

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

O.A.N.25/06

.....TUESDAY... this the ...13<sup>th</sup>... day of November 2007

**C O R A M :**

**HON'BLE Mrs.SATHI NAIR, VICE CHAIRMAN**  
**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER**

E.Gopinathan,  
S/o.Govindan Nair,  
Retired Works Mate (Ad hoc),  
Office of the Deputy Chief Engineer (Construction),  
Southern Railway, Calicut.  
Residing at Nandanam, Thekkethara,  
Pazhayannoor, Trissur.

...Applicant

(By Advocate M/s.Santhosh & Rajan)

**Versus**

1. Union of India represented by the General Manager,  
Southern Railway, Chennai – 3.
2. The Divisional Personnel Officer,  
Southern Railway, Mysore.

...Respondents

(By Advocate Mr.P.Haridas)

This application having been heard on 24<sup>th</sup> October 2007 the  
Tribunal on ...13.11... November 2007 delivered the following :-

**ORDER**

**HON'BLE Mrs.SATHI NAIR, VICE CHAIRMAN**

The applicant has put forth the following prayers in this Original  
Application :-

1. To declare that the applicant is entitled to get promotion  
to the post of Keyman, Gangmate and Supervisor (Permanent  
Way) from the dates of the promotion of Sri.E.Vasudevan, with  
all consequential benefits.
2. To direct the respondents to promote the applicant  
notionally to the post of Keyman, Gangmate and Supervisor  
(Permanent Way) from the date of promotion of  
Sri.E.Vasudevan and also direct to re-fix his pay accordingly.

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3. To direct the respondents to re-fix the pension and pensionary benefits of the applicant based on the re-fixation of pay and direct further to grant the arrears of difference in pension and pensionary benefits at the earliest.

4. To direct the second respondent to consider and dispose of Annexure A-8 representation without further delay.

2. The applicant was initially engaged as ELR Lascar under the Executive Engineer (Construction) Southern Railway, Sakleshpur in 1967. He was screened and empanelled for appointment as Gangman by Annexure A-1 order dated 17.12.1977. In this order the applicant is figuring at Serial No.87 and his juniors referred to in the averments are Serial No.98 and 102 respectively. Based on Annexure A-1, 52 employees including the applicant and the juniors referred to were appointed as temporary Gangman by Annexure A-2 order dated 11.4.1978 wherein the applicant figures at Serial No.23 and the above mentioned juniors at Serial No.40 and 28 respectively. The applicant was allotted to the Permanent Way Inspector, Construction, Southern Railway, Mangalore and while continuing so the applicant was transferred to the control of Chief Engineer, Construction, Southern Railway, Madras and posted to work under the control of Executive Engineer, Construction, Southern Railway, Podanur vide order dated 5.3.1981. Thereafter he had worked as Lascar under Depot Store Keeper, Construction, Palghat. While so the applicant was promoted as Works mate in scale Rs.950-1500 by order dated 12.12.1989. Thereafter the applicant continued in the post of Works Mate without any break till the date of his retirement on superannuation on 31.8.2004.

3. It is further submitted that he was given a lien in Mysore Division only in 1999 by office order dated 3.5.1999 of Divisional Railway Manager, Mysore (Annexure A-4) whereas juniors Sri.E.Vasudevan and

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Sri.K.Surendran who were screened and absorbed along with the applicant they were given lien in Mysore Division itself in 1978. Based on the lien and seniority in Mysore Division they were also promoted to the post of Keyman in May, 1980 and to the post of Gang Mate in the scale Rs.950-1500 with effect from 12.12.1988. They were also given further promotion to the post of Supervisor, Permanent Way in the scale of Rs.4500-7000 with effect from 20.9.2003 and 10.4.2004. Respondents published the combined (interse) seniority list of Supervisor (Permanent Way) in Annexure A-6 and when he came to know that his seniority was not correctly fixed he submitted several representations to the 2<sup>nd</sup> respondent. However the representations were not considered. The applicant has since retired from service from the lower post in the scale of Rs.3050-4590 and his juniors were working in the scale of Rs.4500-7000 and because of this the applicant is getting only a lesser pension. The grievances of the applicant is that had the applicant been given lien in the year 1978 itself on par with his juniors he would have got all the promotions and he would have got higher pension and pensionary benefits. The applicant has been denied all these benefits for no fault of his. Respondents are squarely responsible for the omission.

4. Per contra, the respondents in their reply statement have stated that it is true that the applicant was initially engaged as a casual labourer and vide Annexure A-1 empanelled for regular absorption as Gang Man and his seniority was assigned at Serial No.87. He was absorbed against a regular post of Gang Man in scale Rs.200-250 against the newly created post of Gang Man for the new MG line between Hassan-Sakleshpur and Subramanya Road-Mangalore with effect from 12.4.1978. Right from the date of his absorption, he is working in the Construction Organisation.

