

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
CIRCUIT COURT SITTING AT BILASPUR**

Original Application No 353 of 2004

Indore This the 18th day of October, 2005.

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

1. H.D. Meshram, S/o late Dashrath Meshram
Aged 68 years, R/o H.No.A-68, K.K. Nagar,
Post Office Mohan Nagar, District Durg (CG)
And 16 others. Applicants
(By Advocate – Shri S.Paul)

V E R S U S

1. Union of India, Ministry of Railway,
Through General Manager, South Eastern Central Railway,
Bilaspur.

2. Divisional Railway Manager, South Eastern Central
Railway, Raipur Division Raipur (CG).

3. Chief Personnel Officer, South Eastern Central Railway
Bilaspur (CG)

4. Divisional Personnel Officer, South Eastern Central
Railway, Bilaspur (CG).

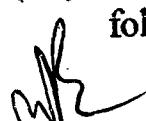
5. Mr.K.K. Saha (Since retired), Through Divisional
Railway Manager, South Eastern Central Railway,
Raipur Division, Raipur (CG). -Respondents
(By Advocate – Shri H.B.Shrivastava)

O R D E R

By M.P. Singh Vice Chairman –

By filing this Original Application, the applicants have
sought the following main reliefs :-

"(ii) Command the respondents to extend the benefit of
judgment in Aloysis's case in favour of the
applicants.
(iii) Consequently, command the respondents to grant the
following benefits to the applicants:



The pay-scale of Rs. 550-750 (RS)/1600-2600(RPS) from 1.8.1982/ 1.8.1983 with all consequential benefits till their retirement.

- (iv) Direct the official respondents to pay interest on delayed payment of DCRG after three months from the date of retirement till the date of payment of DCRG;
- (v) Direct the official respondents to pay the revised/enhanced pension with arrears thereto to the applicants.”

2. M.A.No. 515/2004 filed by the applicants under Rule 4(5)(a) of Central Administrative Tribunal (Procedure)Rules, 1987, seeking permission to file the present OA jointly, is considered and allowed.

3. The brief facts of the case are that the applicants were working under the respondent-railways and have retired. It is stated by the applicants that they were holding the higher posts/grade vis-à-vis the private-respondent Mr.K.K.Saha. The applicants are placing reliance on the provisional seniority list of Station Masters (for short 'SMs') in the pay scale of Rs.425-640 as on 26.2.1982 (Annexure-A-3). In this seniority list the name of private-respondent K.K.Saha is placed at serial no.54. The private-respondent K.K.Saha came on his own transfer from Waltair Division to Bilaspur Division and accordingly his case was governed as per Para 312 of Indian Railway Establishment Manual (for short 'IREM'), and he was given bottom seniority below all the existing and confirmed employees in the grade of Rs.425-640.

3.1 It is also mentioned by the applicants that both the groups of SMs and Assistant Station Masters (for short 'ASMs') were merged with effect from 11.3.1983 by the then South Eastern Railway. A combined seniority list of ASMs and SMs was prepared in the pay scale of Rs.425-640 in terms of Para 320 of the IREM, and further promotions were made on the basis of this seniority list vide order dated 5/6.12.1983 (Annexure-A-4). One

A.Alloysisus also finds place in the said promotion order at serial no.23. The private-respondent K.K.Saha was not within the zone of consideration for promotion in the grade of Rs.455-700 w.e.f 1.8.1983.

3.2 The applicants have further submitted that after the aforesaid promotion, a seniority list was prepared showing the position of SMs/ASMs as on 31.12.1987 (Annexure-A-5). In the said seniority list the names of the applicants are mentioned whereas the name of private-respondent does not find place. The pay scales of Rs.425-640 and Rs.455-700 were merged into one grade of Rs. 1400-2300 w.e.f 1.1.1986. The private-respondent stood retired on superannuation on 30.4.1986 in the scale of Rs.425-640 (Rs.1400-2300). In view of the aforesaid factual position, the private-respondent was not only junior but was also in the lower grade vis-à-vis the applicants. In this view of the matter, the applicants had the preferential right to get promotion in the scale of Rs.550-750(Rs.1600-2600 RPS) and in the scale of Rs.700-900(Rs.2000-3200) w.e.f 1.8.1982/1.8.1983.

