

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 269 OF 2006

Dated the 29th August, 2008

CORAM:-

**HON'BLE Mr. GEORGE PARACKEN, MEMBER (JUDICIAL)
HON'BLE Dr. K.S.SUGATHAN, MEMBER (ADMINISTRATIVE)**

K.Govindaraji,
Aged 44 years,
S/o Kuppu Swamy, Technician Gr-I
Power Supply Installation,
Southern Railway, Sular Road,
RS Residing at No.19-A
Railway Quarters, Mulagoundan
Pudur PO Sular Road RS
Coimbatore District

.. **Applicant**

[By Advocate: Ms. TC Govindaswamy)

-Versus-

1. Union of India, represented by
The General Manager, Southern Railway,
Headquarters Office,
Park Town, PO Chennai-3.
2. The Senior Divisional Personnel
Office, Southern Railway, Palakkad.
3. Divisional Railway Manager,
Southern Railway, Palakkad Division,
Palakkad.
4. E. Ramakrishnan, Technician Gr-II
Power Supply Installation,
Palakkad Division,
5. K.Lokanathan, Technician Gr.II,
Power Supply Installation,
Palakkad Division.
6. M.Vivekanandan, Technician Gr-II
Power Supply Installation,
Palakkad Division,



7. G.Gunasekharan, Technician Gr-II
Power Supply Installation,
Palakkad Division.

...Respondents

[By Advocates: Ms Simla for P.Haridas (R/1-3
Mr TA Rajan, R/4, 6 & 7)

This application having been heard on 16th July, 2008 the Tribunal delivered the following -

ORDER

(Hon'ble Dr.KS Sugathan, AM)

The applicant in this OA is aggrieved by the downward revision of his seniority and the consequent reversion from the post of Technician Gr.I to Technician Gr.II by order dated 3.4.2006 (A/1). The applicant was promoted as Technician Gr.I by order dated 31.8.2004. Subsequently he was issued a notice on 29.12.2004 asking him to show why his seniority cannot be revised and why he cannot be reverted. He submitted a reply to the notice on 10.1.2005. As the respondents did not fix his pay in the pay scale of the promoted post for a long time, he filed an OA (568 of 2005) seeking fixation of pay. The said OA was allowed and consequently the respondents fixed his pay in the new scale (4500-7000) by order dated 22.3.2006. Soon thereafter the respondents issued the order for his reversion to Technician Gr.II on 3.4.2006. By way of interim relief, the Tribunal had stayed the operation of the order dated 3.4.2006 subject to the final outcome of the OA.

[2] The applicant has contended that he joined the Railway Electrification Organization as a casual labourer during 1984. He

was screened, empanelled and posted to the Traction Distribution Unit at Palghat Division on 27.7.1992. The applicant's initial posting was in the Remote Control Wing (RC wing) of the Traction Distribution Unit. After closure of the RC wing the persons working there including the applicant was deployed with full seniority to the Power Supply Installation Wing (PSI wing). Based on the inter se seniority of the applicant and the others named in A/1 order dated 3.4.2006, the applicant was placed senior in all the seniority list published ever since the RC wing was closed. He was also promoted on the basis of the same seniority to Technician Grade III, further to Technician Gr.II and thereafter to Technician Gr.I. The applicant has relied on seniority list of technician Gr.II issued on 19.5.1999 (A/7) and seniority list of Khalasis as on 1.5.1993 (A/8). In these seniority lists the date of joining of the applicant is shown as 27.7.92, whereas the date of joining of respondent No.4 is 7.12.1992, respondent No.5 is shown as 10.8.92, respondent No.6 is shown as 27.1.1993 and respondent No.7 is shown as 13.2.1993. Therefore the applicant has been accepted to be senior to all the private respondents. The settled seniority position cannot be unsettled after more than a decade. The concerned employees had an opportunity to represent against the seniority list. If they had not represented the seniority list becomes final. The seniority list cannot be revised at this belated stage at the instance of the trade union.

[3] The respondents have contested the OA. It is stated in their reply that while allowing OA 568/05 regarding fixation of the applicant's pay the Tribunal had given liberty to the respondents to take a final decision regarding the seniority in accordance with rules. The date of joining of respondent No.4 is erroneously shown as 7.12.1992. It is actually 1.4.1992. Respondents No.4 had indeed represented against the wrong seniority given to him vide letter dated 31.7.1996 followed by another representation on 25.2.1998 and subsequently also on 16.6.1999 (R/2, R/3 and R/4). Since no action was taken by the respondents on these representations, the matter was represented through the union (R/5). After examination of the case it was found that actually respondent No.4 is senior to the applicant and he should have been promoted by order dated 31.8.2004 as Technician Gr.I instead of the applicant. Action was therefore taken to correct the mistake. It is further contended that the applicant was promoted as Khalasi helper only on 2.6.1994, whereas respondents No.4 to 7 were promoted as Khalasi helpers in the year 1993 (R/6 and R/7). Para 228 of IREM provides for reversion of erroneous promotions.


[4] In the reply statement filed by respondent No.4 on behalf of respondents No.4, 6, and 7 it is stated that the 4th and 7th respondents joined the RC wing on 01.4.92 and 10.6.92 respectively, whereas the applicant joined only on 27.7.1992. The sixth respondent joined the PSI wing on 27.1.1993. Further all the three private respondents were promoted as *ad hoc*

khalasi helpers in 1993 whereas the applicant was promoted as khalasi helper only on 2.6.1994.(R/4 and R/5). Therefore the applicant is junior to the private respondents.

