

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A No. 408 / 2006

Friday, this the 25th day of April, 2008.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE DR K.S.SUGATHAN, ADMINISTRATIVE MEMBER

K.C.P.Sivanandan,  
Retired Mail Guard,  
Madurai Division, Southern Railway,  
Residing at Archana House,  
Tuneri.P.O.Kozhikode.

....Applicant

(By Advocate Mr K.A.Abraham )

1. Union of India represented by  
the Secretary,  
Railway Board,  
Rail Bhavan, New Delhi.
2. The General Manager,  
Southern Railway,  
Park Town, Chennai-3.
3. The Divisional Personnel Officer,  
Southern Railway, Madurai.
4. The Divisional Railway Manager,  
Southern Railway,  
Madurai-625 010.

....Respondents

(By Advocate Mrs Sumathi Dandapani, Senior with Ms PK Nandini )

This application having been finally heard on 17.4.2008, the Tribunal on 25.4.2008 delivered the following:

ORDER

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

The applicant sought the following reliefs in this O.A.:

- i) to issue a direction to the respondents to review and revise the seniority of the applicant as directed in Annexure A1 order of the



CAT Madras in O.A.862/90 and to promote the applicant retrospectively from the effective date of his promotion in the grade of Mail Guard and pay the arrears of salary on fixation of pay and all other benefits which he would have been eligible due to his promotion.

- ii) To refix the pension and retiral benefits consequent on the refixation of his promotion to the grade of Mail Guard and to pay the arrears.

2. Brief facts of the case are that the applicant who belong to unreserved category was initially appointed as a Goods Driver (Grade 'C') with effect from 17.11.1976. Thereafter, his juniors who belong to the SC/ST category were appointed to the same grade on different dates. As those juniors who belong to the SC/ST category were given accelerated promotion and seniority in the higher grades superseding the applicant, he along with other similarly placed persons filed O.A.862/1990 before the Madras Bench of this Tribunal and the same was allowed vide order dated 15.10.1992 (Annexure A-1) with the following observations/directions:


"The question which arises in this case is whether a person who gets promotion on the basis of the reserved quota, is entitled to reckon the seniority in the promoted post from the date of his actual promotion or from the date from which he would have obtained promotion in the normal course but for the preferential treatment based on reservation. This point has been considered elaborately in O.A.85/89 and we have come to the conclusion that for the purpose of promotion under the general quota, the seniority should be not on the basis of the date of actual promotion but on the basis of the date on which promotion would have been granted in due course if reservation has not played its role. We apply the same principle to the facts of this case. Consequently we allow the application and we direct as follows:

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"We direct the respondents to revise the seniority of the applicants and the respondents in the category of Passenger Guards taking into account for the applicants, their actual date of promotion and for the respondents, the date on which they would have been granted promotion but for the preferential treatment based on reservation." "

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3. As the respondents did not implement the aforesaid orders/directions of this Tribunal, the applicant filed Contempt Petition No.80/1993 before the Madras Bench. Meanwhile, the respondents have filed SLP No.17704/1993 against the aforesaid order of the Tribunal. Vide order dated 1.11.1993 the Apex Court tagged the aforesaid SLP along with C.A.No.9272/1995 arising out of SLP(C) 6468/1987 (**Union of India v. Virpal Singh Chauhan and others** [1995 (6) SCC 684]. The Apex Court has also granted interim stay against the operation of the aforesaid impugned order passed by the Madras Bench of this Tribunal. The applicant did not appear before the Supreme Court and pursued the matter. Finally, the aforesaid SLP was dismissed on 15.1.1996 (Annexure A-3). Thereafter the applicant has also retired from service on 31.8.1996.

