

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 455/ 2007

Wednesday, this the 5th day of March, 2008.

CORAM

HON'BLE MRS SATHI NAIR, VICE CHAIRMAN

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

P.V.Sunil Kumar,
Pharmacist Gr.II, Railway Hospital,
Southern Railway, Palghat-678 009.Applicant

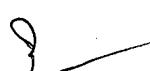
(By Advocate Mr TC Govindaswamy)

v.

1. Union of India represented by
the General Manager,
Southern Railway,
Headquarters Office,
Park Town.P.O.
Chennai-3.
2. The Chief Personnel Officer,
Southern Railway,
Headquarters Office,
Park Town.P.O.
Chennai-3.
3. The Chief Medical Director,
Medical Department,
Southern Railway,
Headquarters Office,
Park Town.P.O.
Chennai-3.
4. Smt Malarvizhi,
Pharmacist Gr.II,
Railway Hospital/Southern Railway,
Goldren Rock,
Tiruchirapalli.
5. Shri K.R.Sasidharan,
Pharmacist Gr.II,
Railway Hospital/Southern Railway,
Palght.Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

This application having been finally heard on 26.2.2008, the Tribunal on 5.3.2008



delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant's grievance is that he was not considered for promotion as Pharmacist Grade-I with effect from 29.10.1996 when the 4th respondent who was junior to him was considered to the said grade.

2. The facts in brief are that the applicant joined as a Pharmacist Grade-III on 28.11.1990 and the respondents 4 & 5 joined the same post on 20.3.1991 and 5.2.1991 respectively. All of them belong to the Scheduled Caste community. In the Annexure A-1 seniority list dated 3.3.1993 of the Pharmacist Grade-III, the positions of the applicant as well as respondents 4 & 5 and their community status as SC were correctly shown at Sl.No.76, 78 and 79 respectively. In the subsequent Annexure A-2 seniority list of Pharmacist Grade-III published on 31.12.1995, their positions were again correctly shown at Sl.No.38, 40 & 41 respectively but the community status of the applicant was omitted. The respondents had conducted an examination on 3.6.1995 for promotion to Pharmacist Grade-II and the applicant also appeared in the said examination. However, in the subsequent examinations held on 8.7.1996 and on 23.5.1997, the applicant was not permitted to write the written examination but the respondents 4 & 5 were allowed, and on the basis of the result of the examination, they were promoted as Grade-II in the scale of Rs.1400-2600. He made Annexure A-3 representation dated 17.7.1996 and A-4 representation dated 22.7.1997 pointing out the aforesaid lapse on the part of the respondents and also requesting them to promote him also as Pharmacist Grade-II with effect from the date the 4th respondent was promoted to that grade. In the meanwhile, respondents again published the Annexure A-5 seniority list of Pharmacist Grade-I, II and III as on 31.12.1998 and the Applicant's name and



his community status was shown at Sl.No.30 of the list of Pharmacist Grade.III. Since the respondents 4 & 5 have already been promoted by that time to the grade of Pharmacist Grade-II, their names were shown at Sl.No.60, 61 respectively in the list of Pharmacist Grade-II and it was stated therein that they have been promoted against SC quota vacancies with effect from 29.10.1996 and 23.11.1998 respectively. Applicant again made Annexure A-6 representation dated 3.6.2003 requesting the respondents to promote him also as Pharmacist Grade-II with retrospective effect, at par with his juniors Smt Malarvishi and K.R.Sasidharan (4th and 5th respondents in this O.A.). Finally, by Annexure A-7 Office Order dated 23.5.2005, the applicant was empanelled as a Pharmacist Grade-II against the vacancies arisen on account of the restructuring of the Department and the resultant vacancies with effect from 1.11.2003. Since the applicant's request for promotion to the grade of Pharmacist Grade-II from the date his junior has been appointed was not acceded to by the respondents so far, he again made Annexure A-8 and A-9 representations dated 6.6.2006 and 26.3.2007 respectively. As a last resort, he filed the present O.A seeking the following reliefs:

- (i) Declare that the applicant is entitled to be considered for promotion as Pharmacist Gr.II in scale Rs.5000-8000, in preference to the 4th respondent and declare further that the applicant is entitled to be granted the consequential benefits of promotion as Pharmacist in Gr.II in scale Rs.5000-8000, with effect from 29.10.1996;
- (ii) Direct the respondents to grant the applicant the benefit of promotion as Pharmacist Gr.II in scale Rs.5000-8000 with effect from 29.10.1996 with all consequential benefits including arrears of pay and allowances.
- (iii) Declare that the applicant is entitled to be considered for further promotion as Pharmacist Gr.I in scale Rs.5500-9000, in preference to the 4th and 5th respondents and direct the respondents to consider the applicant for promotion as Pharmacist Gr.I in preference to the respondents 4 and 5, both

against the reserved quota and also against general quota vacancies and direct the respondents accordingly.

