

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO.301/2008

Thursday this, the 15th day of October, 2009

CORAM:

**HON'BLE SRI GEORGE PARACKEN, MEMBER(J)
HON'BLE SRI K. GEORGE JOSEPH, MEMBER(A)**

M.Surendran, S/o Raghavan, aged 47 years,
Technician Grade III(AC),
O/o Senior Section Engineer(Electrical),
Southern Railway, Mangalore,
residing at Manayaghathodi House,
Kuruvattur P.O., Palakkad District.

... Applicant

(By Advocate Sri T.A.Rajan)

vs

1. Union of India represented by
The General Manager,
Southern Railway, Chennai-3.

2. The Senior Divisional Personnel Officer,
Southern Railway, Palghat.

... Respondents

(By Advocate Mr. Varghese John for Mr. Thomas Mathew Nellimoottil)

ORDER

Hon'ble Sri K. George Joseph, Administrative Member:

In this O.A., the applicant prays for the following reliefs:-

- (a) Declare that the applicant is entitled to be promoted to the post of Technician Grade III(AC) and Technician Grade II(AC) from the dates of promotion of his junior Sri Rajendran with all

consequential benefits.

- (b) Direct the respondents to promote the applicant to the posts of Technician Grade III(AC) and Technician Grade II (AC) from the date of promotion of his junior Sri K.Rajendran and also direct to grant all the consequential benefits including the difference in salary.
- (c) Award costs of and incidental to this application.
- (d) Grant such other relief, which this Honorable Tribunal may deem fit and proper in the circumstances of the case.

2. To state the facts of the case briefly, the applicant was engaged as Casual Labourer, Electrical Department of Palghat Division of Southern Railway on 8.12.80. He was granted temporary status with effect from 8.4.1981. He joined AC wing on 11.4.86. He was regularly absorbed as Electrical Khalasi by order dated 25.2.91. He was allotted J/E 1215 vide Annexure A5, wherein he is listed at Sl.No.2. It was stated in Annexure A5 that seniority of the applicant and others will be reckoned on obtaining clarification from the Chief Personnel Officer, Southern Railway, Chennai. M/s. Rajendran and M.Edwin were with him as his juniors as evident from Annexure A3 and Annexure A4. Their Staff Nos. were J/E 1220 and J/E 1229 respectively. The applicant was given seniority in the cadre of AC Khalasis with effect from 26.10.1998 as per order in O.P.No.1028/98 and 4178/98 filed before the Hon'ble High Court of Kerala. As the applicant is senior to the juniors mentioned herein, he is entitled to get promotions to the higher grade from the date of promotion of the above said juniors, as claimed by the applicant. As the representation of the applicant was not considered by the second respondent for promotions from the dates of promotion of his juniors, the applicant approached this Tribunal in O.A. No.409/07. This O.A. was disposed of by directing the second respondent to consider Annexure A7 representation and communicate the decision thereon to

the applicant within a period of three months as per order dated 23.7.2007. The second respondent considered and disposed of Annexure A7 representation of the applicant stating that since the seniority assigned to the applicant and others in A.C. wing is under challenge in O.A. No.392/2005, the applicant's request will be considered after the disposal of the said O.A. by this Tribunal. O.A.No.392/05 was dismissed by this Tribunal by order dated 18.1.08. Even after that the second respondent has not considered the claims of the applicant. Therefore he has approached this Tribunal for redressal of his grievances.