4. The case of the applicant is that inspite of the fact that the Apex Court has dismissed the SLP filed by the respondents against the order of the Madras Bench of the Tribunal in O.A.862/1990, the Department has not implemented the directions contained in the said order of the Madras Bench. According to him, the Railway Administration was bound to implement the above order of the Madras Bench and to have assigned the seniority and granted the promotion to him. If the order of the Madras Bench were implemented and revised the seniority of the applicant vis-a-vis his junior SC/ST employees, he would have been placed in all the grades above his junior SC/ST candidates. The applicant's counsel has also submitted that the respondent-Railways did not implement the order holding the view that the order was only with prospective effect from 10.2.1995 as held by the Apex Court in **R.K.Sabharwal v. State of Punjab** [1995(2) SCC 745] and finally settled in the case of **Ajith Singh and others(II) v. State of Punjab and others** [(1999)7 SCC 209] and also in **E.A.Sathyanesan v. V.K.Agnihotri and others** [2004(1) SLR 736]. **Sathyanesan's** case was decided by the Apex Court on 18.12.2003 reiterating the position explained in




Ajith Singh's case and **M.G. Badappanavar & another v. State of Karnataka and others** [2001 (2) SCC 666]. The contention of the applicant is that inspite of the above decisions, the respondent-Railways did not consider the case of the applicant and refix the seniority of the applicant and granted him the promotion.

5. The applicant has filed M.A.629/2006 for condonation of delay in filing the present O.A. He had submitted that SLP filed by the respondents against the orders of the Madras Bench (supra) was dismissed by the Supreme Court on 15.1.1996 and thereafter he retired from service on 31.8.1996. The applicant as well as the impleaded respondents could not enter appearance in the SLP due to financial constraints. They were not aware of the dismissal of the SLP on 15.1.1996. He had also submitted that he enquired the position several times in the office of the Railway at Madurai, but they did not give any information to him. He further submitted that he came to know that the respondents were not taking any steps to revise his seniority vis-a-vis the SC/ST candidates on the plea of prospectivity in R.K.Sabharwal's case. He has submitted that when this issue was finally settled in Sathyanesan's case which was decided by the Supreme Court on 18.12.2003, he submitted representation Annexure A(a) dated 8.5.2004 to the respondents to consider his case for revising the seniority and promotion. However, there was no response from the railway administration and the applicant had approached the Advocate for legal opinion and for filing the case before this Tribunal during the end of October, 2004. Thereafter, on the advise of the counsel he got the information about the fate of the SLPs before the Supreme Court and finally he got a certified copy of the judgment (Annexure A-3) on 14.2.2006 during the end of February 2006. Thereafter, he has entrusted the matter to his counsel for filing the O.A and the same has been filed on 1.6.2006. He has submitted that there was no wilful delay, laches or negligence on his part in filing the O.A. The delay was occasioned for the



reason stated above and it was beyond his control. He has also submitted that he is a pensioner and drawing pension every month and in terms of the judgment of the Apex Court in **M.R.Gupta** [1995(5) SCC 628], erroneous fixation of pay in the promoted post of Mail Guard lower than that of his juniors is a continuing wrong giving rise to recurring cause of action every month at the time of payment of pension. He has, therefore, prayed that condonation of delay of 3419 days in filing the present O.A. may be allowed.

6. On merits, the respondents have submitted that the private respondents 2 to 8 in O.A.862/1990 were promoted to the higher grades of Goods Guard, Passenger Guard, Mail Guard earlier to the applicant. They have further submitted that the Apex Court in **R.K.Sabharwal v. State of Punjab** [1995(2) SCC 745], had finally settled the gamut of the issues involved around reservation policy and it was made clear that the principles determined in **Union of India v. Virpal Singh Chauhan and others** [(1995) 6 SCC 684] would be operative from the date of judgment of R.K.Sabharwal's case i.e. 10.2.1995. Therefore, any promotion made and implemented by the respondent-railways prior to 10.2.1995 according to the rules for reservation whether under statutory rules or executive orders would not be reopened and new principles will be applicable only prospectively on or after 10.2.1995. Later in the case of **Ajith Singh and others(II) v. State of Punjab and others** [(1999) 7 SCC 209] it was held that if the promotion is made in excess of the roster made before 10.2.1995 are protected, such promotees cannot claim seniority. According to the respondents, the persons listed as respondents 2 to 8 in O.A.862/1990 were all promoted prior to 10.2.1995 and therefore the question of revision of seniority of respondents 2 to 8 to their disadvantage is beyond the purview of the respondents, as such action will run contrary to the judgment of the Apex Court in **Ajith Singh's** case (supra).



