

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 521 of 2006

Tuesday, this the 1st day of April, 2008

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE DR. K S SUGATHAN, ADMINISTRATIVE MEMBER**

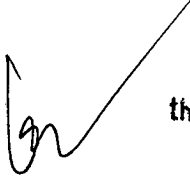
K. Shibu,
S/o. K.K. Thankappan,
Junior Engineer/Permanent Way/Grade I,
Southern Railway, Thalassery,
Residing at Railway Quarter No. 23,
Thalassery Railway Station, Chirakkara P.O.,
Thalassery, Kannur District. ... Applicant.

(By Advocate Mr. T.C.G. Swamy)

v e r s u s

1. Union of India, represented by
The General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai : 3
2. The Chief Engineer,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai : 3
3. The Chief Personnel officer,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai : 3
4. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.
5. The Divisional Engineer / West,
Southern Railway, Palghat. ... Respondents.

(By Advocate Mr. P. Haridas)

 The Original Application having been heard on 01.04.2008, this Tribunal on the same day delivered the following :

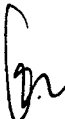
O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant while working as Junior Engineer in the grade of Rs 5,000-8,000 was issued with a charge memorandum dated 22-01-2002, which culminated in a penalty of reduction by three stages for a period of 3 years with cumulative effect, vide order dated 10-10-2002. This has resulted in the deferment of his promotion to the next grade of Rs 5,500 – 9,000/-. When the applicant filed an appeal against the said order, the Appellate Authority proposed enhancement of penalty and issued show cause for the same vide order dated 14-03/4-4-2003. The applicant had therefore, moved the Tribunal in OA No. 343/2003 which was decided on 21st November, 2005 whereby the Tribunal held as under:-

Under thee circumstances, the O.A. must succeed for reasons of non-supply of important documents and apparent pre-judgment of the issue before the commencement of the enquiry and at intermediate stages. The impugned documents A1 and A2 are quashed. The respondents are at liberty to pursue further action in respect of the accident against the applicant as per extant rules and instructions by the competent authorities, if they so desire.

2. During the pendency of the above OA the respondents have passed Annexure A-3 order dated 16-12-2004 whereby under a Restructuring Scheme, certain individuals who were earlier promoted to the grade of Rs 5,500 – 9,000 were further placed in the panel for the higher post in the scale of Rs 6,500 – 10,500/-. The applicant's name also figured therein.

3. The respondents have, vide Annexure A-5 order complied with the order of the Tribunal by setting aside the aforesaid orders of penalty and show-cause but without prejudice to initiation of *fresh proceedings*. By Annexure A-7 order



dated 8-3-2006 the respondents have promoted the applicant to the higher grade of Rs 5,500 – 9,000 effective prospectively. The applicant had, vide Annexure A-6 letter dated 6-3-2006 requested that his promotion be effected from the date it fell due. The respondents have, instead of considering the case of the applicant for retrospective promotion, appointed an inquiry officer in connection with the earlier proceedings, vide Annexure A-9 order dated 3.7.2006. (This was further slightly modified^{by} Annexure A-14 order dated 29.11.2006). The applicant, by Annexure A-10 communication pointed out the limitation in the liberty granted to the respondents by the Tribunal in its order dated 21-11-2005. The respondents have, vide Annexure A-13 communication stated that the earlier charge memo dated 22-01-2002 still held good. The applicant had, thus, come up against the orders at Annexure A-7, A-9, A-13 and A-14 through this ~~order~~ OA ✓

4. Respondents have contested the OA, justifying the legality in the issue of the above mentioned impugned orders.

5. While the case has been pending, the respondents had issued Annexure MA-1 order dated 19-02-2008 whereby the earlier charge memo dated 22-01-2002 stood cancelled.

6. Counsel for the applicant submitted that with the subsequent development (i.e. issue of Annexure MA 1 order cancelling the charge memo), Annexure A-9 read with A-14 and Annexure A-13 have lost their sting. Further with the issue of the aforesaid Annexure MA 1 order there no impediment whatsoever, in considering the case of the applicant for promotion to the higher grade of Rs 5,500 – 9,000 at par with the immediate junior and for effecting further promotion



as per Annexure A-3 Panel. He has, therefore, submitted that the OA may be disposed of with a direction to the respondents to take further action in regard to review of promotion of the applicant in the grade of Rs 5,500 – 9,000 and further consideration of implementation of Annexure A-3 order, as per the Rules.

7. Counsel for the respondents has submitted that while it is true that the initial charge memorandum dated 22-01-2002 stood cancelled, respondents are contemplating to issue a fresh charge sheet against the self same allegation (as of charge sheet dated 22-01-2002) and as such the applicant cannot be considered for promotion as he prays for.

8. Arguments were heard and documents perused. After the cancellation of the initial charge sheet dated 22-01-2002, there is absolutely no impediment and the sealed cover procedure, if adopted at the time of consideration for promotion, should be given effect to and the decision of the DPC shall be implemented. That there is likely to be another charge sheet cannot deprive the applicant the legitimate of his right of implementation of the recommendations of DPC. In the case of *Delhi Jal Board v. Mahinder Singh*, (2000) 7 SCC 210, the Apex Court has held as under:-

The right to be considered by the Departmental Promotion Committee is a fundamental right guaranteed under Article 16 of the Constitution of India, provided a person is eligible and is in the zone of consideration. The sealed cover procedure permits the question of his promotion to be kept in abeyance till the result of any pending disciplinary inquiry. But the findings of the disciplinary inquiry exonerating the officer would have to be given effect to as they obviously relate back to the date on which the charges are framed. If the disciplinary inquiry ended in his favour, it is as if the officer had not been subjected to any disciplinary inquiry. The sealed cover procedure was envisaged under the rules to give benefit of any assessment made by the Departmental Promotion Committee in favour of such an officer, if he had been found fit for promotion and if he was later exonerated in the disciplinary inquiry which was pending at the time when DPC met. The mere fact that by the time the disciplinary proceedings in the first inquiry ended in his favour and by the time the sealed cover was opened to give effect to it, another departmental

enquiry was started by the Department, would not, in our view, come in the way of giving him the benefit of the assessment by the first Departmental Promotion Committee in his favour in the anterior selection.

9. In view of the above, the OA is allowed. Respondents are directed to conduct a review of the promotion granted to the applicant vide Annexure A-7 for antedating the same in accordance with rules and on his so being promoted, further action for implementation of Annexure A-3 order for placing the applicant in the higher scale of Rs 6,500 – 10,000/-. Needless to mention that in case such a review results in antedating the date of promotion and if rules provide for payment of arrears of pay and allowances, the applicant is entitled to the same too. This order shall be completed with, within a period of four months from the date of communication of its communication.

9. Under the circumstances, there shall be no orders as to costs.

(Dated, the 1st April, 2008)



(Dr. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER



(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.