3. The respondents contested the O.A. The applicant was not having requisite educational qualification i.e., minimum SSLC pass, prescribed for the post of Electrical Khalasi as well as A.C. Coach Maintainer Grade III. On the other hand, his junior Sri Rajendran had requisite educational qualification and had passed the trade test prescribed for the post of A.C.Coach Maintainer Gr. III and Gr.II. As per one time exemption in educational qualification, the applicant along with others were absorbed as Helper Khalasi on 25.2.91 in Electrical Department. As he had passed the suitability test for A.C Khalasi on 12.02.91, he was absorbed as regular A.C Khalasi on 25.2.91 itself. After passing the trade test for the post of A.C.Coach Maintainer Gr.III, the applicant was promoted to that post on 8.6.99. As the applicant was belatedly regularised as A.C.Khalasi and passed the trade test and promoted to the post of A.C.Coach Maintainer on 8.6.99, that too after relaxed standard, he cannot claim promotion on par with Sri K.Rajendran who was regularised, promoted without relaxed standard much earlier than the applicant. Besides the applicant has not challenged the seniority lists published in the year 2002, 2006, 2007 and 2008 wherein the applicant is placed below the scale as well as grade of his alleged junior Sri Rajendran. The applicant ought to have challenged the promotions given to his junior Sri Rajendran on 1.11.91 and 16.2.92 at the relevant time. Therefore the O.A. is barred by law of limitation. Again the O.A. suffers from

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non-joinder of Sri Rajendran as well as others likely to be affected by this O.A. It was further submitted by the respondents that the intake of applicant and others by one time relaxation had unsettled the seniority of A.C. cadre for over 10 years due to litigation. If any more benefits are given as claimed in this O.A., the seniority of A.C. cadre in different grades may again get unsettled and further litigation may take place. Therefore the O.A. should be dismissed as devoid of any merit.

4. In the rejoinder filed by the applicant, it was submitted that in Annexure A9 order the respondents agreed to consider the case of the applicant after disposal of O.A. No.392/05. The applicant was not absorbed in the A.C. wing along with Sri Rajendran due to lesser educational qualification, but with the one time relaxation and granting of seniority in the A.C wing with effect from 26.10.88, the position of the applicant was restored above Sri Rajendran and as such he is entitled to get the promotion from the dates of promotion of Sri Rajendran. After granting relaxation and seniority, there cannot be discrimination on the basis of relaxed standard. In the seniority lists published in 2002, 2006, 2007 and 2008, the applicant and his junior Sri Rajendran was shown according to the posts held by them respectively. The applicant had been submitting representations against the seniority lists requesting to refix his seniority by granting him the due promotions. This O.A. is not barred by limitation because there were pending cases and also respondents had assured in Annexure A9 that the case of the applicant would be considered after disposal of O.A.No.392/05. But even after the dismissal of the said O.A. No.392/05, the respondents have not considered the case of the applicant. Therefore there is no delay and laches on the part of the applicant in filing this O.A., nor is the O.A. hit by non-joinder of his junior and other affected persons because he is only claiming promotion on par with promotion of Sri Rajendran, for which he and others are not required to be made parties in the O.A. The applicant had

submitted various representations against the non-granting of his promotions as well as the seniority lists published by the respondents, yet he was not given his due promotions and seniority. There is no bonafide in the contentions of the respondents that the applicant had not submitted any representation against his seniority and in disputing the receipt of Annexure A12 representation. It was submitted that the contentions, the grounds of the O.A. are tenable and sustainable. Therefore the O.A. may be allowed as prayed for.

5. Counsels for the parties were heard, documents perused.

6. The claim of the applicant for the promotions prayed for rests solely on his seniority as claimed by him over Sri K.Rajendran. The following milestones in the service histories of Sri M.Surendran, the applicant and Sri K.Rajendran are listed below for understanding the issue of seniority clearly.

	<u>Sri K.Rajendran</u>	<u>Sri M.Surendran</u>
(i) Educational Qualification	SSLC passed	8 th Standard pass
(ii) Engaged as Casual Labourer	20.7.80	8.12.80
(iii) Date of temporary status	27.3.81	8.4.81
(iv) No. of aggregate service as on 30.9.88	2816	2831
(v) Staff Nos. allotted	J/E 1220	J/E 1215
(vi) Joined AC wing	11.4.86	11.4.86
(vii) Regular Ele.Khalasi	7.7.89	7.7.89
(viii) Suitability test for regular AC Khalasi	11.9.87	12.2.91
(ix) Appointment as regular AC Khalasi	26.10.88	25.2.91(with relaxed standard seniority reckoned w.e.f. 26.10.88)
(x) Adhoc AC Maintainer Gr.III	6.10.90	-