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In April, 1998 the Chief Personnel Officer, Madras vide letter dated 21.4.1998 advised that the lien should be provided in the units where they were empanelled and the seniority position should be interpolated and promotions wherever due on par with juniors in the unit may be given on proforma basis. Accordingly Annexure A-4 order dated 3.5.1999 was issued providing lien to 21 employees in Permanent Way units. The applicant figures at Serial No.2 in the said Annexure A-4 order providing lien. On providing the lien his seniority was interpolated between Shri.T.M.George and Shri.P.K.Kumaran and he was considered for proforma promotion as Track Man with effect from 5.9.1985 and Senior Track Man with effect from 1.3.1993. Annexure R-1 and Annexure R-1(a) refers. Consequent on the proforma promotion the applicant had become eligible for promotion in the post of Key Man in the scale of Rs.2750-4400 during 2002 and he was advised to appear for the post of Key Man. The applicant represented that he should have been considered for proforma promotion as Key Man on par with his juniors who were promoted earlier to him and even though his representation was replied to by the respondents stating that his lien was provided only during 1999 and therefore proforma promotion could not be granted on par with the juniors he did not appear for the selection and hence he was not considered for promotion as Key Man. One more selection was conducted during June 2004 and the applicant was again advised to appear for the selection but he did not appear. The post of Keyman is a selection post and as the applicant did not appear for the selection, which is mandatory, he could not come under the purview for consideration for promotion as Gang Mate. Regarding the lien the respondents have submitted that the applicant was all along worked in the Construction Organisation till the date of his retirement and since he was not in the seniority unit during 1980, 1988,

1994-95 his juniors were promoted to higher scales from time to time. They have also submitted that the applicant has never complained against the non grant of lien or promotion when the same was given to his juniors at the relevant point of time and having acquiesced with the same he could not contend otherwise now.


5. Rejoinder has been filed in which it has been contended that the respondents have not fixed the seniority of the applicant by interpolating his name between Sri.T.M.George and P.K.Kumaran, which is arbitrary, illegal and is also against the order of Chief Personnel Officer. The applicant had submitted a representation against the seniority and also when he had come up for promotion as Keyman which he was entitled to in 1980. Since the respondents had called for selection to the post in the year 2003 he had kept away from the selection duly representing the facts. As soon as the lien has been given to him in 1999 and he had came to know about the promotion granted to his junior Shri.E.Vasudevan he had represented the matter. Finally the applicant has submitted that he is entitled to get all the proforma promotions on par with junior Shri.E.Vasudevan.

6. We have heard learned counsel Shri.T.A.Rajan for the applicant and Mrs.Deepa Pal for the respondents. Learned counsel for the applicant argued that the reply furnished by the respondents to the fact that the Chief Personnel Officer vide letter dated 21.4.1998 had advised that the lien is to be provided in the units where the Gang Man were empanelled and also to interpolate the seniority position and grant promotions on proforma basis amounted to the acceptance of the applicant's stand that he is entitled to the promotion from the date of promotion granted to his juniors. The counsel also brought to our notice Para 228 of the IREM regarding

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erroneous promotions in which a provision has been made for correcting such administrative errors. Counsel for the respondents argued that the applicant's right can be set to have accrued only after the grant of lien and that he had not taken up the matter at the right time when promotions were granted to the juniors.

7. The facts averred in the O.A regarding empanelment, dates of absorption and grant of lien etc. are admitted. The question arising for our consideration is whether the individuals Shri.E.Vasudevan, Shri.K.Surendran were juniors to the applicant and whether the applicant is entitled to the promotions from the earlier dates granted to his juniors. From the perusal of the pleadings it is evident that Annexure A-1 dated 17.12.1977 is the initial order of empanelment of the casual labourers for absorption and Annexure A-2 dated 11.4.1978 is the consequential order of appointment as temporary Gang Man. As per extent rules the seniority is to be determined by the ranking in the panel and it is clear that the applicant figures at Serial No.87 of Annexure A-1 in the panel whereas Shri.E.Vasudevan is at Serial No.98 and Shri.K.Surendran at Serial No.102. Annexure A-2 order also follows the same seniority wherein Shri.E.Gopinathan, the applicant was placed at Serial No.23 and allotted to Gang No.3 and Shri.K.Surendran at Serial No.28 and Shri.E.Vasudevan at Serial No.40 allotted to Gang No.4 & 5 but all have been posted under the same Permanent Way Inspector. It is stated that after this temporary appointment as Gang Man in the Mysore Division the applicant was transferred to the Construction Organisation and that he had been working there till his retirement. It is not known where other juniors of his were posted. However it is stated that they were available in the Permanent Way, Kabakaputtur Unit during 1980, 1988 and 1994-95 and since the



