

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 109/97

Friday, this the 31st day of March, 2000.

CORAM

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

HON'BLE MR G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

V.K. Velayudhan, S/o P.A. Kannan,
Senior Section Engineer,
Special Works,
Southern Railway,
Ernakulam Junction.

Applicant

By Advocate Mr T.C. Govindaswamy.

Vs.

1. Union of India through the
Secretary to the Govt. of India,
Ministry of Railways,
Rail Bhavan, New Delhi.
2. The General Manager,
Southern Railway,
Headquarters Office,
Park Town P.O., Madras-3.
3. The Chief Personnel Officer,
Southern Railway,
Headquarters Office,
Park Town P.O., Madras-3.
4. The Divisional Railway Manager,
Southern Railway,
Trivandrum Division,
Trivandrum-14.
5. Shri Dany Thomas,
Deputy Chief Engineer,
Southern Railway,
Headquarters Office,
Madras-3.

Respondents

By Advocate Mrs Sumathi Dandapani for Respondents 1 to 4.


The Application having been heard on 3.3.2000,
the Tribunal delivered the following on 31.3.2000

O R D E R

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

Applicant seeks to quash A1, A2, A3, A10, A11 and A12
and to direct the respondents to consider him for promotion to
the post of Assistant Engineer, Group-B service in preference
benefits thereof.

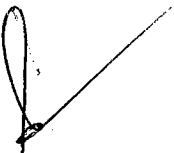
2. The applicant is working as Senior Section Engineer (Special Works), Southern Railway, Ernakulam Junction in the scale of Rs.2375-3500. He was initially appointed as Inspector of Works. He was promoted to the next higher scale of Rs.550-750 on ad hoc basis in the year 1978 and on regular basis in the year 1981. He was further promoted to the next higher scale of Rs.700-900 (Rs.2000-3200 - Revised) in the year 1982. He again promoted in January 1989 to the next higher scale of Rs.2375-3500. In the year 1990 he became senior enough to be considered for promotion to Group-B service as Assistant Engineer. Adverse confidential remarks were written against him for the years ending on 31st March, 1991, 31st March, 1992, 31st March, 1994 and 31st March, 1995. Applicant preferred appeals against the adverse entries. While appeals were pending, the authorities published a list of Group-C employees who were being considered for promotion to Group-B service in the Civil Engineering Department on ad hoc basis. As per order dated 9.4.96 all those who are placed at Sl.No.6 and below are juniors to the applicant. Applicant ought to have been considered and promoted on ad hoc basis. Aggrieved by not considering him, he submitted a representation dated 16.4.96. Without considering the same, his juniors were promoted. In pursuance of the order in O.A.540/96 preferred by the applicant before this Bench of the Tribunal, he got a letter dated 16.5.96 issued by the 2nd respondent stating that he had not secured the required grade for the last 5 years in the confidential reports and therefore, he did not qualify to be promoted on ad hoc basis to Group-B. Aggrieved by that, he again preferred O.A.871/96 before this Bench of the Tribunal and the same was disposed of with a direction to the 4th respondent to consider the appeals against the adverse entries in the confidential reports and to pass appropriate orders. It



was further directed that if the appeals are allowed and if any change of circumstances is brought out, his case for promotion will be considered notwithstanding the letter dated 16.5.96. In compliance of the said direction, order dated 7.10.96 was issued by the 4th respondent. A10 is arbitrary and violative of Fundamental Rights guaranteed under Articles 14,16(I) and (IV).

3. Respondents contend that the committee based on the confidential reports of the employees for the preceding 5 years have drawn up a bench mark grading based on which the applicant was considered for ad hoc promotion to Group-B. As he failed to get the requisite grading, the committee did not recommend him for ad hoc promotion to Group-B service. The applicant has been assessed by different reporting officers and reviewing officers under whom he had worked during the relevant periods and therefore, his averment that adverse confidential reports were written against him in order to deprive his legitimate promotion is not correct. Confidential reports of the applicant have been initiated, reviewed and accepted at appropriate levels as per extant instructions. The confidential reports of the applicant have been accepted by the cadre controlling Head of the Department.

4. In the rejoinder filed by the applicant it is stated that confidential reports were initiated by the Assistant engineer, reviewed by the Divisional Engineer and accepted by the Divisional Railway Manager. None of these authorities stand in the position of the applicant's Cadre Controlling Officer. The applicant belongs to a zonal cadre of Senior Section Engineers controlled by the Chief Engineer who is the Principal Head of the Civil Engineering Department.




5. Though various grounds are raised in the O.A, the learned counsel appearing for the applicant pressed into service only the ground that the confidential reports of the applicant during the periods in question were not accepted by the authority competent and therefore, non-promoting of the applicant on ad hoc basis to the post of Assistant Engineer in Group -B is unsustainable.

6. A1 to A3 contain the adverse entries made in the confidential reports of the applicant for the years ended on 31st March, 1991, 31st March 1994 and 31st March, 1995. A.10 is the order rejecting the appeals filed by the applicant against the adverse entries in the confidential reports, A1 to A3. A11 contains the adverse remarks in the confidential report of the applicant for the year ended on 31st March, 1992. A12 is the order in the appeal preferred by the applicant against A11 stating that the remarks will remain.

7. The question that is to be looked into is whether the confidential reports of the applicant for the periods in question have been accepted by the authority competent. During the relevant periods the applicant was in the pay scale of Rs.2375-3500 (Rs.840-1040 pre-revised).


