CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A. No.394 OF 2006

Friday this the 2nd day of March, 2007

CORAM :

HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER

T.D.Prasannan
Depot Material Superintendent(DMS)II,
Railway Electrification
Dr.Salim Ali Road, Ernakulam
Residing at : House No.32/1261
Anupam House
Kalavath Road, Palarivattom PO
Kochi - 682 025 : Applicant

(By Advocate Mr. T.N.Sukumaran)

Versus

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

2. Chief Personnel Officer
Headquarters Office,
Personnel Branch,Southern Railway,
Perambur, Madras - 23

3. Chief Project Manager
Railway Electrification,
Egmore, Chennai-8

4. District Controller of Stores
General Stores Depot(GSD),
Southern Railway,
Perambur, Madras - 23

5. Senior Personnel Officer
Railway Electrification,
Madras-Egmore, Chennai-8

6. Biju Kumar
DM SI, SD Electrification
Southern Railway, Kollam

7. Siva Subramanian, DSK II
D.C.O.S.G, Southern Railway
Perambur, Madras - 23 : Respondents

(By Advocate Mr. K.M.Anthru (R1-5))

The application having been heard on 02.03.2007, the Tribunal on the same day delivered the following :

ORDER

HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Shri T.D.Prasannan, Depot Material Superintendent (DMS) II, Railway Electrification Project, Ernakulam is aggrieved by the respondents orders refusing the pay fixation benefits from an anterior date.

2. Having joined the service in the Railways, he was on deputation to Railway Electrification Project as DSK III at the Stores Depot at Bangarpet in Karnataka from May 1992. Vide A-1 order dated 18.3.94 the applicant was one among seven DSK III grade officers in scale of Rs.1400-2300 who had been empanelled for the post of DSK II and who were promoted as such in scale Rs.1600-2660 and posted to ACOS/DSD/ED. In the said promotion order, the following conditions had been specified:

i) Promotions were provisional.

ii) They were to take effect from the date of assumption of higher responsibilities.

Iii) They were to duly convey their acceptance.

iv) The controlling officers were to be held personally responsible and accountable to ensure that the employees were relieved on or before 30.3.94.

v) The relief of the employee on promotion was not to be held up on any account and

vi) No employee was retained without the specific approval of the Headquarters.

The applicant conveyed his willingness for the promotion. But, he was not relieved for want of a successor. Despite the A-2 letter dated 22.3.94 written by the Senior Store Officer, Madras, the controlling officer of the applicant, to the District Controller of Stores to arrange for a substitute, to enable him to relieve the applicant, on or before 30.3.94, nothing came off. Vide A-3 letter dated 20.9.94, one post of DSK Grade II was created and the applicant was promoted thereto from 12.9.94, approximately six months after the expected date of relief vide A-1. The applicant was aggrieved not only because the six other officers in the A-1 list were promoted before 30.3.94 but also one Shri Sivasubramanian, an officer junior to him, was promoted with effect from 18.4.94. Vide A-4 representation dated 28.9.94, and A-7 dated 31.10.2005 ~~be~~ he brought to the notice of the superiors the fact that he was not given promotion in pursuance of the A1 order, in time, he was promoted after some delay purely due to administrative reasons, Subsequently, some of his juniors were also promoted superseding him and hence his request was that the anomaly be set right, the date of his promotion properly fixed and consequential benefits be given to him. His representation (A-7) was rejected vide impugned order A-8 dated 9.12.2005. It was mentioned therein that he was promoted with effect from 12.9.94 and pay fixation was available only from that date.

3. Aggrieved by this he has come before this Tribunal for the following reliefs:

i) Quashing of A-8.

ii) A declaration to the effect that he is entitled to promotion benefits like pay fixation, arrears of pay and seniority with effect from 18.3.94. The prominent ground on which he rests his case is that he was not relieved in time by his controlling officers and he should not be asked to bear the

consequences which affected him prejudicially.

4.. The respondents oppose the application on the following grounds:

i) Promotion is to take place from the date of assumption of higher responsibilities, which in this case is 12.9.94 as per A-1 order..

ii) There was some unavoidable delay in the creation of the posts which led to a slight delay in the promotion.

