

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.454/96

Tuesday this the 2nd day of July, 1997.

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

P.R.Gopi,
Staff No. J/E 407,
Electrical Fitter (Power)
Highly Skilled Grade I,
Southern Railway,
Palakkad.

... Applicant

(By Advocate Mr. T.A. Rajan)

Vs.

1. Union of India represented by its
General Manager,
Southern Railway, Madras.
2. Divisional Personnel Officer,
Southern Railway, Palakkad. ..Respondents

(By advocate Mrs. Sumati Dandapani)

The application having been heard on 2.7.1997, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The short question that arises for consideration in this case is "Whether an official promoted to a higher post if retained in the lower post in the exigencies of service for some time and later promoted with retrospective effect with effect from the due date can be denied the difference in wages between the pay of the higher post and the lower post on the ground that he has not actually shouldered the higher duties and responsibilities of the higher post during the period.

2. The facts can be shortly stated thus. The applicant who was Electrical Fitter Power H.S. Grade II qualified in the

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trade test for promotion to the post of Electrical Fitter Grade I as is seen from the order dated 23.12.91 (A-1). Consequent on the success of the applicant, the applicant alongwith some others were promoted by order dated 10.2.92(A-2) as Electrical Fitter Grade I at Coimbatore. The order A-2 stated that the promotion was with immediate effect and directed the controlling officers to relieve the respective officials immediately. However, the Chief Workshop Manager, S&T Workshop, Podanur under whom the applicant was working did not relieve the applicant to enable him to take over at Coimbatore presumably owing to shortage of staff. The applicant was willing to give effect to the orders of promotion. A proposal was sent by the Chief Workshop Manager, S&T Workshop, Podanur to the Divisional Personnel Officer, Palakkad for permission to retain the applicant in the Workshop but the same was turned down for want of a post in the grade by order dated 4.2.93. The applicant was again posted as Electrical Fitter Grade I at Podanur itself. This order was also not given effect to. The Chief Workshop Manager, S&T Workshop, Podanur in his letter dated 3.3.93 stated that the promotion of the applicant would take effect only with effect from the date of relief of one M.P.Nagarajan from the Unit. Finally by order dated 31.5.93 the applicant was relieved to take over as Electrical Fitter Grade I at Coimbatore. The applicant took over as Electrical Fitter Grade I at Coimbatore on 4.6.93. After taking over there he made a representation to the Divisional Personnel Officer requesting that his promotion may be ante dated to 10.2.92 and he be given all the consequential benefits. This request was turned down by order dated 9.8.93 (A8) but he was informed that his seniority would be

protected. Aggrieved by A8 and A9 orders, the applicant filed OA. 920/94. During the pendency of the above application an order dated 11.11.94 was passed by the Divisional Personnel Officer, Palghat promoting the applicant on a proforma basis with effect from 15.2.92 the date on which a person immediately junior to him took over as Electrical Fitter Grade I. His pay was accordingly refixed but he was not given the arrears of pay and allowance. Finding that the grievance of the applicant to a certain extent was already redressed, the application O.A.920/94 was disposed of with a direction to the applicant to make a representation to the competent authority in regard to his claim for arrears of pay and allowances. Accordingly the applicant made a representation on 23.2.95 (A-13). The impugned order dated 3.4.95 was passed in reply to the above representation. It was stated in this order that as the applicant did not shoulder the higher responsibilities of the post of Electrical Fitter Grade I with effect from 15.2.92 in accordance with the provisions contained in paragraph 228 of the Indian Railway Establishment Manual Vol.I he was not entitled to get arrears of pay and allowances. Under these circumstances the applicant has filed this application praying that the impugned order may be quashed declaring that the denial of arrears of pay and allowances to the applicant from 15.2.92 to 4.6.93 is illegal ^{and} the respondents may be directed to pay to the applicant the arrears of pay and allowances.

3. The respondents admit in the reply statement that the applicant was promoted by order dated 10.2.92 as Electrical Fitter Grade I on his being qualified in the trade test, that his relief till 31.5.93 was delayed owing to exigencies of service, and that his pay has been fixed on proforma basis,

reckoning his date of promotion as 15.2.92 protecting his seniority, but would contend that in view of the fact that the applicant has not between 15.2.92 and 4.6.93 shouldered the higher responsibilities of the post of Electrical Fitter Grade I in accordance with the provisions contained in paragraph 228 of the Indian Railway Establishment Manual, the applicant is not entitled to the arrears of pay and allowances as claimed by him.

4. I have gone through the pleadings and materials available on record and have heard the arguments of the learned counsel on either side. The learned counsel for the applicant placed reliance on the ruling of the Tribunal in O.A.254/90 and connected cases titled K.G.Thomas Vs. Union of India and others decided on 28.6.91 to which I was also a party. The issues involved in O.A.254/90 and connected cases was whether arrears of pay and allowances can be justifiably denied to an employee whose promotion at the relevant date was denied and was subsequently promoted with effect from the due date. After exhaustive discussion of the case law on the point, the Bench held that under such circumstances the employer is not entitled to deny to the employee the arrears of pay and allowances. This ruling was followed by the Ernakulam Bench in another ruling P.Thyagarajan and Others Vs. Union of India and others reported in (1992) 19 ATC 839. Identical question was considered in P.Narayanan Nair and others Vs. C.G.M.T, Kerala Circle and others reported in 1994(26) ATC 883 and it was held that while the employee was willing and available to perform the duties of a higher post and if the opportunity to perform the duties of the higher responsibilities was denied to him, the employer is not

entitled to deny to the employee arrears of pay and allowances.

5. I am in respectful agreement with the views taken in the above said cases and find no reason to take a different view. It is a fact beyond dispute in this case that the applicant was willing to shoulder the higher responsibilities of the post of Electrical Fitter xxxxxxxx Grade I immediately from the date of his promotion on 10.2.92 but was denied the opportunity on account of administrative reasons and not for any reason attributable to him. The respondents who have denied to the applicant the opportunity to shoulder the higher responsibilities and to give effect to the promotion to suit their convenience cannot turn around and say that the applicant shall not be entitled to the salary attached to the post from the date on which he was later given a retrospective promotion.

6. In the result and in the light of what is stated above, I am of the view that the applicant is bound to succeed in this application. The application is therefore allowed and the impugned order (A14) quashed. Respondents are directed to pay to the applicants the arrears of difference in pay and allowances from 10.2.92 till 4.6.93 between what was due to him as Electrical Fitter Grade I and what was really paid to him during the period. Payment of the arrears shall be made within two months from the date of communication of a copy of this order. No order as to costs.

Dated the 2nd day of July, 1997.


A.V. HARIDASAN
VICE CHAIRMAN

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