

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**O.A.No.231/2006
Dated the 9th day of July, 2008.**

**CORAM :
HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE DR K.S.SUGATHAN, ADMINISTRATIVE MEMBER**

K Pankajakshan.
HS-I (Electrical Fitter),
Southern Railway,
Thiruvananthapuram.

... Applicant

By Advocate Mr.P.V.Baby

V/s

- 1 Union of India
represented by its Secretary to
Railway Ministry, New Delhi
- 2 The Divisional Railway Manager,
Southern Railway,
Thiruvananthapuram.
- 3 The Divisional Personnel Officer,
Southern Railway,
Thiruvananthapuram.

... Respondents

By Advocate Mrs.Sumathi Dandapani Sr. with
Ms.P.K.Nandini

This application having been heard on 4th June, 2008, the Tribunal delivered the following on 9.7.2008.

(ORDER)


Hon'ble Mr.George Paracken, Judicial Member

The applicant is aggrieved by Annexure A-13 letter dated
10.10.2005 issued by the Divisional Railway Manager,




Thiruvananthapuram by which his Annexure A-11 representation dated 28.9.2004 claiming seniority and arrears of pay have been rejected.

2 Brief facts of the case, according to the applicant, are that he entered service as Khalasi on 24.2.1970 in the Southern Railway as indicated in the casual labour service card issued to him. Alongwith other Railway employees of Southern Railway, he also took part in the strike in the year 1974 and for doing so, his service was terminated by the Railway administration. Challenging the said termination of service, he filed O.P.No.5576/1975 before the Hon'ble High Court of Kerala alongwith other similarly placed employees and by judgment dated 20.9.1977, the termination was quashed and the Railways were directed to reinstate the applicant in service. Even though the Railway Administration filed W.A. No.48/1978, against the aforesaid judgment dated 20.9.1977, the same was dismissed. Thereafter, the applicant and others were reinstated in service with all consequential benefits including continuity in service as Khalasi. Later on, he had undergone the Trade test for promotion to the post of Basic Electrical Fitter/Train Lighting on 24.5.1979. On having passed the aforesaid Trade Test he was promoted to the said post on 16.10.80 vide Annexure A 2 Office Order dated 16.10.1980. Thereafter, he was trade tested for the post of Electrical Fitter/Train Lighting in the scale of Rs 260-400 on 6.12.1980 (Annexure A3 letter dated 5.1.1981) and promoted to that post with effect from 20.12.1980. In the year 1984, by way of disciplinary action, he was dismissed from service. However, by order dated 19.10.1989 (Annexure A-4) the aforesaid dismissal order was




set aside by this Tribunal in K-498/1987 and he was reinstated in service. Thereafter, he was Trade tested and promoted as Electrical Fitter HS-II vide order dated 14.5.1991 with retrospective effect from 1.1.1984 (Annexure A-6). The respondents have not paid him the arrears of pay and allowances in the cadre of HS-II from 1.1.1984 to 1991 but his pay was notionally fixed vide Annexure A-7 order dated 16.4.1992. Meanwhile, the applicants juniors S/Shri Thirupathy and Gopi were promoted as Electrical Fitter/Train Lighting HS-I. His contention is that he was not called for the Trade Test for HS I alongwith his aforementioned juniors. He has, therefore, made the Annexure A-8 representation in April, 1992. In the provisional seniority list of staff of Electrical Department published later on 5.1.1993, his name was shown at serial no.1 in the cadre of HS II but his date of joining was shown as 3.12.1974 as against the entry in the casual labour service card as 24.2.1970. He was later promoted as HS-1 vide order dated 3.1.2000. However, one Shri Nachimuthu who was at serial no.15 in the cadre and seniority list dated 5.1.93, was already promoted as HS 1 w.e.f. 1.2.1985 and as Electrical Chargeman in the year 1990 itself. According to the applicant taking into consideration of his service with effect from 24.2.1970, he also should have been promoted as HS I w.e.f. 1.2.1985 instead of 3.1.2000 and as Electrical Chargeman in the year 1990 just after the promotion of Mr.Nachimuthu. He has, therefore, sent the Annexure A-10 Advocate's notice dated 29.3.99 demanding promotion and all other attendant benefits including seniority and the arrears of pay arising thereof. He has also made the Annexure A-