3.3 The applicants have also submitted that a similar question was raised before this Tribunal by aforementioned A.Alloysisus by filing O.A.No.732/1998 and this Tribunal vide order dated 25.7.2003 held that the applicant in the said OA was entitled to promotion in the pay scale of Rs.550-750 as Dy.Station Superintendent (for short 'Dy.SS') and in the pay scale of Rs.700-900 as Station Superintendent (for short 'SS') Grade-II w.e.f 1.8.1982/1.8.1983 and also as Station Superintendent Grade-I in the scale of Rs.2375-3500 w.e.f 1.3.1993 with all consequential benefits at par with his next junior Shri N.Gopalan. The retrial benefits and pension were also directed to be revised accordingly. The present applicants have submitted that their case is still on a better footing, because in Aloysisus case (supra) his respective junior Shri N.Gopalan was in the same grade, whereas in the present case the private-respondent K.K.Saha was junior and was

in a lower grade. The applicants have preferred representations to the official respondents seeking extension of the benefit of the judgment of the Tribunal in the case of A.Aloysius (supra). Till now the official-respondents have not taken any decision in the matter. Hence, this Original Application.

4. The official-respondents in their reply have stated that in the South-Eastern Railway (now South-East Central Railway) with headquarters at Bilaspur, there has been a practice of calling for option from the incumbents who were appointed as ASMs in the initial grade. The employees so appointed were required to opt whether they want to seek further promotions in the cadre of ASMs or SMs. The employees who gave option to seek further promotions as ASMs were promoted according to their seniority/suitability up to grade Rs.425-640/ 455-700. They had a separate line of promotion up to grade Rs.455-700 amongst themselves. Such of the employees who had exercised their option to work as SMs were also entitled to seek further promotion in their own line up to the grade of Rs.455-700. The employees from both the channel of promotion had a common seniority group in grade Rs.550-750 designated as Dy.SS and SS-II in grade Rs.700-900. The majority of the employees joining the cadre of ASMs had preferred to seek further promotion as ASM as there were more number of posts in their channel of promotion as compared to SMs line of promotion where the number of posts in higher grade were less. The option once given by the employees joining in the cadre of ASMs was treated as final and the line of promotion opted by a particular individual could not be changed till promotion to the grade Rs.550-750 where both the channels were merged for the purpose of further promotions. Such a practice continued upto 1983. Thereafter, with the consultation of both the organized federations/unions, it was decided that the option system as prevalent in the cadre be discontinued, and all employees getting appointed in ASMs/SMs cadre shall seek promotion according to



their inter se seniority on the basis of instructions issued by the Railway Board and existed in other Railways. The employees who had opted to seek promotion in SMs cadre and were junior in lower grades as compared to their counterparts in ASMs category, there being less number of posts in higher grades in SMs line of promotion were aggrieved with the decision of dispensing with the system of option as prevalent prior to 1983 and ultimately approached the Hon'ble Supreme Court challenging the decision of the Railway Administration in dispensing with the option system. As the optees of SMs cadre were likely to get a lower position in the combined seniority list of 550-750 onwards, it was also contended by such employees of SMs cadre that such a decision of dispensing with the option could be given prospective effect and not with retrospective effect as such employees had already given their option which was irrevocable. Meanwhile the orders were issued by the Railway Board for restructuring in the cadre of SMs/ ASMs w.e.f. 1.3.1983 and the incumbents working as SMs were likely to lose their further chance of promotion in higher grades. The Hon'ble Supreme Court in the case of S.B.Sarkar and others Vs. Union of India and others, Civil Appeal No.2054/1990 decided on 30.4.1990 (Annexure-R-1), reported in (1990) 14 ATC 707 has held as under:

"In the result this appeal is disposed of by directing that the respondent authorities shall grant promotional benefit to those 204 SMs who had exercised option before 1983 in the same manner as it would have been if option had not been abolished in accordance with the earlier procedure provided they fulfilled the other requirements. While doing so those who had been promoted shall not be disturbed as directed by this Court on 30th July 1987. Further if as a result of this exercise posts in higher grade fall short, the respondents shall create adequate number of additional posts to overcome the difficulty. The respondents are further directed to complete all this exercise within six months. Persons promoted in pursuance of this order shall be entitled to all consequential benefits from the due dates. Appellants shall be entitled to consolidated costs which are assessed at Rs.5000/- to be payable by respondent no.2".



