

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No.392 / 2005

Friday, this the 18th day of January, 2008.

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HON'BLE MRS SATHI NAIR, VICE CHAIRMAN

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

A.Karunakaran Kutty,
S/o Shri V Appu,
AC Coach Attendant,
O/o the Senior Section Engineer,
Electrical , Southern Railway,
Mangalore.Applicant

(By Advocate Mr TC Govindaswamy)

1. Union of India represented by the
General Manger,
Southern Railway,
Headquarters Office,
Park Town.P.O.
Chennai-3.
2. The Chief Personnel Officer,
Southern Railway,
Headquarters Office,
Park Town.P.O.
Chennai-3.
3. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.
4. Shri P Gangadharan,
AC Mechanic Grade III,
Southern Railway,
Coimbatore Junction, Coimbatore.
5. Shri K Rajendran,
AC Mechanic Grade III,
Southern Railway,
Coimbatore Junction, Coimbatore.
6. Shri Sree Hari,
AC Mechanic Grade III,
Southern Railway,
Coimbatore Junction, Coimbatore.

7. Shri Krishna Das,
AC Mechanic Grade III,
Southern Railway,
Mangalore.

8. Shri CM Basheer Jan,
AC Mechanic Grade III,
Southern Railway,
Coimbatore Junction, Coimbatore.

9. Shri KJ Vincent,
AC Mechanic Grade III,
Southern Railway,
Palghat Junction, Palghat. -Respondents

(By Advocate Mrs. Sumathi Dandapani for R.1 to 3)

(By Advocate M/s TA Rajan and P Santhoshkumar for R.5 to 9)

This application having been finally heard on 8.1.2008, the Tribunal on 18.1.2008 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The dispute in this O.A is regarding the seniority position of the applicant vis-a-vis that of the respondents 4 to 9 in the cadre of AC Khalasis. According to the applicant, fixation of their seniority on the basis of the date of entry in the cadre is contrary to law, discriminatory and unconstitutional and it should have been based on the dates of their absorption. He has, therefore, prayed this Tribunal to:

- (i) Call for the records leading to the issue of Annexure A-8 and Annexure A-11 and quash the same.
- (ii) Call for the records leading to the issue of provisional seniority list Annexure A-5 dated 17.2.1999 and declare that grant of seniority to the respondents No.4 to 9 in the cadre of AC Khalasis taking the date of their entry into the cadre as 26.10.1988 is contrary to law, discriminatory and unconstitutional;
- (iii) Declare that the respondents No.4 to 9 are entitled to reckon their seniority in the cadre of AC Khalasis only with effect from



the date of their absorption as AC Khalasis on 22.4.1991 and not from any other date;

(iv) Call for the records leading to the issue of Annexure A-5 and quash the same to the extent it places respondents No.4 to 9 above the applicant;

(v) Direct the Respondents to revise the applicant's seniority above the respondents No.4 to 9 taking into consideration his date of absorption i.e. 1.3.1990, the date of entry in the cadre of AC Khalasis; and direct the respondents to grant all consequential benefits arising therefrom." The said Annexure A-5 document is challenged the Annexure A-5 seniority list of Electrical Staff AC side of Palghat Division dated 17.12.1999 showing the respondents 4 to 9 as senior to him.

2. The brief facts of the case are that the respondents 4 to 9 were initially appointed as Casual Labourers in the Electrical Department of Southern Railway on 18.11.1981, 12.1.1981, 6.12.1980, 21.11.1980 and 12.1.1981 respectively. While continuing so, they were transferred and posted in the Air Condition Wing by order dated 3.4.1986 of the Senior Divisional Electrical Engiener, Southern Railway, Palakkad. They were absorbed on regular basis vide Office Order No.J/E.10/91 dated 25.2.1991 wherein it has also been stated therein that their seniority in the AC side will be reckoned on obtaining clarification from CPO/MAS. On the other hand, the the applicant was initially appointed as a Casual Labour in the Electrical Department of Southern Railway on 1.8.1981 and attained temporary status in that capacity on 30.11.1981. By Annexure A-1 office order dated 29.8.1989 he was deployed in the AC side with effect from 5.6.1989. Later on, he was absorbed as AC Khalasy on regular basis vide Annexure A-2 order No.J/E.11/91 dated 25.2.1991 with the seniority to be reckoned with effect from 1.3.1990.



