

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BENGALURU**

ORIGINAL APPLICATION NO.170/00398/2018

DATED THIS THE 19TH DAY OF MARCH, 2019

**HON'BLE DR. K.B.SURESH
HON'BLE SHRI C.V. SANKAR**

**...MEMBER(J)
...MEMBER(A)**

A.S. Manjunath
S/o Late Singiri Narasimiah,
Aged about 38 years,
Working as Technician Grade-I,
South Western Railway,
Central Workshop, Mysore South,
Mysore.

...Applicant.

(By Advocate Shri Izzhar Ahmed)

Vs.

1. Chief Works Manager,
South Western Railway,
Central Workshop,
Mysore South,
Mysore.

2. The Chief Personnel Officer,
(Personnel Department)
Head Quarter,
South Western Railway,
Gadag Road,
Hubli – 20

3. Union of India,
Through the General Manager,
South Western Railway,
Gadag Road,
Hubli – 20.

...Respondents.

(By Standing Counsel Shri N. Amaresh for Respondents)

ORDER (ORAL)

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

This matter is covered by our order in OA. No.880/2014 dated
18.4.2015, which we quote:

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

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act. 1985 , seeking the following reliefs:

1. To set aside the impugned orders No. S/P. 612/IV/Seniority 01.02.2009 (annexure-A/3) and S/P.612/IV/seniority dated 15.09.2009 (Annexure-A/5) as illegal and without parameters of the rules of law;
2. To direct the Respondent No.1 to consider the case of the applicant for the date of appointment from the date of granting Temporary Status in terms of the order dated 09.09.2011 in OA No.14/2011 (Annexure-A/10), order dated 17.09.2012 in WP No.5743/2012 (Annexure-A/11), order dated 15.04.2013 in OA No.812/2012 (Annexure-A/12) and the order dated 03.04.2014 in OA No.449/2014 (Annexure-A/13) with all consequential benefits, and
3. Grant relief or reliefs as deemed fit and proper, with costs, in the interest of justice and equity.

The facts of the case in brief are as follows:

2. The applicant was initially selected as trade Apprentice and undergone the trade test Respondent No.1. Following the completion of apprenticeship, the applicant was engaged as a substitute Khalasi(Helper Gr.II) in the scale of Rs.2550-3200/- with effect from 07.06.2005 vide Office Order dated 15.06.2006 (Annexure-A/1). On completion of 120 days, the applicant was conferred Temporary Status vide Office Memorandum dated 12.11.2005(annexure-A/2). According to the applicant, the date of Temporary Status. Accordingly, seniority was not accorded to him while promoting the juniors to the applicant.

3. In response to a representation made by the applicant against the provisional seniority list, the respondents vide their reply dated 01.03.2009(Annexure-A/3) held that the seniority has been fixed as per the integrated seniority of the substitutes at the time of the engagement and the same seniority position is maintained in the appointment as helper Gr.II on empanelment and also in promotion to helper Gr.I . The applicant had submitted further representations at annexures-A/5 and A/6, but did not get due relief. The applicant submits that Para 6 of the Master Circular 20(Annexure-A/9) which reads as follows, was not considered in his case:

“Para-6:Date of Appointment:-

The date of appointment of a substitute to be recorded in the service book against the column “Date of appointment” should be the date on which he/she attains Temporary Status after a continuous service of four months if the same is followed by his/her is regularly appointed /absorbed”.

Since, the applicant was granted Temporary Status on 5.10.2005, the applicant is eligible to have the date of appointment as 05.10.2005 and this should be recorded for the benefit of seniority and consequential benefit of promotion. The applicant in the OA further submits that similar issue has been considered by this Tribunal in OA No.14/2011(Annexure-A/10), which was further upheld by the Hon'ble High Court of Karnataka vide its order dated 17.10.2011 in WP No.5743/2012(Annexure-A/11). The same position was also reiterated by an order of this Tribunal dated 15.04.2013 in OA No.449/2014 to 456/2014(Annexure-A/13). Therefore, he prayed for grating relief as sought for.

4. The respondents have filed their reply statement in which they have submitted that the applicant had undergone training in Central Workshop, Mysore South, after which he was engaged as a substitute Khalasi with effect from 07.06.2005. On completion of 120 days of continuous service, he was granted Temporary Status with effect from 05.10.2005. Names of 556 candidates who completed the course of apprentice were found suitable for engagement as substitute in Group-D service in the scale of Rs.2550-3200/- by the selection committee which was forwarded to various Field units and Workshops of South Western Railway, including the Central Workshop, Mysore South by the Chief Personnel officer, South Western Railway, Hubli, vide his letter No.SWR/R/P.563/Act App/Vol.1 dated 12.05.2005. This is also the merit list. The applicant figured at Sl.No.516 on page 13 of the Annexure enclosed to the said letter of 12.05.2005. The applicant was further included at Sl. No.7 in the final seniority list of Electrical of TL trade in the category of Helper Gr.I published as on 10.02.2009 (Annexure-R/2). The applicant had represented about the assignment of seniority in the provisional seniority list of Electrical-TL Trade in the category of Helper Gr.I published as on 10.02.2009 and the same was disposed of vide letter No.S/P.612/IV/Seniority dated 01/03/2009(annexure-A/3) wherein it was advised to the applicant that his seniority position has been assigned as per the position assigned to him in the integrated seniority list, which is also the merit list, issued by the Chief Personnel officer, South Western Railway, Hubli, vide his letter No.SWR/P.563/Act.App/Vol.1 dated 12.05.2005. In fact the seniority of Khalasis is regulated in terms of Para 303(b) of IREM-VOL.1 which is reproduced below:

“The seniority of candidates recruited through the Railway Recruitment Board or by any other recruitment authority or by any other recruitment authority should be determined as under:

“In the case of candidates who do not have to undergo any training in training school, the seniority should be determined on the basis of the merit order assigned by Railway Recruitment Board or other recruiting authority.”(Annexure-R3)

5. The seniority of substitute Khalasis should be regulated strictly as per the merit order assigned to them in the list calculated by the Chief Personnel officer, South Western Railway, Hubli, vide his letter No.

SWR/P.563/Act.App/Vol.1 dated 12.05.2005. The applicant has wrongly contended that his seniority should be regulated from the date of grant Temporary Status i.e. 06.10.2005 .The seniority of candidates recruited through the railway Recruitment Board or by any other recruitment authority or by any other recruitment authority should be regulated in terms of Para 303 of IREM-Vol.1. Thus the applicant's seniority should be regulated only as per the merit order assigned in the select list advised by the Chief Personnel officer, South Western Railway, Hubli, vide letter No. SWR/P.563.Act.App/Vol.1 dated 12.05.2005 and not from the date of grant of Temporary Status. In view of the above , there is no merit in the application .

6. The applicant submitted his rejoinder in which he has reiterated the facts made in the OA and also submitted that the applicant was appointed as substitute Khalasi apprentice dated 07.06.2005 (without any written and visa-voce)on the apprentice qualification and the name of the applicant is listed at Sl.No.13 vide Office Order dated 15.06.2005 (Annexure-A/1) . The applicant was granted Temporary Status on 05.10.2005(Annexure-A/2) after completion of 120 days and the applicant is working continuously even from the date of granting temporary status. The Respondent No.2 issued the seniority list dated 10.02.2009(Annexure-R/2) indicating the date of appointment as on 07.06.2005. The above date 07.06.2005 is the date of initial appointed (Annexure-A/1)and considering the same as the date of appointment is wrong.
7. Heard the learned counsel for the parties.
8. The learned counsel for the applicant reiterated the submissions made in the OA and submitted that in terms of Para 6 of Master Circular 20, the date appointment should be taken as the date on which he had attained Temporary Status and not the date from which he joined service of the respondents as substitute Khalasi. He also made reference to orders passed by this Tribunal , wherein the respondents had been directed to make appropriate corrections with regard to the date of appointment in the seniority list as per the said master Circular. On being asked to clarify on the issue of seniority , which is one of the reliefs sought for by him and the stand of the respondents that it is as the inter-se seniority of candidates following screening on completion of the apprentice course, he had no specific answer.
9. The learned counsel for the respondents accepted the contention of the applicant that the date of appointment shown in the seniority list against the candidates should be in terms of Para 6 of Master Circular 20. However, on the seniority issue, he reiterated the submissions made in the reply statement and submitted that it is based on the inter-se seniority list of all candidate who were found suitable in the screening of candidates following the apprentice training and when they recommended for engagement as substitute in Group 'D' categories. He also submitted that many of the candidates, based on the appointment order joined on the same date and hence, the seniority assigned to a particular candidate was based on the integrated seniority list prepared on the completion of the course .He also submitted that the interpretation made by the applicant has been duly

replied to clarifying and explaining the position . therefore, there is no merit in the OA and is liable to be dismissed.

