inter Railway transfer of the applicant in the skilled grade from both recognised and other unions. Further, in the communication A13, it was admitted specifically by the same office, i.e. the Southern Railways that there was an element of direct recruitment for the skilled grade. In fact, it is the latter provision which is stated in the Railway Board instructions relied upon by the learned counsel for the applicant during the course of arguments on 23.8.97.

8. We therefore are unable to appreciate this ground advanced now by the Respondents. To us, it does appear to be an afterthought. If this was truly the case, we have no doubt that the Board would have been informed by the Southern Railways of the non-availability of a post at Skilled Grade -III level in 1981 itself.

9. As regards the plea of estoppel, it is clear from the detailed correspondence that has gone on this behalf from the time when the applicant's case came up for consideration by the Railway Board and particularly from the time when he was relieved in the Western Railways that the applicant was compelled to accept the post of Khalasi with bottom seniority. Even then he has not given up. He has, on the other hand, kept on making representations to the authorities to redress his grievances. In this situation, his acceptance of the post of Khalasi in a lower grade can only be considered as an acceptance under compulsion of circumstances. His liberty to set right the injustice done to him, in our opinion, cannot be considered as having been willingly surrendered in 1981. Besides, this Tribunal in the order dated 5.1.94, mentioned above, specifically held in 1994 that the applicant was not estopped from making representations after the cause of action arose in the wake of the transfer of Shri Rajan in 1990 and that the said representation pending since 20.10.90 should be disposed of. Therefore, in our view, the plea of estoppel cannot be sustained at this stage, particularly when the said order of the Tribunal was neither challenged nor set aside. For the very same reason, the plea of limitation also has to be rejected.

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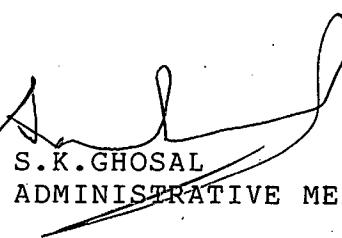
10. It was with the approval of the Railway Board that the intial order of transfer of the applicant in the grade of Fitter Grade III was issued. There is no case for the respondents that the approval has been recalled just because the applicant was owing to compelling circumstances forced to accept posting on a lower post. ⁴⁹ It is unjust to deny to him the benefit of his earlier service and to treat him differently compared to Sri M.V.Rajan who was identically situated like him. We are, therefore, of the considered view that the respondents are bound to treat that the applicant was transferred and posted in Southern Railways in 1981 in the same level, viz. Fitter Skilled Grade-III.

11. In the light of the discussions made above, we allow the application and set aside the impugned order. The respondent No 3 is directed to refix the pay and allowances of the applicant and to grant him other benefits, including promotional and consequential benefits, treating his transfer to the Southern Railway in 1981 as at the level of Fitter Skilled Grade-III with bottom seniority and grant the same to the applicant within six months from the date of receipt of this order. However the applicant will not be entitled to any arrears of pay and allowances on account of the notional fixation and promotion. It is also made clear that no one who has been senior to the applicant on account of his joining as Khalasi will be reverted while working out the



above directions. The case of the applicant for promotion should be considered from the date on which the person who would become immediate junior to him by treating him to have been transferred as Fitter Skilled Grade III in 1981, was considered and promoted. There will be no order as to costs.

Dated the 11th September, 1997.



S.K.GHOSAL
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

List of Annexures:

1. Annexure A-12: Letter bearing Nb.V/P 535/IV/C&W F Vol.V dated 19/5/94 communicated by the 2nd respondent.
2. Annexure A-13: Order bearing D.O. No. P(S) 676/IV/II/Vol.6 dated 24/3/81 issued by the Additional Chief Personnel Officer Southern Railway Madras.
3. Annexure A-14: Order bearing Nb.DO.No.P(S)676/IV/II/Vol.VI dated 8/5/81 issued by the Additional Chief Personnel Officer, Southern Railway Madras.