

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 594 of 89 199
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DATE OF DECISION 29-4-1991

K. Kunhiraman _____ Applicant (s)

Shri V.P. Raghuraj _____ Advocate for the Applicant (s)

Versus

Sr. Divisional Engineer _____ Respondent (s)
Southern Railway, Trivandrum and 3 others

Smt. Sumathi Dandapani _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P. Mukerji, Vice-Chairman

The Hon'ble Mr. N. Dharmadan, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Ye.*
2. To be referred to the Reporter or not? *No.*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No.*
4. To be circulated to all Benches of the Tribunal? *No.*

JUDGEMENT

N. Dharmadan, M(J)

This application was filed for implementation of the order of promotion Annexure A-1 dated 5-11-1985 promoting the applicant to the post of Inspector of Works Grade-II (IOW for short) in the scale of pay of Rs.550-750 (pre-revised) and for arrears of salary and other emoluments from the date of assumption viz. 24-1-1986. Later when this order was cancelled by the third respondent on 2-7-86, the applicant amended the application seeking to quash the

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the cancellation order as void.

2. The facts are as follows: The applicant was promoted as IOW Grade-II as per Annexure A-1, Office order No.228 dated 5-11-1985. On 6-11-85, the first respondent issued Annexure A-2 order directing to relieve the applicant from the post of IOW Grade-III from Cannanore so as to enable him to join ~~xx~~ the promoted post in Madras Division. Since the applicant was laid up, he filed Annexure A-3 representation on 10-11-85 seeking permission to continue in Palghat Division with the promotion. No reply was received. The applicant reported at the Cannanore office on 24-1-86 and assumed duties of higher responsibilities of IOW Grade-II at Cannanore itself on 24-1-86 by forwarding Annexure A-4 communication to the Divisional Railway Manager (DRM).

3. In the meantime, the third respondent by Annexure A-5 proceedings dated 3-12-85 issued an alert notice to the applicant and others working as IOW Grade-II to appear for selection to the post of IOW Grade-I in the scale of 700-900. In this notice, the applicant's name was included as rank No.92 among IOW grade-II. In Annexure A-6 provisional seniority list of IOW grade-II as on 2-1-1986, the applicant's name is shown as item No. 305 with the remark "under

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orders to Madras". The date of entry to the cadre of IOW Grade-II is shown in the list as 5-11-1985. Hence the applicant submitted that he is entitled to get his pay and other consequential benefits of post of IOW Grade-II from 24-1-86, on which date he assumed higher responsibility pursuant to Annexure A-1, ~~xxx~~ as if he had been relieved from the post of IOW Grade-III in terms of Annexure A-2. The applicant submitted Annexure A-7 representation before filing this application for getting reliefs from the respondents.

4. On 20-4-85, the CBI seized some documents and other articles from the house of the applicant and initiated investigation. After two years in 1987, the CBI referred the matter recommending the departmental action. Thereafter, the first respondent issued a charge memo Annexure A-8 dated 28-11-86 and commenced disciplinary action. The applicant submitted reply to Annexure A.8 charge memo. He was kept under suspension from 19-2-1988 to 25-1-89. After the completion of the enquiry, the first respondent issued Annexure A-9 penalty order against which he filed appeal. It was heard and disposed of by Annexure A-10 confirming Annexure A-9 order but modified the penlty to one of reduction of pay to the

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stage of Rs.1520/- in the grade of Rs.1400 - 2300 as IOW Grade-III for a period of two years. Against the punishment the applicant filed OA 532/89 challenging the penalty orders. In this application the claim of the applicant in gist is that he is entitled to salary of IOW Grade-II on the revised scale of pay of Rs.1600-2660 from 24-1-86.

5. The respondents filed counter affidavit and additional counter affidavit. Their case is that the applicant, while working as IOW grade-III in the scale of pay of Rs.1400/- was issued with Annexure A-8 charge memo and after enquiry Annexure A-9 penalty order was passed. It was confirmed in appeal by Annexure A-10. They further submitted that without CBI case and adverting to the pendency of disciplinary proceedings, the Head Quarters Office at Madras promoted and transferred the applicant as IOW Grade-II subject to the condition that no departmental proceedings have been initiated against the applicant. Even though a promotion order has been passed, it was not communicated to the applicant by the Senior Divisional Personnel Officer Palghat Division who is the competent authority to communicate the order. Since FIR in the CBI case against the applicant (R.C.6/85) was registered on 18-4-1985, the order promoting the applicant as IOW Grade-II was treated as cancelled as per CPO/MAS

letter No.P(s) 535/I/5/Vol.IV(Ty) of 2-7-86. They also stated that no responsible authority has directed the applicant to assume higher responsibility of the post of IOW Grade-II at Cannanore. Hence, his assumption of charge as IOW Grade-II at Cannanore as indicated in Annexure A-4 is unauthorised and not acceptable. The alert notice Annexure A-5 for the selection as IOW Grade-I was issued within one month from the date of promotion order and that is why the applicant was shown in the seniority list as IOW Grade-II with the remark 'under order to Madras'. This indicates that his promotion has not taken effect. It will take effect only when he joins as IOW Grade-II in Madras Division. In fact the applicant was not relieved from Cannanore to carry out his promotional transfer to Madras Division. Since the CBI case was pending against him while communicating the alert notice dated 3-12-85, the Senior Divisional Personnel Officer ^{Palghat} / has shown the applicant's designation correctly as IOW Grade-III/CAN as evidenced by this letter No. J/P.608/IX/I/Vol.II dated 11-12-1985. Similarly in the provisional seniority list of IOW Grade-II as on 2-1-1986 communicated under letter of the 3rd respondent dated 28-4-1986, the applicant is correctly shown as IOW/Grade-III as item No.268 with remarks that he is under order of transfer as IOW/Grade-II/MAS Division. This is marked as Ext.R-2.