3. The respondents have not disputed the aforesaid factual position stated by the applicant in the O.A. They have in fact admitted that there was an inadvertent error in the seniority list of Pharmacist Gr.III published on 31.12.1995 and consequently his junior was promoted. They have also submitted that the error was purely due to over sight and in the subsequent list published on 31.12.1998 his caste status was restored and he was promoted as Pharmacist Gr.II with effect from 1.11.2003. However, they have submitted that his request for retrospective promotion from the date his junior has been promoted is not permitted in terms of Para 228 of the Indian Railway Establishment Manual which is reproduced as under:

"228. Erroneous Promotions (I) Some times due to administrative errors, staff are overlooked for promotion to higher grades could either be on account of wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotion or some other reasons. Broadly, loss of seniority due to the administrative errors can be of two types:

- (i) Where a person has not been promoted at all because of administrative error, and
- (ii) Where a person has been promoted but not on the date from which he would have been promoted but for the administrative error.

Each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-a-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts."

They have also submitted that the aforesaid provision of rule has been upheld by the Apex Court in Civil Appeal No.8904/1994 in the case of **Union of India v. P.O.Abraham** but they have not made available a copy of the aforesaid



judgment.

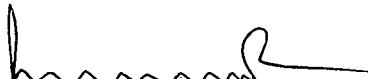
4. Applicant has filed a rejoinder refuting the contentions of the respondents. He submitted that it was because the respondents have not responded to his representations timely, his promotion was delayed unnecessarily.

5. We have heard Shri TC Govindaswamy, counsel for the applicant and Shri Thomas Mathew Nellimoottil, counsel for respondents. There is no denial of the fact that the respondent No.4 was the immediate junior of the applicant in the SC category of Pharmacist Gr.III. She was considered and promoted for the post of Pharmacist Gr.II with effect from 29.10.1996. Applicant has immediately brought this fact to the notice of the respondents. But they have not taken any corrective measures. Instead, they have promoted the next junior of the applicant also on 23.11.1998. Ultimately, the applicant was promoted only with effect from 1.11.2003 against the restructured/resultant vacancy. One could understand that there can be errors and omissions in promotions for various reasons. It could be for the wrong assignments of relative seniority, inadequate details of the employees etc. But once the applicant has brought the error to the notice of the respondents, it is their bounden duty to rectify the same immediately. Admittedly, the applicant pointed out the mistake on the part of respondents on 17.7.1996 itself (Annexure A-3). Respondents did not bother to take any action on this representation. It was followed by another representation dated 22.7.1997 again requesting the respondents to consider him also for promotion to the post of Pharmacist Gr.II. This representation was also went unheeded by the respondents. Such callous and indifferent attitude of the respondents has resulted in the delay in promoting the applicant. Therefore, the responsibility in not promoting the applicant on time entirely rests upon them and it was not attributable to the applicant in any manner. The Apex Court in the case of

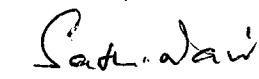
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Nirmal Chandra Bhattacharjee and others v. Union of India and others [1991 Suppl.(2) SCC, 363] it was held "*The mistake or delay on the part of the department, therefore, should not be permitted to recoil on the appellants*". Here the delay in appointing the applicant was entirely with the respondent-department and no explanation whatsoever is forthcoming from them except saying that it was due to some inadvertent mistake that he was not considered for promotion. In the above facts and circumstances of the case we allow this O.A. and declare that the applicant was entitled to be considered for promotion as Pharmacist Gr.II in the scale of Rs.5000-8000 from the date the 4th respondent was promoted to the said grade i.e. with effect from 29.10.1996. Consequently respondents shall grant the applicant the benefit of promotion of Pharmacist Gr.II with effect from 29.10.1996 with all consequential benefits including arrears of pay and allowances. He shall also be entitled for consideration for further promotion as Pharmacist Gr.I in the scale of Rs.5500-9000 in preferences to respondents 4 & 5 subject to his fulfilling of the required conditions as laid down in the relevant rules. The exercise shall be completed within a period of two months from the date of receipt of this order. There shall be no order as to costs.

Dated, the 5th March, 2008.



GEORGE PARACKEN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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