It is further stated by the respondents that as there were certain employees, who were not appellants in the afore-mentioned case before the Hon'ble Supreme Court but were identically placed at par with the appellants before the Hon'ble Supreme Court, the respondents had held that they should also be extended the same benefits as ordered by the Hon'ble Supreme Court, and accordingly a decision was taken at the zonal level to extend the same benefits to non-petitioners who were identically placed. Accordingly office orders were issued by the CPO,SE Railway in 1997 to promote such non-petitioners in grade Rs.550-750 / Rs.700-900 w.e.f. 1.8.82/ 1.8.83 who were found otherwise suitable. Accordingly, private-respondent no.5 (K.K.Saha) was promoted in the grade of Rs.550-750/ Rs.700-900 vide Annexures R-3 & R-4. The applicants in the instant O.A., who were well aware of the facts and judgment of the Hon'ble Supreme Court and the action of promoting private-respondent no.5 in higher grade prior to their promotion, did not come forward to challenge the action of the official-respondents in extending the benefits of promotion and they have approached this Tribunal taking a chance after a decision of the Tribunal in OA 732/1998, which was allowed.

4.1 The respondents further submit that the applicants, who were optees of ASMs cadre, have correctly been promoted on their turn to grade Rs.550-750/700-900. There can be no comparison of their case with that of private-respondent no.5 who was an optee of SM cadre. As the Hon'ble Supreme Court had already decided in the case of S.B.Sarkar (supra) that options given prior to 1983 shall stand good, private-respondent no.5 who happened to be an employee of SM optee group has correctly been promoted along with other such similarly placed employees. The claim of the applicants is based on incorrect appreciation of facts and they have tried to compare their case with incumbents who had separate line of promotion and the same has been upheld by the



Hon'ble Supreme Court. The contention of the applicants that private-respondent no.5 (K.K.Saha) was never promoted to grade Rs.550-750/700-900 is factually incorrect as this private-respondent superannuated on 30.4.1986 and the question of appearing his name in the seniority list circulated subsequently does not arise. The main ground taken by the applicants that private-respondent no.5 is junior to them in all grades is basically incorrect as the official-respondents have clearly indicated that this private-respondent was senior to all the applicants and promoted correctly on the basis of the decision rendered by the Hon'ble Supreme Court in the case of similarly situated petitioners who were ordered to be allowed the benefit. As regards the observation made by this Tribunal in para 9 of the order dated 25.7.2003 in OA 732/1998 (Annexure-A-1), the respondents have submitted that as per practice in force prior to 1983, different seniority lists were maintained for ASM/SM categories up to grade Rs.455-700 as particular incumbents were eligible to seek promotion in their own line up to grade Rs.455-700. Common seniority list was prepared for both line of optees from grade Rs.550-750 onwards on the basis of their entry in lower grade. As stated above, since the private-respondent no.5 superannuated on 30.4.1986, the question of his name appearing in the seniority list circulated does not arise.

4.2 The respondents have further stated that the applicants have wrongly claimed parity of their case with the private respondent. The applicants are all employees who had opted to seek further promotion in ASMs channel of promotion and private-respondent no.5 was an optee of SM channel of promotion. Both the channels of promotion had their own line of promotion up to grade Rs.455-700 and further promotion to grades Rs.550-750/700-900 was based on the basis of integrated seniority made out on the basis of non fortuitous length of service in lower grades. Since the private-respondent no.5 happened to be an optee of SMs line of promotion and exercised his option for that channel of promotion, he has been



extended the benefit of promotion from 1.8.1982/1.8.1983 on par with other such optees of SM cadre on the basis of judgment rendered by the Hon'ble Supreme Court. The matter having been finally decided by the Hon'ble Supreme Court, the private respondent no.5 has correctly been promoted to grade Rs.550-750/700-900 whereas the applicants who were all optees of ASM channel of promotion have been promoted to such grades on their turn. The applicants in the instant OA did not challenge the promotion of private-respondent no.5 as given on the basis of the judgment of the Hon'ble Supreme Court and cannot compare their case of promotion with that of private-respondent no.5. The representation submitted by the applicant Shri B.N.Ghosh is the outcome of an after thought on the basis of a decision rendered in OA732/98.

