

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO. 170/00275/2016

DATED THIS THE 06TH DAY OF DECEMBER, 2017

HON'BLE DR. K.B. SURESH, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

Glen Cuffley
S/o R.J. Cuffley
Aged about 57 years,
Working as Technician Grade-1,
Office of Carriage & Wagon,
South Western Railway,
Bangalore City,
Bangalore

.....Applicant

(By Advocate Shri Izzhar Ahmed)

Vs.

1. Senior Divisional Personnel Officer,
South Western Railway,
Bangalore Division,
Bangalore.
2. Senior Divisional Mechanical Engineer,
South Western Railway,
Bangalore Division,
Bangalore.
3. The Union of India,
Through the General Manager,
South Western Railway,
Kesavapura,
Hubli
4. Shri O. Balaraj,
Working as Technician Grade-I,
Office of the Section Engineer
(Carriage & Wagon)
South Western Railway
Bangalore.

5. Shri T. Selvanarayana
Working as Technician Grade-I
Office of the Section Engineer
(Carriage & Wagon)
South Western Railway
Bangalore.

6. Shri Basheer Ahmed
Working as Technician Grade-I
Office of the Section Engineer
(Carriage & Wagon)
South Western Railway
Bangalore.

7. Shri A. Radhakrishna
Working as Technician Grade-I
Office of the Section Engineer
(Carriage & Wagon)
South Western Railway
Bangalore

(The respondents 04,05 and 06 are working under the Respondent No.2)

....Respondents

(By Shri N. Amaresh, Railway Standing Counsel for R-1 to 3.)

ORDER

HON'BLE PRASANNA KUMAR PRADHAN, MEMBER (A):

The facts of the case as evident from the contention made in the OA and the reply statement is as follows;

The applicant was initially appointed as a substitute Khalasi vide order dated 19.05.1980 (Annexure-A1) and was absorbed as temporary Khalasi vide order dated 09.03.1988 (Annexure-A3). In the seniority list published on 04.08.1989 he was at Sl. No. 36 and above the private respondents, i.e., Respondent No. 5 to 7. The applicant also submits that he was drawing higher pay than the private respondents following the 5th Pay Commission recommendation. Vide

order dated 02.04.1997 (Annexure-A7) he was promoted to the post of Carpenter Grade III with effect from 01.01.1997. He was further promoted to Carpenter Grade II vide order dated 03.06.2004. He submits that he was getting same pay as the other respondents who are junior to him in the grade of Khalasi as on 01.01.2006. The respondents were of the view that the Ancillary cadre have inadequate promotion opportunities as compared with C&W cadre and therefore in a joint meeting held with the representatives of the Trade Union it was decided to merge two cadres so that the employees are benefitted due to large number of posts in the C&W cadre and equal opportunities shall be available to both the C&W and Ancillary employees in the matter of promotion and career progression. It was also decided that the merged inter-se seniority shall be on the basis of entry into the present grade for the current incumbent of both cadres. Thereafter a combined seniority was prepared in which the respondents were placed above the applicant considering date of entry into the merged cadre. Thereafter the applicant made representation against his seniority saying that the date of the original appointment as Khalasi should be taken into consideration for giving him the inter-se seniority. When the matter was not considered by the respondents, he approached the Tribunal in OA No. 451/2013 and this Tribunal vide order dated 22.04.2014 (Annexure-A14) gave liberty to the applicant to file comprehensive representation and the competent authority was directed to examine the same and pass appropriate order as per rules. The applicant submitted detailed representation on 02.07.2014. Thereafter the respondents issued an order dated 04.06.2015 (Annexure-A16) rejecting his contention.

