

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * *

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 26 APR 1989

APPLICATION NOS. 1898 to 1903, 1904 to 1911
1912 to 1930, 1970 to 1977/88(F)
305 to 307 & 336/89(F)

Applicants

Respondent

Shri A. Sagayanathan & 44 Ors

V/s

The Divisional Personnel Officer,
Southern Railway, Bangalore

To

1. Shri A. Sagayanathan
2. Shri P. Selvaraj
3. Shri R.P. Renugopal
4. Shri N. Venkatachalapathy
5. Shri E. Varadan
6. Shri K. Ramanujam
7. Shri M. Muniswamy
8. Shri Mohammed Asif
9. Shri Abdul Majeed
10. Shri H. Padmanabha
11. Shri Meeraiah
12. Shri Muthiyalappa
13. Shri N. Ramachandra
14. Shri Mohammed Riyaz
15. Shri S. Ramulu
16. Shri Lakshmaiah

17. Shri T. Shama Rao
18. Shri D. Dass
19. Shri P. Subbarayudu
20. Shri P. Armugam
21. Shri M. Eswar
22. Shri S. Venkatappa
23. Shri Srinivasan
24. Shri R. Sadasiva
25. Shri N. Purushotham
26. Shri Nataraj

(Sl Nos. 1 to 26 -

Khalasis
Southern Railway
Bangalore Division
Bangalore - 560 023)

27. Shri S. Sampath Kumar
28. Shri K. Shivananjaiah
29. Shri Prabhakaran

- 30. Shri R.S. Irudayaraj
- 31. Shri V.B. Fletcher
- 32. Shri R. Gopalanaidu
- 33. Shri Yedurappa
- 34. Shri D.T. Venkataramana
- 35. Shri Venkatesha
- 36. Shri D.S. Madanagopal Raju
- 37. Shri V. Srinivasa Rao
- 38. Shri C. Ananda Reddy
- 39. Shri R. Shashidharan
- 40. Shri Abdul Khayum

- 41. Shri Shivalingaiah
- 42. Shri Venkatesha
- 43. Shri Damodaran
- 44. Shri C. Corter
- 45. Shri Munavar Pasha

(Sl Nos. 27 to 45 -

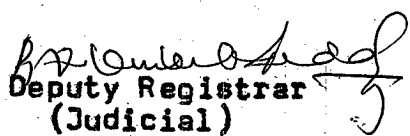
Fitters
Carriage & Wagon Department
Southern Railway
Bangalore Division
Bangalore - 560 023)

- 46. Shri M. Raghavendra Achar
Advocate
1074-1075, 4th Cross
2nd Main, Sreenivasanagar
II Phase
Bangalore - 560 050
- 47. The Divisional Personnel
Officer
Southern Railway
Bangalore Division
Bangalore - 560 023
- 48. Shri M. Sreerangaiah
Railway Advocate
No. 3, S.P. Building
10th Cross, Cubbonpet Main Rd
Bangalore - 560 002

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Enclosed herewith please find a copy of ORDER passed by this
Tribunal in the above said applications on 21-4-89.

Encl : As stated above


Deputy Registrar
(Judicial)

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 21ST DAY OF APRIL, 1989.

Present:

Hon'ble Mr. Justice K.S. Puttaswamy, Vice-Chairman.

&

Hon'ble Mr. P. Srinivasan,

.. Member(A).

