

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

....

O.A. No.125/93

Friday, this the 25th day of March, 1994

SHRI N.DHARMADAN, (J)
SHRI S.KASIPANDIAN, (A)

Applicant

K.Joseph Nirmal,
Lascar,
O/o the Inspector of Works (Special)
S.Railway, Podanur.

By Advocate Shri P.Santhosh Kumar

Versus

Respondents

1. Union of India rep. by the
General Manager, S.Railway,
Madras.
2. The Divisional Railway Manager,
S.Railway, Palakkad.
3. The Divisional Personnel Officer,
Southern Railway, Palakkad.

By Shri K.S.Bahuleyan, Advocate

O R D E R

N.Dharmadan, (J)

Applicant is a Lascar in the Southern Railway. He is aggrieved by the denial of promotion to Group C post based on his selection and inclusion in the list along with eight others who have filed OAK 101/88. The judgement is produced as Annex.I.

2. The facts are not in dispute. Applicant though selected for promotion to Group C was suspended w.e. 30.3.88 on account of the filing of the criminal case No.226/88 against him before the Judicial Magistrate, Coimbatore. When he was acquitted, in the criminal case, Annex.II order was passed by the Assistant Engineer, Special Works, Podanur on 2.7.91

revoking the suspension order. It reads as follows:

"Whereas an order placed Sir K. Joseph Nirmal, Lascar, of IDW/SW/PTJ under suspension was made by XEN/SW/PGT on 29.3.88.

Now therefore, the undersigned by clause (C) of the Sub (S) of Rule 5 of R.S.(1) (D&A) Rule 1968, hereby revoke the said order of suspension with immediate effect without prejudice of pending court order, since he has been acquitted by the Magistrate, Coimbatore vide Judgement copy No.226/88 dt. 18.4.91."

In the meantime, applicant along with eight others filed OAK 101/88 for getting an appointment to a Group C post pursuant to their selection and inclusion in the list. It was allowed as per Ann.I judgement dated 27.4.89. Applicant is Sl.No.9. Out of the applicants in that case only three of them alone were promoted. The rest of them filed OAs 599/89 and 645/89. They were heard together and disposed of as per Ann.IV dated 21.12.90. Pursuant to the direction of the judgement, except applicant, all others in Ann.I judgement were promoted to Group C post w.e.f. 21.11.87 as per order dated 12.8.87 produced before us for our perusal.

3. The complaint of the applicant, under these circumstances, is that he was denied promotion only because of the suspension which was later revoked as per Ann.II order. According to him, after the revocation of the suspension when he was reinstated, he should have been treated as an employee having no suspension order against him and promoted along with others who had been selected and included in the panel referred to above. According to us there is considerable force in the submission.

4. The applicant relied on two decisions in Jitendra Nath Rakhit Vs. The Director General of Police and others reported in 1985(2) SLR 97 and in CO Arumugam and others v. State of Tamil Nadu & others reported in (1991) 17 ATC 402 SC. The in the above case Supreme Court considered a similar issue and held as follows:

"As to the merits of the matter, it is necessary to state that every civil servants has a right to have his case considered for promotion according to his turn

and it is a guarantee flowing from Article 14 and 16(1) of the Constitution. The consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principles. The promotion of persons against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded. They must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable, they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted."


3. This Tribunal in NE Saramma V. Senior Supdt. of Post Offices, Always & Others (O.A. 1705/92) very recently decided an identical issue and held as follows:


"It is made clear in Ann.IV judgement that the applicant is eligible for consequential benefits. The directions take in the period of 'put off' as well. After Ann.IV judgement, for the grant of consequential benefits, the applicant is to be treated as an employee who had not been punished pursuant to a disciplinary proceedings for the order had been set aside by this Tribunal. He is to be relegated to the original position as if no disciplinary proceedings were initiated against him."

4. We are of the view that the decisions relied on by the applicant and the above decision of this Tribunal would apply to the facts of this case and the applicant is entitled to promotion along with others who have been selected and who are parties in Annex.I judgement. Thus he is entitled to be promoted in a Group C post along with eight others referred to above.

5. Accordingly we direct the respondents to promote the applicant along with the applicants in Ann.I judgement giving appropriate position considering his position, seniority in the panel and fitness for appointment. It goes without saying that the applicant is also entitled to the consequential benefits to which he is eligible under law.

6. The OA is allowed as above. No costs.


(S.Kasipandian)
Member (A)


(N.Dharmadan)
Member (J) 25.3.94