Aggrieved by the same, the applicant has filed the present OA seeking the following reliefs:

- i. *Set aside the impugned orders No. B/P. 612/V/C&W/Mech dated 04.06.2015 (Annexure-A16) as illegal, without prescribed rule and against the parameters of the rules of law in the present case,*
- ii. *Direct the respondents to consider the case of the applicant for promotion to the post of Technician Grade-I at par with the juniors and fixed the pay accordingly with all consequential benefits.*

2. The applicant in the OA submits that the post of Khalasi was existing in the Carriage & Wagon (C&W) in the Mechanical department and the respondents are junior to him in the post of Khalasi. The designation as Carpenter, Welder, Blacksmith, Riveter, Painter, Mechanist & Timer were called under one unit as Artisan staff/Ancillary Staff (C&W) wing as per revision of pay under 5th Pay Commission. The applicant and the Respondent No. 4 & 5 were promoted to the post of Carpenter Grade II and Painter Grade II respectively with effect from 01.11.2004. However the Respondent No. 4 & 5 was promoted to the post of Grade I with effect from 25.07.2006 whereas the applicant was promoted to the post of Carpenter Grade I on 09.03.2012 ignoring his eligibility. When all the persons were appointed as Khalasi in beginning, giving promotion to his juniors in the grade of Khalasi before him and placing them higher in the seniority list following the merger is unjustified. Therefore he prayed for granting the relief as sought for.

3. The respondents have filed a reply statement in which they have referred to service particulars of all the private respondents and submit that the applicant was given seniority in Khalasi grade. However he opted to go as Carpenter Grade III in Artizan category and was promoted as Carpenter Grade

III with effect from 02.04.1997. He continued in Carpenter Grade III which is a separate unit and progressed in the cadre of Artizan category. However the Respondent No. 4 – 7 continued in different category and they got promotion as Painter/Technician in terms of their seniority position in that categories. They further submit that the applicant was selected and promoted to Carpenter Grade III much earlier whereas his seniors and juniors continued in the lower post of Khalasi Helper in the Carriage & Wagon cadre. He continued in the Carpenter category and never agitated for reverting back to the C&W unit of the Mechanical department knowing that the seniors are still working as Khalasi Helpers. The isolated ancillary category trades such as Blacksmith, Trimmer, Painter & Carpenter are individual trades and seniority of these trades are maintained individually in each trade and the employees worked in these individual trades are considered for promotion based on seniority in that trade which resulted in some getting promotion earlier based on sanctioned strength as compared to others. Only because of the issue of limited promotion opportunities in some of the cadres it was decided to consider the merger of the ancillary cadre with that of the C&W cadre so as to improve the promotional opportunity of all. At the time of merger, it was decided to fix the inter-se seniority based on the date of entry of all employees into that specific cadre. Since the private respondents were promoted in their cadre earlier, they were placed above the applicant. The averment of the applicant that the date of appointment into Khalasi should have been taken into consideration at the time merger of the cadres is without any merit and cannot be supported by the rules. The movement of the applicant in the Carpenter category was by his

choice and accordingly he got promotion in this cadre. The inter-se seniority following the merger cannot be based on the initial appointment of Khalasi but the date of entry to the grade at the time of merger. Therefore the contention made by the applicant does not merit any consideration.

4. The applicant has also filed a rejoinder in which he has reiterated the submission made in the OA and submitted that the statement by respondents that he opted for Carpenter Grade III is incorrect and there is no document to prove the same.

5. We heard the learned counsel for both sides. They have practically reiterated the submission made in the OA and the reply statement. Both sides also have filed written arguments on the same line. The respondents have also enclosed the minutes of the joint meeting held with the Trade Union for merger of cadre along with their written statement.

6. We have carefully considered the facts of the case and submissions made by either side. The main issue that have been agitated in the OA is the inter-se seniority following the merger of the cadres and promotion allowed to the private respondents before the applicant. Based on the order passed in the earlier OA filed by the applicant, i.e., OA No. 451/2013 and the representation submitted by the applicant the respondents have issued a detailed order explaining the entire position. It is evident from the records that though the applicant and the respondents joined as Khalasi they went to different trades like Blacksmith, Painter, Carpenter, Technician etc. The applicant was promoted as Carpenter Grade III in 1997 through a trade test and thereafter as

Carpenter Grade II. The respondents who have reportedly joined as Khalasi after the applicant were promoted in Painter category or Technician category as per their seniority in their grades and their promotion were on different dates. It also appears from the submission made that the promotional opportunities in different categories were different based on the vacancy position and the position of seniority as per the specific trade. It also says that though the applicant as well as Respondent No. 4 & 5 got Grade II in the Carpenter/Painter category in 01.11.2003, the Respondent No 4 & 5 got Painter Grade I in 2006. Similarly the Respondent No. 6 & 7 got Grade III category in 2005, Grade II in 2008 and Grade I in 2010 in view of the vacancy in that category. However the applicant did not raise the issue on that point of time and prior to merger of the posts maybe because of the fact that he was aware of the fact that the promotion opportunity in different trade was different.