7. The respondents have further submitted that after the SLP against O.A 862/1993 of the Madras Bench was dismissed on 15.1.1996, the case of the applicant was considered but in the meanwhile the Supreme Court passed its judgment in **R.K.Sabharwal's** case in which it was made clear that the principle enunciated in the above case would come into effect only from 10.2.1995. Subsequently, the Government of India brought in the 77<sup>th</sup> Amendment Act, and Article 16(4A) was incorporated in the Constitution. As per the said Article, nothing shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the service under the State in favour of SC/STs, which, in the opinion of the State. Subsequently the Government of India passed the 85<sup>th</sup> Amendment Act which provide for protection of seniority to SC/ST employees for promotion.

8. On the question of limitation, the respondents submitted that the SLP was dismissed on 15.1.1996. It was only after that date the applicant was retired from service on 31.8.1996. No reason has been stated for not taking action for getting the benefit of Annexure A-1 order implemented before he got retired. They have also submitted that the applicant cannot rely upon the judgment of the Apex Court in **M.R.Gupta V. Union of India** [1995(5) SCC 628] as the same has no application in the instant case as the said case was purely for fixing the pay in accordance with rules and the aggrieved person therein were not paid the salary which should have been computed correctly in accordance with the rules. Since wrong computation was made contrary to the Rules, the Apex Court held that if the incumbent's claim is found on merits, he would be entitled to be paid accordingly in future and the question of limitation would arise for recovery of the arrears for the past period. On the other hand, in the present case, the applicant wants to get his seniority refixed as per the directions rendered in the Madras Bench of the Tribunal dated 15.10.1992. They have also relied upon the



judgment in **Ramesh Chandra Sharma v. Udam Singh Kamal and others** [(1999) 8 SCC 304] in which it has been held that the O.A is barred by limitation and could not be disposed of on merits in view of the statutory provisions contained in Section 21 of the AT Act, 1985. They have also relied upon the Apex Court judgment in **Ratan Chandra Samantha v. Union of India** [JT 1993 (3) 418] in which it was held as under:

"A writ is issued by this Court, in favour of a person who has some right and not for sake of roving inquiry-leaving scope for maneuvering. Delay itself deprives a person of his remedy available in law. In absence of any fresh cause of action or any legislation a person who has lost his remedy by lapse of time loses his right his right as well."

9. We have heard Shri K.A.Abraham counsel for applicant and Smt Sumathi Dandapani, Senior with Ms PK Nandini for respondents.


10. In this O.A, the applicant is basically seeking a direction from this Tribunal to implement the orders of the Madras Bench of this Tribunal in O.A 862/1990 dated 15.10.1992. It is seen that the applicant had filed Contempt Petition against non-compliance of the directions contained in the aforesaid order. However, the same was not followed up in view of the stay granted by the Apex Court in SLP No.17704/1993 filed by the respondents challenging the aforesaid order. By the applicant's own admission he did not appear before the Apex Court in the SLP filed by the respondents. In fact the applicant was not following it at all and he was not even aware of the fact that the SLP was dismissed on 15.1.1996 itself. The applicant was still in service when the aforesaid SLP was dismissed. He was retired only on 31.8.1996. Even after his retirement he did not pursue the matter. It was only on 8.5.2004 the applicant has sent a representation to the respondents requesting them to reconsider his promotion and fixation of his seniority in the category of Passenger Guard and Mail Guard respectively with effect from the date of his junior SC/ST candidates



were promoted. Even after filing the representation the applicant has not taken any further steps in the matter. It was only on 1.6.2006 the applicant has filed the present O.A. The applicant has himself was admitted there is a delay of 3419 days in filing the present O.A. The explanation given by the applicant .for such a long delay in filing the O.A is not acceptable as no specific of convincing reasons have given. As held by the Apex Court in **Ramesh Chandra Sharma's** case, in the circumstances the O.A cannot be considered on merits and it has to be dismissed on limitation. No doubt, the present case is hopelessly time barred.

11. In the above facts and circumstances of the case, we have no option but to dismiss the O.A on the question of limitation. Accordingly the O.A is dismissed. No costs.

Dated, the 25th April, 2008.

  
**DR K.S.SUGATHAN**  
**ADMINISTRATIVE MEMBER**

  
**GEORGE PARACKEN**  
**JUDICIAL MEMBER**

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