

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 274 of 2008

MONDAY, this the 27th day of July, 2009

CORAM:

Hon'ble Dr. K.B.S. Rajan, Judicial Member

Hon'ble Mr. K. George Joseph, Administrative Member

K.K. Madhavan, aged 64 years,
 S/o. Koran (Retd. Chief Office Superintendent/
 Southern Railway/Mechanical Branch/PGT Division),
 Residing at Karippala House, Kattakampal P.O.,
 Trichur District, Kerala State. **Applicant**

(By Advocate – Mr. TCG Swamy)

V e r s u s

1. Union of India, represented by the General Manager,
 Southern Railway, Headquarters Office, Park Town P.O.,
 Madras-3.
2. The Chief Personnel Officer, Southern Railway,
 Headquarters Office, Park Town P.O., Madras-3.
3. The Chief Mechanical Engineer, Southern Railway,
 Headquarters Office, Park Town P.O., Madras-3.
4. The Divisional Railway Manager, Southern Railway,
 Palghat Division, Palghat.
5. The Divisional Personnel Officer, Southern Railway,
 Palghat Division, Palghat.
6. The Sr. Divisional Mechanical Engineer, Southern
 Railway, Palghat Division, Palghat. **Respondents**

(By Advocate – Ms. PK Nandini)

The application having been heard on 17.7.2009, the Tribunal on
27-07-09 delivered the following:

O R D E R

By Hon'ble Dr. K.B.S. Rajan, Judicial Member -

The applicant superannuated from Railway Service on 31.1.2004 as Chief Office Superintendent in the scale of Rs. 7450-11500/- . According to him Palaghat Division where he was serving, was accorded a sanctioned strength of three Chief Office Superintendents and he was the senior most in Palaghat Division among serving Office Superintendents and was thus asked to perform the duties of Chief Office Superintendent from 10.5.1998. Vide Annexure A-5, three individuals were promoted and posted as Chief Office Superintendents in Palaghat Division namely V. Lokanathan, M.N. Muralidharan and S. Jayasimha. Of the three, the first had joined, the second declined and the third, at his request, was accommodated at Mysore, shifting the post of Chief Office Superintendent from Palaghat to Mysore. Thus one vacancy did exist against which the applicant continued and the applicant was later on vide Annexure A-7 dated 16.8.2001 promoted as Chief Office Superintendent in the scale of Rs. 7450-11500/- which took effect from the date he assumed the higher responsibility. It is the case of the applicant that as in the case of others, vide Annexure A-5 order dated 8.2.2000, after assuming higher responsibility as Office Superintendent the pay of the employees in the higher grade i.e. Rs. 7450-11500/- should be fixed with effect from 10.5.1998 (i.e. the date of issue of Board's orders regarding introduction of higher pay and scales). This was not granted to him and hence he has made a representation vide Annexure A-8. This was forwarded to the higher authorities by the Divisional Office, Mechanical Branch, Palaghat vide Annexure A-9 note dated 29.8.2001. Subsequently also the applicant preferred representation dated 27.12.2001 which is also forwarded to the Senior DPO by the Divisional Office, Mechanical Branch, Palaghat. The respondents however rejected the case and hence the applicant has moved this OA seeking the following relief:-

“(i) Declare that the applicant is entitled to be granted the benefit of the scale of pay of Rs. 7450-11500 as Chief Office Superintendent with effect from 10.5.98;

“(ii) Direct the respondents to grant the applicant the benefit of the scale of pay of Rs. 7450-11500 with effect from 10.5.98 and direct

further to grant the applicant all consequential benefits of revision of pay and allowances, revision of pension and other retirement benefits and direct further to grant the applicant the arrears of pay and allowances and other terminal benefits arising therefrom;

(iii) Direct the respondents to grant the applicant interest on the delayed payment of arrears of pay and allowances, pension and other terminal benefits at the rate of 9% per annum from the date from which the arrears fell due."

2. The respondents have contested the OA. According to them there is no vacancy as the vacancy which was kept unfilled by virtue of declining by Shri Muralidharan was diverted to Madras to accommodate one Suganya who was at the material point of time posted ex-india. As such, there is no question of the applicant being given the benefit of higher pay scale, for any period prior to his actual regular promotion. It has also been contended in the reply that the authority competent to direct any individual to perform the duties of a particular post is the General Manager's office and no such direction was given to the office at Palaghat to direct the applicant to perform the duties of Chief Office Superintendent. Hence, the applicant is not entitled to the relief sought for.