APPLICATIONS NUMBERS 1898 TO 1930, 1970 TO 1977 OF
1988, 305 TO 307 AND 336 OF 1989

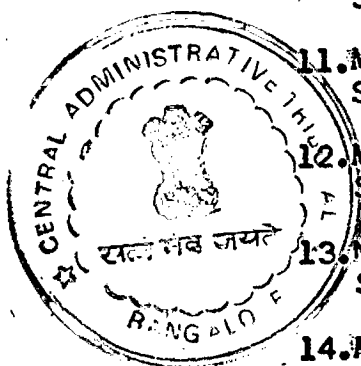
1. A. Sagayanathan, Major,
S/o B.A. Arul Dass,
2. P. Selvaraj, Major,
S/o M. Donnuswamy.
3. R. P. Renugopal, Major,
S/o A.M. Palanivelu.
4. N. Venkatachalapathy, Major,
S/o Narayanappa.
5. E. Varadan, Major,
S/o Eathiraju Naidu.
6. K. Ramanujam, Major,
S/o Krishnan.
7. M. Muniswamy, Major,
S/o Murugesh.
8. Mohammed Asif, Major,
S/o Mohammed Hussain.
9. Abdul Majeed, Major,
S/o Abdul Khader.
10. H. Padmanabha, Major,
S/o B.V. Hanumanthaiah.

.. Applicants 1 to 6
in A.Nos. 1898 to 1903
of 1988.

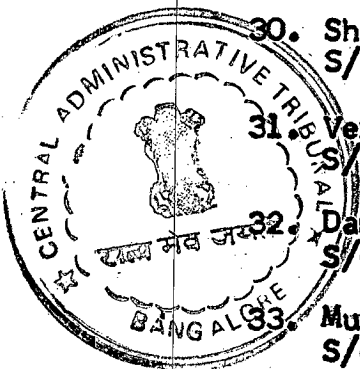
11. Meeraiah, Major,
S/o Guruvaiah.
12. Muthiyalappa, Major,
S/o Narasappa.
13. N. Ramachandra, Major,
S/o Narayanappa.

14. Mohammed Riyaz, Major,
S/o S. Mahaboob.

.. Applicants 1 to 8
in A.Nos. 1904 to
1911 of 1988.



15. S.Sampath Kumar, Major,
S/o P.S.Sivanesan.
16. K.Shivananjaiah, Major,
S/o Kallaiah.
17. Prabhakaran, Major,
S/o Vasunair.
18. R.S.Irudhyaraj, Major,
S/o Sabastin R.
19. V.B.Fletcher, Major,
S/o V.Fletcher.
20. R.Gopalanaidu, Major,
S/o Muniswamy Naidu.
21. Yedurappa, Major
S/o Huchappa.
22. D.T.Venkataramana, Major,
S/o Timmappa.
23. Venkatesha, Major,
S/o Keshappa.
24. D.S.Madanagopal Raju, Major,
S/o D.V.Seshagiri Raju.
25. V.Srinivasa Rao, Major,
S/o Venkoba Rao.
26. C.Annanda Reddy, Major,
S/o R.Muniswamy Reddy.
27. R.Shashidharan, Major,
S/o K.Raman.
28. Abdul Khayum, Major,
S/o Mohammed Sahib,B.
29. C.Cortier, Major,
S/o C.L.Cotter,
30. Shivalingaiah, Major,
S/o Chikkalingaiah.
31. Venkatesha, Major,
S/o Sonnappa.
32. Damodaran, Major,
S/o C.Gopal.
33. Munavar Pasha, Major,
S/o Mohammed Pasha.



.. Applicants 1 to 19
in A.Nos.1912 to
1930 of 1988.

34. S.Ramulu, Major.
35. Lakshmaiah, Major.
36. T.Shama Rao, Major,
37. D.Dass, Major.
38. P.Subbarayudu, Major.
39. P.Armugam, Major.
40. M.Eswar Major.
41. S.Venkatappa, Major.

.. Applicants 1 to 8
in A.Nos.1970 to
1977 of 1988.

Sl.Nos.1 to 14 and 34 to 41 are
working as Khalasis and Sl.Nos.
15 to 33 are working as Fitters,
Carriage and Wagon Department
in S.B.C.Division, Southern Rail-
way, Bangalore.

42. Srinivasan, Major,
 43. R.Sadasiva, Major,
 44. N.Purushotham, Major.
- All are working as Khalasis
in SBC Division, Southern
Railway, Bangalore.

.. Applicants 1 to 3
in A.Nos. 305 to 307
of 1989.

45. Nataraj, Major,
working as Khalasi in
SBC Division,
Southern Railway,
Bangalore.

.. Applicant in A.No.
336 of 1989.

