

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00963/2010

&

Original Application No.180/00049/2010

Thursday this the 9th day of August, 2018

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member

Hon'ble Mr. Ashish Kalia, Judicial Member

1. **O.A. No. 180/00049/2010** -

C.K. Manoharan,

Aged 50 years, S/o. C.N. Kesavan,

Senior Clerk, Office of the Senior Section Engineer/

Electrical/Southern Railway/ Ernakulam Marshalling Yard,

Residing at: Railway Quarter No. 58-A, Marshalling Yard,

Cochin – 682 032.

..... **Applicant**

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. Union of India, represented by the General Manager,
Southern Railway, Headquarters Office, Park Town P.O,
Chennai - 3

2. The Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum – 14.

3. The Divisional Electrical Engineer,
Traction Distribution,
Southern Railway, Trivandrum Division,
Trivandrum – 14.

4. Shri Dudachan,
Senior Clerk, Electrical Branch,
Southern Railway, Chalakudy Railway Station,
Chalakudy

5. Ms. Nirmala Ramakrishnan Nair,
Senior Clerk, Office of the Section Engineer,
Southern Railway, Electrical Branch,
Ernakulam Junction, Cochin – 682 016

..... **Respondents**

(By Advocate – **Mr. Sunil Jacob Jose for R1 to 3**
Mr. Martin G. Thottan R4 & 5)

2. **O. A. No.180/00963/2010**

C.K. Manoharan,
 Aged 51 years, S/o. C.N. Kesavan,
 Senior Clerk, Office of the Senior Section Engineer/
 Electrical/Southern Railway/ Ernakulam Marshalling Yard,
 Residing at: Railway Quarter No. 58-A, Marshalling Yard,
 Cochin – 682 032.

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3. The Divisional Electrical Engineer,
 Traction Distribution,
 Southern Railway, Trivandrum Division,
 Trivandrum – 14.

4. Shri. N. Prasannan,
 Senior Clerk, Office of the Senior
 Section Engineer/AC/Southern Railway,
 Trivandrum Central, Trivandrum.

5. Ms. Nirmala Ramakrishnan Nair,
 Senior Clerk, Office of the Section Engineer,
 Southern Railway, Electrical Branch,
 Ernakulam Junction, Cochin – 682 016

.... **Respondents**

(By Advocate – **Mr. Thomas Mathew Nellimoottil for R1 to 3**
Mr. Martin G. Thottan for R5)

This Original Application having been heard and reserved for orders on
 02.8.2018, the Tribunal on 09.08.2018 delivered the following:

ORDER

Per: Ashish Kalia, Judicial Member:

The applicant seeks the following reliefs in O.A. No. 49/2010:

“(a) Declare that the applicant must be deemed to have been absorbed
 as a Junior Clerk in the Electrical Department with effect from
 31.3.2001 (the date on which the 5th respondent was posted to cadre),
 18.7.05 the date on which A4 was issued or at least with effect from

14.02.06 i.e the date of A6, with all consequential benefits like seniority and promotion, in preference to respondents 4 and 5 in accordance with A5 orders of the Railway Board and direct the respondents to grant the benefits accordingly; or in the alternative,

(b) Direct the respondents to grant the applicant the benefit of promotions as Technician Gr.II and Technician Gr.I on par with his juniors in his parent cadre and direct further to grant the benefit of absorption as office clerk in an equivalent grade which the applicant would have held in the parent cadre as on the date of A7 i.e. 19.9.2006 with all consequential benefits emanating there from, including arrears of pay and allowances thereof;

(c) Award costs of and incidental thereto

(d) Pass such other orders or directions as deemed just and fit by this Tribunal. “

Applicant seeks the following reliefs in O.A. No. 963/2010:

“(i) Call for the records relating to the issue of Annexure A.1 and quash the same to the extent it relates to the 4th respondent.

(ii) Direct the respondents to consider and promote the applicant as an Office Superintendent in PB 9300-34800 with GP Rs. 4200 with consequential benefits of promotion with effect from the date of Annexure A.1.

(iii) Call for the records leading to the issue of Annexure A9 and quash the same.