8. A13, the relevant extract of Indian Railway Establishment Code (Vol.II), Appendix XXXVIII says who are the officers declared to be the Heads of the Department. A16 Circular No.33/85 says that in respect of staff in the grade of Rs.550-700 and above, including staff in the grade Rs.425-640/425-700, who have put in 3 years of non-fortuitous service and have reached Rs.560 per month and likely to be considered for promotion to Class II service it has been decided that the last portion of Section II viz., "Remarks by



the Head of the Department" should henceforth be filled by the Principal Head of the Department only. A17 says that in partial modification of A16, it has been decided that the last portion of Section II of the confidential reports need be signed by the Principal Head of the Department only in respect of employees working in two grades immediately below Group-B. A18 in partial modification of A17 says that remarks by the Head of the Department need be endorsed by the Principal Head of the Department only in respect of the staff in the grade of Rs.840-1040 and Rs.840-1200 (Rs.700-900 for office staff) as the case may be. It is clearly seen that in the case of the applicant, the accepting authority of the confidential report is the Principal Head of the Department.

9. Principal Head of the Department, as far as the applicant is concerned, is the Chief Engineer. Though in the reply statement it is stated that the confidential reports of the applicant have been accepted by the Cadre Controlling Head of the Department, respondents have not stated the designation of the Cadre controlling Head of the Department. So, this is a clear case of the applicant's confidential reports for the periods in question were not accepted by the authority competent.

10. The applicant has prayed for quashing A1, A2, A3, A10, A11 and A12. We do not think that it is necessary to quash these for the sole reason that the Confidential Reports of the applicant for the periods in question were not accepted by the authority competent i.e., the Chief Engineer. It will be only just and proper to direct the respondents to place the Confidential Reports of the applicant for the periods in question before the Chief Engineer for remarks. If the Chief Engineer for any period is not in service or the Chief Engineer

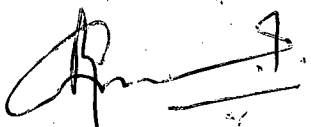


for entire period in question not in service, the Confidential Reports of the applicant for the concerned period or the full period in question, as the case may be, shall be placed before the present Chief Engineer for endorsing the remarks.

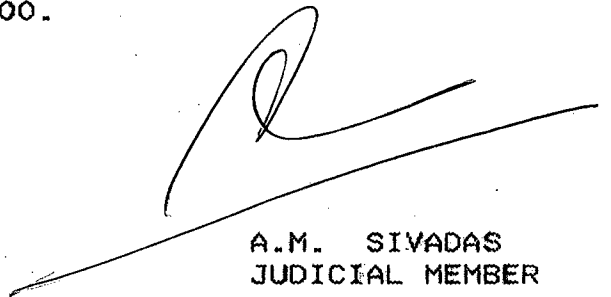
11. Accordingly, the respondents are directed to place the Confidential Reports of the applicant for the periods in question before the Chief Engineer for remarks. If Chief Engineer for any period is not in service, or the Chief Engineer for the entire period in question not in service, the Confidential Reports of the applicant for concerned period or the full period in question, as the case may be, shall be placed before the present Chief Engineer for endorsing the remarks. After endorsing the remarks by the Chief Engineer, the representations submitted by the applicant against the adverse entries in his Confidential Reports shall be considered afresh by the authority competent and pass orders within two months. Thereafter, the respondents shall consider the applicant for ad hoc promotion to the post of Assistant Engineer, Group-B Service, in preference to his juniors included in A7 dated 9.4.96 based on the orders passed by the authority competent on the representations of the applicant, and pass appropriate orders within three months from the date of disposal of the representations.

12. The Original Application is disposed as aforesaid. No costs.

Dated the 31st of March, 2000.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

P.2832000

LIST OF ANNEXURES REFERRED TO IN THIS ORDER

- Annexure A1: True copy of the letter No.V/CS/CR/Engg dated 23.9.91 issued by the fourth respondent.
- Annexure A2: True copy of the letter No.V/CS/CR/Engg dated 11.10.94 issued by the fourth respondent.
- Annexure A3: True copy of the letter No.V/CS/CR/Engg dated 29.9.95 issued by the fourth respondent.
- Annexure A7: True copy of the Order No.P(G)543/I/Gr"B" dated 9.4.96 issued by the third respondent.
- Annexure A9: True copy of the judgment in O.A.871/96 dated 5.8.96 delivered by this Hon'ble Tribunal.
- Annexure A10: True copy of the Order No.V/CS/CR/Engg dated 7.10.96 issued by the fourth respondent.
- Annexure A11: True copy of the Order No.V/CS/CR/Engg dated 28.7.92 issued by the fourth respondent.
- Annexure A12: True copy of the Order No.V/CS/CR/Engg dated 4.12.92 issued by the fourth respondent.
- Annexure A13: True copy of the list of Officers declared to be Heads of Department as contained in Appendix XXXVIII of the Indian Railway Establishment Code, Vol.II, issued by the Railway Board (1971 Edition).
- Annexure A16: True copy of the Personnel Branch Circular No.33/85 dated 7.6.1985.
- Annexure A17: True copy of the Personnel Branch Circular No.132/85 dated 8.11.1985.
- Annexure A18: True copy of the Personnel Branch Circular No.2/86 dated 6.1.1986.