3. The respondents have issued a provisional seniority list of AC Staff, ACCA in the scale of Rs.800-1150 and AC Khalasis in the scale of pay of Rs.750-940 vide letter dated 20.1.1997 (Annexure R-1). In the said list of ACCA, the applicant was shown at Sl.No.14, but the respondents 4 to 9 were placed at Sl.No.7 to 12. One Shri P Sasi and one Shri M Surendran were placed at Sl.No.5 and 6 respectively in the said list. One Shri D Jayakumar was at Sl.No.3 of the AC Khalasi in the scale of Rs.750-940. He had earlier filed O.A.38/1996 before this Tribunal seeking revision of seniority in the cadre of AC Khalasi from the date he was deployed in the AC Wing from 5.6.1989 as against the seniority already granted to him with effect from 6.9.1993, i.e. the date from which he was regularly absorbed as Khalasi against a regular Group D post. The respondents' stand was that Shri P Sasi and others who were treated as senior to applicant were regularly absorbed as AC Khalasi from 22.4.1991 relaxing the prescribed minimum qualification as a one time exemption. This Tribunal allowed the said O.A holding that those persons were not entitled to be absorbed in the AC Wing of the Electrical Department of Southern Railway, Palghat Division. However, the said Shri P Sasi and others challenged the aforesaid order of this Tribunal before the Hon'ble High Court of Kerala in O.P.No.1028/1998 and this Tribunal's order was set aside by judgment dated 10.2.2000 (Annexure A-12) with the following observations:

"...Since we have already found that Chief Personnel Officer has got power to pass relaxation orders in consultation with higher authorities, we do not find any infirmity in the reasoning shown in those orders to grant relaxation of educational qualification."

4. When the respondents proposed to promote them, the applicant and other two persons approached this Tribunal vide O.A.370/1999, but the same was dismissed on the ground that the applicant had not challenged the seniority list itself. The operative part of the said order is as under:

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"The declaration sought that the proceedings taken pursuant to A-3 in so far as respondents No.3 and 4 are concerned are bad in law is on the ground that applicants are senior to the private respondents. As that position cannot be accepted since the seniority list published is not under challenge as per which the applicants are placed below private respondents, the applicants are not entitled to the declaration sought for.

In the light of what we have found, the third relief sought to restrain the 1st respondent from proceeding with A-5 to grant promotion to respondents 3 and 4 cannot be granted".

5. The respondents updated the seniority list of ACCA in the revised scale of Rs.2650-4000 vide Annexure A-5 provisional seniority list dated 17.12.1999. In the said seniority list, the applicant's name was shown at Sl.No.8 and the respondents 4 to 9 herein were shown as Sl.No. 1 to 6. The applicant made Annexure A-6 representation against the aforesaid provisional seniority list stating that Shri P Sasi and Shri M Surendran and the respondents 4 to 9 herein were ineligible to be promoted in AC side as they did not possess the minimum educational qualification of SSLC pass prescribed by the Railway Board in its letter dated 16.8.1985 and therefore, this Tribunal vide order in O.A.38/1996 dated 7.11.1997 (supra) held that they are back door entrants and set aside the erroneous promotions granted to them as ACCA. He had also sent Annexure A-7 representation dated 9.12.2002 for refixation of his seniority as well as granting promotion at par with his juniors. However, the respondents vide Annexure A-8 impugned order dated 12.11.2003 alerted some of the party respondents herein to be in readiness to appear for the trade test for the post of ACM Grade-III. Against this, the applicant has made Annexure A-9 representation dated 17.5.2004 on the same ground that they were not eligible to be absorbed as AC Khalasis from 22.4.1991 relaxing their minimum qualification. As no action was taken on his representations by the respondents, he approached this Tribunal by filing O.A.430/2004 and the same was disposed of on 16.7.2004 directing the



respondents to consider and dispose of Annexure A-5 representation dated 17.5.2004 within a period of two months. The impugned Annexure A-11 letter dated 10.9.2004 has been issued by the respondents in compliance of the aforesaid order of this Tribunal in O.A.430/2004. The relevant portion of the same are reproduced as under:

"As per IREM Vol.I para 321 (b) Staff concerned may be allowed to represent about the assignment of their seniority position within a period of one year after the publishing of the seniority list. No cases of revision in seniority lists should be entertained beyond this period. Therefore, at this distant date the seniority cannot be revised. Apart from the IREM provision mentioned above, it is to be mentioned that the relief sought by you in OA No.430 of 2004 is also same in nature. The principle of fixing seniority to Shri P Sasi and 8 others including the 3rd respondent i.e. Shri P Gangadharan as done has been upheld by High Court of Kerala/ERS vide orders dated 10.2.2000 in OP No.1028 of 98 and OP No.4278 of 98 filed by Shri P Sasi and 8 others including Shri P Gangadharan against the judgment of the Hon'ble Central Administrative Tribunal/ERS Bench in O.A.38/96 filed by Shri D Jayakumar, ACCA/MAQ. Since the seniority published in accordance with the orders of the Hon'ble High Court of Kerala in the OAs mentioned above has become final, and you had never made any representation against it, your request cannot be considered on this distant date."

6. As grounds for challenging the action of the respondents to promote respondents 4 to 9 as ACM Grade-III, the applicant has submitted that the said respondents were transferred and absorbed as AC Khalasis only with effect from 22.4.1991 as evident from Annexure A-12 judgment of the Hon'ble High Court of Kerala. However, they were allowed to count their service with effect from 26.10.1988 for the purpose of seniority in the AC Wing i.e. the date on which they were regularly absorbed as Group 'D' employees. According to the applicant, those respondents were not entitled to seniority with effect from 26.10.1988 as they came to be absorbed on transfer to the AC Wing only with effect from 22.4.1991. They have also stated that the Hon'ble High Court's judgment (Annexure A-12) has in unequivocal terms stated that the date of



absorption of respondents 4 to 9 was 22.4.1991 and official respondents are now estopped from counting any other date of absorption for the purpose of seniority in respect of respondents 4 to 9. On the other hand, the applicant who was regularly absorbed as AC Khalasi on 1.3.1990 is entitled to be placed above them in the seniority list in the cadre of AC Khalasis.

7. In the reply filed by the Senior DPO, Southern Railway, Palghat on behalf of respondents 1 to 3 through Senior Counsel Smt Sumathi Dandapani submitted that Annexure A-8 alert notice was based on seniority position available in the various seniority list which has become final. The applicant is now challenging Annexure A-5 seniority list dated 17.12.1999 after six years in 2005. They have further submitted that in Annexure A-5 seniority list published on 20.1.1999, the position of the applicant was at Sl.No.14 whereas respondents 4 to 9 were placed at 7 to 12. Applicant and two others had earlier filed O.A.370/1999 before this Tribunal challenging the promotion of Shri P Sasi and Shri M Surendran, who were at Sl.Nos. 5 and 6 respectively but the same was dismissed on the ground that the applicant had not challenged the said seniority list. Thereafter, the respondents have issued revised seniority list in 1999 and 2002 also and in all these lists, the applicant was shown junior to respondents 4 to 9. They have submitted that if the applicant was aggrieved by the aforesaid seniority list, he should have approached this Tribunal within the period of limitation i.e. before 17.12.2000. Therefore, they have submitted that the present O.A is barred by limitation, acquiescence and estoppel and therefore, is liable to be dismissed in limine.