(By Sri M.Raghavendra Achar, Advocate).

v.

The Divisional Personnel
Officer, S.B.C.Division,
Southern Railway,
Bangalore.

.. Respondent.
in all Applications.

(By Sri M.Sreerangaiah, Advocate.)

..4.



These applications having come up for admission/hearing, Hon'ble Vice-Chairman made the following:

ORDER

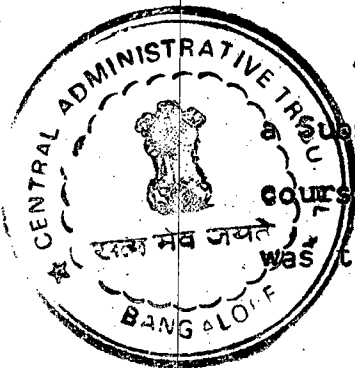
As the questions of law that arise for determination in these cases are common, we propose to dispose of them by a common order.

2. Application Nos. 1970 to 1977, 1898 to 1930 of 1988 earlier admitted were posted for regular hearing on 31-3-1989. On that day, Applications Nos. 305 to 307 and 336 of 1989 which had not been admitted earlier posted on that day or on later dates were taken up for hearing, without making formal orders of admission, as agreed to by both sides.

3. All the applicants initially commenced their career as 'casual labourers or Substitute Khalasis' on different dates from 1970 and onwards in one or the other divisions of Southern Railway. When working as 'Substitute Khalasis', they were selected or empanelled for regular appointments as Khalasis in the Railways on different dates. On that basis, they were later appointed as regular Khalasis from different dates.

4. One Sri S.Yates, who was similarly appointed as a Substitute Khalasi was empanelled and appointed in due course as a regular Khalasi on or about 31-12-1976. What was true of Yates was also true of many others.

5. In Office Order No.Y/P 524/W/C/Mech dated 23-5-1983 the Divisional Railway Manager, Mysore Division, Mysore ('DRM') promoted 151 Khalasis as Wagon Lubricant Attendant



(Skilled) ('WLA') in the then higher time scale of Rs.260-400 from 1-8-1978 on the terms and conditions stipulated in that order. Sri Yates, who claimed to be senior to some of them but had not been promoted, approached this Tribunal in 1986 in Application No. 518 of 1986 for directions to promote him to the post of WLA or Fitter from the date his immediate juniors were promoted. On 6-3-1987 a Division Bench of this Tribunal consisting of Sri L.H.A.Rego, Member (A) and Sri Ramakrishna Rao, Member (J) allowed the said application (Annexure-A in A.Nos. 1970 to 1977 of 1988 to the annexures of which we will hereafter refer). The operative portion of the order made in this case reads thus:

"20. In the result, we make the following order:

- (i) We direct the respondents to assign deemed dates of promotion to the applicant, to the posts of Wagon Lubricant Attendant/Skilled and Fitter, from the dates his immediate junior (with reference to his length of service in the post of Substitute Khalasi) was promoted to these posts and re-determine his seniority and re-fix his pay accordingly.
- (ii) Since, however, the applicant has not shouldered responsibility in these higher posts, he shall not be entitled to arrears of salary, till the date he is actually promoted to the post of Fitter according to his seniority, re-determine as above.
- (iii) This order be given effect to within a period of one month from the date of its receipt.

21. The application is allowed in the above terms but we make no order as to costs".

On the basis of this order, Varadarajan and 10 others approached this Tribunal on 8-9-1987 in Applications

Nos. 779 to 789 of 1987 for similar reliefs. On 20-6-1988 a Division Bench of this Tribunal consisting of one of us (Justice K.S. Puttaswamy) and Sri L. H.A. Rego, Member (A) allowed them in these terms:

"16. In the result, we make the following:

ORDER

1. We declare that these applications are governed mutatis mutandis, by the ratio of the decision in Yate's case.
2. Consequently, we direct R1 and R2 to notionally promote the applicants as Fitters, from the dates their immediate juniors (with reference to their length of service as Substitute Khalasis) from among R3 to R13, were promoted to these posts and to determine their seniority and pay accordingly, taking into account the increments that would have accrued to them during the intervening period.
3. The applicants, however, will not be entitled to any arrears of this account, not having actually shouldered responsibility in the posts of Fitters.
4. This order be complied with, within a period of two months from the date of its receipt.
5. The applications are disposed of in the above terms, but with no order as to costs.