4.3 The respondents further submitted that a writ petition No.450/2004(Union of India & ors Vs.A.Aloysius & anr) had been filed by them before the Hon'ble High Court of Chattisgarh against the judgment delivered by this Tribunal in OA 732/98 (A.Aloysius Vs. Union of India & ors) and the said writ petition has been disposed of vide order dated 12.5.2005. Para 7 of the order dated 12.5.2005 is reproduced as under:-

“7.Respondent no.1 has retired from service way back on 31.08.1994 and it will not be proper for this Court to reopen the case of respondent No.1 to promotion after his retirement at this stage. The matter should be closed and respondent No.1 should be given all his financial benefits as per the judgment of the Tribunal in O.A.No.732 of 1998 dated 25.07.2003 and in accordance with the order dated 31.10.2003 passed by the Divisional Personnel Officer, South East Central Railway, Raipur quoted above. The amount of Rs.1,18,635/- (Rupees one lakh eighteen thousand six hundred and thirty five only) deposited with the Registry of this Court towards the said financial benefits together with interest, if any, accrued on the said deposit may be withdrawn by respondent No.1. We make it clear that the case of respondent No.1 will not be treated as a precedent while deciding the claims of all other officers who may be placed in the same position as respondent No.1”.



In view of the aforesaid facts, the respondents have submitted that the applicants are not entitled to any relief and this OA is liable to be dismissed.

5. We have heard the learned counsel for the parties and carefully perused the records.

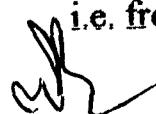
6. The question for consideration before us is as to whether the benefits granted to Shri K.K.Saha, respondent no.5 (who belonged to SM group and was non-petitioner in the case of S.B.Sarkar(supra), can be extended to the present applicants, who were optees of ASM group, on the ground that they had become senior to private-respondent no.5 consequent to the restructuring of the cadre.

7. The admitted facts of the case are that prior to re-structuring, the cadre comprised of ASMs at the bottom and SS at the top. Initial appointment of ASM was made in the scale of Rs.360-540. The promotional ladder bifurcated into (i) ASM to ASM and (ii)ASM to SM, both in the scale of Rs.425-640 (non-selection) and then Rs.455-700 (selection) before becoming one common source for promotion to Dy.SS/SM (Rs.550-750)(non-selection), Rs.700-900 SS (selection) and Rs.840-1010 SS (non-selection). For moving up the promotional ladder, every ASM was required to opt if he would proceed on the channel of ASM to ASM or ASM to SM. Before 1983, the practice of obtaining option was mandatory in the South-Eastern Railway and the ASMs were being promoted in their respective line of promotion, according to the options exercised by them. Subsequently, this practice was given up in terms of the orders issued by the Chief Personnel Officer, which had been accepted by the employees unions, as it was beneficial to a majority of the employees. But, the same resulted in dissatisfaction, as those ASMs who became SMs were entrusted with supervisory control and administrative responsibility. For this the ASMs recruited in the same batch must have been unhappy. And the SMs must, also have had the grievance as promotion in

higher scale was obviously delayed because the post of SM must have been fewer in number as compared to ASMs. Therefore, it was rightly abolished and was hailed by the two unions of employees. While doing so, no provision was made for those SMs who due to irrevocable option exercised prior to 1983 had been waiting for moving up and due to abolition of option and implementation of the alternative 'I' lost the opportunity while ASMs junior to them availed it. In these circumstances the Hon'ble Supreme Court in the case of S.B.Sarkar (supra) directed that the "respondent-authorities shall grant promotional benefit to those 204 SMs who had exercised option before 1983 in the same manner as it would have been if option had not been abolished in accordance with the earlier procedure". It is because of implementation of the aforesaid judgment of the Hon'ble Supreme Court that private-respondent no.5 was promoted to the grade of Rs.550-750/ Rs.7000-900 with effect from 1.8.1982/1.8.1983 as the benefit of the aforesaid judgment of the Hon'ble Supreme Court was extended to non-petitioners before the Hon'ble Supreme Court and private-respondent no.5 happens to be such a beneficiary.