applicant was not available at that time in the same unit his juniors had been promoted. While this could be factually true the respondents themselves have averred that during 1998, the Chief Personnel Officer vide letter dated 21.4.1998 had forwarded the list of names of Gang Man and advised that their lien should be provided in the units where they were empanelled and that Annexure A-4 order was issued in pursuance of that advice. In Annexure A-4 the applicant figures at Serial No.2. It has therefore to be construed from this order that non granting of lien in respect of these persons was taken note of as an omission and that the Divisions had been directed by this letter to make good the omissions and to rectify the same by providing the lien and the consequential benefits of interpolating seniority and also proforma promotions on par with the juniors. In fact this amounted to a direction that those who were not provided lien in the unit in which they were empanelled should be now provided the lien and also the retrospective benefit of promotions. It is admitted that the applicant was empanelled in the Mysore Division and that Shri.E.Vasudevan and Shri.K.Surendran were also empanelled along with him and that they were junior to him. Since they happened to be continuing in the same unit perhaps they got their lien earlier but by issue of Annexure A-4 order this omission had to be rectified by granting such lien to the applicant along with assignment of seniority and proforma promotions. Therefore, we have to reject the contentions of the respondents that the applicant can be given lien only from the date of issue of the order, namely, 3.5.1999. The instructions are more than clear that the benefits due to granting of the lien were to be granted on retrospective basis. Thereafter, respondents have issued Annexure A-5 order and Annexure A-6 order interpolating the seniority of the applicant. The respondents have also produced Annexure R-1 and R-1(a) orders granting

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proforma promotions to the applicant and others included in Annexure A-4 order on par with their immediate juniors. It is seen from this Annexure R-1 order that four others were granted proforma promotions on par with immediate junior Shri.M.K.Chakrapani who was upgraded with effect from 5.9.1985. Annexure R-1(a) makes this clear wherein in the remarks column it is stated that the applicant and four others were upgraded to the scale of Rs.800-1150 and Rs.825-1200 on par with the immediate junior Shri.M.K.Chakrapani with effect from 1.3.1993. It is evident, therefore, that at this stage only the mistake has crept in. Since Shri.M.K.Chakrapani who has been referred to as the immediate junior by the respondents in these orders was not the immediate junior of the applicant as seen from Annexure A-1 panel in which the said Shri.M.K.Chakrapani was only at Serial No.110 whereas the other juniors referred to by the applicant were at Serial No.98 and 102. By these orders, therefore, it is clear that though the respondents complied with the directions of the Chief Personnel Officer by granting the applicant retrospective seniority and proforma promotions, had not correctly implemented these orders with reference to his immediate junior Shri.M.K.Chakrapani who might have been immediate junior to Shri.K.Bhaskaran who figured at Serial No.109 and who was included in Annexure A-4 order at Serial No.10, but as far as the applicant and others figuring at Serial No.1 and 2, Shri.M.K.Chakrapani was not the immediate junior and several persons in between had been promoted on earlier dates. On publication of the seniority list at Annexure A-5 and Annexure A-6 the applicant had taken up the matter with the respondents. Therefore, the contention of the respondents that the applicant had never represented the matter and acquiesced in the irregular promotions granted to him are also to be rejected. The respondents' contentions that the applicant did not appear for the selection for further promotion to Keyman and therefore not

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eligible for the higher post of Gang Mate etc. are also to be rejected on the same ground. Since the applicant had a genuine reason that his representation bringing to the notice of the respondents that he was entitled to get the said promotion as Keyman on 1980 on par with his junior had not met with any satisfactory response from them.


8. For all the above reasons, we are of the view that the applicant's prayer has merit and has to be allowed to the extent of granting him notional seniority and proforma promotion on par with his junior Shri.E.Vasudevan. However, in line with the provision of Para 228 of IREM which reads as under, No arrears will be payable to the applicant as seniority and proforma promotion were granted only on notional basis. However, he shall be entitled to the arrears of difference in pension and pensionary benefits.

" 228. Erroneous Promotions – (I) sometimes due to administrative errors, staff are over-looked for promotion to higher grades could either be on account of wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotion or some other reasons. Broadly, loss of seniority due to the administrative errors can be of two types :-

(i) Where a person has not been promoted at all because of administrative error, and

(ii) Where a person has been promoted but not on the date from which he would have been promoted but for the administrative error.


Each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-a-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts."



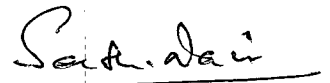
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9. In the result, we declare that the applicant is entitled to get promotion to the post of Keyman, Gang Mate and Supervisor (Permanent Way) from the dates of the promotion of Shri.E.Vasudevan, his junior, on notional basis and direct the respondents to re-fix his pay accordingly. His pension shall also be re-fixed based on the said re-fixation of pay and the pensionary benefits granted accordingly as stated above. He shall also be entitled to arrears of difference in pension and pensionary benefits. The above exercise shall be completed within a period of three months from the date of receipt of a copy of this order. No order as to costs.

(Dated this the ...13<sup>th</sup>... day of November 2007)



**K.B.S.RAJAN**  
**JUDICIAL MEMBER**



**SATHI NAIR**  
**VICE CHAIRMAN**

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