

WRIT PETITION NO. 1281 OF 2015
WITH
CIVIL APPLICATION (ST) NO. 28302 OF 2017

Sreekumar G. } Petitioner
versus
Konkan Railway Corporation } Respondents
Ltd. and Ors. }

Ms. Kiran Bagalia for the respondents.

**CORAM :- S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

DATED :- DECEMBER 6, 2017

ORAL JUDGMENT :- (Per S. C. Dharmadhikari, J.)

1. Rule. Respondents waive service. Since the pleadings are complete and we have heard both sides extensively, we dispose of this petition by this judgment and order.

2. The petitioner before this court had instituted this writ petition and for the following reliefs:-

“a) that this Hon’ble Court be pleased to issue a writ of certiorari or other appropriate writ, order or direction calling for the record and proceedings leading to passing of the order dated 28.06.2013 by the authorities and this Hon’ble Court be pleased to examine the legality and/or propriety of the said letter/ order dated 28.06.2013 and this Hon’ble Court be pleased to quash and set aside the same.

b) that this Hon'ble Tribunal be pleased to hold and declare that the promotion to the petitioner from 28.03.2005 on ad-hoc basis in junior scale in the accounts department of Konkan Railway, is regular service for all purposes in view of the terms of absorption of the Petitioner and hold that on that basis the petitioner is entitled for further promotion in the Konkan Railway in the department of Konkan Railway with all consequential benefits.

c) that this Hon'ble Court be pleased to issue a writ of mandamus or other appropriate writ order or direction directing the Konkan Railway authorities to consider the case of the petitioner by treating the promotion to the petitioner as junior scale with effect from 28/3/2005 as regular and give promotion to the petitioner from April 2009 or on par with his Juniors in 2009 as senior scale with all consequential service benefits including seniority, pay fixation from that date and all other consequential service benefits at the rate of 18% p.a. on the said due date till date."

3. After this petition was heard at some length on the earlier occasion, namely, 22nd November, 2017, we had passed the following order:-

"1 After this matter was argued for some time and we clearly expressed to Mr. Ramamurthy, learned advocate appearing for the petitioner, that in the light of the affidavits of the Konkan Railway Corporation Limited and particularly in the absence of the petitioner relying on any rule, regulation or promotion policy, it will not be possible to consider his grievance, Mr. Ramamurthy prays that an adjournment be granted as a last chance so as to enable the petitioner to produce the promotion policies in a compilation.

2. Let Mr. Ramamurthy produce such a compilation and that will be taken on record, provided a copy is served on Ms. Bagalia in advance.

3 We place this petition on 6th December, 2017, under the caption "For Passing Orders".

4. Pursuant to this order, a compilation of documents, stated to be the promotion policies in the Konkan Railway Corporation Limited (hereinafter referred to as the "KRCL"), is placed on record. For appreciating the contentions of the petitioner's counsel Mr. Ramamurthy, it must be noticed that the petitioner joined the services of the Central Railway in the accounts department on 10th November, 1987 as Junior Accounts Assistant. He earned promotions and was working as Senior Section Officer (Accounts) in the Central Railway in 2001. At that stage, the first respondent-Corporation invited the eligible officials of the Central Railway to work on deputation with the first respondent. Their willingness was sought for and the petitioner states that he expressed his willingness to work on deputation with the KRCL as Senior Section Officer and Section Officer in the Accounts Department and other related posts.

5. There was an interview held on 20th March, 2001 and thereafter, a communication was addressed informing the petitioner that the petitioner would be taken on deputation in KRCL. That is because, there were interviews held and the petitioner also was granted an ad-hoc promotion. It is stated by the petitioner that this ad-hoc promotion order dated 23rd March, 2015 would enable him to urge that whatever may be the

nomenclature attached to the post. Since the petitioner is absorbed in the services of the KRCL, he could not be termed as an employee of the Central Railway. He may have been required to tender a resignation for technical compliance, but that does not in any manner indicate that his ad-hoc promotion is of no legal effect. In other words, after working for five years in KRCL on deputation, the petitioner made a request on 15th November, 2007 for permanent absorption in KRCL.

6. Mr. Ramamurthy would submit that respondent nos. 1 to 3 are cashing on this resignation by the petitioner. However, they cannot make any capital of the same for that was a requirement to be fulfilled so as to issue the formal order of permanent absorption. That, by no stretch of imagination, can wipe out the promotion granted to the petitioner, all the more when he was serving the Corporation for five years. It is in these circumstances that the petitioner would submit that the four annexures to this writ petition, namely, Annexure 'B' at page 26, Annexure 'C' at page 28 with the file notings and annexure 'D' at page 29 are crucial documents. Together with that, the document at Annexure 'E' at page 30 would indicate that the negotiations between the petitioner and the management culminated in a requirement of a technical resignation of the petitioner. He was

required to tender resignation from the Central Railway, which he tendered, copy of which is at Annexure 'F' at page 31 of the paper book. It is that document which is relied upon to the detriment of the petitioner. What the respondents forget is their own communication at page 32 and the file notings thereon. This would indicate as to how the petitioner's services would have to be reckoned from the date of his ad-hoc promotion, namely, 26th March, 2005 and not from 25th July, 2008 as erroneously understood by the respondents. In that regard, heavy reliance is placed on Annexure 'I' to this petition. That annexure reads as under:-

“EXTRACT OF THE MINUTES OF THE 97th MEETING OF THE BOARD OF DIRECTORS HELD ON 16TH JANUARY 2008 AT 17:30 HRS. AT COMMITTEE ROOM, RAIL BHAVAN, RAISINA ROAD, NEW DELHI.