5. Heard the counsel and perused the documents.

6. It is seen that in A-1 order certain obligations are cast on both the employees and the controlling officers. The applicant has fulfilled his part of the obligation by promptly sending his acceptance of the offer. As regards the controlling officer, they were bound to relieve promptly the promoted employees within 10 days and the relief should not be held up for any account and retention if any should be only with the approval of the headquarters. The respondents have no case that the last mentioned condition of approval from the headquarters applies in his case. The controlling officer violated the other two preceding conditions as well. In equity, the applicant should not be expected to bear the cross for the failure of the controlling officers in promptly relieving him; it becomes all the more prejudicial when even his juniors have been promoted earlier than he. In the M.A.1051/2006, he has mentioned the 6th and 7th respondents, who are admittedly his juniors and who were promoted with effect from 25.4.94 and 29.4.94 respectively and prayed that he is entitled to be promoted to the said grade at least from 25.4.94. This appears to be reasonable.

7.. Under these circumstances and in the interest of justice, the O.A is allowed with a direction that the applicant is deemed to have been promoted with effect from 25.4.94 with consequential benefits allowed as per the rules.

8. No costs.

Dated, the 2nd March, 2007.

GEORGE PARACKEN
JUDICIAL MEMBER

N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

trs

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM EBNCH

R.A.14 OF 2007 IN O.A.No. 394 OF 2006

Monday, this the 6th day of August, 2007.

CORAM :

HON'BLE Mrs. SATHI NAIR, VICE CHAIRMAN
HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER

1. Union of India represented by General Manager
Southern Railway
Headquarters Office
Chennai – 3

2. The Chief Personnel Officer
Headquarters Office
Personnel Branch
Southern Railway
Chennai – 3

3. The Chief Project Manager
Railway Electrification
Egmore
Chennai – 8

4. District Collector of Stores
General Stores Depot (GSD)
Southern Railway
Perambur, Chennai – 23

5. The Senior Personnel Officer
Railway Electrification
Egmore, Chenai – 8 : Review Applicants
(Respondents 1 to 5 in the OA)

(By Advocate Mr.K.M.Anthru)

Versus

1. T.D.Prasannan
Depot Material Superintendent (DMS/1)
Railway Electrification
Dr.Salim Ali Road Ernakulam
Residing at House No. 32/1261
Anupam House
Kalavath Road Palarivattom
Kochi – 682 025

2. G.S.Bijukumar
DMS I SD Electrification
Southern Railway
Kollam

3. Sivasubramaniam, DSK II
DCO SG, Southern Railway
Perambur, Chennai - 23 : (Respondents applicant and Respondents 6 & 7 in O.A.)

(By Advocate Mr. T.N.Sukumaran)

The Review Application having been heard on 06.08.2007, the Tribunal on the same day delivered the following :

ORDER

HON'BLE Mrs. SATHI NAIR, VICE CHAIRMAN

The Review Application has been filed to review Annexure RA 1 order in O.A.394/2006 dated 2nd March, 2007, alongwith M.A430/07 for condonation of delay of 25 days. The counsel for respondents submitted that the question of limitation raised by them when filing reply in the O,A has not been considered by this Bench and sought a review of the order. Delay in filing the R.A is condoned. Review .Application is allowed. O.A. may be posted for re-hearing on 14.08.2007.

Dated, the 6th August, 2007.

GEORGE PARACKEN
JUDICIAL MEMBER

SATHI NAIR
VIC E CHAIRMAN

vs

CERTIFIED TRUE COPY
Date .....

Section Officer (Judl)

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

The 12th September, 2007

ORIGINAL APPLICATION NO.394 OF 2006

CORAM:-

HON'BLE MS. SATHI NAIR, VICE CHAIRMAN
HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

T.D. Prasannan,
Depot Material Superintendent (DMS)II,
Railway Electrification,
Dr.Salim Ali Road, Ernakulam,
Residing at House No.32/1261,
'Anupam House,Kalavath Road,
Palarivattom, PO,Kochi-682 025. .. **Applicant**
[By Advocate: Mr. TN Sukumaran)