8. It is not in dispute that all the applicants are employees who had opted to seek further promotion in ASM channel of promotion and private-respondent no.5 was an optee of SM channel of promotion. The Hon'ble Supreme Court had granted the benefit only to those SMs who had earlier given their option and have been waiting for quite some time for moving to the higher post in their channel of promotion . It was for this reason they were given the benefit of the higher scale.

9. Similarly, we find from the judgment of this Tribunal dated 25.7.2003 in the case of A.Aloysius (supra) that Shri M.Gopalan – private-respondent no.5 in the said case, was promoted to the grade of Dy.SS (Rs.550-750) and SS (Rs.700-900) from the same date i.e. from 1.8.1982 and 1.8.1983 respectively, as he was also a non-

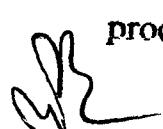


petitioner in the SMs Group. The position of the applicant A.Aloysius in OA 732/1998 and the applicants in the present OA is altogether different as they^{(the applicants in both the OAs) with} had been optees for promotion to the channel of ASM and not SMs Group.

10. As regards the reliance placed by the applicants on the decision of the Hon'ble High Court in the case of A.Aloysius (supra), we find that the Hon'ble High Court of Chhattisgarh vide order dated 12.5.2005 has clearly observed that "We make it clear that the case of respondent No.1 will not be treated as a precedent while deciding the claims of all other officers who may be placed in the same position as respondent No.1".

11. We further find that Shri M.Gopalan (respondent no.5 in OA 732/1998) and Mr.K.K.Saha (respondent no.5 in the present OA), were granted the benefit as a result of the decision of the Hon'ble Supreme Court in the case of S.B.Sarkar(supra).Although they were not the parties before the Hon'ble Supreme Court, but the Railways had decided that similarly placed persons were to be granted those benefits.

12. We further find that the applicants in the present case and respondent no.5 (K.K.Saha) were in different channel of promotion and, therefore, there is no question of having seniority or juniority before restructuring as both of them belonged to different channel before the merger of the cadre. The Hon'ble Supreme Court has also observed that prior to re-structuring, the cadre comprised of ASMs at the bottom and SS at the top. Initial appointment of ASM was made in the scale of Rs.360-540. The promotional ladder bifurcated into (i) ASM to ASM and (ii)ASM to SM, both in the scale of Rs.425-640 (non-selection) and then Rs.455-700 (selection) before becoming one common source for promotion to Dy.SS/SM (Rs.550-750)(non-selection), Rs.700-900 SS (selection) and Rs.840-1010 SS (non-selection). For moving up the promotional ladder, every ASM was required to opt if he would proceed on the channel of ASM to ASM or ASM to SM".



13. The applicants in the present case and the applicant in OA 732/1998(A.Aloysius) belong to the category of ASM, who opted for their channel of promotion from ASM to ASM. The Hon'ble Supreme Court in their judgment in the case of S.B.Sarkar (supra) had not granted the benefit to this category of persons and had granted the benefit to the category of SM only. Therefore, the present applicants cannot be granted the benefit, as they do not belong to the SM Group.

14. A similar matter was filed before the Cuttack Bench of the Tribunal in OA No.419/1994 (Shri T.C.Rao & 20 others Vs. Union of India and 3 ors), which was dismissed vide order dated 1.5.2000. In the said OA it has been found that the applicants had not mentioned in the said OA whether at the time of their recruitment they had exercised their option either to go from ASM to ASM(senior) or from ASM to SM.

