

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 346/96

TUESDAY, THIS THE 2ND DAY OF DECEMBER, 1997.

C O R A M:

HON'BLE MR. A. M. SIVADAS, JUDICIAL MEMBER

HON'BLE MR. S. K. GHOSAL, ADMINISTRATIVE MEMBER

P.G. Thilakan
S/o P.C. Gopalan,
Carriage & Wagon Fitter II,
Carriage & Wagon Superintendent's Office,
Irimpanam, Southern Railway,
Trivandrum Division
residing at Pulickaparambil,
B.M.C. P.O. Thrikkakara
Cochin-21.

..Applicant

By Advocate Mr. Majnu Komath

Vs.

1. Union of India represented by the
Secretary, Railway Board,
Rail Bhavan, New Delhi.
2. Divisional Railway Manager,
Southern Railway,
Trivandrum Division,
Trivandrum.
3. Divisional Personnel Officer,
Southern Railway,
Trivandrum Division,
Trivandrum.
4. The Chief Personnel Officer,
Southern Railway,
Madras.

..Respondents

The original application having been heard on 24.11.97, the Tribunal on 2.12.97 delivered the following:

O R D E R

HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

The applicant is now working as a Carriage & Wagon (C&W) Fitter II in the Trivandrum Division of the Southern Railway. He feels aggrieved by the impugned order at Annexure A9 rejecting his claim for the payment of arrears



arising out of the reclassification (upgradation) of the semi-skilled post of Wheel Lubricating Attendant (WLA) as skilled, which was ordered under Annexure A4 dated 14.1.93 by the respondent-3 i.e. the Divisional Personnel Officer, Southern Railway Trivandrum Division.

2. The case of the applicant briefly is as follows.

He was granted temporary status on 6.8.76 after his initial engagement as a casual labour khalasi. However, he was retrenched even after the grant of the temporary status, allegedly retaining his juniors in service. By virtue of the order of the Hon'ble High Court of Kerala in the judgment dated 7.8.80 in O.P.No. 1188/77, which had set aside the termination order and which became final, he was empanelled against the vacancies existing on 3.12.78 with all consequential benefits. However, when the next promotions of the applicant became due first as Khalasi Helper and then as a C&W Fitter Grade III, his turn was overlooked and allegedly his juniors were called for tests and promoted. Aggrieved by this action, he filed O.A. 842/86 before this Bench along with a few others similarly situated.

The Tribunal in its order dated 28.2.89 disposing of the O.A. directed that the applicant, along with similarly situated employees, who were applicants in the said O.A., should be considered for promotion immediately after they would complete two years as Khalasi helpers and after



passing the trade and other suitability tests and that if they were so promoted, the effect of the promotion would be from the dates of promotion of their immediate juniors with all consequential benefits and backwages as C&W Fitter, seniority and consideration for further promotion. The respondent⁴⁹ Department i.e. the Southern Railways, Madras, implemented that order and the applicant was promoted first as WLA Khalasi helper w.e.f. 1.8.78 and as C & W Fitter w.e.f. 8.9.86. Subsequently, the applicant was promoted as C & W Fitter Grade II on 28.5.90. In the seniority list of C&W Fitter Grade II in the scale of Rs. 1200-1800, the applicant has been placed at Sl. No. 120 reckoning his date of appointment as 6.8.76. His grievance is that the employees, whose seniority is admittedly below his even in the cadre of WLA/Khalasi Helper, have been considered as eligible for the arrears, i.e. lump sum arrears at the rate of Rs. 20/- per month for the period from 1.4.80 to 31.12.81 subject to a maximum of Rs. 400/- and actual arrears from 1.1.82 on account of reclassification of those posts as skilled. As a part of the order reclassifying the semi-skilled⁴⁹ post of WLA as a skilled post and granting the above arrears, one Sri P.P. Mohanan, who is admittedly his junior as per the seniority list at A3 having been shown at Sl. No. 138 vis-a-vis the placement of the applicant indicated at Sl. No. 120⁴⁹ there, has been declared as eligible for those arrears, the

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applicant has specifically contended.

The applicant has further stated that in spite of making representations against that order repeatedly, he was not granted the arrears. Finally, the 4th respondent i.e. the Chief Personnel Officer of the Southern Railway, Madras passed the impugned order at A9 dated 10.3.95 rejecting the claim of the applicant for the payment of arrears on the ground that the applicant did not actually hold the post of WLA at any point of time before his promotion as C&W Fitter w.e.f. 8.9.96 which itself was the first level skilled category post at that point of time and that, therefore, he is not eligible for any more benefit arising out of reclassification of the post of WLA as a skilled post, ^{to 49} in form of both lump sum arrears till 31.12.81 and the arrears from 1.12.1982.

