

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 450/2003

Wednesday, this the 9th day of February, 2005.

C O R A M

HON'BLE MR. K. V. SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

M.K. John S/o M.I. Kurian
Office Superintendent, Grade-II
Office of the Dy. Chief Engineer
Construction, Southern Railway,
Ernakulam
residing at Mangatt House, Meenadom PO
Kottayam-686 516.

Applicant

By Advocate Mr. M.P. Varkey

Vs.

1. Union of India represented by
General Manager
Southern Railway
Chennai-600003
2. The Chief Administrative Officer
Construction, Southern Railway
Egmore, Chennai.
3. The Dy. Chief Engineer /Construction
Southern Railway.
Ernakulam Jn. Kochi-682016.
4. The Senior Accounts Officer/Construction
Southern Railway
Ernakulam Jn., Kochi-682016
5. The Executive Engineer/Construction
Office of the Dy. Chief Engineer
Construction, Southern Railway
Ernakulam Jn Kochi-682016.

Respondents

By Advocate Mr. Thomas Mathew Nellimootttil

O R D E R

HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

The applicant M.K. John, who superannuated from the position of Office Superintendent Grade-I in the establishment of the Dy. Chief Engineer (Construction) ERS, Southern Railway on 30.4.2004 (AN), had filed this Application while working as Office Superintendent Grade-II in the same establishment seeking refixation of his pay in

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that grade in the scale Rs. 5500-9000 w.e.f. 1.2.1995 as contemplated in A7 order and not from 1.10.1998 as done by A2 order, and consequential forward regulation for his pay in the post(s) held.

2. The case of the applicant is that beginning with his appointment as an Office Clerk in Southern Railway on 17.9.1965 he has been working in the Construction/Project Organization of the Railways, as his lien continued to be maintained in the Works Branch of Palghat Division. While so he was granted adhoc promotion to the post of Office Superintendent grade-II (OS-II) on 1.2.1995, initially for a period of three months, which went on being extended without break. While continuing as such he was regularly promoted to OS-II from 25.9.1998 (advanced to 24.4.1998 by Annexure A3 dated 6.5.2002). The applicant by A-10 dated 13.10.1998 exercised the available option for fixation benefit from 1.10.1998. His pay was fixed on 4.12.1998 at Rs. 6725 in the scale Rs. 5500-9000 as on 1.10.1998. Through his A5 representation dated 26.10.2002, the applicant sought the benefit of promotion from 1.2.1995 under Rule 1313 of Indian Railway Establishment Code claiming that since he was promoted on regular basis while officiating in an adhoc post continuously from 1.2.1995 he would be entitled to the benefit of promotion from that date. The Construction Organisation apparently acceded to the claim of the applicant but this failed to muster the required certification from the Accounts Branch (entrusted with internal check) on the ground that the promotion was adhoc and no certification as to whether the applicant was the seniormost Head Clerk awaiting

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promotion to the rank of OS-II in the cadre was available (R3 dated 12.9.2002), and further that the applicant had already exercised his option for fixation benefit from 1.10.1998 which was final. The Construction Organisation (CAO Works Construction Branch) however continued to hold the view that refixation from 1.2.1995 would be warranted (A-9 dated 4.10.2002). The matter rested there when the applicant filed the O.A.

3. The matter to be decided is whether the applicant is entitled to the benefit of promotion from the date of adhoc officiation and whether such adhoc promotions in the Construction Organisation, held as ex-cadre, would be of any consequence when fixation is to be determined in the ex-cadre post without involving reversion to the cadre. In the context of issues to be identified, we have kept ourselves reminded of the decisions of the Tribunal in OA 1497/98, OA 1282/98 and OA 1284/98 between January, 2001 to June, 2001.

4. Heard. While we recognise that the criticality of a distinction between cadre and ex-cadre is unassailable when movements between cadre and ex-cadre placements take place, thereby throwing open both in-line and ex-line opportunities and making it imperative that parity is achieved through in-line control, we could not be persuaded to apply the in-line control for one who worked for the entire length of this career ex-line outside the normal line of promotion without ever holding a cadre post. If the respondents allowed such a situation to govern the career of an employee, on the face of clear instructions that adhoc promotions

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should not be resorted to for regular posts excepting in inescapable circumstances where the selection panel could not be formed due to stay orders from Courts, etc., then they are in no position to invoke now the tenuous distinction between cadre and ex-cadre for denying the applicant the consequence of their action, without reverting him to a cadre post. As to the question whether the post held by the applicant in the Construction Organisation was a regular post, a reference of much used R-2 communication of the Railway Board would clarify the matter. Para 2 of that communication is reproduced below:

2. The revised method of calculation of vacancies for selection posts vide this Ministry's letter No. E(NG)I-98/MMP1/19 dated 21.10.97 requires that all the vacancies existing and reported upon by a Construction Organisation including Railway Electrification should be taken into account by Open Line administration while conducting selection(s). Accordingly, it is for the Open Line to post their staff in Construction Projects including Railway Electrification. It is implicit in these instructions that such postings in the Construction, etc., will normally be on regular basis. However, in exceptional circumstances in the exigency of work and against the short term vacancies, the Open line administrations are not debarred from posting them on adhoc basis on promotion to one grade higher than the grade held by them on regular basis. RE/Construction Organisations are thus required to convey all their requirement of staff to the concerned/contiguous Open Line Units.

(Emphasis added)

5. We have noted from this communication that postings in the construction Organisation would be on regular basis and that vacancy would be treated as a regular vacancy for the purpose of applying the norms of selection. As to the procedure for making adhoc promotions in selection posts, guideline (b) contained in R1 would clarify the position.

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(b) Adhoc promotion in selection posts

(i) Adhoc promotions may be made in leave vacancies and short duration vacancies upto 4 months beyond which period the FA&CAO should not draw the pay of concerned employee unless the Chief Personnel Officer has personally approved the continuance.

(ii) Normally no adhoc promotion should be made against regular vacancies. If it becomes inescapable to make adhoc promotion against regular vacancies warranted by such circumstances as Court's orders, etc., such promotion should be allowed only with the prior personal approval of the Chief Personnel Officer who should satisfy himself with the reasons for non-finalisation of the selection before according his sanction. In any case such arrangements should not be allowed to last over six months save in exceptional circumstances like where a panel cannot be formed because of stay orders from Courts, etc. The Chief Personnel Officer should keep record of having accorded approval to such adhoc promotion or continuation thereof and review the progress made in filling up these posts by selected persons every month. He should also review the position of selection to all posts whether such posts are controlled at Zonal, Divisional or Extra-Divisional level.

(Authority: Board's letters NO. E-55/PM1/19/3 dated 11.6.55 E(NG)I-73/PM1/222 dated 23.2.74 and E(NG)II-81/BC/1 dated 1.4.81)

6. Evidently, the guideline was not followed and adhoc promotions in selection posts (Construction posts of long duration are selection posts) continued without reviewing the position of selections to all posts including those controlled at extra-Divisional level like the post occupied by the applicant.

7. Now about the question of parity of pay with the applicant's seniors in the cadre, we do not see any real basis for parity as the applicant was never reverted to open line cadre where his lien was maintained. The contention of the respondents that regularisation of an adhoc appointee in an ex-cadre post would involve fixation of his pay in the cadre post with reference to his presumptive pay in the cadre

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post, does not help the respondents as we are concerned here with the applicant's pay fixation in the ex-cadre post. His cadre pay fixed on presumptive basis on regularisation in ex-cadre post would remain only for record without any consequence unless the ex-cadre appointee returns to the cadre post. It should be clearly understood that regularisation of promotion in the ex-cadre post only means that the employee is now entitled to the grade in the cadre. This has nothing to do with the employee's ex-cadre entitlement. When he reverts to the cadre, he would be placed between his senior and junior for parity.

8. As regards finality of the option exercised by the applicant on 13.10.1998, we notice that by A-4 ruling dated 6.8.2002 a break in continuity was ignored, thereby granting the applicant the benefit of continuous officiation from 1.2.1995, and enabling the applicant to claim promotion from that date. So, the option of 13.10.1998 was exercised when no decision had been taken to ignore the break and the applicant was in no position to claim anything other than incremental benefit on deferred fixation. In the circumstances of the case, finality of that option would not stand on the way of reopening the fixation.

9. In the result we allow the Application and direct that the pay of the applicant be fixed under Rule 1313 of the Indian Railway Establishment Code granting him the admissible

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option from the date of initial promotion (1.2.1995) with all consequential benefits within a period of four months from the date of issue of these orders. Parties to bear their own costs.

Dated, the 9th February, 2005.

H.P.Das
H.P.DAS
ADMINISTRATIVE MEMBER

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K.V. Sachidanandan
K.V. SACHIDAAANANDAN
JUDICIAL MEMBER