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(xi) Trade-test	12.3.91	11.5.99
(xii) Regular Gr.III	1.11.91	11.6.99
(xiii) Trade-test for Gr.II passed	7.4.92	-
(xiv) AC Coach Maintainer Gr.II	By order dt.16.6.92 w.e.f. 19.3.92	-

7. It appears that based on the aggregate service of 2831 units of time which is 15 units more than that of Sri K.Rajendran, the applicant was given Staff No.J/E 1215. For having less aggregate service Sri K.Rajendran is given Staff No.J/E 1220. Based on this, the applicant counts himself senior to Sri Rajendran and seeks promotions for himself on the dates when promotions were given to Sri Rajendran. The seniority of the applicant over Sri Rajendran is in the cadre of regular Electrical Khalasi. After passing the suitability test on 12.9.87 Sri Rajendran was appointed as regular A.C. Khalasi on 26.10.88. After passing trade test on 12.3.91 Sri Rajendran became regular A.C.Coach Maintainer Gr.III on 1.11.91. Later, on passing trade test for Gr.II on 7.4.92 he was appointed AC Coach Maintainer Gr.II with effect from 19.3.92. Sri M.Surendran, the applicant, was one of the 8 Electrical Khalasis who did not pass SSLC and got the benefit of the relaxation in the educational qualifications. With one time relaxation of educational standard, Sri Surendran could pass suitability test for A.C. Khalasi on 12.2.91 and was appointed A.C. Khalasi on 25.2.91 by which time Sri Rajendran was already promoted as A.C.Coach Maintainer Gr.III. Sri Surendran passed the trade test for A.C.Coach Maintainer Gr.III on 11.5.99 by which time Sri Rajendran had already got promoted as A.C.Coach Maintainer Gr.II with effect from 19.3.92 and had put in more than 7 years of service in that cadre. Whether the claim of the applicant for promotion on the dates Sri Rajendran was promoted to Gr.III and

Gr.II is tenable in law, taking into account the rules of seniority and the rules of promotion is to be decided by the competent authority.

8. The applicant for the first time made a representation for granting of promotions from the dates of promotions of Sri Rajendran to the Senior Divisional Personnel Officer, Southern Railway/PGT on 2.12.2006, the relevant portion from the said representation is extracted as under:-

"As the seniority granted to me in the AC wing viz. w.e.f. 26.10.1988 was upheld by the Hon'ble High Court I am entitled to get promotions to higher grades based on the said seniority. Hence, I am entitled to get promotions from the date of promotions of my immediate junior Sri K.Rajendran.

In these circumstances I humbly request that goodself to promote me to the posts of Technical grade III(AC) and Technician grade III(AC) from the dates of promotion Sri K.Rajendran without further delay. The consequential benefits also may be granted to me at the earliest. My seniority may also be refixed based on the said promotions. For the acts of kindness I shall ever be grateful to your, Sir." (emphasis supplied)

9. The applicant approached this Tribunal in O.A.No.409/07 which was disposed of as under:-

"The applicant is working as Technician Grade III(AC) under the respondents and is aggrieved that his juniors had been promoted. It is further submitted that the applicant has made Annexure A-7 representation dated 2.12.2006 to the 2nd respondent which has not been considered so far.


2. When the matter came up today, counsel for the applicant submitted that he will be satisfied if a direction is given to the 2nd respondent to consider the representation of the applicant at



Annexure A-7 as expeditiously as possible.

3. Accordingly, we direct the 2nd respondent to consider the representation of the applicant at Annexure A-7 and communicate the decision to the applicant within a period of three months from the date of receipt of a copy of this order."