3. The applicant has urged that in terms of the order passed by this Tribunal in O.A. 842/86 even at the level of Khalasi helper/WLA, and after his retrospective promotion to that grade, he should be deemed to have worked as a WLA and therefore, he should not be deprived of the arrears accruing to him on account of the reclassification of the post of WLA as a skilled post. According to him since the posts of WLA/Khalasi helper were reclassified (upgraded) as skilled posts before he was given the benefits of retrospective promotion to the skilled category of C&W

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Fitter, those benefits from an earlier point of time should be extended to him also. He has claimed these arrears at least from the time when his juniors were promoted to the post of Khalasi Helper/WLA.

The applicant has finally sought the relief that Annexure A9 order issued by the 4th respondent should be quashed. He has further prayed for a direction to be issued to the respondent Department, i.e. the Southern Railways, Madras, to treat the applicant as deemed to have held the post of WLA from the time he was given the benefit of promotion to the cadre of Khalasi Helper/WLA with retrospective effect and to consider him as eligible for arrears in terms of the provisions of Annexure A4 order on account of the reclassification (upgradation) of the post of WLA to the skilled category.

4. The respondent Department has strongly opposed these claims of the applicant on the principal ground that the applicant had not held the post of Khalasi Helper/WLA either before 31.12.81 or after that date till his promotion to the first skilled grade, i.e. as C & W Fitter which was ordered in compliance with the directions of the Tribunal in O.A. 842/86. The impugned order, while discussing the grounds on which the representation of the applicant was rejected, also mentions the fact that the applicant did not hold the post of WLA at any point of time before his promotion as C&W Fitter w.e.f. 8.9.86. In the

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detailed reply statement, the respondent Department has advanced basically the same ground though with certain further details.

That argument advanced on behalf of the respondent Department is to the effect that all the posts of WLA as on 1.8.78 were reclassified as skilled in terms of the Railway Board's letter dated 13.11.82, that there were 65 posts of WLAs in the Mechanical Department and that the benefit of reclassification i.e. promotions were offered to the incumbents of those 65 posts w.e.f. 1.8.78. According to the contentions made on behalf of the respondent Department all the employees, who had been promoted as WLA against the released vacancies and also those who actually held the post of WLA were granted the same benefits. It has been further urged on behalf of the respondent Department that only 50% of the posts of Khalasis were upgraded as Khalasi helpers w.e.f. 1.8.78 and 70% of those posts were upgraded subsequently as skilled categories under the Railway Board letter dated 10.7.85 at Annexure R3. It has been finally contended by the learned counsel for the respondent Department that since the applicant did not hold the post of WLA and since the benefits of the order at Annexure ⁴⁹~~A~~4 are available only to those who have actually held the post of WLA, those benefits cannot be extended to the applicant. Finally, on these grounds, the respondent

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Department has urged that the application should be rejected. We must observe here that the details regarding the difference between the proportion of posts of WLAs vis-a-vis Khalasi Helpers furnished by the respondent Department in the reply statement in the context of reclassification of these posts as skilled and the applicability based thereon of the benefits flowing from the A4 order are not relevant for the defence taken by them.

5. We have given careful consideration to the pleadings and other materials placed before us and heard the arguments of the learned counsel on either side.

6. It has not been denied by the applicant that in compliance with the order passed by this Tribunal in O.A. 842/86 and when he was given retrospective promotion as a C & W Fitter w.e.f. 8.9.96, even though the order of the Tribunal was dated 28.2.89, he has been paid the full backwages and other consequential benefits like seniority, consideration for further promotion based on such such seniority, etc. His case briefly is that since his promotion as Khalasi Helper was also given retrospective effect on account of the implementation of the other part of the order of the Tribunal in the same O.A. *RL*

RL a similar dispensation should have been ordered, namely that he is eligible for all the consequential

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benefits like backwages^{which is} should be granted to him in the promoted cadre of Khalasi helper also w.e.f. the date when he was so promoted retrospectively, i.e., 1.8.78. The applicant has stressed the fact that when the post of Khalasi helper was also upgraded as a skilled post, parallelly with the upgradation of the post of WLA as a skilled post, the benefit of the lumpsum arrears upto 31.12.81 and thereafter^{the 1.1.82} actual arrears w.e.f. 1.1.82, cannot be denied to him from 1.8.78 and to the time he was granted promotion as C & W Fitter w.e.f. 8.9.86.