We are informed that these orders have not been appealed by the Railway Administration.

6. Applicants in Applications Nos. 1970 to 1977, 1912 to 1930 of 1988 have been promoted as Fitters from 14/23-5-1986. But, the other applicants have not so far been promoted.

7. In these applications made on the dates set out below impleading the Railway Administration only, the applicants have sought for a declaration that they are governed by Yates case and the reliefs granted by this



Tribunal in Yates and Varadharajan's cases be extended to them on the ground that they are seniors to them and those promoted on 23-5-1983 by the DRM:

<u>Application Nos.</u>	<u>Date of Filing</u>
1898 to 1930 of 1988	5-12-1988
1970 to 1977 of 1988	12-12-1988
305 to 307 of 1989	28-3-1989
336 of 1989	31-3-1989

8. In their reply, the respondents have inter-alia urged that these applications were barred by time; that those promoted on 23-5-1983 by the DRM, who would be affected by granting the reliefs were necessary parties and that on merits, they were not entitled to the reliefs sought by them.

9. Sri M.Raghavendrachar, learned Advocate has appeared for the applicants in all the applications. Sri M.Sreerangiah, learned Advocate has appeared for the respondents in all those cases.

10. On the pleadings and contentions urged before us, the following points arise for determination:

- (1) Whether the applications made under Sec.19 of the Act were in time or not?
- (2) Whether the persons promoted on 23-5-1983 by the DRM were necessary parties to these applications, If so, whether their non-joinder disentitles the applicants for any relief?
- (3) Whether the applicants are entitled for the declaration and directions sought in their applications?

We now proceed to examine these points in their order:

RE: POINT NO.1

11. Sri Sreerangiah at the threshold has urged that these applications made on the dates noticed by us seeking



promotions on the basis of the order dated 23-5-1983 of the DRM from 1-8-1978 were barred by time and were liable to be dismissed in limine.

12. Sri Achar has urged that these applications were in time.

13. We have earlier noticed that the DRM in his order dated 23-5-1983 had promoted 151 persons as WLA from 1-8-1978. That order omitting the names of those promoted which is not material and on which there is no controversy also, reads thus:

" In terms of Railway Board's letter No.E(PQA) I-82/JC/1 dated 13-11-1982 received under CPO/MAS letter No.P(PC)528/G/Vol.II of 29-11-1982, the following employees are fitted against the reclassified posts of WLAs/Skilled in scale Rs.260-400 retrospectively from 1-8-1978 purely on proforma basis. They are also granted further increments provisionally. Payment of lumpsum arrears for the period from 1-4-1980 to 31-12-1981 at Rs.25/- p.m. subject to a maximum of Rs.400/- wherever admissible is indicated against each. Arrears amount is payable for the actual months during which an employee was on duty. Even if an employee was on duty for a day during the month, full month will count for admissibility. Period of LAP and LHAP will be considered as duty for this purpose. Arrears due to higher fixation is payable from 1-1-1982."

In this order, the DRM had promoted 151 persons as WLA from 1-8-1978.

14. Section 21 of the Act which stipulates the period of limitation for making applications under the Act reads thus:

21. Limitation:- (1) A Tribunal shall not admit an application, -

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;



- (b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where -

- (a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceeding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

- (b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

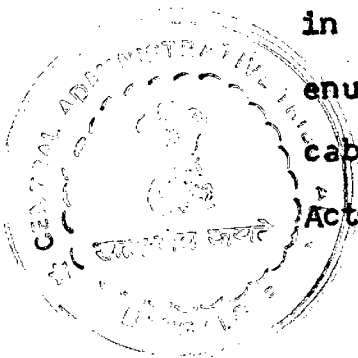
the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later."