10. Accordingly the Senior Divisional Personnel Officer/PGI communicated to the applicant as under:-



"From the records available in this office, it is an accepted fact that relaxation in Educational qualification of 10th Pass required for absorption in AC wing was granted by CPO whose competency also having accepted by the Hon'ble High Court of Kerala while disposing OP Nos.1028/98 and 4278/98 on OA No.38/96 filed by Sri Jayakumar on 10.2.2000. However, another OA has been filed by Shri Karunakaramorthy, AC Coach attendant before Hon'ble CAT/Ernakulam in O.A. No.392/05 which is still pending for disposal by the Hon'ble Tribunal. Though slightly different the contention of the applicant in this O.A. also is about seniority to the respondents in OA 38/96 filed by Shri D.Jayakumar, with omission of three names including your name. The main question here is regarding grant of seniority to the respondents before the date of relaxation. Though you have not been cited as a respondent, you were also allowed to continue in AC wing with seniority from the date of regularisation as ELK i.e. 26.10.88. Hence, as the seniority already assigned to you and similarly situated persons in AC wing itself is under challenge **your request will be considered after the disposal of the O.A. by the Hon'ble Tribunal.** The A7 representation stands disposed off on the above lines."

(emphasis supplied)


11. The applicant made another representation dated 23.10.07 which was concluded as under:-

“In these circumstances I humbly request your goodself to consider my representation first referred to above and issue necessary orders promoting me to the posts of Technician Grade III (AC) and Technician Grade II(AC) from the dates of promotion of Sri K.Rajendran and the consequential benefits may also be ordered to be given to me, within the time stipulated in the order second referred to above. My seniority may also be refixed based on the said promotions. “ (emphasis supplied)

12. O.A.No.392/05 mentioned in the communication to the applicant from the Senior Divisional Personnel Officer was dismissed on the points of limitation as well as on merit. The point of limitation was that the applicant therein had not challenged the seniority lists published in 1999 and 2002 within time before this Tribunal. As held by the Apex Court in a catena of decisions, the seniority once settled cannot be unsettled after several years.

13. The applicant made a further representation on 9.2.08 which concluded as under:-

“Under the above circumstances your goodself may kindly consider my representation 1st referred to above and issue necessary orders promoting me to the posts of Technician Grade III(AC) and Technician Grade II(AC) from the dates of promotion of Sri K.Rajendran(J E 1220) and the consequential benefits may also be ordered to give me without further delay.”

 14. It can be seen from the representations of the applicant that he asked for promotions to Gr.III and Gr.II from the dates of promotions of Sri K.Rajendran to those grades and consequential benefits and as if an afterthought he added that his seniority may also be refixed based on the said promotions, but in the

representation dated 9.2.08, he chooses not to make even a direct mention of granting seniority as he did earlier on two occasions. The applicant chooses not to ask for fixation of his seniority over Sri Rajendran in the cadre of AC Khalasi or AC Coach Maintainer Gr.III before he seeks promotions to AC Coach Maintainer Gr.III and Gr.II, but he seems to hold that his seniority over Sri Rajendran in the cadre of Electrical Khalasi will carry him through all cadres abreast of Sri Rajendran. He chooses not to mention about his eligibility by passing the trade test for AC Coach Maintainer Gr.III and Gr.II on the dates when Sri Rajendran was promoted. He chooses not to challenge the seniority lists of 2002, 2006, 2007 and 2008 and the promotions given to Sri Rajendran on 1.11.91 and 16.2.92 at the relevant time. He also chooses not to challenge Annexure A9 communication from the Sr. Divisional Personnel Officer/PGI by which his representation is supposedly disposed of as directed by this Tribunal in O.A. No.409/07.

15. Annexure A9 communication dated 17.9.07 from the Sr. Divisional Personnel Officer/PGI is not a disposal of the representation of the applicant in accordance with the direction given by this Tribunal in O.A.No.409/07. It is only a postponement of the consideration of the representation of the applicant as stated in the said communication as under:-

“Hence as the seniority already assigned to you and similarly situated persons in AC wing itself is under challenge, your request will be considered after the disposal of the O.A. by the Hon’ble Tribunal.”, the O.A. being No. 392/05. (emphasis supplied)