8. On merits they have submitted that the applicant was absorbed as an AC Khalasi on regular basis vide Annexure A-2 order dated 25.2.1991 and his seniority was reckoned from 1.3.1990 since he was already empanelled as



Electrical Khalasi from that date. On the other hand, the respondents 4 to 9 were empanelled in Electrical side on 26.10.1988 and thus, their seniority was reckoned from 26.10.1988. In both the cases same yardstick has been applied for. They have also submitted that the earlier O.A.370/1999 filed by the applicant against Shri P Sasi and Shri M Surendran were dismissed on the ground that he had not challenged the seniority list. Respondents have published the seniority again on 17.12.1999 (Annexure A-5) and 14.11.2002 and the applicant did not challenge these seniority lists also. Accordingly, the seniority list have become final. They have also submitted that the Hon'ble High Court of Kerala had upheld the seniority assigned to respondents 4 to 9 in O.P.No.1028/1998 filed by Shri P Sasi and another against the orders of this Tribunal in O.A.38/1996 filed by Shri D Jayakumar.

9. Advocate Shri TA Rajan on behalf of respondents 5 to 9 have also filed a reply raising the same objections raised by the Railways stating that the O.A is barred by limitation, acquiescence and estoppel and therefore the same is liable to be dismissed. He further submitted that the respondents 4 to 9 were initially appointed as Casual Labourers in the Electrical Department of Southern Railway in 1980-81 and they were also granted temporary status in the year 1981. They were transferred and posted in the Air condition wing by Annexure R-5(d) by order dated 3.4.1986 and ever since they were working in the same Department. They were absorbed as AC Khalasis by Annexure A-13 order. Since they were empanelled as Electrical Khalasis on 26.10.1988, the said date was reckoned for the purpose of granting seniority to them. On the other hand, the applicant was initially appointed as a Casual Labourer on 1.8.1981 and granted temporary status on 30.11.1981 and transferred to the AC Wing only on 29.8.1989. Thus the respondents 4 to 5 are senior to the applicant in all aspects, viz, initial appointment, attainment of temporary status and deployment to AC Wing. The



applicant was regularly absorbed as AC Khalasi by Annexure A-2 order dated 25.2.1991 and he was assigned seniority in the AC side with effect from 1.3.1990 i.e. the date of his empanelment as Electrical Khalasi but the respondents 4 to 9 were regularly absorbed as AC Khalasis by Annexure A-13 order dated 25.2.1991. In the cases of both the applicant as well as respondents 4 to 9, the seniority was reckoned from the respective dates of their empanelment as Electrical Khalasis.

10. We have heard Shri TC Govindaswamy learned counsel for applicant, Smt Sumathi Dandapani Senior counsel for respondents 1 to 3 and Shri TA Rajan learned counsel for respondents 4 to 9. Though the applicant has sought a relief to call for the records leading to the issue of Annexure A-5 and to quash the same to the extent it places respondents No.4 to 9 above the applicant, he has not challenged the said seniority list in this O.A. Obviously, Annexure A-5 seniority list is dated 17.12.1999 and it is time barred. The applicant's counsel is well aware that the seniority once settled, it cannot be unsettled after a long period of time and therefore the said seniority has not been challenged here. We have seen that seniority list of AC Staff of Electrical Department of the Palghat Division was published initially on 20.1.1997 (Annexure R-1). In the said list the applicant was at sl.No.14 and the respondents 4 to 9 were at Sl.No.7 to 12. The applicant never challenged the said list and it has become final. Based on the said seniority list, the employees at Sl.No. 5 & 6 (S/Shri P Sasi and M Surendran) were considered for promotion as AC Mechanic Grade-III. The applicant filed O.A. 370/1999 challenging the proposed promotion but it was dismissed as the applicant had not challenged the seniority list. Therefore, the respondents have published the seniority list of AC Staff (Electrical Department) on 17.12.1999 (Annexure A-5) and on 14.11.2002. The applicant again did not challenge those seniority lists. He had also filed O.A.430/2004 wherein he was



