

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO. 434 OF 2007

Tuesday, this the 23rd day of September, 2008.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

R. Manickavasagam
Executive Electrical Engineer
Southern Railway/Construction/Ernakulam Junction
Residing at No.129-A, Railway Quarters
Ernakulam Junction : Applicant

(By Advocate Mr. TCG Swamy)

v.

1. Union of India represented by the Secretary
to the Government of India
Ministry of Railways, Rail Bhavan
New Delhi
2. The General Manager
Southern Railway, Headquarters Office
Park Town P.O
Chennai - 3
3. The Chief Electrical Engineer
Southern Railway, Headquarters Office
Park Town P.O
Chennai - 3
4. Shri Dinesh Jain
Deputy Chief Electrical Engineer/Construction
Southern Railway, Egmore
Chennai - 8 : Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil (R1-3)

The application having been heard on 23.09.2008, the Tribunal
on the same day delivered the following:

O R D E R

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

Annexure A-1 order dated 23rd March, 2007 whereby Shri Dinesh
Jain SS/IRSEE/Dee/RS/AVD was detailed to look after the duties in JAG on

ad hoc basis and Annexure A-2 order dated 25-04-2007 whereby the applicant was issued with a warning in respect of an alleged omission in performance of his official duties sometimes in 2002 are under attack in this O.A.

2. At the very outset, it may be stated here that unless there is a close proximity between Annexure A-1 and Annexure A-2, the legality of both cannot be considered together in this order. In case there is no link between the two, in so far as Annexure A-2 is concerned, the same would not be dealt with and the applicant would be given liberty to agitate against the same in accordance with law.

3. Brief facts of the Case are as under:-

- (i) The applicant became a Group B officer in 1994 and was promoted to senior scale in 2001. In respect of his ACR for the year ending 31st March, 2003, he was communicated an adverse remarks against which his representation made was rejected and thereafter, OA No. 42 of 2004 came to be filed, which was also rejected and writ petition against the same had also been dismissed. Annexures A-4 and A-5 refer. Again, in 2004 there was an OA relating to relinquishment of charge by the applicant on a particular date, which came to be decided in his favour vide order dated 5th December 2006 in OA No. 34/2004. The said order, however, contained an observation, "*The respondents may have a very good case against the applicant, who, according to them defied the instructions of the superiors as relating to his failure to attend to accident duties*"
- (ii) The applicant was issued with another adverse remark for the period ending 31st March 2006 and on appeal the same was expunged by the appellate authority. Regular promotion in the Group A Junior Scale service (Indian Railway Service of Electrical Engineers) was granted to the applicant vide Annexure A-8. Annexure A-9 is the seniority list of Group A officers of the Electrical Engg. Department of the Indian Railway and the name of the applicant figures in at serial No. 790, while that of Respondent No. 4 at serial No. 807.
- (iii) Provision exists for consideration on ad hoc basis to the next JAG post for which seniority is the spinal criteria. However, overlooking the applicant who is senior, the respondents have

3

afforded promotion to the private respondent vide Annexure A-1 order dated 23-03-2007, and hence, this O.A challenging the legal validity of the said Annexure A-1 order. In April, 2007, the respondents had issued the warning order dated 25-04-2007 in respect of an alleged incident of 2002 in respect of which the applicant was not put to notice. This has also been under challenge. The applicant has connected issue of Annexure A-2 with a view to justifying issue of Annexure A-1 order promoting respondent No. 4.

4. Official Respondents have contested the OA by filing reply. However, no reply has been filed by the private respondent and service of notice is deemed under the provisions of the CAT Procedure Rules.

5. Respondents in their counter have contended that for 2006 ad hoc promotion to JAG level, two senior Scale Officers, viz Shri Kavathalaimuthu (senior to the applicant) and the applicant were considered. It has, however, been stated in the counter that as per Annexure R-1 order of the Railway Board, an officer to become eligible for ad hoc promotion to junior administrative grade should obtain two Very Good and three Good grading in the last five Annual Confidential Reports and also be considered fit for promotion during the last assessment year. As the applicant did not fulfill the above criteria, he was not given the ad hoc promotion to the Junior Administrative grade. After this, two proposals were initiated during March 2007 and July 2007 to fill up 1 and 2 vacancies respectively in the junior administrative grade on ad hoc basis in the Electrical Department and at these two stages also the applicant did not fulfill the required criteria. Therefore, the applicant was not given the adhoc promotion to the Junior Administrative Grade. Fourth Respondent Shri Dinesh Jain and Shri Govind Prasad Saini were considered and promoted as they were Group A officers (Direct Recruit through UPSC) and satisfied the conditions. It has also been stated that as and when the next proposal

is initiated, the applicant will be considered and if, at that time, the applicant fulfills the required criteria, he will be given the ad hoc promotion to the Junior Administrative Grade.

6. Applicant had filed his rejoinder stating that the respondents have not disclose as to what criteria the applicant did not comply with.