16. The directions given by this Tribunal in O.A. No.392/05 is yet to be complied with by the respondents in this application. The respondents will have to decide whether Sri M.Surendran is really senior to Sri Rajendran in the cadres of AC Khalasi, AC Coach Maintainer Gr.III and AC Coach Maintainer Gr.II and also whether he is eligible to be granted promotions, as requested by him, on

the dates Sri Rajendran was promoted as AC Coach Maintainer Gr.III and Gr.II in accordance with the rules and regulations and in the light of judgments of Hon'ble Courts and this Tribunal concerning seniority and promotion. Only after the respondents take a decision, cause of action for the applicant before this Tribunal will arise if he is aggrieved by that decision. Therefore, in our considered view, this O.A. is pre-mature and it should be dismissed on that ground without considering it on merits at this juncture. The applicant is at liberty to move the concerned authorities for implementation of the directive given in O.A.No.409/07.

17. Accordingly, this O.A. is dismissed. No order as to costs.



(K.George Joseph)
Member(A)



(George Paracken)
Membr(J)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.301/2008

this, the 7th day of June, 2010

CORAM:

HON'BLE MR.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE MRS. K.NOORJEHAN, ADMINISTRATIVE MEMBER

M.Surendran, S/o Raghavan, aged 47 years,
Technician Grade III(AC)
O/o Senior Section Engineer(Electrical),
Southern Railway, Mangalore,
residing at Manayaghathodi House,
Kuruvattur P.O., Palakkad District.

.. Applicant

By Advocate : Sri T.A.Rajan

Vs.

1. Union of India represented by
The General Manager,
Southern Railway, Chennai-3.

2. The Senior Divisional Personnel Officer,
Southern Railway, Palghat.

.. Respondents

By Advocate: Mr.Thomas Mathew Nellimoottil

The Application having been heard on 28.05.10 the Tribunal on 07.06.10 delivered the following:

ORDER

HON'BLE MR.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

The applicant has filed this Original Application for a direction to the respondents to promote him to the post of Technician Grade



III(AC) and Technician Grade II(AC) from the dates of promotion of his junior Sri Rajendran, on declaring that the applicant is entitled to be promoted to the post of Technician Grade III(AC) and Technician Grade II(AC).

2. The few facts of the case are as follows. The applicant is now working as Technician Grade III(AC) under the respondents. The seniority of the applicant in the cadre of Air conditioning Khalasi was not fixed for want of clarification from the Chief Personnel Officer, Southern Railway, Chennai. However, the applicant was given seniority in the cadre of AC Khalasi with effect from 26.10.1988. In the mean while his juniors were promoted to the post of Technician Grade III(AC) prior to the promotion of the applicant to that grade. His juniors were given also given further promotion to Technician Grade II(AC). Hence the applicant filed a representation and also O.A.No.409/07. The said representation has been disposed of by the second respondent to the effect that since the O.A No.392/05 is pending, his case cannot be considered for the time being. However the said O.A. 392/05 has been dismissed by this Tribunal upholding the order giving relaxation to all the candidates for reckoning their seniority in the cadre of Khalasi(AC) with effect from 26.10.1988. If so, the applicant is entitled for such promotion along with his juniors or at least from



the date of promotion given to his juniors. Hence this O.A. has been filed with the prayers as stated above. However, this Tribunal heard this O.A. on 15th day of October, 2009 and this Tribunal dismissed the O.A. on the ground that the O.A. is barred by limitation. Against the said order passed by this Tribunal, the applicant filed R.A. No.50/09 and this Tribunal heard the R.A. On 2nd February, 2010 and allowed the R.A. And reposted the O.A. for rehearing. Thus the O.A. came up for hearing.