7. Considering the fact of differential promotion opportunity and due to lower number of posts in some of the category effecting the promotion of persons in that particular trade, the respondents in consultation with Trade Union, decided to merge Ancillary cadre with C&W cadre so that equal opportunities shall be available to all the employees in both C&W and Ancillary category. Following the merger, the inter-se seniority had to be prepared and it was decided that the merged inter-se seniority shall be on the basis of entry into the present grade for the current incumbent of both cadres. We are of the view that the approach taken by the respondents for fixing inter-se seniority is quite logical. This was also done in consultation with employees union. Accordingly in the inter-se seniority the applicant was placed lower than the

respondents who had got promotion to the Grade I category before the applicant. The seniority position of the applicant vis-à-vis respondents have been explained in detail in their communication dated 04.06.2015 (Annexure-A16) in response to the representation made by the applicant. On going through the said communication we are of the view that the stand taken by the respondents in preparation of seniority list in the event of merging of different cadres in single unit is logical and we do not find anything irregular or unjustified in the order passed by the respondents.

8. On detailed consideration of facts and circumstances of the case, we are of the view that the contention made by the applicant in the present OA is clearly devoid of merit and accordingly the OA stands dismissed. No order as to costs.

(PRASANNA KUMAR PRADHAN)
MEMBER (A)

(DR. K.B. SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00275/2016

Annexure A1: Copy of letter No. Y/P.407/I/Sub./Advice dated 19.05.1980

Annexure A2: Copy of Memo No. Y/P.407/V/SBC/MG dated 26.09.1980

Annexure A3: Copy of letter Office Order No. 113/Mech/88 dated 09.03.1988

Annexure A4: Copy of seniority list of Khalasi letter No. B/P.612/V/C&W dated 04.08.1989

Annexure A5: Copy of Memorandum No.B/P.536/V/Gr-'D' (C&W) dated 29.11.1991

Annexure A6: Copy of list of Ancillory (C&W Wing) staff

Annexure A7: Copy of Office Order No : P/MCW/35/97 dated 02.04.1997

Annexure A8: Copy of Office Order No : MCW/33/06/04 dated 03.06.2004

Annexure A9: Copy of Office Order No : 197/03/2009/ANC/Gr.C dated 07.03.2009

Annexure A10: Copy of provisional inter-se seniority list of Artizan/C&W with effect from 20.12.2010

Annexure A11: Copy of letter No.B/P.612/V/C&W/Mech dated 01.10.2012

Annexure A12: Copy of representation of the applicant dated 23.11.2012

Annexure A13: Copy of reply statement in OA No. 451/2013 dated 21.04.2014

Annexure A14: Copy order in OA No. 451/2013 dated 22.04.2014 of the Central Administrative Tribunal, Bangalore Bench

Annexure A15: Copy of representation of the applicant dated 02.07.2014

Annexure A16: Copy of letter No. B/P.612/V/C&W/Mech dated 04.06.2015

Annexure A17: Copy of letter seeking information under RTI filed by the counsel for the applicant dated 29.01.2013

Annexure A18: Copy of letter No. B/P.180/RTI/Sr.DPO/70/01/13 dated 12.03.2013

Annexure A19: Copy of letter seeking information under RTI filed by the counsel for the applicant dated 15.05.2013

Annexure A20: Copy of letter No. B/P.180/RTI/Sr.DPO/361/06/13 dated 26.06.2013

Annexure A21: Copy of letter seeking information under RTI filed by the counsel for the applicant dated 03.07.2015

Annexure A22: Copy of letter No. B/P.180/RTI/Sr.DPO/724/10/7 dated 06.08.2015

Annexures with reply statement:

Nil

Annexures with written argument note of the Respondents:

Annexure RW1: Copy of letter No. B/P.694/V/C&W/PNM/FNM/2009 dated 31.07.2012