In order to establish his right to the grant of these arrears, the applicant has relied upon the same order of the Tribunal dated 28.2.89 in the same O.A.No. 842/86 mentioned above. Since the respondent Department has also specifically relied upon the same order of the Tribunal on this aspect of treatment of the promotion of the applicant to the cadre of Khalasi helper, we consider it useful to quote that part of the order of the Tribunal in that O.A. which relates in particular to this matter. We accordingly quote para 4 of that order which is as follows:

"We have heard the arguments of the learned counsel for both the parties and have gone through the document carefully. The grade of Carriage & Waggon (C&W) Fitter being in the safety category the respondents have rightly stated that the applicants can be considered for promotion only after they have completed two years of service as Khalasi Helpers. They have also assured that once they were found suitable after being trade tested they will be granted promotion with retrospective effect from the date of immediate juniors were promoted. They have, however, qualified this assurance by stating that the

retrospective promotion will be given on a proforma basis. It appears that the promotion of the applicants as Khalasi Helper has held up because of the termination of their service which was set aside by the High Court and they were reinstated in 1981 when their juniors had been promoted on 1.8.79. Since the applicants have not in this application prayed for backwages and benefit of seniority etc., as Khalasi Helper with retrospective effect the same cannot be considered. However, there is no reason why once they are promoted as C & W Fitter they should be deprived of back wages from the date their juniors were promoted in the grade."

(underlined by us for emphasis).

7. The applicant has relied upon the last sentence of the above paragraph in that order of the Tribunal. According to him it lays down the rule that after the applicant was promoted as C&W Fitter, he should be given back wages from the date his juniors were promoted not only to the cadre of C & W Fitter, but also to the cadre of Khalasi helper. In our considered view, the above order of the Tribunal, as far as it relates to the claims of the applicant to backwages as a Khalasi helper, as distinct from his eligibility for benefits retrospectively in the further promotional category of C & W Fitter, is not amenable to any such construction. The portions underlined by us of the same paragraph in that order above clearly brings out the fact that the Tribunal in that order specifically stated that the claim of the applicant, along with a few other similarly placed employees, for payment of backwages, the benefit of seniority, etc. as a Khalasi helper with retrospective effect, could not be considered in the absence of a prayer to that effect. However, the Tribunal duly noted the assurance given by⁴² the respondent

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Department that it would grant retrospective promotion to the applicant as Khalasi helper, but only on a proforma basis. We, therefore, find it extremely difficult to agree with the contentions made by the learned counsel for the applicant that by virtue of that order of the Tribunal, as contained in the last sentence of paragraph 4 of the order passed by the Tribunal in O.A. 842/86 quoted above, the applicant has been held by the Tribunal as eligible for back wages and other consequential benefits even in the cadre of Khalasi Helper/WLA and that this eligibility was established once he was promoted as C & W Fitter Grade III. We have to observe that the latter is admittedly a promotional post from the cadre of Khalasi Helper/WLA and that the expression "from the date their juniors were promoted in that grade" appearing in the last sentence of the said para can only refer to the grade of C & W Fitter and by no means includes the grade of Khalasi Helper also, when the latter claim has been specifically discussed in the self-same order, but was not considered for lack of a prayer therefor. ^{as reversed by the applicant} That position is clearly untenable, given the fact that the para 4 should be read in entirety and in harmony with itself. Further, a similar prayer for these benefits retrospectively as a Khalasi Helper cannot be considered at this stage, ^{as} for such a prayer, which has now been made in the present O.A., is hit by Order II Rule 2 of

L. J.

Civil Procedure Code.

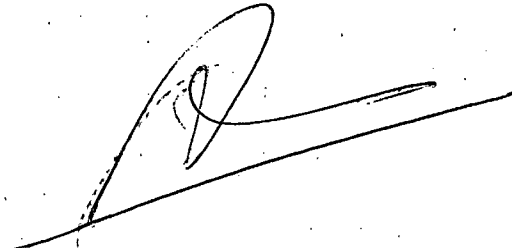
8. In the light of these detailed discussions made by us, we are unable to hold that the applicant is eligible for the reliefs prayed for by him, namely, that he should be treated as deemed to have held the post of WLA for the purpose of grant of the benefits under the Annexure A4 order only on account of the retrospective seniority granted to him even though he has not actually worked as a WLA/Khalasi Helper in the past.

9. In the event, the application is dismissed. There shall be no order as to costs.

Dated the 2nd December, 1997.



S. K. GHOSAL
ADMINISTRATIVE MEMBER



A. M. SIVADAS
JUDICIAL MEMBER

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LIST OF ANNEXURES

1. Annexure A(3): Seniority list No.V/P-612/Mech/Vol.4, dt. 3.3.93, issued by the 3rd respondent.
2. Annexure A(4): Order No.4/93(M) - V/P 524/IV/RC/Artizens/Vol.3 dated 14.1.93 issued by the 3rd respondent.
3. Annexure A(9): (Impugned Order) Copy of Order No.P(S) 535/IV/ TXR/CAT dt. 10.3.1995 issued by the 4th respondent.
4. Annexure R3: Letter No.E(P & A) I-82/JC/I dated 10.7.85 of Additional Director, Establishment (P & A) Railway Board, New Delhi circulated vide letter No.V/P.629/P. dated 24.7.85 of Divisional Personnel Officer, Southern Railway, Trivandrum.

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