

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 513/ 2007

Friday, this the 17th day of October, 2008.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE DR K.S.SUGATHAN, ADMINISTRATIVE MEMBER

V.S.Ashok,
Junior Engineer//Permanent Way,
East, Southern Railway,
Palghat.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 Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.
4. The Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.
5. The /Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.
6. Shri N Sridhar,
Junior Engineer//P.Way,
Southern Railway, Palghat Division,
Palghat.Respondents

(By Advocate Mr Thomas Mathew Nellimoottil for R.1 to 5)

This application having been finally heard on 19.9.2008, the Tribunal on 17.10.2008 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant's claim in this O.A is two fold; first is that he is entitled to be granted the benefit of promotion as Junior Engineer Gr.II/Permanent Way in scale of pay Rs.5500-9000 with effect from 18.11.1998, the date from which his juniors have been promoted, second is that his name should be included in the Annexure A-15 panel for promotion to the post of Section Engineer, P.W in the scale of Rs.6500-10,500 against 80% promotional quota.

2. The relevant facts for the disposal of this case are as follows: The applicant was initially appointed as Junior Engineer Gr.II/Permanent Way on 26.4.1988. While he was so working, after issuing him with a minor penalty charge memo No.J/T.5/1/B4/82/96 dated 8.11.1996, he was awarded the penalty of withholding of his annual increment normally due on 1.4.1998 for a period of 24 months on non-recurring basis, vide Annexure A-1 dated 6.8.1997. However, the said Annexure A-1 penalty advice was kept in abeyance till such time further advice is received from the Chief Track Engineer by Annexure A-2 Note No.J/W.349/9 dated 13.8.1997 on the ground that the issue involved was "disputed by the CE". However, no further orders were issued revoking the Annexure A-2 Note or restoring the Annexure A-1 penalty advice. However, since the respondents have already made an entry in the service record of the applicant regarding the Annexure A-1 penalty advice dated 6.8.1997, vide Annexure A-3 letter dated 29.11.1997, he requested the 4th respondent, viz, the Divisional Engineer (Central), Palghat Division to give

necessary instructions to the FPO, Palghat for correcting the wrong entry made in his service record and to grant him the increment on the due date. However, without considering his aforesaid request, the Chief Personnel Officer, Southern railway vide Office Order No.J/W1/15/99 dated 30.3.1999 promoted number of applicant's juniors as J.E//P.W in the scale of Rs.5500-9000. The aforementioned promotion of juniors was communicated by the 3rd respondent vide Annexure A-4 Office Order dated 30.3.1999. As regards the applicant was concerned, it was stated therein that he was considered for promotion to the post of J.E./P.W in the scale Rs.5500-9000 but it was passed over as he was undergoing punishment. He has, therefore, made the Annexure A-5 representation dated 14.5.1999 to the 3rd respondent and requested to consider his name for promotion from the date his juniors have been promoted. Since there was no response to the aforesaid representation, he made the Annexure A-6 representation dated 1.6.1999, followed by the Annexure A-7 representation dated 4.12.1999 to the DRM. Finally he got the Annexure A-8 letter from the office of the A.E., Southern Railway, Palghat directing him to file a proper appeal to the DRM. Accordingly, he submitted the Annexure A-9 appeal stating that his case for promotion was passed over on the ground that he was undergoing punishment but in fact his penalty advice was kept pending as per the orders dated 13.8.1997 and subsequently it was cancelled by the DRM, Palghat vide his letter dated 20.1.2000. He has, therefore, requested the Chief Personnel Officer to carry out his promotion which was due to him from 18.11.1998 without any further delay. At last, the applicant was promoted as J.E in the scale of Rs.5500-9000 but only with effect from 14.2.2002. He has, therefore submitted Annexure A-11 representation dated 10.10.2006 requesting the respondents to review his case and to grant him promotion from 18.11.1998 instead of 14.2.2002. During the pendency of his aforesaid appeal, the respondents alerted those who were working as J.E/P.Way in the zone of consideration for

selection to the post of S.E./P.Way in the scale Rs.6500-10500 vide Annexure A-12 letter dated 26.2.2007. Applicant had also applied for the aforesaid post and passed the written examination conducted on 7.4.2007 with 84% marks. According to the applicant, he was under the bonafide belief that he will be assigned the due position in the seniority list. However, it is noticed in Annexure A-12 "List of Employees working as JE Gr.I/P.Way in scale Rs.5500-9000 alerted for selection for the post SE/P.Way in scale Rs.6500-10500" and in the Annexure A-13 panel "Selection for the post of SE/P.Way in scale Rs.6500-10500 against 80% promotional quota, 11 of his juniors have been placed above him. Having come to know about the aforesaid position, applicant submitted another representation dated 7.7.2007 (Annexure A-14) addressed to the 2nd respondent stating inter-alia that 11 of his juniors have been placed above him in the Annexure A-12 on the ground of failure on the part of the respondent-department to grant him benefit of J.E with effect from the date from which it fell due i.e. 18.11.1998. Respondents did not consider the Annexure A-14 representation. Instead they have issued the impugned A-15 letter letter dated 13.7.2007 placing 23 J.Es in the panel for the post of Section Engineer/P.Way in the scale Rs.6500-10500. Finding that the applicant was not placed in the Annexure A-15 panel, he submitted the Annexure A-16 representation dated 13.1.2007 addressed to the 2nd respondent to consider his proper position as well as seniority the outstanding marks obtained in the written test and to include his name in the approved selection panel. There was no response to the aforesaid representation also. According to the applicant, without disposing of the aforementioned representation, respondents are going ahead with the promotion of persons from the Annexure A-15 panel. He has, therefore, sought a declaration that he is entitled to be granted the benefit of promotion as J.E Gr.I/P.Way in scale Rs.5500-9000 with effect from 18.11.1998 and to consider him for promotion from that date and also to include him at the proper place in

the Annexure A-15 panel taking note of his date of promotion to the feeder post of J.E Gr.I as 18.11.1998.

