

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 272/2005

Wednesday, this the 07th day of June, 2005.

C O R A M :

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. KBS RAJAN, JUDICIAL MEMBER**

S. Sivadasan Achary,
Helper Grade I (Train Lighting),
Southern Railway,
Thiruvananthapuram – 14 ... Applicant.

(By Advocate Mr. P.K. Madhusoodhanan)

v e r s u s

1. The Senior Divisional Personnel Officer,
Southern Railway,
Divisional Office,
Thiruvananthapuram.
2. Union of India represented by
The General Manager,
Southern Railway.
Park Town,
Chennai – 3 Respondents.

(By Advocate Mr. K.M. Anthru)

The application having been heard on 1.6.06, this Tribunal
on 7.6.06 delivered the following:



O R D E R
HON'BLE MR. KBS RAJAN, JUDICIAL MEMBER

1. This Tribunal by order dated 8.2.2001 in O.A. No. 1356/98, declared that the applicant was "entitled to be deemed to be absorbed with effect from 31.12.1983 in the Railways" and directions were given to the respondents to notionally absorb the applicant with effect from that date and grant him seniority and all consequential benefits arising therefrom. Seniority was no doubt, given to the applicant, but the grievance of the applicant is that the consequential benefits have not been afforded.

2. The capsulated facts of the case as could be culled out from the earlier order itself, as succinctly mentioned therein, are that the applicant, who commenced his service in the Southern Railway as Carpenter on 6.7.74, was appointed as Substitute Khalasi on 6.3.81. He was granted temporary status with effect from 1.1.82. Though the applicant and similar others were empanelled for regularisation as Electrical Khalasis in the vacancies that existed as on 31.12.83 as approved by the competent authority vide order dated 4.3.87, the applicant was not absorbed with effect from the date on which he was deemed to be absorbed. As the applicant was given seniority only with effect from 23.2.87 he made a representation for granting him notional absorption and seniority with effect from 31.12.1983 pointing out that Carriage and Wagon Khalasis of mechanical Department identically



situated like the applicant were given retrospective absorption from the date of their empanelment. However, this representation was rejected by the order dated 5.5.98 on the ground that the seniority would reckon only from the date of regular absorption and that the dispensation in the case of Carriage & Wagon Khalasis of Mechanical Department was a one time measure and in the case of the applicant those conditions were not satisfied. Aggrieved, the applicant filed earlier application seeking to set aside the order impugned in that OA and for a declaration that the applicant is deemed to be notionally absorbed with effect from 31.12.83 and also for grant of all consequential benefits arising therefrom.

3. It was in the aforesaid O.A. that direction to absorb the applicant notionally with effect from 31.12.83 was given. The applicant had made representation dated 21.5.2004 (A/3) requesting the respondents to grant him promotions and all consequential benefits as a part of implementation of the order of this Tribunal. As there was no response, O.A. No. 789/04 was filed by him which was disposed of with a direction to the respondents to consider and dispose of the representation on merits within the stipulated period, vide order dated 4.11.2004.

4. In pursuance of the aforesaid directions, the respondents had passed order dated 7.2.05 (A/6) wherein the respondents have held as under:



“ It is seen from the records that in pursuance to the order of the Hon’ble Tribunal in OA No. 2356/98, you are deemed to have been absorbed with effect from 31.12.1983 and consequential seniority granted. It is further seen that even now your seniors consequent on the reversion of seniority are continuing in the grade of Helper/I. Regarding the promotion given to your junior with effect from 16.6.2000 it is advised that Shri Gopakumar, who is junior to you, has been promoted against 25% quota reserved for serving employees and not against promotional quota. It is also seen that even though you had appeared for the selection against 25% quota held on 9.11.2002, you have not qualified in the said selection.”

5. It is against the aforesaid order dated 7.2.2005 that the applicant has filed this O.A. The relief claimed by the applicant includes the following:

- (a) quashing and setting aside the order dated 7.2.2005;
- (b) issue of direction to the first respondent to grant the applicant three annual increments eligible to him on his preponement of absorption from 23.2.87 to 31.12.83 in the post of Helper-II and refix his pay and allowances accordingly;
- (c) grant him grade promotion as Helper-I from an earlier date than that of 9.9.88 on preponement of his absorption and fix his pay etc. arising therefrom, including arrears of pay and allowances.

6. The respondents have resisted the O.A. According to them, the applicant has compared his case with his junior, Shri Gopakumar, who was

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promoted with effect from 16.6.2000 to the grade of Technician Grade-III under the 25% quota. As per the respondents, promotion of Shri Gopakumar was on the basis of his qualifying in the test conducted by the respondents whereas the applicant who also participated in the test did not qualify in the said selection. And insofar as selection under the promotion quota, even the seniors to the applicant are waiting in the queue and, therefore, the question of applicant's case being considered for promotion to the exclusion of those seniors does not arise.

7. The applicant has filed rejoinder and submitted that he was supposed to have been considered under the 25% quota in the year 1988 which the respondents did not. As he was not given an opportunity to participate in the 25% promotion quota, his fundamental right to equality has been hampered.