(iv) Award costs of and incidental to this application;

(v) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case. “

Both these cases viz. O.A. No. 963/2010 and O.A.49/2010 were restored for re-hearing in pursuance of orders /judgement dated 22.6.,2017 in OP(CAT) No.574/2012 filed against order dated 16.5.2011 which has been set aside and remanded back by the Hon'ble High Court of Kerala with the following observation:

"8. In the said circumstance, we find that a reconsideration of O.A.No.49/2010 filed by the petitioner which ended up in Annexure A8 and reconsideration of O.A.No.963/2010 filed by the petitioner requires to be made by the Tribunal after hearing both the sides, though the verdict passed by the Tribunal stands in favour of the petitioner herein.

In the said circumstance, we find it appropriate to set aside Exhibit. P1 order passed by the Tribunal to cause the entire issue to be reconsidered and finalised after hearing both the sides. We accordingly make the interim order dated 17.2.2012 passed in this case absolute and set aside Exhibit. P1 and also Annexure A8 in O.A.No.49/2010 dtd 21.7.2010. We remit the matter to have both the above OAs restored and to finalise the merits in accordance with law, of course after affording an opportunity of hearing to the parties in both the OAs. Considering the sequence of events and the time gap, we hope that the matter will be finalised by the Tribunal at the earliest as expeditiously as possible."

2. As per the directions of Hon'ble High Court of Kerala, this issue has to be dealt with after hearing all the parties concerned afresh. It is the applicant herein joined the service of the Southern Railway as casual worker and subsequently absorbed as Khalasi with effect from 16.9.1982. He was promoted as Technician Grade III on 23.3.1992 and thereafter joined the newly formed traction distribution unit of the Southern Railway at Trivandrum without suffering any loss of seniority in the year 1998. While he was serving with the above organisation, applicant met with an accident and was medically found unfit to discharge the duty of Technician grade III carrying the pay scale of Rs.3050-4590. He was medically decategorised. But he was found fit only in respect of the jobs coming within the class C-ONE and C-TWO. A Certificate was issued by the Medical Superintendent of the Railway Hospital on 16.2.2000. He has been given a supernumerary post of Technician Gr.III vide Annexure A.1 in the scale of pay of Rs. 30560-4590 with effect from 16.2.2000.

3. The applicant was thereafter promoted as Office Clerk on 4.12.2000. On 19.9.2006 applicant was posted as Junior Clerk in Electrical Department and he joined on 25.09.2006. The Seniority List of ministerial Staff of Electrical Department vide No. V/P.612/VIII/EL/GS dated 10.1.2008 and applicant was shown as at Sr.No.1 in the said seniority list of clerk. Hence applicant made a representation to the respondent No.2 on 4.2.2008. Nam of his juniors Mrs.Nirmala Radhakrishnan Nair, Mr. Dudachan and Mr. N. Prasannan were shown in the seniority list of Senior Clerk requesting that his seniority be fixed with reference to the date of 23.3.1992 as per extant rules as they have joined the Electrical Department on loss of seniority on 31.3.2006 based on inter cadre transfer. A provisional seniority list was published by the respondent No.2 on 31.12.2005 as Annexure A10.

4. Respondents No.4 Dudachan and Respondent No.5 Mrs.Nirmala Ramakrishnan Nair both were made entry into the grade of Junior Clerk on 5.8.1994 and 31.3.2001 respectively. 5th respondent Mrs. Nirmala Ramakrishnan Nair joined the cadre of Junior Clerk of the Electrical Department of Trivandrum Division on loss of seniority only on 31.3.2001 based on inter-cadre transfer.

5. The respondents submitted in their written reply that the applicant's seniority was fixed in scale Rs. 3050-4590 on 10.01.08. It can be seen from the seniority list that the applicant was shown as the senior most junior clerk in the category of Clerk and the 4th Respondent herein had already been promoted as Sr. Clerk on 01.07.2006. It is, therefore, obvious that on the date of absorption, i.e., on 25.09.2006, the 4th Respondent had already become Sr. Clerk, i.e., with effect from 01.07.2006, while the applicant entered as Office clerk in scale Rs. 3050-4590 in the Electrical Department only on 25.09.2006 and the applicant can in no way seek seniority above the 4th Respondent.

6. It is further submitted that in terms of instructions contained in RBE No. 89/99 medically de-categorized staff should be allowed seniority in the grade of absorption with reference to the length of service rendered on non-fortuitous basis in the equivalent or corresponding grade before being declared medically unfit (para 1310 of the IREM, Vol. I). It is also submitted that when the applicant filed OA No. 49/2010, the applicant's seniority was reviewed on 8.6.2010. The Respondents submitted that while reviewing the issue, the extant rules on the fixation of seniority of medically de-categorized staff had been erroneously applied and consequently, an erroneous revision of seniority as shown in Annexure-R2 has been made.