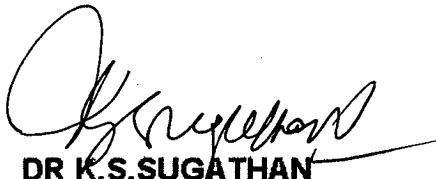
3. The respondents in their reply have submitted that the applicant was imposed with a penalty of withholding of annual increment due on 1.4.1998 for 24 months (non-recurring as per penalty advise dated 6.8.1997) but the same was cancelled by the Divisional Railway Manager, Palghat on 5.1.2000 on the ground that during the pendency of finalisation of the enquiry report at Headquarters level, penalising the employee based on the findings arrived at Divisional level was not proper. Accordingly, the withheld increments were released to the applicant from due dates. However, pursuant to the proceedings in another case, the pay of the applicant was reduced by three stages for a period of one year from 1.12.2000 which was later modified as reduction of one stage. Later on, he was promoted as J.E Gr.I vide Office Order dated 26.3.2002. They have also submitted that as per Rule 25, only the General Manager has the power to undertake review suo motu without any restriction of time limit and therefore the cancellation of penalty by the Head of the Division after one year was a breach of rule and the cancellation of penalty was ab initio void. They have further submitted that the first penalty of withholding of increments for 2 years was from 1.4.1998 and it was to expire on 31.3.2000 and the second penalty of imposition of reduction of pay for one year from 1.12.2000 and it expired on 30.11.2001. They have also submitted that from 1.4.2000 to 1.12.2000, when he was free from operation of any penalty, it should necessarily be covered as period under contemplation of initiating disciplinary proceedings under the Discipline & Appeal Rules (DAR), thereby rendering him ineligible to be considered for promotion during such period. Therefore, even though the applicant was eligible for consideration for promotion as J.E Gr.I from 18.11.1998, he could be considered for the same only from 1.12.2001 the date

on which the currency of his second penalty has expired.

4. In the rejoinder, the applicant has denied the contentions of the respondents. He has submitted that the averment of the respondents that "since he was undergoing penalty, he was not granted promotion as J.E.I which was due from 18.11.1998" is not correct. He has submitted that he was not undergoing any penalty since the penalty was kept pending by the competent authority by Annexure A-2 dated 13.8.1997 itself and later it was cancelled. Therefore, he became due for promotion on 18.11.1998 and any penalty imposed after 1.12.2000, even if true, not conceding, cannot be a ground to deny the applicant the benefit of promotion due on 18.11.1998. He has also submitted that in terms of the instructions on the subject, the sealed cover proceedings can be initiated in Railways only in respect of major penalty proceedings and not in respect of minor penalty proceedings and, at any rate, the minor penalty proceedings came to an end initially on 6.8.1997. The only impediment for promoting him, if any, was recording of a non-existing penalty in his service records at the time of consideration his for promotion. Once the penalty is cancelled, it is only natural that he is given all consequential benefits relating to the same.

5. We have heard the learned counsel for the parties. The undisputed fact of the matter is that the applicant was eligible to be considered for promotion as J.E Gr.I from 18.11.1998. The only reason given by the respondents as to why he was not considered on the said due date was that he was imposed with a penalty of withholding of annual increment due on 1.4.1998 for 24 months (non-recurring) as per penalty advice dated 8.8.1997. The respondents themselves have admitted that the said penalty was subsequently cancelled by the Divisional Railway Manager, Palghat and the withheld increments were released to him

from the due dates. Thereafter no further action was taken in respect of the penalty or the cancellation of the same. Therefore, there is no merit in their contention that the Divisional Railway Manager had no such power to cancel the penalty already imposed and such a power vested only with the General Manager and the General Manager has not passed any order in this regard. In effect, as far as the applicant is concerned, he was free from any disciplinary proceedings during the period from 1.4.1998 to 31.3.2000. Therefore, the promotion due to him from 18.11.1998 cannot be denied to him. In the above facts and circumstances of the case, we declare that the applicant is entitled to be granted the benefit of promotion as Junior Engineer Gr.I/P.Way in scale Rs.5500-9000 with effect from 18.11.1998, the date from which the applicant's juniors are promoted with all benefits including arrears of pay and allowances and he shall be promoted accordingly. Consequently, we also declare that the applicant is entitled to be included in the Annexure A-15 panel dated 13.7.2007 granting him appropriate seniority position. The aforesaid directions shall be complied with, within a period of three months from the date of receipt of this order. The O.A is accordingly allowed. There shall be no order as to costs.


DR K.S.SUGATHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER