

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00312/2015

Thursday, this the 7th day of February, 2019

CORAM:

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

B. Gopakumar, aged 49 years, S/o. P. Balakrishna Pillai,
 Assistant Executive Engineer/Construction/Southern Railway/
 Ernakulam Junction, Permanent Address : No. TC-25/2168-2,
 Gokulam, Thaivila Lane, Thaivila Road, Opposite : Ayurveda College,
 Trivandrum – 695 001. **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 PO,
 Chennai – 3.
2. The Chief Personnel Officer, Southern Railway,
 Headquarters Office, Park Town PO, Chennai – 3.
3. The Railway Board, Rail Bhavan, New Delhi – 110 001,
 through its Secretary. **Respondents**

(By Advocate : Mr. Sunil Jacob Jose)

This application having been heard on 01.02.2019 the Tribunal on
 07.02.2019 delivered the following:

O R D E R

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicants are as under:

- “(a) Call for the records leading to the issue of A10 and quash the same;
- (b) Declare that the applicant is entitled to be granted the benefit of A6 order of this Hon'ble Tribunal in the matter of promotion to Group B service and declare further that the applicant is entitled to be granted the benefit of fitment and promotion from the date of such promotion of Shri S.

Anilkumar, the applicant's junior, who was the applicant in A6 order of this Hon'ble Tribunal and direct the respondents accordingly;

- (c) Direct the respondents to grant the applicant the benefit of A6 order of this Hon'ble Tribunal and direct further to grant all the consequential benefits at par with the applicant's junior Shri S. Anilkumar, the applicant in A6, with all consequential benefits emanating therefrom;
- (d) Award costs of and incidental thereto;
- (e) Pass such other orders or direction as deemed just and fit by this Hon'ble Tribunal.”

2. The brief facts of the case are that the applicant was initially appointed as a Section Engineer/Works in the then scale of Rs.2000-3200/- against the 20% direct recruitment quota w.e.f. 25.9.1992. After an initial period of in-service training the applicant was posted against a working post on 28.10.1993 and for all material purposes the applicant's date of appointment to the cadre of Section Engineer/Works is 25.9.1992. According to the Recruitment Rules of Assistant Divisional Engineer/Assistant Executive Engineer in Group-B service the vacancies are to be filled 70% by promotion and 30% by a Limited Departmental Competitive Examination by considering various Junior Engineers and Section Engineers belong to the different cadres in the Civil Engineering Department. The inter-se seniority for the purpose of selection and appointment is determined with reference to the date of entry into the grade of Section Engineer/Works in scale of Rs.9300-34800/- with GP Of Rs. 4,600/-.

3. The respondents for filling up 57 vacancies issued notification dated 28.10.2009. The applicant participated in the written examination and he

also qualified the same. In the meanwhile the respondents circulated a combined seniority list of persons belonging to the different cadres being considered together for promotion against the 70% quota vacancies. In the said seniority list the applicant's name is shown at Sl. No. 148. The date of appointment of the applicant is shown as 25.9.1992 whereas against the column Section Engineer the date of entry is shown as 28.10.1993. However, it should be 25.9.1992. The respondents published a panel of selected candidates on 23.4.2010. However, only 38 persons were included in the panel against the 43 general category vacancies notified. The applicant was not promoted. Thereafter the applicant participated in the 30% LDCE quota and having secured very high percentage of marks the applicant was empaneled and posted as an Assistant Engineer/Assistant Executive Engineer in Group-B service of Civil Engineering Department of Southern Railway w.e.f. 14.12.2011. Applicant submits that a similarly situated employee Shri S. Anil Kumar who had also joined along with the applicant against 20% direct recruitment quota and date of entry later than that of the applicant was placed in the panel conducted in terms of Annexure A1 notification by enlarging the panel.