3. The applicant has filed his rejoinder in which he has annexed an order dated 22nd February, 2008 passed by this Tribunal which according to him covers the case of the applicant as well. Other averments as in the OA have been reiterated by the applicant.

4. In their additional reply respondents have stated that order dated 22.2.2008 of this Tribunal relied upon by the applicant would not be applicable here as it was issued in a different context where all the eligible candidates whose suitability was assessed, one man was not declared suitable by selection committee and therefore not placed in the panel. In the case of the applicant herein, the vacancy against which the applicant claims to have worked was shifted to Madras as the aforesaid Smt. Suganya Devi was found suitable and placed in the panel. It has also been intimated in the additional reply that the applicant was not the senior most Office

Superintendent as two more persons senior to him namely Shri Shekhar and Shri T.S. Venkataraman where also available. According to the respondents the promotion order initially issued vide Annexure A-5 was intact and the applicant being junior to all those empaneled, cannot claim any benefit.

5. Counsel for the applicant has made following submissions:-

- a) As per Annexure A-1 order of the Railway Board the date of effect of the number of posts to be operated in various scales including Chief Office Superintendents is 10.5.1998 which is the date of issue of the order.
- b) Vide Annexure A-3, a panel was accorded under the simplified procedure for promotion as Chief Office Superintendent in the scale of Rs. 7450-11500/- . In the said order Suganya Devi figures in serial No. 7. Serial No. 15 is the last general candidate and he is S. Jayasimha who sought for retention at Mysore itself. As per seniority list circulated vide 12.11.1997 vide Annexure A-4, the said Jayasimha is junior to M. Shekhar and T.S. Venkataraman. As such it is evident that these two seniors have been overlooked and the junior has been promoted. These overlooked individuals who were at the material point of time posted at Madras were not asked to perform the duties of Chief Office Superintendents at Palaghat.
- c) Vide Annexure A-5, 15 promotions were effected, whereas the total number of vacancies were 16 as could be seen from Annexure A-2. The empanelment was also for 16 vide Annexure A-3 but Suganya Devi at serial No. 7 was not promoted as she was at that time ex-india. Thus, the total promotion came to 15 instead of 16.
- d) The counsel for the applicant also referred to the distributions of COS and in regard to TPJ Division two posts of Office Superintendents were allotted. However, at the time of issuing the posting order only one post was filled up by posting one Shri K.

Muralidharan vide Annexure A-5. Thus, if at all Suganya was to be accommodated it ought to have been against the vacancy which was kept unfilled at TPJ and not by way of shifting the vacancy from Palaghat to Madras.

e) That the applicant had been carrying out the functions of higher responsibilities, had been duly certified by the higher authorities as could be seen from Annexure A-13 order dated 20.6.2000. Thus, the applicant having worked as Chief Office Superintendent is entitled to pay in the pay scale attached with the post as held by the Apex Court in the following cases:-

- a) Jaswant Singh Vs. Punjab Poultry Field Staff Association - 2002 (1) SCC 261
- b) Jeet Singh Vs. MCD - 1986 Supp. SCC 560
- c) Selvaraj Vs. Lt. General of Island Port Blair - 1998 (4) SCC 291

6. Counsel for the respondents submitted that the applicant's relief are limited and as he had not performed the functions of Chief Office Superintendent under any specific order of the competent authority, he is not entitled to relief claimed.

7. Arguments were heard and documents perused.

8. The following facts are clear from the pleadings:-

- a) The Railway Board issued orders relating to up-gradation of certain posts on 10.5.1998.
- b) Chief Office Superintendent is a post carrying pay scale of Rs. 7450-11500/- which constitutes 2% of ministerial staff and is above the post of Office Superintendent.
- c) Thus out of 792 total posts from Clerk to Chief Office Superintendent, 16 posts are designated as Chief Office

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Superintendent with the aforesaid pay scale.

d) The share of Chief Office Superintendent of Palaghat Division is three.

e) As many as 16 Office Superintendents on the basis of seniority cum selection were empaneled for the aforesaid post. However, only 15 promotions were effected by order dated 8.2.2000 with a stipulation that all these would carry higher pay scale of Rs. 7450-1500/- with effect from 10.5.1998.

f) The lone candidate from the panel who was not promoted is serial No. 7 in the panel, Suganya Devi. Correspondingly the lone post out of 16 which has not been filled up by order dated 8.2.2000 is one of the two posts sanctioned to Trichi Division.

g) In seniority the last person of the general candidate covered was Shri S. Jaysimha who is one above the applicant.

