

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 232 of 2011

WEDNESDAY, this the 31st day of October, 2012

CORAM:

**HON'BLE MR. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

T.O. Johnson,
S/o. T.P. Ouseph, (Retired Driver Gr. II,
Office of the Executive Engineer,
Southern Railway, Construction, Muvattupuzha),
Residing at Thekkerala House,
P.O. Ammadam, Trichur District, Kerala ... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

versus

1. Union of India represented by
The General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3
2. Chief Engineer (Construction),
Southern Railway, Egmore, Chennai – 8
3. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum – 14 ... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

This application having been heard on 15.10.12, the Tribunal on 31.10.12
delivered the following :

O R D E R

HON'BLE MR. K GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant was appointed as Casual Lorry Attendant on 27.05.1992
under the Construction Wing of Southern Railway, Trivandrum Central, but



actually he was working as Driver. He was transferred to the control of the Assistant Engineer on 15.06.1979 and regularised as Gangman (Trackman) on 21.01.1980, but was utilised as Driver in the Construction Wing. He was promoted as Jeep Driver on 01.03.1980 on ad hoc basis under the Assistant Engineer, Trivandrum/Construction. Later, he was transferred as ad hoc Driver under the Executive Engineer/Construction, Trichur. The applicant claims that he was absorbed as regular Driver against the construction reserve post and later as Driver Grade-II. He retired from service on 30.11.2010. His pay and other benefits were fixed at a lower stage than the pay he was drawing at the time of retirement as if he had continued as a Trackman. This was challenged in O.A. No. 73/2011 by the applicant, which is pending. The post of Trackman is also a feeder category for promotion as Driver Grade-III in the open line. His juniors in the Trackman cadre have been promoted as Drivers. He could have been given lien as Driver in the open line with effect from 01.04.1992 for promotion as Driver Grade-III from the date of promotion of his juniors, namely, Shri M. Jayakumaran Nair and Baby Daniel and so on and consequential retirement benefits. In this background, the applicant has filed this O.A. for the following reliefs:

- (i) Declare that the applicant is entitled to be provided lien in the open line organization of Trivandrum Division in the cadre of Motor Vehicle Drivers with effect from 01.04.1992 and, to be granted the consequential benefits accordingly;
- (ii) Direct the respondents to grant the applicant the benefit of promotion and consequential benefits including arrears of pay and allowances on par with his juniors in the cadre of Motor Vehicle Drivers of the open line organization of Trivandrum Division in the light of the declaration above and direct further to revise the applicant's pension and other retirement benefits on that basis; or alternatively
- (iii) Declare that the applicant is entitled to be promoted as a

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Driver Grade-III on par with his juniors in the open line organization namely Shri Jayakumaran Nair, Baby Daniel etc. and direct further to grant the consequential benefits thereof including revision of pension and other retirement benefits.

- (iv) Award costs of and incidental to this application;
- (v) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of this application.

2. The applicant contended that going by the spirit of Annexure A-3 order the applicant ought to have been granted the benefit of promotion from the date of promotion of his juniors as Driver Grade-III or the respondents ought to have granted to him lien in the cadre of Driver at least with effect from 01.04.1992 and granted him the benefit of further promotion and consequential benefits on par with his juniors appointed to the cadre on or after 01.04.1992. The applicant was under the legitimate belief that the respondents would grant him the benefits on par with his juniors in the open line either under the next below rule or under the rules relating to the promotion of staff working in the construction organization vis-a-vis their juniors open line organization. The applicant relied on the decision of the Madras Bench of this Tribunal in O.A. No. 930/2011 dated 24.09.2012 (***M.T. Venugopal and Ors. vs. Union of India and Others***).

3. The respondents in their reply statement submitted that the applicant never applied whenever notifications were issued calling for applications to be considered for the post of Motor Vehicle Driver. He had not challenged the orders providing him lien in the category of Trackman. Therefore, the prayer for provision of lien in the category of Motor Vehicle Driver is hit by estoppel, acquiescence. The Hon'ble Supreme Court had observed in **Ratanchandra**

Samanta and Others vs. Union of India and Others, 1993 AIR 2276, that delay itself deprives a person of his remedy available in law. The applicant never challenged Annexure A-5 seniority list of Motor Vehicle Drivers. If he had any claim for promotion or seniority, he should have agitated the same before the administrative authority at the appropriate time and if aggrieved by the rejection of the same, it should be agitated before the suitable legal forum. The applicant has never been absorbed as Motor Vehicle Driver on regular basis in Trivandrum Division Open Line in his service, as he had not expressed his willingness to be considered for selection to the said post. He was working as Motor Vehicle Driver when he retired from service on 30.11.2010 on ad hoc basis in the construction wing. After regularization on 21.01.1980, the applicant had been provided lien in the post of Trackman in Trivandrum Division. The arrangement made as Driver on ad hoc basis does not bestow on him any claim for seniority, pay fixation, regularization etc. in the post. Annexure A-1 is only a proposal and not regularization of the applicant as regular Driver against construction reserve post of Driver with effect from 01.04.1988. There is nothing in Annexure A-2 to prove that he was regularized as a Lorry Attendant with effect from 01.04.1992 in Trivandrum Division. The applicant is asking for promotion nearly after a gap of two decades without participating in the selection for promotion, on par with another who has been selected to the said post by way of a duly constituted selection process. Because of his non appearance in the selection process for the post of Driver, he was not selected on regular basis.

4. We have heard Mr. T.C. Govindaswamy, learned counsel for the applicant and Mr. Thomas Mathew Nellimoottil, learned counsel for the



respondents and perused the records.

5. The entire service of the applicant from 1972 to 2010 was practically with the construction wing. Although he was regularized as Trackman in the open line on 21.01.1980, he worked as a Driver on ad hoc basis in the construction line. Annexure A-2 shows that he is fitted as Driver with effect from 01.04.1992 against construction reserve post. His promotion as Driver Grade-II was on ad hoc basis. Annexure A-3 letter required that lien in the open line in the appropriate category should be given to the staff in the construction line. The grievance of the applicant, who continued in the construction line purely on ad hoc basis throughout his career with lien as Trackman, should have been given lien as Driver Grade-III with effect from 01.04.1992. He has filed this O.A on 17.02.2011. He never applied for the post of Motor Vehicle Driver whenever notifications were issued. He had not challenged the order granting him lien as Trackman nor the promotion of his juniors at the relevant time. If he was to be absorbed as regular Driver in the construction line with effect from 01.04.1992 as Driver, it never materialised and he never pursued it. No regularization is permissible in the construction organization. Annexure A-7 letter does not confer any right on him. The inaction of the applicant in agitating his claim for promotion before the administrative authority or legal forum at the appropriate time has extinguished his right whatsoever by lapse of time and acquiescence and has become too stale for consideration by this Tribunal.

6. The applicants in O.A. No. 930/2011 before the Madras Bench of this Tribunal had challenged the lien granted to them as Lorry Attendant in time.

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In the instant case, there is no challenge to the lien granted to the applicant as Trackman or to the non-granting of lien to the applicant as Driver. Both the O.As are distinguishable in facts. Therefore, the reliance of the applicant on the decision of the Madras Bench is misplaced. The applicant was shockingly inactive for over two decades for claiming his right.

7. In the result, the O.A fails and it is accordingly dismissed. No order as to costs.

(Dated, the 31st October, 2012)


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

cvr.