contended that he was absorbed as a regular hand in the service of the Railway with effect from 1.3.1990 and respondents 3 and 4 (Shri P Sasi and Shri M Surendran etc.) were appointed on regular basis only with effect from 22.4.1991 and therefore, the applicant is senior to them but the official respondents have ignored this fact by inviting two of his alleged juniors Shri P Gangadharan and Shri K Rajendran for trade test for the post of ACM Grade-III. This Tribunal directed the respondents to consider the representation of the applicant dated 17.5.2004 and dispose of the same. It is in compliance of the aforesaid order of this Tribunal dated 16.7.2004 that the respondents have issued the impugned Annexure A-11 order dated 10.9.2004. Respondents have observed in the said letter that the applicant had earlier filed O.A.370/1999 for promotion as AC Mechanic in preference to his alleged juniors Shri P Sasi and Shri M Surendran. The said O.A was dismissed as the applicant had not challenged the seniority list published in this respect. The same relief has sought by the applicant in O.A.430/2004 also. They have also submitted that the principle of fixing the seniority of Shri P Sasi and 8 others including Shri P Gangadharan was upheld by the Hon'ble High Court of Kerala vide its judgement dated 10.2.2000 in O.P.No.1028/1998 and O.P.No.4278/1998 vide by Shri P Sasi and 4 others. The applicant has filed the present O.A also in a camouflage manner challenging the seniority of respondents 4 to 9 without actually impugning Annexure A-5 seniority list dated 17.12.1999 but at the same time seeking a relief to set aside the same. Shri P Gangadharan is the 4th respondent in the present case also. This O.A is liable to be dismissed on the same ground taken earlier in O.A.370/1999 filed by the applicant which was dismissed by this Tribunal as he had not challenged the seniority list. It is seen that the seniority list position of the applicant vis-a-vis respondents 4 to 9 have been settled way back on 20.1.1997 (Annexure R-1). The respondents have updated the said list twice thereafter in 1999 and in 2002. In all the seniority lists, the position of the



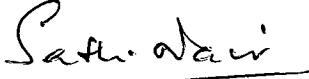
applicant was below respondents 4 to 9. The applicant also has not challenged the subsequent seniority list published in 1999 and 2002 within time before this Tribunal. As held by the Apex Court in a catena of cases, the seniority once settled cannot be unsettled after several years. As contended by the respondents, this O.A is therefore liable to be dismissed on the ground of limitation. On merits also, we do not find any infirmity in fixing the seniority position of the applicant as well as respondents 4 to 9. Respondents 4 to 9 were initially appointed as Casual labourers in the Electrical Department of Southern Railway on 18.11.1981, 12.1.1981, 6.12.1980, 21.11.1980 and 12.1.1981 respectively and they were granted temporary status in the year 1981. They were transferred and posted to the Air Condition Wing on 3.4.1986 and they joined the said wing on 11.4.1986. On the other hand, the applicant was initially appointed as Casual Labourer on 1.8.1981 and he was granted temporary status on 30.11.1981 and transferred to AC Wing on 29.8.1989. Thus the respondents are senior to the applicant in all respects, viz, initial appointment, attainment of temporary status and deployment of AC Wing. The applicant was absorbed as AC Khalasi by Annexure A-2 order dated 25.2.1991 and assigned seniority in the AC side with effect from 1.3.1990 i.e. the date of his empanelment as Electrical Khalasi. The respondents 4 to 9 were regularly absorbed as AC Khalasis by Annexure A-13 order dated 25.2.1991 and they were assigned seniority with effect from 26.10.1988. The respondents have adopted the uniform policy in both the cases by granting seniority from the respective dates of their empanelment as Electrical Khalasis. Moreover, the Hon'ble High Court of Kerala in the judgment in O.P.1028 & 4278 of 1998 dated 10.2.2000 (supra) has clearly held that the Chief Personnel Officer has got power to pass relaxation orders in consultation with higher authorities. We, therefore, do not find any illegality or irregularity in fixing the seniority of the applicant as well as respondents 4 to 9 on the said basis.

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11. In the above facts and circumstances, O.A is dismissed both on limitation as well as on merits. No costs.

Dated, the 18th day of January, 2008.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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