11 representation dated 28.9.2004 stating that he should have been given seniority in HS-I grade w.e.f 1.2.1985 instead of, from 3.1.2000 and his name should have been shown below sl no.15 in the HS-I seniority list dated 5.1.1993 i.e. below the name of Shri Nachimuthu. Since Shri Nachimutthu was later promoted as Electrical Chargeman in the year 1990, the applicant has also demanded promotion to that grade from 1990. The respondents without considering his Annexure A-10 notice and the Annexure A-11 representation, issued the Annexure A-9 seniority list of Electrical Staff working in Thiruvananthapuram Division wherein the Applicant's name has been shown at serial no.36 under the category of HS I but his juniors have been found promoted as Technician/Senior Technician(Train Lighting). According to him, Shri R Chamy at sl.no.6 of the list under the category of Sr.Technical (TL) was junior to him.

3 Since the request made in the aforesaid representation was not granted by the respondents, the applicant had earlier approached this Tribunal vide OA 511/05 and the same was disposed of vide order dated 4th July, 2005 (Annexure A-12) directing the respondents to consider and dispose of the representation and communicate the decision to the applicant within a period of three months.


4 In purported compliance of the aforesaid order, the respondents have issued the Annexure A-13 letter dated 10.10.2005 stating that in terms of the direction of this Tribunal in the order in K-498/87 dated 19.10.1989, the applicant was trade tested for the post of ELF/HS I and ELF/HS II but he qualified only for the post of ELF/HS-11



and failed in the trade test for the post of ELF/HS-1. Accordingly, he was given promotion as ELF/HS-11 with effect from 1.1.1984 i.e. the date of promotion of his junior on proforma basis and the arrears were given with effect from 14.5.1991 i.e. the date of shouldering higher responsibility. According to the respondents, the promotions already granted to him was in the order of seniority and therefore, no revision is warranted.

5 As regards his request for correcting his date of appointment in the seniority list dated 5.1.1993 as 24.2.1970 based on the date of entry shown in the Casual Labour Card, the respondents have submitted that the casual labour service will not be counted for the purpose of seniority. According to them, as per rules, seniority is to be fixed only from the date of regular absorption based on the seniority position in the empanelment order and therefore, the seniority already assigned to him does not warrant any revision.

6 Challenging the aforesaid letter of the respondents dated 10.10.2005, the applicant submitted that the reasons stated therein by 3rd respondent for denying him the proper seniority was not correct. He has submitted that he was not called for the Trade Test of HS-1 alongwith others after the order of this Tribunal in K 498/87 (supra) dated 19.10.1989. According to him, he was trade tested for HS I post much later and after qualifying the same, he was promoted as HS-I w.e.f. 3.1.2000. He has also submitted that his promotion as HS-11 post with effect from 1.1.1984 is also illegal as he was eligible to be promoted to that much earlier. He has also questioned the decision of the respondents to grant him only



proforma promotion with effect from 1.1.1984 to 13.5.1991 and denying the arrears of wages. He has also submitted that his service from 24.2.1970 as entered in the Casual Labour Card is eligible to be considered and the denial of the same to him is absolutely incorrect and illegal. His contention, therefore, is that he is entitled to get fixation of seniority taking into account total service rendered by him from 24.2.1970 and sought the following reliefs:-


- "i) To call for the records leading to Annexure A-13 and after considering the same quash Annexure A13.
- ii) Declare that the applicant is eligible to be promoted to the post of Senior Technician since the juniors to the applicant, viz. R.Chami whose names mentioned in Annexure A9 has been promoted to the said post within effect from the date of promotion of R.Chami, the Serial No.6 in Annexure A9.
- lii) Declare that the services of the applicant is eligible to be considered with effect from the date of entry shown in the Casual Labour Card that is, 24.2.1970, and the applicant is also entitled to get arrears of wages and all other benefits as mentioned in Annexure A11 representation and direct to issue such benefits to the applicant.
- iv) issue a such other reliefs as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and to award the cost of this proceedings to the applicant."

