

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A. No. 458 of 1995.

Wednesday this the 31st day of July 1996.

CORAM:

HON'BLE MR. JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR. P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

C. Sivashanmugham,
Retired Mail Driver,
Southern Railway, Erode,
136, Parvathy Krishnan Street,
Kollampalayam, Erode.

.. Applicant

(By Advocate Shri T.A. Rajan)

Vs.

1. Union of India represented by
the General Manager,
Southern Railway, Madras.

2. The Chief Personnel Officer,
Southern Railway,
Madras.

3. The Divisional Railway Manager,
Southern Railway,
Palghat.

4. The Divisional Personnel Officer,
Southern Railway,
Palghat.

.. Respondents.

(By Advocate Shri P.A. Mohamed)

The application having been heard on 31st July 1996,
the Tribunal on the same day delivered the following:

O R D E R

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

Applicant a retired Mail Driver under respondents,
seeks a direction to grant him pensionary benefits after
refixing his pay with effect from 6.7.90, (The alternate
prayer for grant of pension with effect from 27.12.89 is
not pressed) which is the date on which his immediate

junior was promoted. Applicant approached this Tribunal by O.A. 894/94 and we disposed of the same permitting applicant to make a representation and directing second respondent to pass orders thereon. A representation was made and A7 order was passed. He was granted proforma promotion as Mail Driver from 6.7.90, but his pay was fixed in that grade only from 1.10.90. The reason for this is stated in A7 :

" Running allowance is an allowance paid to Running Staff for performance of duties directly connected with the charge of moving trains. As you did not work as a Driver prior to 20.10.90, you are not entitled for any allowance...."

According to applicant, he is entitled to have proforma pay fixed coeval with the date of his proforma promotion. Ordinarily, an appointment carries the emoluments attached thereto from the date of appointment and both are coterminous. The reason stated for denying fixation of pay is that applicant did not perform the duties of the Driver. If applicant can be granted proforma promotion, there is no good reason why he should not be granted proforma fixation of pay. But, according to counsel for Railways, there is a reason. Running allowance can be given only if an official performs 'running duties'. We think that there is a fallacy in this argument. More than one type of allowance is earned by 'running staff'. One of them is 'kilometrage' in the contemplation of para 1507 of the Indian Railway Establishment Code, Volume II. There are allowances, other than kilometrage. For example There is running allowance in the contemplation of Para 913 (ii)(a) of Indian Railway Establishment Manual, Volume I. It is to the effect that:

" When running staff are put to officiate in a stationary post for more than 30 days, their pay will be fixed on the basis of their pay in the lower post plus 30% thereof representing the pay element of the Running Allowance."

If kilometrage is not admissible, running allowance aforesaid will be admissible on the reasoning in this rule. Applicant happened to be in a lower post, due to the wrong denial of promotion. We may also point out that when promotion was wrongly denied (as in this case) the employer is bound to give all the benefits which the official would earn, but for the wrong denial of promotion. (See Union of India etc. Vs. K.V. Jankiraman etc. etc. AIR 1991 SC 2010). There is no rhyme or reason for giving promotion on one date and giving pay and allowances only from a later date. Railway counsel could not point out any rule or justification, except what we noticed earlier, namely, that applicant was not performing running duties. He did not perform running duties, because promotion as Mail Driver was wrongly denied to him. The view taken in A7 to the extent of denying running allowance as contemplated by para 313 between 6.7.90 and 1.10.90 is improper. We declare that applicant is entitled to receive the running allowance in the contemplation of paragraph 913 (ii)(a) with effect from 6.7.90. Respondent Railway will refix the pension of applicant on this basis and make payment. However, applicant will not be entitled to receive the arrears of pay/allowance for that period and the declaration

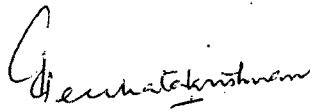
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will be limited to fixation and payment of pensionary benefits.

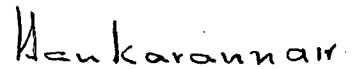
2. Original application is allowed as aforesaid.

No costs.

Wednesday this the 31st day of July 1996.



P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER



CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN

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