This section is a complete code in itself.

15. In our country as in all civilised countries, laws regulating limitation have been enacted.

16. The Limitation Act, 1963 (Central Act No. 36 of 1963) that came into force from 1-1-1964 had replaced earlier Indian Limitation Act, 1908 (Central Act IX of 1908) regulating the periods of limitation for suits and other applications in Courts. The juristic concepts and the principles enunciated in the interpretation of these Acts are applicable in deciding the scope and ambit of Section 21 of the Act.

17. Justice Story in his 'Conflict of Laws' 8th Edition, page 794 has propounded the object of the limitation Acts in a civilised society in these words that have become classical:



" Statutes of limitation are statutes of repose, to quiet title, to suppress frauds and to supply the deficiency of proofs arising from the ambiguity and obscurity or the antiquity of transactions. They proceed upon the presumption that claims are extinguished or ought to be held extinguished whenever they are not litigated within the prescribed period. They quicken diligence by making it in some measure equivalent to right. They discourage litigation by burying in one common receptacle all the accumulations of past times which are unexplained and have now from lapse of time become inexplicable. It has been said by John Voet that controversies are limited to a fixed period of time, lest they should be immortal, while men are mortal".

The Judicial committee of the Privy Council in **LUCHMEE v. RANJEET** (20 WR 375 13 BLR177) dealing with the earlier Limitation Act in the country stated the object of that Act in these words:

"The object of the Limitation Act is to quiet long possession and to extinguish stale demands".

In **NAGENDRA NATH DEY AND ANOTHER v. SURESH CHANDRA DEY AND OTHERS** (AIR 1932 PC 165) the Judicial Committee of the Privy Council stated the rule of construction to be followed in interpreting articles of the Act in these words:

"The fixation of periods of limitation must always be to some extent arbitrary, and may frequently result in hardship. But, in construing such provisions equitable considerations are out of place and the strict grammatical meaning of the words is, their Lordships think, the only safe guide".

Our Supreme Court and the High Courts in the country have approved these principles. In **MEHARBAN KHAN AND OTHERS**

vs. UNION OF INDIA AND OTHERS [(1988) 8 A.T.C. 575]

a Full Bench of this Tribunal had exhaustively reviewed all the earlier cases and had stated these very principles.

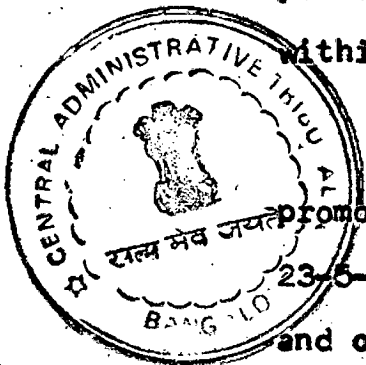
Bearing these principles, we must ascertain the scope and ambit of Section 21 of the Act and then apply the same to the facts of the cases.



18. Section 21 (1)(a) stipulates that an application under Section 19 of the Act for redressal of grievances shall be made within one year from the date - the final order has been made against the concerned person. This section stipulates or allows a liberal period of one year from the date of the final order.

19. Section 21(1)(b) of the Act which deals with reckoning of representations referred to in Section 20(2) of the Act, has no application to these cases and, therefore it is unnecessary for us to ascertain its scope and ambit.

20. Section 21(2) regulates the period of limitation to those cases to which Section 21(1) does not apply. This section deals with limitation for filing applications, on the constitution of this Tribunal and ^{where} no legal proceedings had been instituted on or before 1-11-1985, on which day, this Tribunal came into existence. Section 21(2) stipulates that an application for redressal of grievance that arose prior to the constitution of this Tribunal, however restricting the same for a period of three years before the constitution of this Tribunal, shall be made within a period of one year from the date of the final order or within a period of 6 months whichever is earlier.