4. The benefit of inclusion in the panel and placement at Sl. No. 33 of Shri S. Anil Kumar was because of the directions of this Tribunal in OA No. 870 of 2010 dated 23.11.2011 as confirmed by Hon'ble High Court of Kerala in OP (CAT) No. 1681 of 2012 dated 14.3.2014. Shri Anilkumar was also granted the benefit of fitment and promotion into Group-B service with effect from 7.7.2010. Since the final placement in the panel is to be based

on seniority and since the applicant is identically situated as in the case of Shri Anilkumar and as he is all along senior with his date of entry into the grade as 25.9.1992, the applicant submitted Annexure A9 representation dated 9.2.2015. However, the same was rejected vide Annexure A10. Aggrieved the applicant had filed the present OA.

5. Notices were issued to the respondents. They entered appearance through Shri Sunil Jacob Jose who contended that the benefit of the order passed by this Tribunal in OA No. 870 of 2010 cannot be given to the applicant as the said judgment has been complied with as *Jus in Personam*. As per paragraph 320 of IREM when a post is filled by considering staff of different seniority units, the total length of continuous service in the same or equivalent grade held by the employees shall be the determining factor for assigning inter-seniority irrespective of the date of confirmation of an employee with lesser length of continuous service as compared to another unconfirmed employee with longer length of continuous service.

6. This is subject to the provision that only non-fortuitous service should be taken into account for this purpose. Therefore, the request of the applicant cannot be accepted. The applicant cannot compare his case with Shri S. Anilkumar as Shri S. Anilkumar was initially appointed as Commercial Clerk and thereafter selected as Apprentice Section Engineer while he was in service. However, the applicant was straightaway appointed as Apprentice Section Engineer and then absorbed in the working post. The applicant was appointed as Apprentice Section Engineer on 25.9.1992 and

had joined the working post only on 28.10.1993 on successful completion of the prescribed training and as such his date of entry as Section Engineer would be 28.10.1993 only and not 25.9.1992 as claimed by him.

Respondents pray for dismissing the OA.

7. Heard Shri T.C. Govindaswamy, learned counsel for the applicant and Shri Sunil Jacob Jose, learned Standing Counsel appearing for the respondents. Perused the records.

8. The only point that arises for consideration is as to whether the applicant was appointed to the grade of Rs. 2000-3200/- on a non-fortuitous basis from 25.09.1992 or is it from 28.10.1993. This Tribunal in an identical matter in OA No. 870 of 2010 filed by Shri Anilkumar S. had allowed the OA on 23.11.2011. The relevant portion is extracted below:

“5. We have heard both sides. The only point that arises for consideration is as to whether the applicant was appointed to the grade of Rs. 6500-10500/- (pre-revised scale 2000-3200/-) on a non-fortuitous basis from 14.10.1992 or is it from 28.10.1993. If his appointment to the grade is to be taken as 14.10.1992 then he would be placed on a much higher position in the inter se seniority of the candidates eligible to be considered for promotion to the Group-B and in which event he will be entitled to be considered for the panel of Group-B. On the other hand if his entry is taken as 28.10.1993 then he had no chance of being included in the panel for further promotion to Group-B and the contention of the respondents in this regard would be justified.

6. The order of appointment dated 14.10.1992 produced by the respondents as per memo dated 12.11.2011, we mark as Annexure “X” for the purpose of reference. In the order of appointment, it is stated that the applicant who has been selected for appointment by the Railway Recruitment Board, Madras, is appointed as Apprentice in the scale of Rs. 2000-3200 and posted to the unit. His service will be temporary and on successful completion of training (i.e. after having passed the prescribed examination after one year training), he will be absorbed as temporary IOW/Grade-I at Rs. 2000-3200 plus usual allowances. He joined the post of Section Engineer on 28.10.1993, as per seniority lists at Annexures R-5, R-6 and R-7. Thus it can be seen that the entry of the applicant into the grade of Rs. 2000-3200 was on 14.10.1992 and his entry into the cadre of

Section Engineer was on 28.10.1993.

7. In service parlance, the term 'cadre' refers to a distinct class of officers and the term 'grade' refers to scale of pay. The applicant was appointed to the grade/ scale of pay of Rs. 2000-3200 (IV CPC) on 14.10.1992 as Apprentice-IOW/Grade-I. He got annual increments on 01.10.1993, 01.10.1994 and so on and the replacement scale of Rs. 6500-10500 (V CPC) on the basis of his entry into the grade on 14.10.1992. His in-service training which started on 14.10.1992 was followed by regular appointment as Section Engineer in the grade of Rs. 2000-3200. His service in the grade of 2000-3200 was continuous, without any break since 14.10.1992, earning increment. So his service in the grade of Rs. 2000-3200 was not fortuitous. The applicant did serve the Railway during the period from 14.10.1992 to 28.10.1993 in the grade of Rs. 2000-3200. Non employment in or against a substantive vacancy in the cadre of a branch of the department is not material at all for the relief sought by the applicant. What is relevant is the seniority of the applicant not in the cadre of Section Engineer but in the grade of Rs. 2000-3200/6500-10500. It is not the case of the respondents that when he was given regular appointment as Section Engineer on 28.10.1993, his pay was re-fixed in the scale of Rs. 2000-3200 ignoring the increment earned.

8. The applicant joined the cadre of Section Engineer on successful completion of training on 28.10.1993. His seniority/service in the cadre of Section Engineer counts from that date.

9. As per para 203.5, the integrated seniority for the purpose of selection from different streams is on the basis of total length of non-fortuitous service in the grade of Rs. 6500-10500 and not on the basis of the service rendered in respective cadres of the officers concerned. For the sake of convenience, Para 203.5 from Chapter II, Section 'A' of Indian Railway Establishment Manual, Vol.I, is extracted as under:

“203.5. Since employees from the different streams will be eligible to appear for the selection, their integrated seniority for purposes of the selection should be determined on the basis of total length of non-fortuitous service rendered in grade Rs. 6500-10500 (R.S.) and above. In other words, the date of appointment to the grade Rs. 6500-10500 (R.S.) on a non-fortuitous basis will be the criterion.”

(emphasis supplied)

The applicant will gain a higher position in the integrated seniority list of eligible candidates for promotion to Group-B in the light of Para 203.5, but his seniority in the cadre of Section Engineer will not change. Nor does he seek it. The question of unsettling the settled position will not, therefore, arise. Training being an essential part of service, there is no reason not to count the period spent on training for seniority in the grade. Not all feeder cadres for promotion to Group-B may have a phase of apprenticeship before joining a substantive post. Therefore, it makes sense to count the total length of service in the grade rather than the cadre for determining the integrated seniority as provided in Para 203.5. Therefore, the O.A. deserves to be allowed.

10. The Annexure A-1 order dated 23.04.2010 to the extent it does not include the name of the applicant is set aside. The respondents are directed to correct the date of entry of the applicant into the grade of Rs. 2000-3200 (SE) as 14.10.1992 and take consequential action to consider

his promotion to Group-B service from the date of promotion of his juniors with all benefits.

11. The O.A. is allowed as above with no order as to costs.”

The respondents challenged the above order before the Hon'ble High Court in OP (CAT) No. 1681 of 2012. The Hon'ble High Court passed the following judgment while confirming the order of this Tribunal:

“Heard.

2. The issue that fell for consideration before the learned Tribunal was as to the correction of the date of entry of the applicant into the Grade of Rs.2000-3200/- (Section Engineer). After analysing the facts, the learned Tribunal found that the date of entry of the applicant was 14/10/1992 and he entered the cadre of Section Engineer on 28/10/1993. To hold so, the learned Tribunal has clearly noticed the distinction between the term “cadre” which refers to a distinct “class of officers” and the term “grade” which refers to the scale of pay. The Tribunal noted paragraph 203.5 of Chapter II of Section ‘A’ of the Indian Railway Establishment Manual Vol-I and held that the employee concerned will gain a higher position in the integrated seniority list of eligible candidates for promotion to group ‘B’ in the light of that provision but, his seniority to the cadre of Section Engineer will not change. The Tribunal also held that training being an essential part of service, there is no reason not to count the period spent on training for seniority in the grade. Reasoning so, the Tribunal held ultimately, that the employee was entitled to succeed and the establishment was directed to correct the date of entry of the employee into the grade of Rs.2000-3200/- (SE) as 14/10/1992 and to take consequential action to consider his promotion to Group ‘B’ service from the date of promotion of his juniors, with all benefits. We do not find any legal infirmity or jurisdictional error in the approach of the Tribunal warranting interference at our hands under Article 227 of the Constitution of India, at the instance of the establishment. This original petition fails and the same is accordingly, dismissed. No costs.”

9. The reasons submitted by the respondents in the reply statement for non-grant of the benefit to the applicant were already considered by this Tribunal in the above OA No. 870 of 2010 filed by a similarly situated person Shri Anilkumar S in whose case also the seniority was granted from the date of entry in to the cadre of Section Engineer i.e. on 28.10.1993. However, this Tribunal find that training being an essential part of service, there is no reason not to count the period spent on training for seniority in

the grade. Further the respondents did not give the benefit of OA No. 870 of 2010 to the applicant as the said order of the Tribunal was treated by them as a *Jus in Personam*. However, we find that the above order passed by this Tribunal in OA No. 870 of 2010 dated 23.11.2011 confirmed by the Hon'ble High Court of Kerala in OP (CAT) No. 1681 of 2012 dated 14.4.2014 squarely applies to the present case as well. Therefore, nothing remains to be decided in the present case.

10. Accordingly, the Original Application is allowed. We quash the impugned order at Annexure A10. The respondents are directed to correct the date of entry of the applicant into the grade of Rs. 2000-3200/- (Section Engineer) as 25.09.1992 and take consequential action to consider his promotion to Group-B service from the date of promotion of his juniors with all consequential benefits. The aforesaid exercise shall be completed within three months from the date of receipt of a copy of this order. Parties are directed to bear their own costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/00312/2015**APPLICANT'S ANNEXURES**

Annexure A1 - True copy of notification issued under letter bearing No. P(G) 532/1/70% Regular/2009-2012 dated 28.10.09, from the office of the 1st respondent.

Annexure A2 - True copy of provisional seniority list bearing No. J/P.612/IX/P.Way/Works/Bridges dated 15.9.09, issued from the office of the 3rd respondent.

Annexure A3 - True copy of letter bearing No. P(G).532/1/Selection/Regular/70% (2009-12

Annexure A4 - True copy of communication bearing No. P(G)532/1/Selection/Regular/70%(2009-12)/Vol.II dated 31.3.2010, issued from the office of the 2nd respondent.

Annexure A5 - True copy of order bearing No. P(G).532/I/Selection?Regular/70%(2009-2012)Vol.III.

Annexure A6 - True copy of order dated 23.11.2011 in OA No. 870/2010 rendered by this Hon'ble Tribunal.

Annexure A7 - True copy of judgment dated 14.3.2014 in OP (CAT) No. 1681/2012 rendered by the Hon'ble High Court of Kerala.

Annexure A8 - True copy of office order bearing No. HPB(O) 71/2015 dated 5.2.2015 issued by the 1st respondent.

Annexure A9 - True copy of representation dated 9.2.2015 addressed to the 2nd respondent.

Annexure A10 - True copy of letter bearing No. P(G)532/I/Selection/General dated 13.3.2015, issued from the office of the 1st respondent.

Annexure A11 - True copy of Railway Board letter bearing No. E(NG)I-93/PM1/4 dated 18.1.1993.

RESPONDENTS' ANNEXURES

Nil

-X-X-X-X-X-X-X-X-