7. As per the instructions contained in RBE NO. 89/99, medically de-categorized staff are entitled to seniority in the grade of absorption with reference to the length of service rendered on non-fortuitous basis in the equivalent or corresponding grade before being declared medically unfit. The applicant's seniority had been correctly fixed as shown in Annexure-R1. It is respectfully submitted that the revision of seniority made by Annexure-R2, re-fixing his place in the higher grade based on his date of entry as Technician Grade-III (23-3-92) in between Anoop S. Nair & N. Prasannan, the 4th Respondent herein, was wholly erroneous and the Respondents sincerely regret the error. The said error has actually resulted in undue claim made by the applicant in the OA seeking seniority above the 4th Respondent.

8. The respondents submitted that when OA No. 693/2010 was filed by Shri Dudachan & Anr, challenging the Annexure R1 in Annexure A7, the Annexure R2 herein, the whole issue was thoroughly examined by the

Respondents Railways in accordance with rules. The error crept in the revision of seniority had to be set right for which Show-Cause Notice was issued to the applicant as per the Annexure A9 Notice dated 27-09-2010 and he was asked to respond to Annexure A9 against the proposed course of action. The applicant preferred no representation even after a month and the 4th respondent was urging for his promotion against the existing vacancies. Similarly, the applicants in OA No.693/2010 also withdrew the OA taking notice of the corrective action taken by the Respondents Railways by issuing Show-Cause Notice to the applicant.

9. It was in the said circumstances, the Annexure A1 impugned order dated 01-11-2010 was issued, promoting the 4th respondent as Office Superintendent. It is submitted that though the applicant was shown as senior to the 4th Respondent by Annexure R2 dated 08-06-2010, the indisputable fact remains that the 4th Respondent was working as Office Clerk in scale of Rs. 3050-4590 with effect from 07-01-1992 and was promoted as Sr. Clerk in scale of Rs. 4500-7000 in the Electrical Department on 18.05.2006 whereas the applicant entered as Office clerk in scale of Rs.3050-4590 in the Electrical Department with effect from 25-9-2006 only. It can be seen from these that the applicant cannot in any way claim seniority over the 4th Respondent in the category of Office Clerk in scale of Rs.3050-4590 or for that matter in Sr. Clerk also in the Electrical department. It is respectfully submitted that the applicant cannot take advantage of an erroneous order based on which he now challenges the Annexure A1 order, which, though issued in the presence of Annexure R1, is in accordance with rules and the 4th Respondent has every right to be promoted ahead of the applicant. It is respectfully submitted that in view of the clear findings by the Respondents Railways that Annexure R1 of Annexure A7 is erroneous and legally impermissible, the applicant has been issued with the Annexure A9 Show-cause Notice and the correct rule provision has been clearly stated and the applicant's ineligibility to claim seniority over the 4th Respondent.

10. It is further submitted that if the erroneous revision of seniority made by order dated 8.6.2010 is allowed to continue, the 4th Respondent and Shri Doodachan & Smt. Nirmala Ramakrishnan Nair, the applicants in OA No.

693/10, would be deprived of their due promotion since they are actually seniors to the applicant and the seniority list dated 1.10.2008 makes it amply clear and the said seniority list was never challenged by anybody and has become final. It is, therefore, submitted that the applicant is not entitled to be considered for promotion as Office Superintendent at present as per his seniority.

11. Respondent No. 4 and No.5 also filed reply statement and contested the O.A. by adopting the stand taken by the official respondents.

12. Respondents have also filed the seniority list as R.1(2) dated 10.1.2008. In this seniority list C.K.Manoharan's seniority is shown in the list of Clerks in scale of Rs.3050-4590 from 23.03.1992 with notional seniority from 25.9.2006. Admittedly his juniors Dudachan and Ms.Nirmala K.Nair who joined the service on 5.8.1994 and 19.01.1983 were given seniority with effect from 1.7.2006 in the scale of 4500-7000 as Senior Clerk. Both are admittedly junior to the applicant.

SR. CLERK IN SCALE RS.4500-7000

1	Anoop S.Nair	Sr.DEE/O/TV C	11.06.1970	28.07.1970	01.11.2003
2.	N.Prasannan	SSE/AC/O/TV C	20.08.1954	05.08.1994	18.05.2006
3.	Dudachan	SE/O/CKI	26.06.1954	05.08.1994	01.07.2006
4.	Nirmala R. Nair	SSE/O/ERS	28.07.1961	19.01.1983	01.07.2006

CLERK IN SCALE RS.3050-4590

1.	C.K.Manoharan	SSE/O/ERM	28.12.1958	16.09.1982	23.3.1992/25.0 9.2006
2.	S. Kattapomman	ST/Sr.DEE/O/ TVC	15.02.1957	27.04.1977	31.12.1990
3.	Beena Santhosh	TRD/O/TVC	29.12.1975	01.11.2000	01.11.2000/19. 02.2007
4.	R. Ajikumar	SC Sr. DEE/O/TVC	20.05.1974	30.08.1990	30.08.1990/04. 07.2007

13. We have heard the learned counsel appearing for the parties and perused the pleadings and considered the rival submissions.

14. Respondents have taken the stand since his immediate junior has already been made senior clerks with effect from 1.7.2006, the applicant was given seniority with the date of absorption i.e. 25.9.2006. Obviously, the name has to be shown under their names in the seniority list. Whereas the learned counsel appearing for the applicant has drawn our attention to Rule

1309 and 1310 of IREM on fixation of seniority of disabled and medically decategorised persons.

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*“1309. **Benefit of past service to be allowed:** A disabled/medically decategorised Railway servant absorbed in alternative post, will for all purposes, have his past service treated as continuous with that in the alternative post.*

*1310. **Fixation of Seniority of disabled/medically decategorised staff absorbed in alternative employment:** The disabled/medically decategorised staff absorbed in alternative posts should be allowed seniority in the grade of absorption with reference to the length of service rendered on non-fortuitous basis in the equivalent or corresponding grade before being declared medically unfit. This is subject to the proviso that if a disabled/medically decategorised employee happens to be absorbed in the cadre from which he was originally promoted, he will not be placed above his erstwhile seniors in the grade of absorption.”*

15. A plain reading of the rule as above, states that the person who is medically decategorised should be allowed seniority in the grade of absorption with reference to the length of service rendered on non-fortuitous basis in the equivalent or corresponding grade before being declared medically unfit and he shall not be placed above his erstwhile seniors in the grade of absorption. If we apply this rule the entire service shall be reckoned for the purpose of seniority of the disable persons whereas the applicant's immediate junior Ms.Nirmala R. Nair and Dudachan were promoted w.e.f. 1.7.2006 and the applicant's seniority on notional basis has been fixed on 25.9.2006. In accordance with the above rule, the length of service rendered by the disable employee has to be reckoned for the purpose of calculating the seniority.

There are four ingredients of the Rule 1310 of IREM as under:

- (i) Medically decategorised should be allowed seniority in grade of absorption.
- (ii) Length of service rendered on non-fortuitous basis shall be counted.
- (iii) Equivalent on corresponding grade before being declared medically unfit (i.e. 16.2.2000)
- (iv) he shall not be placed above his senior.

16. Now we apply the same into the present case. Applicant was admittedly given seniority in the grade of absorption and counting the length of service he has rendered. He was put in the top of list of clerks in the scale of Rs. 3050-4590 with effect from 23.3.1992 and he was absorbed in the

electrical department on 25.9.2006, by the time his immediate juniors R.4 and R.5 stood promoted to the post of Sr. Clerk in the scale of Rs.4500-7000/- The applicant's name was put exactly after them. Now if we apply the last ingredient he shall not be placed above his senior on the date of absorption.

17. The date of absorption of the applicant in the Department was on 25.9.2006. Thus the Respondent has rightly reckoned his seniority. Now the applicant's grievance was that he should be given seniority with effect from the date of his immediate junior was given seniority, it cannot be given because Rule 1309 and 1310 of IREM (supra) say that medically decategorised staff absorbed in the alternative post meaning thereby the date of absorption is having significance or crucial date for continuance of service with that in alternative post. Rule has made clear the provision that the medically decategorised person should not be placed above his erstwhile seniors. That on that date of absorption the R4 and R5 got promotion to the next post of Senior Clerk.

18. The applicant cannot be placed above these two persons who have now become his senior by getting promotion on 21.7.2006 much earlier to his date of absorption on 25.9.2006 in the grade of clerk in the grade of 3000-4590. Though the applicant joined prior to Respondents No.4 and 5 in technical service, but in ministerial cadre on the post of Clerk he joined after them.