15. We further find that in the case of A.Aloysius (supra) this Tribunal has not examined the aspect as to whether the applicant in the said OA and the private respondent Shri M.Gopalan belong to different groups and had given option to different channels, and the Hon'ble Supreme Court had granted the benefit only to those optees who had opted for the channel of promotion in SM Group. On the other hand, the Tribunal had granted the benefit in that case to the applicant on the basis of seniority. The benefit of the judgment of the Hon'ble Supreme Court in the case of S.B.Sarkar (supra), was to be given only to the optees for SM group. This point has neither been brought to the notice of the Tribunal nor has been examined by the Tribunal in the case of A.Aloysius and that is why the Tribunal has granted the benefit to the applicant in the said case on the basis of seniority and also non-availability of any rule, which was not the basis for grant of the benefit before the Hon'ble Supreme Court. It is also observed that the seniority list referred to in the order dated 25.7.2003 passed in the case of A.Aloysius (supra) refers to the seniority list which was issued on



9/12.7.1994. This seniority list was issued in 1994 before the implementation of the judgment of the Hon'ble Supreme Court, and after the abolition of the practice of taking option for different streams for promotion to different channels i.e. ASM channel and SM channel. The judgment of the Hon'ble Supreme Court in the case of S.B.Sarkar(supra) has been implemented with reference to the position and the date when the practice of giving option was in vogue and separate seniority lists were being prepared. We find from the seniority list of SMs issued on 26.2.1982(Annexure-A-3), that the name of private-respondent no.5 is appear~~s~~ at serial no.54 whereas the names of the applicants do not appear in that list as they had opted for promotion from ASM to ASM. The benefit of the judgment of the Hon'ble Supreme Court in the case of S.B.Sarkar, has been extended in the year 1996 to the category of SMs, to which the private respondent in both the OAs 732/1998 and the present OA belong, and the seniority list shows the position before implementation of the judgment. In the seniority list issued, after the implementation of the judgment of the Hon'ble Supreme Court, the private respondent could not have been shown junior. These aspects have not been brought to the notice of the Tribunal while deciding OA 732/1998 and the same have not been considered.

16. We further find that the name of the private-respondent in OA 732/98 Shri M.Gopalan and also the private-respondent no.5 Shri K.K.Saha in the present OA, appear in the seniority list issued on 26.2.1982 (Annexure-A-3) of SMs – which was a different group and channel of promotion. It was only in the year 1983 just before restructuring that the practice of taking option for two different channels of promotion i.e. from ASM to ASM, and ASM to SM was abolished. Both the channels of promotions were merged together and it was only after the merger of both the groups in 1983 that the seniority list of persons who opted from ASM to SM and from ASM to ASM was prepared in the year 1994

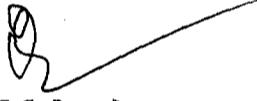


in which the applicant in OA 732/1998 – A.Aloysius and the present applicants were shown senior. This has happened due to the fact that the directions given by the Hon'ble Supreme Court in the year 1990 to promote the ASMs who had opted for SM channel of promotion, were implemented in the year 1996 only.

17. Now, from the facts mentioned above, it is abundantly clear that the case of the applicant in OA 732/1998 is not applicable in the instant case in view of the discussions made above.

18. In the conspectus of the aforesaid facts and the discussions made above, we do not find any merit in the present O.A. and the same is dismissed, however, without any order as to costs.

19. The Registry is directed to enclose a copy of the memo of parties along with this order for record. The Registry is further directed to supply a copy of memo of parties alongwith this order while issuing a copy of the same to the concerned parties.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

rkv

पृष्ठांकन सं ओ/न्या..... जवाहरलाल, दि.....
 प्रतिरिदिधि दाता दिनांक.....
 (1) समिति, दाता दिनांक..... जवाहरलाल, यावतीपुर
 (2) अधिकारी दिनांक..... दे ताउंसल
 (3) अधिकारी दिनांक..... दे ताउंसल
 (4) अधिकारी दिनांक..... दे ताउंसल
 सूचना एवं आवश्यकता के लिए अंगठी
 17/11/05 अधिकारी दिनांक

S.Paul 20/10/05
H.B.Prasad 20/10/05
POV 20/10/05

Recd
17/11/05