

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 325 of 2009

Wednesday this the 07th day of October, 2009.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

T.P.Baby
Carriage & Wagon Khalasi / Southern Railway
Alappuzha
Residing at Thottiyil House
Naliyani, Koovakkandom P.O.
Thodupuzha, Idukki District

Applicant

(By Advocate Mr. TCG Swamy)

versus

1. Union of India represented by
the General Manager,
Southern Railway, Headquarters Office
Park Town P.O, Chennai – 3
2. The Additional Divisional Railway Manager
Southern Railway, Trivandrum Division
Trivandrum – 14
3. The Senior Divisional Mechanical Engineer
Southern Railway, Trivandrum Division
Trivandrum – 14
4. The Divisional Personnel Officer
Southern Railway, Trivandrum Division
Trivandrum – 14
5. The Senior Section Engineer
Carriage & Wagon
Southern Railway,
Alappuzha RS & PO

Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

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The application having been heard on 05.10.2009, the Tribunal on 07/10/09 delivered the following:

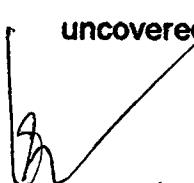
ORDER
HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER

The applicant, who was working as Carriage and Wagon Khalasi, had, consequent on his unauthorized absence for a substantial period from 2nd May 2000 onwards been removed from service as a matter of penalty vide order dated 20-05-2002. This penalty order was, in appeal, set aside by order dated 17-11-2004 vide Annexure A-2. The applicant maintains that immediately thereafter, he did visit the office for reinstatement but he was not permitted so and hence filed this O.A seeking the following reliefs:-

(i) Declare that the non-feasance on the part of the respondents to reinstate the applicant back to service in the light of Annexure A2 order is arbitrary, discriminatory, contrary to law and hence illegal;

(ii) Direct the respondents 2 and 3 to implement Annexure A2 forthwith and to grant the applicant all the consequential benefits as if the applicant had not been removed from service in terms of the order dated 20.05.2002 referred to in Annexure A2, with all consequential benefits including arrears of pay and allowances arising therefrom.

2. Respondents have contested the O.A. According to them, the applicant has not explained the delay in approaching the Tribunal on time. Subsequent to the Annexure A-2 order of the appellate authority he never reported before the 5th respondent or other respondents. As per Annexure A-2 he was to rejoin duties in November 2004 and this period till date remains uncovered and accordingly he is not entitled for any service benefits. The



applicant cannot make a march over the other employees, who have been conferred the service benefits pertaining to this period consequent on their faithful service.

3. In his rejoinder the applicant has reiterated his stand as contained in the O.A. As for covering the period from 17-11-2004, according to him, the same would be in accordance with law.

4. Counsel for the applicant submitted that once the Appellate Authority had set aside the order of removal, the respondents ought to have passed suitable order permitting the applicant to resume duties in a place specified by them. This was not done, even after the applicant had presented before them as early as in 2004 itself. The entitlement of the applicant to resume duties, in pursuance of the appellate authority's orders, cannot be obliterated due to lapse of time. Thus, there is continuous cause of action, and hence, limitation aspect is not applicable in this case. As regards the regularization of past period, counsel for the applicant submitted that the applicant may be permitted to move appropriate representation and the same would be considered by the respondents.

5. Counsel for the respondents reiterated the contents of the counter.

6. Arguments were heard and documents perused. The fact remains that the applicant was victorious in his appeal vide Annexure A-2. Though he maintained that he did appear before the fifth respondent, the same has been refuted by the respondents. While the applicant blames the administration for

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non-issue of necessary orders in the wake of the appellate order, the respondents blame the applicant for not properly prosecuting his case before the administrative authorities or before the legal forum. As a matter of fact, after the order of the Disciplinary authority is set aside, the applicant ought to have been permitted to attend the office. In the absence of his voluntarily presenting himself before the authorities in the office, necessary communication should have been sent to the applicant. This has, obviously not been done. Thus, the fault lies on both the sides. Be that as it may. The applicant is entitled to be back in service. The respondents shall entertain the applicant in the same post and it is left to the authorities for placement if there is no vacancy in the place where the applicant worked last.

7. Now as to the regularization of past services. Counsel for the applicant has suggested that the applicant be permitted to make representations in this regard. Obviously, in case of rejection of his representation (the probability of which is high, in view of the resistance of the O.A), the same would lead to another round of litigation on that score, whereas attempt should be made to decide the issue at one go. The respondents are right when they submitted that due to prolonged absence of the applicant in securing resumption of duties, many others who have been sincere in their work cannot be allowed to suffer by making the applicant to march over them. The period of regularization shall be in such a manner that the applicant is not put to great loss, nor should the juniors' career prospects should be upset. The applicant cannot gain any advantage when he is also at fault. In fact, he had not substantiated with any documentary evidences to support his case of having sent Annexure A3 and A-4 representations. Nor did he approach the Tribunal on the expiry of six months

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from the date of his representation preferred in 2005.

8. Keeping in view the following would meet the interest of justice and the same is so ordered:-

- (a) The applicant would be reinstated in service within two weeks from the date of communication of this order, in the same grade/post from where he was removed as a matter of penalty.
- (b) His posting would be in the same division where his seniority is maintained (May be in different office, without adversely affecting his seniority on account of such posting).
- (c) The reinstatement would be effective from the date the applicant had filed this O.A., i.e., 25th May 2009. His pay as on 25th May 2009 would be fixed notionally and actually from the date the applicant had joined duties. His pay would be in the revise pay admissible to him with his past services taken into account (save the period of absence from November 2004 to April, 2009). Till such time order relating to fixation of pay is passed, the applicant shall be paid, on provisional basis, the minimum in the scale of pay plus grade pay applicable to him.
- (d) If any of his juniors have been already promoted to any higher grade, the same shall not be disturbed.
- (e) The period between November 2004 till the date of resumption to duty, would be regularized by way of grant of earned leave or other kinds of leave including extra ordinary leave available to the applicant.
- (f) The above absence would not constitute any break in service.

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(g) Seniority would be so fixed that his juniors in the present post of Khalasi would continue to be juniors, while those juniors who have been granted promotion (if any) would not be disturbed.

(h) The period of absence would not qualify for any purpose such as pension etc.,

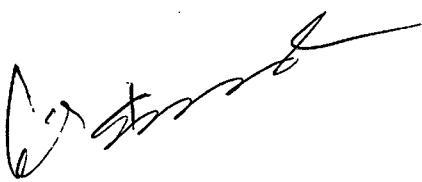
(i) The applicant shall file a certificate to the effect that he was not in gainful employment during the period from May, 2009 onwards.

9. The OA is disposed of with the above directions. The applicant shall present himself, within the stipulated time as stated above, before the office D.R.M Trivandrum with a certified copy of the this order, who would in consultation with respondent No. 5 post the applicant to any appropriate place. Order relating to regularization of leave, fixation of pay, payment of arrears (being the difference in pay admissible to him and the provisional pay being paid to him as per the directions at (c) above) and his position in the seniority list of Khalasi would all be passed within a period of three months from the date of communication of this order.

10. Under the circumstances, there shall be no order as to costs.

(Dated, the 07th October, 2009)


K GEORGE JOSEPH
ADMINISTRATIVE MEMBER


Dr. K.B.S.RAJAN
JUDICIAL MEMBER

cvr.