3. The case of the applicant as stated in the O.A. is that as the applicant's seniority in Khalasi(AC) cadre has been reckoned with effect from 26.10.1988 by giving exemption from passing the required educational qualification for promotion to the next higher cadre and as per the order passed by the third respondent, the seniority of all other candidates who were working as Khalasi has been also reckoned by the order passed with effect from 26.10.1988. However as the applicant has not been considered for his seniority, he approached this Tribunal by filing the earlier O.A. viz. O.A.No.409/07 and the said application has been considered by this Tribunal and directed the respondents to consider the claim of the applicant by giving an answer to his representation Annexure A7 marked therein. However on implementation of the said order passed by this Tribunal, the respondents had answered that the



seniority assigned to the applicant and similarly situated persons in the AC wing was under challenge in O.A. No.392/05. Hence on account of the pendency of the said O.A. filed by other officials the representation of the applicant can be considered later. Now the applicant submits that the said O.A. has been disposed of by this Tribunal, confirming relaxation given and also the seniority reckoned by the order passed by the third respondent. Hence the counsel for the applicant submits that the applicant is entitled for his promotion to the post of Technician Grade III and Technician Grade II (AC) with effect from the date of promotion of his juniors.

4. Resisting the above contention, the counsel appearing for the respondents, relying on the reply statement filed on behalf of the respondents, submitted that as the order passed by the third respondent assigning the seniority of similarly placed persons in AC wing in the cadre of Khalasi(AC) has been challenged in O.A. No.392/05, the respondents were not in a position to consider the case of the applicant. However in the reply statement the respondents have taken a stand that for promotion to the post of A/C Coach Maintainer Gr.III or the present post renamed as Technician Gr. III, the applicant should have a minimum qualification of S.S.L.C pass which was prescribed for Electrical Khalasi as well as AC Coach Maintainer Gr.III. Since the applicant



was working as a Helper Khalasi in the Electrical Department and the applicant had though passed the suitability test for AC Khalasi and the applicant was absorbed in regular AC Khalasi, as he has not passed the S.S.L.C. qualification, he was not given the promotion along with other similarly situated persons. However, it is admitted in the reply statement that by the order passed by the third respondent, an exemption was given to those Khalasi Helpers or AC Khalasis from passing the educational qualification and their seniority in AC Khalasi has been reckoned with effect from 26.10.1988 and that apart since the relaxation given by the third respondent was under challenge, the representation filed by the applicant for reckoning of his seniority with effect from 26.10.1988 on absorption in the AC wing could not be ordered on account of the pendency of the said O.A.

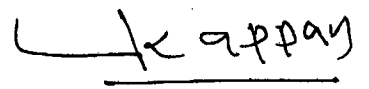
5. We have considered the arguments of the counsel appearing for the parties and also perused the documents produced before this Tribunal. It is an admitted fact before this Tribunal that the applicant was originally appointed as a temporary Khalasi in the AC wing as per Annexure A2 order with effect from 11.4.1986 and thereafter the applicant was absorbed as a regular Khalasi and posted in the Electrical wing as on 31.12.88 and thereafter he was absorbed or transferred in the AC wing on 7.7.89. As per Annexure

A5 order all the Khalasis working in the Electrical wing were absorbed in the AC wing and their seniority has been considered by the third respondent and as per the order passed by him, their seniority in the AC Khalasi has been reckoned with effect from 26.10.1988 by giving a relaxation to the passing of S.S.L.C. If so, it is inevitable on the part of the respondents to consider the seniority of the applicant with effect from 26.10.1988. The next question to be considered is that all other similarly placed persons were promoted to the post of Technician Gr.III and Technician Gr.II, if so, the exemption given to the applicant and has been considered along with other candidates by the third respondent and the third respondent reckoned the seniority of all such employees including the applicant with effect from 26.10.88. Even though some of the juniors were qualified for promotion as the rules stood then, as the exemption granted to the applicant and similarly placed persons, is applicable to him and it is only proper for the respondents to consider the promotion of the applicant vis-a-vis that of promotion given to his juniors especially to Sri Rajendran. In the above circumstances, we are of the view that the O.A. succeeds. Accordingly, we direct the respondents to reconsider the case of the applicant and shall pass appropriate orders allowing his claim to the extent applicable to his promotion with effect from the date of promotion given to his juniors. All this



exercise shall be completed within sixty days from the date of receipt of a copy of this order. The O.A. is allowed to the extent indicated. No order as to costs.


(K.NOORJEHAN)
MEMBER(A)


(JUSTICE K.THANKAPPAN)
MEMBER(J)

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