-Versus-

1. Union of India,
   Represented by General Manager,
   Southern Railway,
   Headquarters Office, Chennai-3.
2. Chief Personnel Officer,
   Headquarters Office, Personnel Branch,
   Southern Railway, Perambur, Madras-23.
3. Chief Project Manger,
   Railway Electrification,
   Egmore, Chennai-8.
4. District Controller of Stores,
   General Stores Depot (GSD),
   Southern Railway,
   Perambur, Madras-23.
5. Senior Personnel Officer,
   Railway Electrification,
   Madras, Egmore,Chennai-8.
6. Biju Kumar, DMSI, SD Railway Electrification,
   Southern Railway, Kollam,
7. Siva Subramanian, DSK II, DCO SG,
   Southern Railway, Perambur,
   Madras-23. ....**Respondents**
   [By Advocates: Mr. KM Anthru)

This application having been heard on 5th September, 2007 the Tribunal delivered the following -

ORDER

(Smt.. Sathi Nair, Vice Chairman):

This Original Application has been reheard consequent to the review application (RA No. 14 of 2007) filed by the respondents, having been allowed.

2. Review Application has been filed on the sole ground that the original application was barred by limitation as the cause of action for the applicant has arisen as early as in 1994; and that the Tribunal had not properly appreciated the matter of delay and the OA was liable to be dismissed on the question of limitation alone.

3. We have heard Sri KM Anthru, learned counsel for the Respondents and Sri TN Sukumaran, learned counsel for applicant.

Learned counsel for the respondents has submitted that the OA was filed after lapse of 11 years and 8 months after the cause of action arose and the applicant had not stated any reason for the inordinate delay in the original application. Learned counsel has placed reliance on various judgments of the Apex Court, viz. *Government of Andhra Pradesh –Vs- MA Kareem (1991 SCC (L&J) 1206), GC Gupta-Vs- NK Pandey (1988 SCC (L&J) 260), Mal Com Lawrence Cecil D' Souza-vs- Union of India, (1976 (1) SCC 599) and also the decision of the Apex Court in Karnataka*

Power Corporation Ltd.-vs- Thanagappan (2006(4) SCC 322), wherein it was held that repeated representations will not cure the defect of latches. On facts, it was pointed out by the counsel for the respondents that the applicant was aggrieved by the Annexure-A/1 order dated 18.3.1994, whereby he was promoted as ACO. In the said order it was stated that the promotion will take effect from the date the employee assume higher responsibilities, but the applicant could not be relieved as no reliever has been posted in his place and later he was given the promotion scale of Rs. 1600-2660/- against a vacancy created with effect from 12.9.94 in the Railway Electrification Project in which the applicant was working and was charged against that post. Thereafter, his pay was fixed in the higher scale with effect from 12.9.94 and he was promoted to a higher post also. The applicant should have no cause and or grievance. The averment of the applicant that he had submitted various representations to authorities since then has been denied by the respondents.

Per contra, the counsel for the applicant submitted that the period of limitation is not reckoned on the basis of cause of action as per Sections 20 and 21 of the Administrative Tribunal Act, 1985 and the Annexure-A/8 order dated 9.12.2005 by which the respondents disposed of the applicant's representation and gave a final reply was impugned in the OA and that being the final order within the

meaning of Section 20(2)(a) and 21(1)(a) of the Administrative Tribunal Act, there is no delay in filing the original application, since the OA has been filed within one year and it is well within the period of limitation. On merit also it was submitted that the applicant had been suffering monetary loss compared to his juniors and this itself is a recurring cause of action and the applicant had submitted sufficient proof that he had been agitating before the respondents to get redressal of his grievances.

4. On perusal of the record, we find that immediately after issue of promotion order, Annexure A/1, in which the applicant was posted to ACOS, DSD, ED, the matter had been taken by the respondents themselves for arranging a suitable substitute for relieving him within the stipulated date. Annexure-A/3 order dated 20.9.94 was issued creating a post in the higher scale in the Division in which the applicant was working and immediately the applicant submitted Annexure-A/4 representation dated 28.9.94 for antedating his promotion also inviting attention to the earlier representation dated 6.7.94, enclosing a copy thereof, which is at Annexure-A/4A. On 6.1.95, vide Annexure-A/5, the respondents asked for further details of promotion of his immediate juniors on the correspondence and Annexure-A/6 shows that the matter was under their consideration. In the face of all this correspondence, the respondents cannot claim that the applicant had not pursued

the matter. Later the respondents considered the representation of the applicant dated 30.11.05 and rejected the same, against this the applicant has filed the present OA, which is well within the period of limitation.

