

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A. No. 70/97.

Friday this the 21st day of August, 1998.

CORAM:

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

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

C. Albert,
Electrical Chargeman (Trainee)
Office of the Section Engineer
(Electrical)
Southern Railway, Coimbatore.

... Applicant

(By Advocate Shri TA Rajan)

Vs.

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

2. The Divisional Personnel Officer,
Southern Railway, Palakkad.

.. Respondents

(By Advocate Shri K. Karthikeya Panicker)

The application having been heard on 21st August, 1998,
the Tribunal on the same day delivered the following:

ORDER

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

Applicant, an Electrical Chargeman (Trainee) in the Southern Railway submits that 25% of the vacancies of Electrical Fitters in scale of Rs.950-1500 are filled from serving semiskilled and unskilled employees having S.S.L.C. and I.T.I. Certificate. Applications were called for volunteers from serving semiskilled and unskilled employees for promotion to the post of Electrical Fitters. Applicant being qualified volunteered. The test was finally conducted in the year 1989 and the applicant came out successful in the written examination. He was not called for the

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Viva-vocetest on the ground that he was overaged by one day. If the respondents had conducted the selection in the normal course without delay, the applicant would have been promoted in the year 1985 itself and the denial of promotion was not due to any fault on the part of the applicant but due to administrative delay in conducting the selection. After repeated representations, the applicant was instructed to attend the viva-voce test on 23.1.1995. Applicant was successful in the viva-voce test and his name was included in the revised panel dated 27.10.95 (A-2). Applicant was, thereafter promoted as Electrical Fitter with effect from 4.9.91 as per order dated 21.11.95 (A-3). The pay of the applicant was fixed on proforma basis with effect from 4.9.91. (A-4). However, the arrears of pay due to the applicant from 4.9.91 to 6.12.95 has been denied. Applicant challenges A-4 order to the extent it denied him arrears of pay for the period from 4.9.91 to 6.12.95 and prays that a direction be given to the respondents to grant the applicant arrears of pay from 4.9.91 to 6.12.95 with 18% interest.

2. Respondents submit that during the period from 4.9.91 to 6.12.95, the applicant did not shoulder the responsibility of the higher post and therefore, in terms of the Rule 228 of the Indian Railway Establishment Manual, Volume I, he is not entitled to any benefit for that period.

The Supreme Court has also in Veerendra Kumar Vs. Avinash Chanha (1990) 3 SCC 472 upheld the principle "no work, no pay". The call letters were issued on 15.2.89 and the applicant was one among the candidates. The approval for calling volunteers had been granted on 22.8.88 on which date the applicant was within the age limit of 35 years and so he was allowed to appear in the written examination.

Subsequently, taking the date of call notice on 15.2.98, as the cut-off date, he was treated as over-aged and he was not considered for further selection. Thereafter, as per the direction of the Chief Personnel Officer, Southern Railway, he was allowed to attend the viva-voce test on 23.1.95. He was empanelled for promotion against 25% rankers quota and the panel already finalised on 28.1.91 for promotion as Skilled Artizan, was revised with the approval of the Divisional Railway Manager, Palghat on 11.10.95. The revised panel was published on 27.10.95 wherein the name of the applicant has been included against the vacancy reserved for Scheduled Caste.

3. It is clear that the delay in empanelling the applicant and appointing him to a higher post was entirely due to administrative reasons for which the applicant cannot be held responsible. Learned counsel for applicant relied on several decisions to support the contention that arrears of pay cannot be denied in such cases. In O.A. 254/90 and connected cases the Tribunal discussed the case law in this regard and held that the provisions of the Railway Board's Circular stating "No arrears on this account shall be payable xxx as he did not actually shoulder the duties and responsibilities of the higher posts" be set aside. In P. Narayanan and others Vs. Chief General Manager, Telecom, Kerala Circle, Thiruvananthapuram and others (1994) 26 ATC 883 the Tribunal stated :

"Learned counsel for applicant relying on the decision in State of Mysore Vs. C.R. Seshadri, Asha Rani Lamba Vs. State of Haryana and Union of India Vs. KV Jankiraman contended that, when work was denied for reasons not due to an official, there was no justification for not paying the emoluments. The doctrine 'no work no pay' applies

to a situation, where work was not done by an official for reasons due to him. But, where an official was willing, and work was denied to him by the Government, he cannot be denied wages. In the case on hand, applicants could not discharge the duties of the higher post, not for reasons due to them, but for reasons entirely due to the respondents. Respondents denied work, and applicants could not do the work. Such cases are clearly governed by the principles enunciated in Jankiraman case."

