

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 521 of 2001

Thursday, this the 17th day of April, 2003.

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. E.K.S. Nair,
S/o late E.R.K. Nair,
Retired Senior Section Engineer (Permanent Way),
South Eastern Railway, Khurda Road Division,
Jatni PO, Khurda District, Orissa-752 030
Residing at Enjakattu House,
Thrikkariyur PO, Ernakulam District,
Kerala.Applicant

[By Advocate Mr. T.C. Govindaswamy]

Versus

1. Union of India represented by the
Secretary to the Government of India,
Ministry of Railways, Rail Bhavan,
New Delhi.
2. The General Manager,
South Eastern Railway,
Garden Reach, Calcutta-43
3. The Chief Personnel Officer,
South Eastern Railway,
Garden Reach, Calcutta-43
4. The Senior Divisional Personnel Officer,
South Eastern Railway,
Khurda Road Division, Jatni PO,
Khurda District, Orissa-752 050
5. The Chief Engineer,
Southern Eastern Railway,
Garden Reach, Calcutta-43Respondents

[By Advocate Mr. P. Haridas]

The application having been heard on 1-1-2003,
the Tribunal delivered the following on 17.4.2003.

O R D E R

HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

The applicant, retired as a Senior Section Engineer
(Permanent Way) from South Eastern Railway on 31-7-2000, who
had claimed promotion as Assistant Engineer (Group B) against

the 75% quota vacancies was, after several rounds of litigation, eventually included in Annexure A1 panel dated 22-12-1995 at Sl.No.155 against 1990 vacancies. This was apparently in compliance with the order of the Central Administrative Tribunal, Cuttack Bench in OA No.404/90 dated 12-8-1993. Though his name figured in the panel, the applicant was not given the benefit of promotion. When the applicant filed a Contempt Petition No.20/96, the respondents produced a copy of Annexure A1 panel, but explained that the applicant could not be promoted since he was placed under suspension with effect from 17-12-1994 for noncompliance with the instructions issued to him from time to time. However, in the same reply statement, the respondents admitted that the suspension had since been revoked with effect from 1-5-1996. The reason for the continued denial of promotion was stated to be the pendency of three major penalty cases against him. According to the applicant, the suspension order of 1994 was set aside by the CAT, Cuttack Bench vide order in OA No.752/94 dated 20-3-1996 (Annexure A2) and the reinstatement of the applicant was ordered. The applicant was accordingly reinstated and his period of absence from duty on account of the suspension was treated as duty. According to the applicant, the allegation that three major penalty proceedings were pending against him was factually incorrect. When one of his juniors in Annexure A1 panel, viz. Shri U.M.Vijayan, was promoted and he was overlooked, there was only one penalty case pending against him. When the applicant filed the Contempt Petition No.20/96 arising out of the order in OA No.404/90, there were two penalty proceedings pending against the applicant. It is the applicant's case that one of the two major penalty proceedings culminated in an order dated 4-9-1999 (Annexure A3) holding him not guilty of any misconduct. In the other major penalty proceedings, the charge levelled against the applicant was ^{held} not

proved, although his failure to attend the enquiry matters on certain days caused the imposition of a minor penalty of 'Censure' (Annexure A4). The applicant claims that he ought to have been promoted as Assistant Engineer with consequential benefits including fitment in the senior scale with reference to the date of promotion of his junior Shri U.M.Vijayan vide Annexure A1 panel and Annexure A-10 order. The applicant's Annexure A5 representation dated 16-1-1998 to the 3rd respondent with copy to the 4th respondent, Annexure A6 representation dated 15-11-1999 to the 5th respondent, Annexure A7 representation dated 26-12-2000 to the 5th respondent and Annexure A8 representation dated 20-1-2001 to the 2nd respondent went unresponded to. Meanwhile, the applicant retired on superannuation on 31-7-2000. Even his regular pension was denied apparently under the pretext of pendency of some CBI case against him. He filed OA No.258/2001 seeking this Tribunal's intervention. At the time of filing of this OA, the same matter was pending. (However, the same has since been disposed of by this Tribunal as per order in OA No.258/2001 dated 16-4-2002.) The applicant sent a lawyer notice on 5-3-2001 (Annexure A9) to the 2nd respondent, the General Manager. Still there is no response. Hence, this OA seeking the following reliefs:-

- "(a) Declare that the refusal on the part of the respondents to promote the applicant to the post of Assistant Engineer (Group B) with effect from the date of promotion of the applicant's junior Shri U.M.Vijayan is arbitrary, discriminatory, contrary to law and unconstitutional and direct the respondents accordingly;
- (b) Direct the respondents to grant all consequential benefits of promotion including the benefit of further promotion, arrears of pay and allowances, as also revision of pension and other retiral benefits, with 18% interest to be calculated from the dates from which the payments fell due;

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- (c) Award costs of and incidental to this Application; and
- (d) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

2. Respondents have filed reply statement opposing the OA stating that the applicant could not be promoted on account of the pendency of departmental proceedings against him. Thereafter, his promotion got delayed for want of final confirmation of vigilance/SPE clearance in his favour. Since one of the major departmental proceedings initiated against him arising out of a CBI investigation was not treated as closed by the CBI authority, even after the finalization of the CBI proceedings holding him not guilty, his promotion could not be carried out. The settlement of dues was also delayed on account of that. There was no arbitrariness or discrimination against the applicant, the respondents would contend. The OA, therefore, is liable to be dismissed, the respondents would urge.