19. In view of the facts and circumstances of the case and legal position discussed above this Tribunal find no infirmity with the seniority assigned by the department to the R4 Dudachan and R5 Mrs. Nirmala Ramakrishnan Nair in (O.A. No. 49/2010) and it is held that the applicant cannot claim parity with them. Thus the present O.A.s fail to convince us. The same is devoid of merits, thus hereby rejected.

20. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER
sj*

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

O. A. No. 180/00049/2010
List of Annexures of the applicant

- | | | |
|---------------|---|--|
| Annexure A-1 | - | True copy of Office Order bearing No. 14/2000/EL dated 13.03.2000 issued by the 2 nd respondent. |
| Annexure A-2 | - | True copy of Note bearing No. V/ P.11/ XII/ Gr.C/ CON/2000/ST dated 04.12.2000, issued from the office of the 2 nd respondent. |
| Annexure A-3 | - | True copy of Memorandum bearing No. P(P) 135/ VII/TVC/Creation dated 06.11.2002 issued by the Chief Personnel Officer. |
| Annexure A-4 | - | True copy of Office Order bearing No. 40/05/PG dated 18.07.2005, issued by the 2 nd respondent. |
| Annexure A-5 | - | True copy of RBE No. 89/99 dated 29.04.99. |
| Annexure A-6 | - | True copy of order dated 14 February 2006, in OA No. 550/05 and connected case rendered by this Hon'ble Tribunal. |
| Annexure A-7 | - | True copy of Office Order bearing No. 52/06/ EL/ GS dated 19.09.2006, issued from the office of the 2 nd respondent. |
| Annexure A-8 | - | True copy of seniority list of Ministerial staff of the Electrical Department issued from the office of the 2 nd respondent under No. V/P.612/VII/EL/GS dated 10.01.2008. |
| Annexure A-9 | - | True copy representation dated 04.02.2008, addressed to the 2 nd respondent. |
| Annexure A-10 | - | True copy of provisional seniority list of Ministerial staff of Electrical Department as on 31.12.2005 issued from the office of the 2 nd respondent. |
| Annexure A-11 | - | True copy of representation dated 16.08.2008, addressed to the 2 nd respondent. |
| Annexure MA1: | - | True copy of memorandum bearing No.V/P 535/VIII/Office Clerk dated 08.06.2010 issued from the office of the 2 nd respondent. |

List of Annexures of the Respondents

- Annexure R-1 - A true copy of Memorandum bearing No. V/P 535/VIII/Office Clerk dated 08.06.2010 issued by the 2nd respondent.

O. A. No. 180/00963/2010

List of Annexures of the applicant

- Annexure A-1 - True copy of Office Order bearing No. 75/2010/EL (GS) dated 01.11.2010 issued by the 2nd respondent.
- Annexure A-2 - True copy of Office Order bearing No. 14/2000/EL dated 13.03.2000 issued by the 2nd respondent.
- Annexure A-3 - True copy of the Railway Board Order bearing RBE No. 89/99 dated 29.04.1999.
- Annexure A-4 - True copy of Note bearing No. V/ P.11/ XII/ Gr.C/ CON/2000/ST dated 04.12.2000, issued by the 2nd respondent.
- Annexure A-5 - True copy of Office Order bearing No. 40/05/PG dated 18.07.2005, issued by the 2nd respondent.
- Annexure A-6 - True copy of common order in OA No. 550/05 and 562/05 dated 14th February 2006 rendered by this Hon'ble Tribunal.
- Annexure A-7 - True copy of the reply statement dated 23 June 2010 filed by the official respondents in OA No. 49/2010 along with its Annexure R1.
- Annexure A-8 - True copy of the order dated 21st July 2010 in O.A. No. 49/2010.
- Annexure A-9 - True copy the show cause notice to the applicant under No. V/P.535/VIII/Office Clerk Vol. III dated 27.09.2010.
- Annexure A-10 - True copy of the very detailed reply dated 27th October 2010, applicant submitted.

List of Annexures of the Respondents

- Annexure R-1 - A true copy of letter No. V/P.612/VIII/EL/GS dated 10.01.2008.
- Annexure R-2 - True copy of letter No. V/P.535/VIII/Office Clerk dated 08.06.2010
- Annexure R-5 (a) - True copy of the office order bearing No. 52/ 06/ EL/GS dated 19.09.2006 issued from the office of the 2nd respondent.
- Annexure R-5 (b) - True copy of the Memorandum bearing No. V/ P.535/8/Office Clerk dated 08.06.2010 issued by the 2nd respondent.