ITEM NO. 14 ABSORPTION POLICY IN KRCL

The Board of Directors agreed to the absorption policy of KRCL to deputationists by giving upto two higher grades. This offer of two higher grades can also be offered to deputationists on need basis. The Directors' Committee will review the case of higher grade before sanction by managing Director. When absorbed with two higher grades in KRCL, seniority shall be fixed as per DPE guidelines i.e. “The seniority of officers for services in an enterprise should be fixed in a particular grade with effect from the date of their original deputation to that grade and not from the date of exercising their option, regardless of the terms offered to them.””

7. The petitioner would submit that there are subsequent events, but what the essential grievance is that nothing which

would wipe out the services rendered from 2005 should be sustained by this court. The petitioner was requesting for promotion, but he was informed on 28th June, 2013 as under:-

“CO/P-E/VIP/Reference Date: 28/06/2013.
Shri Sreekumar
AAO/Funds
KRCL

Sub: Promotion to Senior Scale.
Ref: Your letters dated 15/03/2013 and 09/08/2012.

Reference above, your grievance for promotion to Senior Scale was addressed and replied through various channels. You have obtained replies to your grievances from Railway Board, RTI etc. You have approached political parties to influence your promotion to Senior Scale which is against the Service Conduct Rules of KRCL.

It is reiterated that your promotion to Senior Scale is governed by the extant Promotion Policy.

Hence, your decision for filing a writ petition against the KRCL Administration is totally unwarranted.

This has approval of the Competent Authority.

(S. D. Bapat)
Assistant Personnel Officer”

8. Mr. Ramamurthy would submit that none of these documents can override the specific resolution of the Board of Directors, passed at its 97th meeting. It is in these circumstances Mr. Ramamurthy would submit that the contrary stand in the affidavit in reply of the respondents should not be accepted by this court. That would completely take away the fundamental right guaranteed by Articles 14 and 16 of the Constitution of India. That right is of equality before law and and equality in

public employment. Mr. Ramamurthy relies upon the petitioner's affidavit in rejoinder and an additional affidavit filed pursuant to the earlier order so also the compilation of documents annexed thereto. Mr. Ramamurthy would submit that the promotion policy consistently followed and applied by the KRCL is in tune with the Board Resolution passed in 97th meeting of the Board of Directors of the KRCL. In these circumstances, he would submit that the petition be allowed and the reliefs as prayed be granted.

9. On the other hand, Ms. Bagalia appearing for the respondents would submit that it is not the petitioner's case and relying upon the order dated 20th March, 2001 that he was a permanent employee of the KRCL. In fact, on 20th March, 2001, it is stated that the interview conducted by the KRCL was attended by seven employees from the Central Railway and three employees from the Western Railway. One amongst the seven employees of the Central Railway was the petitioner. Then, on 26th March, 2005, the KRCL issued a direction of ad-hoc promotion in Accounts Department. The Senior Section Officers, who were working on deputation with the KRCL with minimum three years of service were considered for such ad-hoc promotion. After considering such case, the Panel drew up a list of recommended candidates. The petitioner was thus promoted as

Assistant Accounts Officer in the KRCL purely on ad-hoc basis and as a stopgap measure. Ms. Bagalia submits that pertinently, on this date, the petitioner was the employee of the Central Railway and deputationist with the KRCL. Though the permanent absorption of the petitioner was sought by him by a letter dated 15th November, 2007 and granted subsequently with effect from 25th July, 2008, today, the petitioner is arguing that he did not have to seek any permanent absorption in the services of the KRCL nor was he required to tender any resignation and all these are technical matters. However, she would submit that unless and until there was master servant relationship, there was no question of his tendering a resignation from the services of the Central Railway and then being permanently absorbed in KRCL. That was specifically informed to him. The decision of the 97th meeting of the Board of Directors of the KRCL and the Resolution are now read conveniently. The petitioner was informed on 26th August, 2008 that the permanent absorption in the services of the KRCL would be with effect from 25th July, 2008. From that date, till the date of this petition, no grievance was ever made. In fact, the other employees were promoted on 14th May, 2010. However, on that date, the petitioner could not have gained the promotion given the policy of the KRCL. It is in these circumstances, she would submit that he has been promoted as

noted by this court from the contents of the additional affidavit in reply. The petitioner has been promoted to the senior scale of 15600-39100 with Grade Pay 6600 in Pay Band – III vide Office Order No. 65 of 2015 dated 31st December, 2015. It is in these circumstances, the request as made cannot be granted.