h) Two persons M. Shekhar and T.S. Venkataraman who were senior to Jaysimha were admittedly superseded.

i) While filing up the three posts at Palaghat Division, one Shri Lokanathan had joined while the next one Shri M.N. Muralidharan declined while at the request of Shri Jaysimha the post itself has been transferred to Mysore Division. The applicant was the senior most Office Superintendent in Palaghat Division, though in the overall seniority he was the third, Shri Shekhar and Shri Venkataraman referred to above being senior to him.

j) The applicant had been managing the duties in the office of Senior DME, Mechanical Branch, Divisional Office, Palaghat as certified by the Senior DME, vide note dated 29.8.2001.

k) The applicant was promoted to the post of Chief Office Superintendent on regular basis by order dated 16.8.2001.

9. The points in dispute are as under:-

a) While the applicant submits that out of three posts sanctioned for Palaghat Division while two posts of Chief Office Superintendent were occupied (one by Lokanathan at Palaghat and other by Jaysimha at Mysore) the third post against which Mr. M. Murlidharan was promoted remained vacant as he has declined the promotion. However, as per respondents, this post had been transferred to Madras to accommodate Suganya.

b) While the applicant contends that he had been discharging the functions of Chief Office Superintendent since 10.5.1998 as authenticated by his Senior Divisional Mechanical Engineer, according to the respondents there is no question of the applicant's performing the said duties when headquarters had not issued any specific orders in this regard.

10.1 As regards the first disputed point namely a post was shifted from Palaghat to Madras, the records do not reflect anything in this regard except order dated 29.11.2000. In other words till 28.11.2000 the said post was physically available at Palaghat. Shri Jaysimha having voluntarily retired in November, 2000, his post would have also been brought to Palaghat on his vacating the seat at Mysore. It is against one of the two vacant posts that the applicant was functioning, at any given point of time from February 2000 onwards till the applicant was regularly promoted by order dated 16.8.2001. Further, the respondents are totally silent about the vacancy at TPJ. If that had been filled up by any local arrangement, the said individual must be junior to the applicant herein. If so, how he was offered ignoring the senior (who has not been superseded) is a question to be justified by respondents. As regards applicant's senior Shri Shekhar and Shri Venkataraman as they

were superseded when Jaysimha was appointed the 16th post must be deemed to have been filled up by allowing applicant to perform the functions of Chief Office Superintendent.

10.2 As regards second disputed fact, it is seen from the records that there has been no order in respect of any of the Office Superintendents who have been promoted in the said post, to perform the duties of Chief Office Superintendent by the Headquarters. As the post is one of up-gradation only the Railways are right in giving retrospective promotion to all with effect from 10.5.1998 the date Railway Board approved up-gradation. As such, all that is to be seen is that the superior authority in the local office did authorize any of his subordinates to look after the functions of Chief Office Superintendent. Thus, in the instant case the Senior Divisional Mechanical Engineer having categorically stated that the applicant was performing the duties from 10.5.1998 onwards, and now it cannot lie in the mouth of the respondents to deny the same.

11. In view of the above, it is crystal clear that the applicant did perform the duties as a Chief Office Superintendent at Palaghat as authenticated by the Senior Divisional Mechanical Engineer and he continued to hold the same post with the same responsibilities even on his promotion on regular basis as Chief Office Superintendent from 16th August, 2001. As such since a vacancy has been there at Palaghat he stands at par with any of the other 15 individuals for whom orders were passed on 8.2.2000 and who were allowed higher pay scale from 10.5.1998. The applicant cannot be singled out on any ground whatsoever from having his pay scale fixed at Rs. 7450-11500/- from 10th May, 1998.

12. In view of the above, the OA fully succeeds. It is declared that the applicant having en-shouldered the responsibility of one of the three posts of Chief Office Superintendent at Palaghat right from 10.5.1998 is entitled of the pay scale of Rs. 7450-11500/- from 10.5.1998 at par with other 15 individuals vide Annexure A-5. He is entitled to actual difference in the

monthly salary by virtue of the same and in addition, his pension has to be re-fixed taking into account his being placed in the higher pay scale from 10.5.1998. Consequently, there shall be certain arrears to be paid to the applicant by way of pension to which the applicant is entitled. The respondents are therefore, directed to pass suitable orders, working out the pension of the applicant and making available the arrears of pay and pension and also start paying him pension taking into account the increase in his pay at the time of retirement, within three months from the date of communication of this order. No costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(K.B.S. RAJAN)
JUDICIAL MEMBER

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