6. Having heard the arguments on both sides and on perusal of the pleadings and documents, the only question that emerges for consideration is whether the assumption of charge by the applicant as IOW Grade-II at Cannanore is valid and legal and that the subsequent cancellation of the promotion order without notice to the applicant is a denial of his legal right to continue in the promoted post with all consequential benefits. It is admitted by the respondents that Annexure A-1 order of promotion and the consequential order Annexure A-2 directing to relieve the applicant from Cannanore have been passed and issued to the concerned officials. But they contended that these orders have not been communicated to the applicant through proper channel. But the applicant has stated in the additional rejoinder dated 28th January 1991 that Annexure A1 and A2 orders were served on the applicant through a special messenger, Kunkan on 8-11-85. It is only thereafter he made Annexure A-3 representation requesting the second respondent to retain him with the promotion in Palghat Division. There is no denial of these facts. It is further seen from Annexure A-4 that the applicant was allowed to assume duty of higher responsibility of IOW Grade-II on 24-1-1986, at Cannanore. This Annexure A-4 had not been repudiated by the respondents. The further documentary evidence of Annexure A-5 and

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A-6 also go to show that the department has included his name in the various lists as an IOW having the status of Grade-II with effect from 5-11-1985 indicating that he had been treated by the department as a promoted official, of course, with the remarks that he is under transfer to Madras Division. Since no orders had been passed on Annexure A-3 representation the applicant was willing to assume responsibility of the promoted post with effect from 24-1-1986. But the respondents did not permit him to assume duty in the promoted post at Madras. They have also later treated the promotion order as having been cancelled as per letter order No.P(s)535/I/5/Vol IV(Ty.) dated 2/7/1986 without any manner of intimation or notice to the applicant. The respondents have no case that this had been passed by way of correction of a mistake. On the other hand they have also issued Annexure A-5 alter notice to the applicant for consideration of further promotion to the post of IOW Grade-I. Thereafter the respondents included the name of the applicant in Annexure A-6 provisional seniority list of IOW Grade-II as on 2-1-1986. These documents cannot be corrected without giving intimation to the applicant. But Ext. R-2 letter was issued effecting correction and showing the position of the applicant as IOW Grade-III as item No.268. This appears to be

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not in order. Annexure A-8 charge memo itself was issued to the applicant on 28-11-86 after the promotion. CBI investigation alone was pending at the time of Annexure A-1 order and it is not a bar for promotion of the applicant.

7. It is a settled proposition of law that the pendency of a criminal investigation or a disciplinary proceedings against the public servant is not a bar for promotion. The Supreme Court very recently held in NEW BANK OF INDIA V. N.P. SEHGAL AND ANOTHER, JT 1991 (1) SC 498, as follows:

"....we have to bear in mind that it is accepted before us that in law the mere fact that disciplinary proceedings are contemplated or under consideration against an employee does not constitute a good ground for not considering the employee concerned for promotion if he is in the zone of consideration nor would it constitute a good reason ground for denying the promotion if the employee is considered otherwise fit for promotion...."

In the instant case, though the applicant had been promoted as IOW Grade-II as per Annexure-A-2, these orders were not properly implemented. In fact the promotion orders was cancelled without any notice or intimation on account of the fact that an FIR in a CBI case has been registered and an investigation is pending against him. The applicant knew about this

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only when counter affidavit was filed by the respondents. Hence he filed an application for amendment seeking permission to challenge the cancellation order. It was granted and the application was amended. The reason put forward for cancellation of the order is unsupportable and it is not a legal ground for denying the benefits of the promotion conferred on him as per order at Annexure A-1 and A-2. These orders were received by the applicant and they became effective.

8. It is true that the applicant has not assumed higher responsibility of post of IOW Grade-II at Madras pursuant to Annexure A-1. But this is not due to any fault of the applicant. Though initially after Annexure A-1 order the applicant submitted Annexure A-3 representation requesting permission to continue in Palghat Division with the promotion he showed his willingness to assume the responsibility of the promoted post with effect from 24-1-86 and it is clear from Annexure A-4. The respondents have not rejected Annexure A-3 and A-4. If the applicant was actually relieved and directed to report at Madras by the respondent after rejecting Annexure A-3 representation, he would have definitely joined at Madras in pursuance of Annexure A-1 order of promotion. Under these circumstances, we are of the view that the applicant is entitled to be promoted

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as IOW Grade-II with effect from 24-1-86.

9. In the result, having regard to the facts and circumstances of the case, the applicant has made out a case and he is entitled to succeed.

Accordingly, we allow the application and direct the respondents to pay the salary and all other emoluments applicable to the post of IOW Grade-II to the applicant with effect from 24-1-1986 in accordance with law as if he had worked in that post subject to the penalty orders Annexure A-9 and A-10. The application is thus allowed. There will be no order as to costs.

N. Dharmadan

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(N. Dharmadan)
Member (Judicial)

S.P. Mukerji

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(S.P. Mukerji)
Vice Chairman

29th April 1991

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