3. In his rejoinder, the applicant has highlighted the high-handedness of the respondents inspite of the applicant's admitted entitlement for promotion.

4. We have heard Shri T.C.Govindaswamy, learned counsel for the applicant and Shri P.Haridas, learned counsel for the respondents.

5. According to Shri T.C.Govindaswamy, learned counsel for the applicant, the applicant had to approach this Tribunal every time to get his right declared. Inspite of the fact that the respondents had accepted the legitimacy of his claim, the applicant continued to be denied the benefit and therefore, the denial of promotion and consequential benefits along with his

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junior in the same panel was arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution, according to the learned counsel. Respondents had not given any good reason for denying the applicant his legitimate claim in the light of his inclusion in Annexure A1 panel consequent to the CAT, Cuttack Bench's order in OA No.404/90 dated 12-8-1993, the learned counsel would urge. He would also state that the applicant was subjected to continued victimization which fact was taken note by the CAT, Cuttack Bench as per order in OA No.752/94 dated 20-3-1996 revoking the suspension order and directing the applicant's reinstatement. Even his normal pension was denied to him until this Bench of the Tribunal directed the respondents to grant the benefits as per order in OA No.258/2001 dated 16-4-2002. Explaining the pleadings and the grounds in the OA, the learned counsel would maintain that the applicant was entitled to promotion as Assistant Engineer from the date on which his immediate junior in the panel was promoted with all monetary benefits and interest thereon.

6. Shri P.Haridas, learned counsel for the respondents, on the other hand, reiterated the pleadings in the reply statement and maintained that there was no deliberate denial of promotion to the applicant and that there were justifiable circumstances like pendency of disciplinary proceedings, non-receipt of vigilance clearance, etc. According to the learned counsel for respondents, although the applicant was to be promoted as per his position in the panel, his promotion would take effect only prospectively in view of the extant instructions and he could not claim any proforma promotion with reference to his junior in the panel. Learned counsel would, therefore, maintain that the applicant did not have any enforceable claim on promotion and consequential benefits from the date on which his junior was promoted.

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7. We have perused the records and have carefully considered the contentions advanced by the learned counsel for the applicant and the learned counsel for respondents. We find that the applicant had to get his eligibility to be considered for promotion to the post of Assistant Engineer against the 75% quota vacancies of 1990 declared in his favour by the CAT, Cuttack Bench as per order in OA No.404/90 dated 12-8-1993. This is clear from Annexure A1 panel dated 22-12-1995 read with Corrigendum dated 3-1-1996. Respondents' stand in the Contempt Petition No.20/96 filed by the applicant for non-implementation of the Tribunal's directions in OA No.404/90 was that the applicant could not be promoted on account of his suspension, although such suspension was admittedly revoked with effect from 1-5-1996. It is clear from the respondents' reply statement in the CP(C) No.20/96 arising out of OA No.404/90 that the respondents claimed to have initiated three disciplinary proceedings involving major penalties against the applicant which were stated to be pending and that for that reason he did not have a chance to get his promotion. It is interesting to note that the suspension itself, which was stated to have stood in the way of his promotion, was held to be the result of blatant victimization vide order in OA No.752/94 dated 20-3-1996. This was the circumstance under which the suspension order had to be revoked. Even then, the respondents did not relent. They denied him the promotion on the alleged ground of three major penalty cases pending against him. We find that the applicant was denied his due promotion against 1990 vacancies, though no penalty proceedings were actually pending at the material time. Further, the disciplinary proceedings initiated on 16-10-1995 were closed exonerating the applicant from the charges levelled against him vide Annexure A3 communication dated 4-9-1999. Another disciplinary proceedings initiated on 24-6-1994 were also

dropped, though his failure to attend in connection with the enquiries on certain days fixed by the Inquiry Officer caused a minor penalty of 'Censure' to be imposed on him vide Annexure A4 dated 3-9-1999. The respondents' contention that there were three major penalty proceedings pending against the applicant is not borne out by facts. Thus, we notice that there was no circumstance that justified continued denial of promotion to the applicant as Assistant Engineer inspite of his right having been upheld and a finding of victimization was also recorded by the Tribunal. We also notice that his pension and other retiral benefits denied to him allegedly for want of clearance from the CBI had to be released with interest only after this Bench of the Tribunal issued directions vide order in OA No.258/2001 dated 16-4-2002. Having regard to these facts and circumstances, we have no hesitation in holding that the applicant in this case has been more sinned than sinning and that, therefore, he deserves the reliefs prayed for with costs.

8. In view of our above findings, the Original Application is disposed of with the following order/directions:-

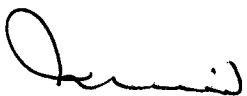
- (i) The applicant is entitled to be promoted as Assistant Engineer (Group B) with effect from the date of promotion of his immediate junior Shri U.M.Vijayan as per Annexure A1 panel; and
- (ii) The respondents are directed to promote the applicant to the post of Assistant Engineer (Group B) as per Annexure A1 panel and to grant him all consequential benefits including further promotions, if he is found suitable on review to be held in that regard, together with corresponding arrears of pay and allowances,

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revised pension and retiral benefits with interest at 12% per annum from the dates from which such payments would fall due.

(iii) On a consideration of the facts and circumstances of the case, we hereby order that the respondents shall pay Rs.2000/- (Rupees two thousand only) by way of costs to the applicant.

9. The above directions shall be carried out and appropriate orders be issued within four months from the date of receipt of copy of this order.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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