10. With the assistance of the advocate appearing for the parties, we have perused the petition and the annexures thereto. We have also perused all the affidavits placed on record. Pertinently, the petitioner was informed by the KRCL that he attended an interview. That interview was in connection with appointing him on deputation in the KRCL. The petitioner knew that he was employee of the Central Railway, but with the concurrence and approval of the Central Railway he can go as a deputationist in the KRCL. That is how he joined. On 26th March, 2005 he accepted an ad-hoc promotion and the communication at page 26 informs him that this is an ad-hoc promotion purely as a stopgap measure. Then, the petitioner was informed by Annexure 'B' on 26th March, 2003 that in order to fill up the existing vacancies of Assistant Accounts Officers in the Accounts Department, the senior officers, who are presently working on deputation in KRCL with minimum three years of service in the KRCL were considered. That is how the petitioner, on his own

showing, applied for absorption. If the facts were not as clear as above, then, there is no occasion for the petitioner to plead in the petition that he applied for permanent absorption. The petitioner himself states that after working for almost five years in the KRCL on deputation, he made a request dated 15th November, 2007 for being permanently absorbed in the KRCL. This request was put up before the competent authority. The 97th meeting of the Board of Directors, held on 16th January, 2008 considered the permanent absorption policy in KRCL. In view of this, the case of the petitioner was put up for promotion. The file notings indicate that the petitioner's case can be considered for permanent absorption in Junior Scale (Regular) Accounts Officer under the Managing Director's powers of sanction, as decided in that meeting of the Board of Directors. Thereafter, an approval was granted.

11. On 26th August, 2008, the petitioner was specifically informed by the KRCL that consequent upon acceptance of resignation from the Central Railway in terms of the Central Railway's letter dated 28th July, 2008, with effect from 24th July, 2008, the petitioner has been permanently absorbed in KRCL with effect from 25th July, 2008. This communication was also accepted by the petitioner and without any protest. The

petitioner himself tendered resignation from the services of the Central Railway. Thus, as a deputationist and earning only an ad-hoc or stopgap promotion, the petitioner knew that he stands nowhere. He would have either to go back to the Central Railway, but if wants promotion in KRCL, the permanent absorption was essential and necessary. The permanent absorption could not have come through unless the petitioner tenderes his resignation from the Central Railway. Thus, the master-servant relationship subsists till the date of permanent absorption in the KRCL. It is the petitioner who makes a capital of the invitation to come for negotiations. If the petitioner was invited for negotiations by his employer (KRCL) that was also conditional upon his tendering the resignation.

12. It is in these circumstances, the note at page 32 would have to be read. We cannot read that in isolation. All the recommendations were to protect the petitioner's pay. If possible, also to consider whether his seniority can be protected. However, for promotion in the KRCL, the petitioner's substantive appointment can be reckoned only from the permanent absorption. The permanent date of absorption being as above, we do not think that the petitioner can derive any benefit from the minutes of the meeting of the Board of Directors, which we have

reproduced above. Pertinently, the Board meeting was also on 16th January, 2008. Before that date, the petitioner had applied, by his letter dated 15th November, 2007 addressed to the KRCL, that he be permanently absorbed in the services of the KRCL. That is how the Board took up the issue for consideration. The Board decided that the absorption can be done of those employees, who are on deputation by giving upto two higher grades. The offer of two higher grades can also be offered to the deputationists on need basis. The Directors' committee will review the case of higher grade before sanction by the Managing Director. When absorbed with two higher grades in KRCL, seniority shall be fixed as per DPE guidelines. That is how the seniority would have to be reckoned. On that basis, we do not think that the petitioner can claim that his promotion, should be reckoned from 26th March, 2005 i.e. prior to his absorption on permanent basis in the KRCL.

13. We do not think that the petitioner deserves any such relief. All the more when we find his conduct entirely blameworthy. He has turned around and questioned the documents which he accepted and derived benefit from more than five years. He never questioned by a single communication, far from accepting the benefits under protest, that his claim for promotion should be

consistent with his joining the KRCL as deputationist. He may also have been promoted on ad-hoc or stopgap basis, but that should also be treated as a regular promotion was never his request until filing of this petition. In these circumstances, when he was accused of trying to gain promotion by extra constitutional method, all the more we are not inclined to grant any relief. The stand in the affidavit in reply does not appear to be inconsistent, much less contrary to the policies of the KRCL.

14. In the light of the view taken above, we do not think that we are required to refer to the compilation compiling the promotional policies of the KRCL. Once everything that the petitioner is indulging is an afterthought then we are not inclined to grant any relief to the petitioner. Consequently, the writ petition is dismissed. Rule is discharged, however, there would be no order as to costs.

(SMT. BHARATI H. DANGRE, J.)

(S.C.DHARMADHIKARI, J.)