10. We have carefully considered the facts of the case and also the submissions made by both sides.
11. In this case , two issues have been raised, the first issue is the actual date that should be taken as the date of appointment and secondly , the seniority of the applicant vis-à-vis others.
12. On the question of date of appointment , Para 6 of the Master Circular 20 is quiet clear and it specified that the date of appointment should be the date on which a person attains Temporary status after continuous service of four months if the same is followed by his/her regular absorption. The earlier orders of this Tribunal in several cases as highlighted by the applicant in the OA have taken the view that it should be as per Master Circular and have directed the respondents to follow the aforesaid procedure and make appropriate corrections with regard to the date of appointment mentioned in the seniority list since in those cases, the date of appointment was mentioned based on the date when the applicant was initially engaged. This point has also been conceded by respondents during hearing and there is absolutely no dispute on this issue. In the final seniority list of CWS/MYSS as on 10.02.1999 produced as Annexure-R/2, the date of appointment against the applicants was shown as 07.06.2005, i.e the date on which he has been engaged as a substitute Khalasi. The applicant was accorded Temporary Status on 05.10.2005 and hence, this should be considered as the date of appointment and mentioned accordingly .It seems that similar mistake might have been made in many other cases. Accordingly , the respondents were required to correct the date of appointment in the said seniority list going by the provisions of the Master Circular 20.
13. On the other issue of the inter-se seniority , it appears that the applicant had questioned the inter-se seniority between him and many others in his representations made to respondent authorities . The issue of assignment of seniority has been clarified to him by the respondents vide their letter dated 15.09.2009 at Annexure-A/5. It would be evident from the order placed at Annexure-R/1 that consequent on finalization of screening of Course Completed Act Apprentices at UBL Shops and MYS Shops , 556 candidates were found suitable for engagement as 'Substitutes' in Gr.D category in scale Rs.2550-3200 by the Selection Committee. The said list was mentioned as Integrated Seniority List of candidates who were found suitable for engagement and it was decided based on their performance . The said inter-se seniority was determined between various persons initially engaged as substitutes in Group D category followed by grant of temporary Status and regular appointment thereafter as well as promotion all along . The seniority has been assigned to the applicant in the Integrated Seniority List accordingly . We do not find any inconsistency or irregularity in the seniority assigned to the applicant and which has been clarified by the respondents to the applicant in their communication at Annexure-A/5.
14. Therefore, after careful consideration of the entire matter , we direct the respondents to correct the date of appointment in the seniority list based on

the date on which the applicant and others were granted Temporary Status in terms of Para 6 of the Master Circular 20. As regards the seniority is concerned , no inconsistency or irregularity in assignment of seniority to the applicant has been noticed and hence, the relief sought for on this issues do not merit any consideration.

15. Accordingly , the OA is disposed in terms of the above observations . No order as to costs.

2. Therefore according to this order, which we have already cited, this OA is also disposed of.

3. We make it clear that the placement of a person in the seniority list shall be on the basis of initial selection. Those who are selected first will come first, then those selected second and third will come second and third. In that way seniority is to be maintained.

4. Shri Izzhar Ahmed, learned counsel for the applicant submits that there had been a change and because of that only he has come to the Court again. Shri N. Amaresh, learned counsel for the respondents denies it.

5. We will direct the respondents to look into this aspect, but will follow scrupulously the earlier order, which has been implemented.

6. OA disposed off. No costs.

(C.V. SANKAR)
MEMBER(A)

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

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Annexures referred in O.A. No. 170/00398/2018

Annexure-A1: Copy of office order dated 15.12.2000.
Annexure-A2: Copy of office order dated 01.05.2003.
Annexure-A3: Copy of the office order dated 06.06.2005.
Annexure-A4: Copy of the office order dated 15.06..2005.
Annexure-A5: Copy of memorandum dated 12.11.2005
Annexure-A6: Copy of letter dated 01.03.2009.
Annexure-A7: Copy of the letter dated 15.09.2009.
Annexure-A8: Copy of the order dated 20.04.2015 in OA. 880/2014.
Annexure-A9: Copy of compliance order dated 22.09.2015.
Annexure-A10: Copy of provisional seniority list dated 16.10.2015
Annexure-A11: Copy of representation dated 30.11.2015.
Annexure-A12: Copy of representation dated 17.06.2016
Annexure-A13: Copy of impugned order dated 13.01.2015
Annexure-A14: Copy of promotion order dated 31.3.2017
Annexure-A15: Copy of promotion order dated 13.09.2017.
Annexure-A16: Copy of office order dated 25.10.2005.
Annexure-A17: Copy of application under RTI dated 17.02.2014.
Annexure-A18: Copy of reply under RTI 26.03.2014.
Annexure-A19: Copy of the order dated 09.09.2011 in OA. 14/2011.
Annexure-A20: Copy of the order dated 17.10.2012 in WP. 5743/2012.
Annexure-A21: Copy of compliance order dated 02.07.2013.
Annexure-A22: Copy of extract Rule 303 (b) of IREM, I-2009.
Annexure-A23: Copy of reply statement dated 9.12.2014.
Annexure-A24: Copy of the order dated 13.01.2015 in OA. 997/2014.

Annexures with reply statement

Annexure-R1: Copy of para-303 (b) of IREM- Vol.I.
Annexure-R2: Copy of integrated seniority list issued by the Chief Personnel Officer, SW Railway, Hubli vide letter dated 12.5.2005.

Annexures with rejoinder

Annexure-A25: Copy of seniority list of Technician-I dated 04.1.2019.

Annexures with Memo for production of documents

Annexure-MA-01: Copy of the order dated 13.01.2015 in OA. 823/2014.