8. Arguments were heard and documents perused. By order dated 8.2.2001, the applicant was made entitled to deemed absorption with effect from 31.12.1983 with attendant seniority and all consequential benefits arising therefrom. Admittedly, the seniority in the post of Khalasi has been granted with effect from 31.12.83. The consequence of fixation of seniority is eligibility for promotion as Helper Grade-I and for higher promotion as Technician Grade-III. Insofar as Helper Grade-I is concerned, the applicant

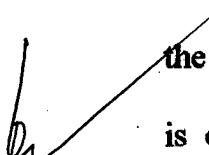


has not pressed the same. In fact, the part of the reliefs claimed namely, pay and allowances in the post of Helper-I was waived by him and that he claimed for promotion to the grade of Technician Grade-III. Now what is to be seen in this case is whether all the consequential benefits have been made available to the applicant in pursuance of the earlier order dated 8.2.2001.

9. Promotion to Technician Grade-III is made by way of (a) promotion on seniority basis and (b) promotion by way of 'selection quota' by examination upto 25%. What is to be seen is whether the advancement in the date of absorption with effect from 31.12.83 as mandated by this Tribunal vide order dated 8.2.01 would assist the applicant in his promotion as Technician-III under the above quotas of promotion and, if so, to what extent. Insofar as promotion on the basis of seniority is concerned, the consequential benefits as a result of earlier judgement would directly apply without any need for the applicant to perform any positive act. Insofar as selection by way of examination is concerned, the same cannot be granted unless he qualified in the departmental examination. Shri Gopakumar, a junior to the applicant, qualified in the 25% quota selection and hence promoted as Technician Grade-III with effect from 16.6.2000 and despite the fact that the applicant participated in the test in 2002, he could not qualify in the said examination. According to the respondents, therefore, the



question of applicant's case being compared with that of Gopakumar does not arise as the case of Shri Gopakumar stands on a different footing by virtue of his qualifying in the 25% quota examination whereas the applicant failed in the said examination in 2002. The applicant, however, contends that he was denied opportunity to participate in the examination in 1988, as he did become eligible for sitting in the qualifying examination by virtue of ante-dated absorption as Khalassi with effect from 31.12.1983. The stand taken by the applicant cannot be appreciated. For, the very order of this Tribunal, by which the applicant's entitlement for deemed absorption was established was of February, 2001 and as such allowing the applicant to participate in the 1988 examination is just impossible. In fact, when the applicant appeared in the 2002 examination, had he qualified in the said examination, there is a justification that his qualifying in the said examination could have been taken as his qualifying in 1988 examination. Unfortunately, the applicant failed to qualify in the 2002 examination. As the promotion of the applicant under the 25% examination quota depends upon the applicant's qualifying in the said examination and not merely on the basis of his deemed absorption as per Court's order, qualifying in the selection examination is a sine-qua-non for promotion. The order of this Tribunal for deemed absorption had only made him eligible for sitting in the examination after five years of absorption. That far, and no further. It is only his qualifying in the examination that would have made him entitled



for promotion. Admittedly, as the applicant could not qualify in the 2002 examination, the question of his being promoted under the 25% quota does not arise. Gopakumar's promotion cannot in any way enable the applicant to claim parity or on the basis of junior having been promoted, senior too should be promoted.

10. Insofar as promotion under normal seniority is concerned, the order of this Tribunal no doubt directly makes him entitled to promotion subject to his being senior enough to be considered for promotion and further subject to his confidential reports being comfortable. That is the consequential benefit in pursuance of absorption with effect from 31.12.1983. The respondents have stated that the applicant's turn for promotion has not reached. According to them, even now, applicant's seniors are continuing in the grade of Helper Grade-I. As such, it cannot be said that the applicant should by virtue of the earlier order of this Tribunal, be considered for promotion under the promotion quota to the exclusion of seniors to the applicant who are in queue. Obviously, if the applicant's turn reaches in near future along with his seniors, the benefit of advanced seniority position of the applicant would be given by the respondents whereby he would be considered for promotion and if otherwise found fit, would be promoted to Technician Grade-III. Until such time his turn comes for promotion under the promotional quota, there is no option for the applicant, but to wait.

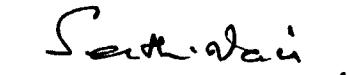
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11. In view of the above, the applicant's non-promotion at par with his junior Shri Gopakumar cannot be legally faulted with and the respondents shall certainly take into account the applicant's seniority as a consequence to the earlier order dated 8.2.2001 for promotion under the promotional quota in his own turn. The O.A. is disposed of with a direction to the respondents to consider the applicant's case at the appropriate time for promotion as Technician Grade-III keeping in view the seniority gained by him by virtue of his deemed absorption with effect from 31.12.1983 vide order of this Tribunal dated 8.2.2001. No costs.

(Dated, 7th June, 2006)



K.B.S. RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

Cvr.