5. Moreover, the applicant's representation was for dating his promotion at par with his juniors and non consideration of the same has resulted in loss of pay and emoluments compared to his juniors, which is also a recurring cause of action and hence not barred by limitation. The claim of the respondents that the benefit of pay fixation has been granted to the applicant from the date on which the new post is created and there was no post available at the time of his promotion is not a plausible argument at all as it is seen from the promotion order itself that the applicant was promoted against a post, which existed at that point of time. Had he been relieved by the respondents, the applicant would have joined the post within the stipulated time. The applicant on his own had not made any request to continue in the same division and the respondents themselves created a post at the same place only after a period of six months, hence the applicant should not suffer the loss of his promotion. The applicant had expressed his willingness on receipt of his promotion order to join the new assignment but he could not do so as he was not relived from the post he was holding.

6. For the aforesaid reasons, we do not see any ground to review the earlier order either on the question of merit or on the ground of limitation, as claimed by the respondents. The OA stands allowed and as per the earlier order dated 2nd March, 2007, the applicant is deemed to have been promoted with effect from 25.4.1994 with all consequential benefits, in accordance with Rules.

No order as to costs.

Dated the...12...th September, 2007

(Dr.KBS Rajan)
JUDICIAL MEMBER

(Smt.Sathi Nair)
VICE CHAIRMAN

R.A. 14/2007 in O.A.394/06

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Placed below is a Review Application filed by Union of India represented by General Manager, Southern Railway, Chennai and 4 others, respondents in O.A. 394/06 seeking a Review of the order dated 2.3.2007 in the O.A. passed by this Tribunal alongwith an M.A. to condone delay (M.A.No.430/2007).

The order in the O.A.394/06 was pronounced by the Division Bench consisting of Hon'ble Mr.N.Ramakrishnan, Administrative Member and Hon'ble Shri George Paracken, Judicial Member.

Since Hon'ble Shri N.Ramakrishnan, Administrative Member ceased to be a Member, it is submitted for orders for constituting a Bench for hearing as per Sub Rule (4) of C.A.T., Principal Bench Notification No.13/19/91-JA, dated the 18th February, 1992 which says that

> Review of order in which one of the Members has ceased to be a Member of the Tribunal
>
> "If one of the Member who passed the order is available in that Bench, the Vice Chairman shall constitute a Bench with him/her and any other Member of the Bench and place the petition for preliminary hearing.
>
> If not, the Vice Chairman shall constitute a Bench consisting of any two Members of that Bench".

In view of the above, this R.A. may be submitted before the Hon'ble Vice Chairman for constituting a Bench for preliminary hearing of the R.A.

VPB 8/6/07

Resubmitted pl

D.R.

Registrar

Hon'ble V.C.

To be posted before the Bench of VC & JM II

25/6/07

S.nair 25/6/07

Final order copy issued 10.8.07

25/6/07

Copies of notice ready on 25.6.07

25.6.07

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM EBNCH

R.A.14 OF 2007 IN O.A.No. 394 OF 2006

Monday, this the 6th day of August, 2007.

CORAM :

HON'BLE Mrs. SATHI NAIR, VICE CHAIRMAN
HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER

1. Union of India represented by General Manager
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5. The Senior Personnel Officer
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(Respondents 1 to 5 in the OA)

(By Advocate Mr.K.M.Anthru)

Versus

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3. Sivasubramaniam, DSK II
DCO SG, Southern Railway
Perambur, Chennai - 23 : (Respondents applicant and Respondents 6 & 7 in O.A.)

(By Advocate Mr. T.N.Sukumaran)

The Review Application having been heard on 06.08.2007, the Tribunal on the same day delivered the following :

ORDER

HON'BLE Mrs. SATHI NAIR, VICE CHAIRMAN

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Dated, the 6thAugust, 2007.

GEORGE PARACKEN
JUDICIAL MEMBER

SATHI NAIR
VIC E CHAIRMAN

vs

INDEX SHEET

LIST OF PAPERS RA. 14/07 IN OA. 394/06

Sl No.	No.of Papers on Record I	II	III	Date of Paper	Description of Paper
1.	4/5/07			Proceedings 1	Pages
2.	6/8/07			Final Orders 2	Pages
		(1)	(2)	4/5/07	RA
			(3)	4/5/07	MA