[5] In the rejoinder filed by the applicant, it has been stated that only respondent No.4 had represented against his seniority and therefore there is no justification in placing the other private respondents above the applicant. The applicant has also drawn attention to the Railway Board Order dated 24.1.1989 which specifies that when surplus staff is redeployed from seniority unit to another they are entitled to full protection of their seniority.

[6] We have heard the learned counsel for the applicant Shri TCG Swamy, the learned counsel for the respondents No.1 to 3 Ms.Simla for P. Haridas and the learned counsel Shri TA Rajan for Respondents 4, 6 and 7. The respondent No.5, though served with a notice did not choose to file any reply. The counsel for the applicant relied on the following citation:

1985 Sup.SCC 218 Omprakash Sharma & others -vs. Union of India.



The facts in the aforesaid citation are however different. The issue involved therein was entitlement of seniority of some employees who secured accelerated promotion in a different seniority unit, on their return to the original seniority unit.

[7] The issues for consideration in this OA are whether (1) the respondents are justified in re-opening the issue of seniority several years after was finalised and acted upon, even though one of the private respondents had indeed protested about his position in the list; and (2) whether a valid criteria has been followed in re-determining the seniority list. We shall presently examine the first issue. The applicant has argued that the decision to unsettle the seniority after a period of 12 years is arbitrary and illegal. He also relied on para 321 of Indian Railway Establishment Manual which specifies that no representation for revision of seniority should be entertained after a period of one year. Para 321 reads as follows:

"321. PERMISSION TO RAILWAY SERVANTS TO PERUSE SENIORITY LIST:-

- (a) Railway servants may be permitted to see the seniority lists in which their names are placed, or if this cannot conveniently be arranged, they may be informed, on request, of their place on the seniority list.
- (b) Staff concerned may be allowed to represent about the assignment of their seniority position within a period of one year after the publishing of the seniority list. No cases for revision in seniority lists should be entertained beyond this period."

[8] The respondents relied on para 228 of IREM to justify the re-opening of the seniority. Para 228 deals with erroneous promotions. The relevant extracts are reproduced below:

"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-à-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.

(II) In pursuance of Rule 1326-R.II, 1987 Edition the following provisions shall govern the pay and increments of the Railway servant whose promotions or appointments in a substantive or officiating capacity to a post is later found to be erroneous on the basis of facts-

.....


(c) Except where the appointing authority is the Railway Board or the President, the question whether promotion/appointment of a particular railway servant to a post was erroneous or not should be decided by an authority next higher than the appointing authority in accordance with the established principles governing promotions/appointments. Where the appointing authority is the Railway Board or the President, the decision should rest with the President and shall be final".

[9] In regard to para 321 the respondents have taken the stand that the provisions therein do not prevent the authorities from revising the seniority list if an error is noticed at any point of time. We are inclined to accept this contention. However in regard to para 228 we are unable to accept the contention of the respondents that the procedure prescribed therein has been followed before reverting the applicant. As per the prescribed procedure the issue whether the promotion was erroneous has to be decided by an authority higher than the appointing



authority. In this case, the Sr.DPO who promoted the applicant has himself decided to revert him. This is against the rules.

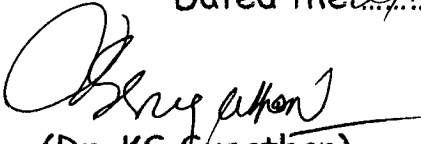
[10] We shall now turn to the issue whether the principle adopted for revising seniority is illegal or arbitrary. It is seen from the seniority list of Technician Gr.II published by the respondents on 19.5.1999 (A/7) that the seniority is determined on the basis of date of promotion as Technician GrII. The applicant and three of the private respondents were all promoted by the same order dated 13.1.1999 and therefore their *inter se seniority* is based on the date of original appointment. The date of original appointment of the applicant is shown as 27.7.1992, whereas the date of appointment of respondent No.4 is shown as 7.12.1992. The date of joining of respondent No.5 and 6 are shown as 10.8.92 and 27.1.93. Respondent No.7 does not figure in that seniority list. In the reply statement filed by the respondent it is stated that the date of joining of respondent No.4 was wrongly mentioned as 7.12.1992. It is actually 1.4.1992. It is also stated that respondent No.4 had indeed made representation against the wrong entry, but no decision was taken on that representation at that time. Therefore the only reason for correcting the seniority list is the wrong date of joining shown in the list against the name of respondent No.4. No other reasons are cited. However in the show cause notice as well as the impugned order the seniority has been revised on the basis of the date of promotion as khalasi helper. The date of promotion as khalasi

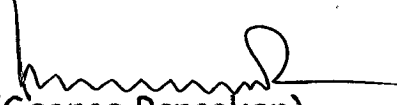


helper was not in the picture at all for determining the inter-se seniority among the contestants in the seniority list issued on 19.5.1999. We are unable to understand why the respondents are adopting the date of promotion as khalsi helpers as the principle for re-determining the seniority now when the only reason for re-opening the issue is the mistake in the date of joining of respondent No.4 as khalsi. After correcting the date of joining of respondent No.4, he would of course become senior to the applicant. But we are of the considered opinion that adopting the principle of date of promotion as khalsi helper for re-determining the seniority is clearly illegal and arbitrary.

[11] For the reasons, the OA is partly allowed. The order 3.4.2006 (A/1) is quashed and set aside. The respondents are at liberty to re-determine the seniority after correcting the date of joining of respondent No.4 as khalsi and take consequential action as per rules. There shall be no order as to costs.

Dated the ~~29th~~ August, 2008.


 (Dr. KS Sugathan)
 Member (Administrative)


 (George Parackken)
 Member (Judicial)

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