7. Counsel for the applicant submitted that the entire action has been accentuated by Malafide, as the respondents, in order to justify their action of promoting the junior, had issued Annexure A-2 warning, without any prior notice whatsoever. He has also submitted that with the expunction of the adverse remarks for year ending March, 2006 there should be no impediment in the promotion of the applicant.

8. Counsel for the respondents submitted that the records were not upto the mark and hence the applicant could not be promoted to the JAG level. Respondents have produced the DPC proceedings.

9. Arguments were heard and documents perused. In so far as 2006 promotion is concerned, as stated in the reply the names of Kavithalaimuthu and the applicant were considered but an endorsement as under had been written in respect of the applicant:-

"The ACR of Shri R. Manickavasagam for the period ending 31-03-2006 has not been finalized. Hence, the proposal for his adhoc promotion will be put up separately on finalization of the ACR"

10. Thus, the respondents were not correct in their statement vide para 6 of their reply, "As the applicant did not fulfill the above criteria, he

was not given the ad hoc promotion to the Junior Administrative Grade. However, the applicant's immediate senior Shri Kavathalaimuthu was promoted to the Junior Administrative Grade on 20-11-2006 vide this office order dated 20-11-2006" Reason for non consideration was only non availability of ACR for 31-03-2006. When statements are made by the respondents duly sworn it, the least expected of them is that the statement is made after due verification of the relevant documents. General Manager, Southern Railway may advise the Deputy Chief Personnel Officer Shri A. Mohan A Menon who had sworn in the affidavit to ensure that no statement is made without due verification of the relevant records. If relevant records are not accessible to him, better that the concerned officer in whose custody the records are be asked to file the statement. Of course, no Malafide act is scented or could be discerned by the omission committed by the Deputy Chief Personnel Officer.

11. Records reveal that when in 2007 the name of the private respondent was considered, the noting goes as under:-

"Only one Senior Scale Officer of Electrical Department is eligible to be considered for promotion to JA Grade on ad hoc Basis.

Shri Dinesh Jain

*DOITS
19-03-2001"*

If for the reason of non availability of ACR for the year ending March, 2006 the applicant could not be considered for 2006 vacancies, for 2007 the same should have been verified and due endorsement was to have been made. Thus, the respondents clean omitted to consider the case of the applicant when by 21-03-2007 the case for ad hoc promotion to JAG level was considered, the competent authority had already on 11-12-2006

passed an order expunging all the adverse remarks for the year ending 31-03-2006. Thus a legitimate entitlement of the applicant to be considered for promotion on ad hoc basis has been denied to him.

12. It may be a different matter if the applicant may or may not fulfill the requirements as contained in the Railway Board's letter which stipulates two Very Goods and three Goods and fit for promotion as for the last assessment year. This is for the DPC to consider and arrive at a just conclusion. Failure to consider the case of the applicant for promotion on ad hoc basis to the JAG level is a clear infringement of the statutory right available to the applicant.

13. In view of the above, the OA is allowed to the extent that the respondents are directed to convene a review DPC and consider the case of the applicant for promotion on ad hoc basis for the JAG level for the year 2007/2008 along with respondent No.4 and other eligible candidates and on the basis of his performance, his case for ad hoc promotion to the JAG level be decided. If he is found fit, he be accordingly given ad hoc promotion and if not, he be suitably informed. In case of promotion to the JAG, his pay would be fixed notionally from the date Respondent No. 4 had been promoted and actually from the date the applicant may assume duties of higher responsibility. In case of such promotion, respondents may consider continuance or reversion of respondent No. 4 at their discretion. Such a drill would be repeated in case the applicant was not found to fulfil the requisite conditions as laid down by the Railway Board for 2007. This order be complied within a period of three months.

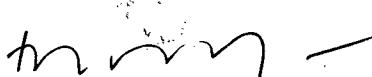
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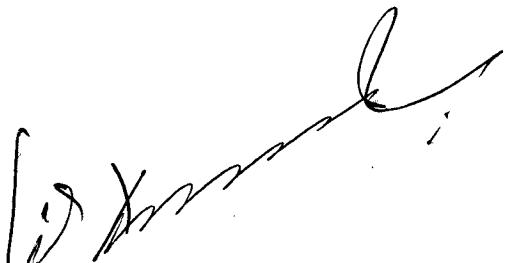
14. In view of the fact that there is no proximity between Annexure A-1 and A-2 orders, as stated earlier, Annexure A-2 order has not been considered on merit. The applicant is granted liberty to agitate against the same in accordance with law, after making due representations to the respondents against the same.

15. A copy of this order be sent by the Registry to the General Manager, Southern Railway, Chennai, for his action vide para 9 above.

16.. No cost.

Dated, the 23rd September, 2008.


K.NOORJEHAN
ADMINISTRATIVE MEMBER


Dr. K.B.S.RAJAN
JUDICIAL MEMBER

vs