21. In reality and in substance, the applicants claim promotions on the basis of the order made by the DRM on 23-5-1983. On the fact that the applicants were not promoted and others who are stated to be their juniors were promoted by the DRM on 23-5-1983, there cannot be any dispute.

We need hardly say that this is no way altered by the decisions rendered by this Tribunal in Yates and Varadarajan's cases. In other words, the applicants' grievance arose on 23-5-1983 on which day, the DRM made his order in favour of others. This order, which is the final order, is the starting point of the grievance of the applicants or the starting point for computing the limitation under the Act. On the terms of Section 21 of the Act, the applicants should have made these applications, in any event, on or before 30-4-1986.

22. We have earlier noticed that these applications are made long after 30-4-1986. From this it follows that these applications made under Section 19 of the Act are clearly barred by time.

23. On the foregoing discussion, we answer point No.1 against the applicants.

RE: POINT NO.2.

24. Sri Sreerangiah has urged that those promoted by the DRM on 23-5-1983 over whom the applicants claim promotions on the ground that they are seniors to them, were necessary parties to the proceedings and that in their absence these applications were liable to be dismissed in limine.

25. Sri Achar refuting the contention of Sri Sreerangiah urged that for granting the declaration sought by the applicants in terms of the earlier orders, all those promoted by the DRM on 23-5-1983 were neither necessary nor proper parties and that in their absence



also the reliefs can be granted by this Tribunal.

26. We have earlier noticed the reliefs sought by the applicants. If the reliefs sought by the applicants are to be granted, then they would all become seniors to those promoted on 23-5-1983, which necessarily means that all of them would be adversely affected [vide: Para 5 of the Full Bench decision dated 31-3-1989 of this Tribunal in T.S.GOPI AND OTHERS v. DEPUTY COLLECTOR OF CUSTOMS, CUSTOMS HOUSE, COCHIN AND OTHERS - O.A.Nos. K-238 of 1987 ETC.]. From this it follows that all those promoted on 23-5-1983 are necessary parties to these proceedings. But, strangely the applicants have not impleaded them. On this objection being raised by the respondent in his reply which was also pressed at the hearing, the applicants did not seek leave to implead them and remedy this defect. If that is so, then we do not think that we should give an opportunity to the applicants to implead them and remedy this defect. We are of the view that the principles enunciated by the Full Bench of this Tribunal in Gopi's case should only be read as only affording an opportunity to the applicants to remedy the defect and cannot be read as directing this Tribunal to compel the applicants to remedy that defect.

27. In Yates and Varadarajan's cases, those applicants had impleaded certain persons against whom they claimed promotions and seniority. On that, this objection was not examined and decided in those cases. But, that is not the position in the present cases.



28. As the necessary parties have not been impleaded and notified, even assuming that there is any merit in the claims of the applicants, then also these applications are liable to be dismissed for want of necessary parties.

29. On the foregoing discussion, we answer point No.2 against the applicants.

RE: POINT NO.3.

30. Sri Achar has urged that the cases of the applicants were in all fours with Yates and Varadarajan's cases and all of them were entitled for the very reliefs granted in those cases.

31. Sri Sreerangaiah disputing the correctness of the contention urged by Sri Achar has sought to distinguish these cases on more than one ground.

32. We have earlier found that these applications were barred by time and reliefs even if well founded cannot be granted for want of necessary parties. Both these conclusions go to the root of the matter and affect our jurisdiction to examine and decide the merits. If that is so, then we will not be justified in examining the merits and pronounce our views. We, therefore, decline to examine this point.

33. On our answers on points 1 and 2 these applications are liable to be dismissed. We, therefore, dismiss these applications. But, in the circumstances of the cases, we direct the parties to bear their own costs.

Sd/-
VICE-CHAIRMAN

Sd/-
MEMBER(A)

DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE
BANGALORE

(Notarially) I have signed this order on 18-4-1989 at Bangalore as I will not be in station and will be in Calcutta on 21-4-1989 to which date these cases stand posted for pronouncement.)

Sd/-
MEMBER(A) 18/4/89