7 The respondents in their reply has submitted that Mr.R.Chami was promoted to the post of Senior Technician with effect from 26.3.2002 and the applicant's claim for promotion to the post of Senior Technician on par with him is highly belated. They have further submitted Shri Chami was promoted to the post of Technician/Grade I (HS I) with effect from 1.1.1984 whereas the applicant was promoted to that post only with effect from 3.1.2000 and applicant has never challenged the promotion of his



junior. On merits, the respondents have submitted that the posts of Technician/Grade I and Senior Technician in the Electrical Department are Artisan posts and they are liable to be filled up on seniority-cum suitability basis, the suitability being assessed by way of trade test/suitability tests. The applicant was trade tested for promotion to the posts of Technician (Grade II) and Technician(Grade I) on the basis of his seniority subsequent in compliance of the Annexure A4 order of the Tribunal dated 19.10.1989 in K 498/87(supra). The applicant could pass only the Technician(Grade II) and not the Technician(Grade 1) test. The applicant has neither challenged the trade test result of post of Technician(Grade I) nor the promotion orders by which his juniors were promoted to the post of Technician(Grade I). Further, they have submitted that the date of appointment is to be counted from the date of absorption on empanelment and not from the date of engagement as casual labour shown in the Casual Labour Card, that is 24.2.1970. They have also submitted that the applicant has received the wages for the period he worked as Casual Labourer with effect from 24.2.1970 and no arrears of wages were payable to him.


8 In the rejoinder, the applicant has submitted that he was claiming only parity of the post of Senior Technician and promotion without any prayer to challenge the promotions given to the juniors. He has submitted that even though he was eligible for promotion he was not called for trade test for Technician(Grade I). He has reiterated his submissions that the date of his appointment as casual labourer as mentioned in the



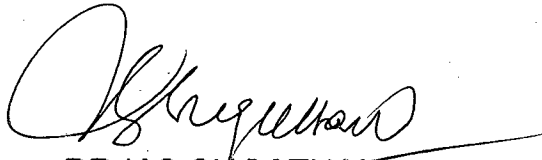
Casual Labour Card is to be taken for counting the seniority.

9 We have heard Advocate Mr.P.V.Baby for the Applicant and learned Senior Mrs.Sumathi Dandapani with Ms.P.K.Nandini for the Respondents.

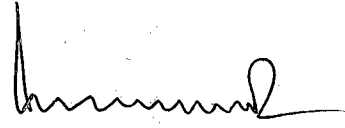
10 It is seen that the applicant is in effect claiming his promotion as HS I w.e.f. 1.1.1984, the date from which his junior Shri R.Chamy was promoted. The factual position is that, in terms of the directions of this Tribunal in K-498/87 dated 19.10.1989, the respondents have trade tested the applicant for both HS II and HS I in 1991 and since he passed only the HS II test, he was promoted as HS II with retrospective effect from 1.1.1984 vide Annexure A-6 Office Order dated 14.5.1991. However, Shri R.Chamy had already passed the HS I trade test on 1.1.1984 itself and he was promoted to that post from that date. The applicant did not challenge his non-promotion to the post of HS I from 14.5.1991 (from the date the Annexure A-6 order promoting him as HS-II was issued retrospectively from 1.1.1984). There is no merit in the submission of the applicant at this belated stage that he was not called for the trade test in 1991. It has been clearly mentioned by the respondents that he failed in the trade test for Technician/Grade I and he had cleared the trade test only for Technician/Grade II and therefore he was promoted to the post of HS-II w.e.f. 1.1.1984 on proforma basis as per Annexure A4. His other prayer that his service w.e.f. 24.2.1970 i.e. the date of his entry as a casual labour, is to be counted for the purpose of determining his seniority has also no merit as the period of Casual Labour Service is not counted for the



purpose of seniority. The regular service of a casual labour commences only from the date of his absorption in service. In these circumstances, OA is dismissed both on merits as well as on limitation. There shall be no orders as to costs.



DR. K.S. SUGATHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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