The Tribunal also stated that, similarly situated persons were granted back wages pursuant to the orders of this Tribunal in O.A. No. 454/89 and O.A. No. 204/89. The Tribunal directed that the applicants be paid pay and allowances from the date of notional promotion, as if they had performed the duties of the post.

4. These decisions squarely apply in the situation before us. Applicant had been permitted to write the written examination but prevented from appearing for the viva-voce test on the ground that he was over-aged. It was later decided that he was not overaged because on the date of approval of the notification, he was within the age limit ^{for} and was permitted to appear/ the viva-voce test in which he was passed. It is, therefore, clear that but for the action of the respondents, the applicant would have discharged the duties in the higher post even from 4.9.91. Following the earlier decisions referred to above we allow the application and quash A-4 to the extent that it denies the arrears of pay to the applicant from 4.9.91 to 6.12.95. The second respondent is directed to pass appropriate orders granting arrears of pay to the applicant from 4.9.91 to 6.12.95 within three months of today.

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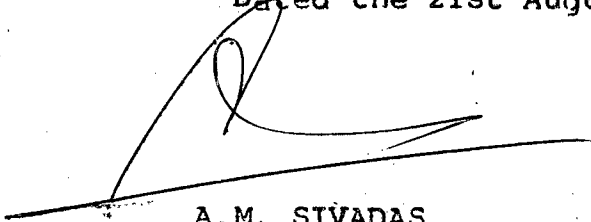
LIST OF ANNEXURES

1. Annexure A2: True copy of the order No.J/P.98/III/
MES/Vol.III dated 27.10.95 of the 2nd respondent.
2. Annexure A3: True copy of the order No.J/P.98/III/
MES/Vol.III dated 21.11.1995 of the 2nd respondent.
3. Annexure A4: True copy of the order No.J/P.524/III/MES/
Vol.III dated 11.1.96 of the 2nd respondent.

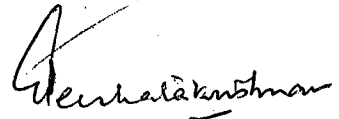
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5. Under these circumstances, we do not consider it appropriate to grant interest on arrears. No costs.

Dated the 21st August, 1998.



A.M. SIVADAS
JUDICIAL MEMBER



P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 70 of 1997

Friday, this the 4th day of August, 2000

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. C. Albert,
Electrical Chargeman (Trainee),
Office of the Section Engineer
(Electrical), Southern Railway,
Coimbatore. ...Applicant

By Advocate Mr. B Sajeevkumar for M/s Santhosh & Rajan

Versus

1. Union of India, represented by
the General Manager,
Southern Railway, Madras.
2. The Divisional Personnel Officer,
Southern Railway, Palakkad. ...Respondents

By Advocate Mr. K. Karthikeya Panicker

The application having been heard on 4th of August, 2000,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

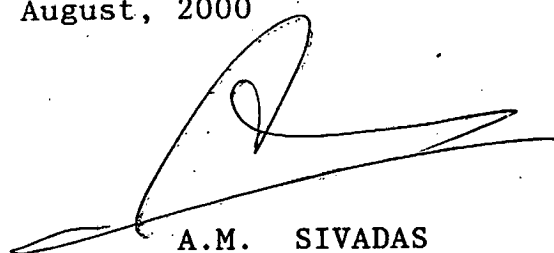
On behalf of the learned counsel appearing for the applicant it is submitted that leave may be granted to withdraw this Original Application with liberty to the applicant to take up the matter before the Department. Leave granted.

2. Accordingly, the Original Application is dismissed as withdrawn with liberty to the applicant to take up the matter before the Department, if so advised.

Friday, this the 4th day of August, 2000



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

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