

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 152/92 199

DATE OF DECISION 30.11.1992

T.Varghese _____ Applicant (s)

Mr.P.Sivan Pillai _____ Advocate for the Applicant (s)

Versus

Union of India through the _____ Respondent (s)
General Manager, Southern Railway,
Madras-3 and three others.

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

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

The applicant retired as Chief Travelling Ticket Examiner from the Southern Railway on 31.1.1985. He joined the Railway service as Travelling Ticket Examiner (TTE) in 1952. In the seniority list of the merged cadre of TTE and Ticket Collectors (TC) which was published on 30.7.66 the applicant was shown as junior to Shri Sivasubramaniam. In implementation of the judgment of the Karnataka High Court in Writ Petition No.516 of 1973 as confirmed in Writ Appeal No.545/80, the aforesaid seniority list was modified and the applicant became senior to Shri Sivasubramaniam. The revised seniority list was published on 20.5.82. Before the revision of the seniority list, however,

Shri Sivasubramaniam had been promoted in the scale of Rs.425-640 on 29.6.76, in the scale of Rs.550-750 on 26.11.76 and in the scale of Rs.700-900 on 1.8.79. One Shri Raman a Travelling Ticket Examiner moved the Madras Bench of the Tribunal claiming retrospective promotion and fixation of pay in the higher grades on the ground that like the applicant before us, in the revised seniority list he had become senior to Shri Sivasubramaniam and that he should be promoted to the higher grades on the same dates on which Shri Sivasubramaniam had been promoted. This application was allowed by the Madras Bench of the Tribunal and the Southern Railway by its letter dated 19.1.87 directed that proforma promotion should be given to all those who in the revised seniority list had become senior to Shri Sivasubramaniam. The Railway authorities thereafter fixed the pay of the applicant before us in the grades of Rs.425-640 and Rs.550-750 from the dates Shri Sivasubramaniam was promoted to those grades. The applicant, however, is aggrieved that his pay was not refixed in the grade of Rs.700-900 with effect from 1.8.79 and the applicant was not allowed arrears of pay on refixation on the ground that he did not shoulder higher responsibility. Meanwhile four other Travelling Ticket Examiners who had also become senior to Shri Sivasubramaniam but were denied notional promotion and pay fixation in the grade of Rs.425-640 from the dates Shri Sivasubramaniam was promoted, on the ground that they failed in the selection, approached the Madras Bench of the Tribunal which by its order dated 22.3.1988 directed that the pay of the applicants before them also should be notionally fixed in the aforesaid three scales with effect from the dates Shri Sivasubramaniam was promoted with arrears of pay and revision of pensionary benefits. The applicant in the first application before us represented on 29.9.1989 seeking similar benefits of arrears of pay and notional promotion to the grade of Rs.700-900, but he was informed that his promotion to the grade of Rs.700-900 would be considered when his juniors are promoted

to the grade. When the applicant found that 11 of the applicant's juniors were empanelled to that grade (Annexure A4), the applicant filed another representation at Annexure A5. Still some other retired CTTIs who were similarly placed as the applicant moved this Bench of the Tribunal for arrears of pay and promotion to the grade of Rs.700-900 and this Tribunal by the common order dated 28.6.1991 in O.A.254,759, 652 and 481/90(Annexure A6) allowed the same. The applicant claims the benefits of the judgment at Annexure A6.

2. The respondents have accepted the factual position as indicated above and have given the same arguments as in O.A.254/90 and other three applications which were decided by us by the common judgment dated 28.6.91.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. In our aforesaid judgment dated 28.6.91 we had elaborately discussed the various rulings regarding payment of arrears consequential upon the retrospective promotion and we found that the provision in the Board's circular dated 15/17 September, 1964 disallowing arrears in such cases is ultra vires and we quashed the same. We had also repelled the argument of the respondents that retrospective promotion cannot be given to the applicants as they had retired. We found that since they had retired after they had become entitled to promotions to higher grades, the mere fact of "superannuation or retirement or even death, cannot be held out for denying them their legitimate rights". This will be also discriminatory and violative of Arts.14 and 16 of the Constitution, if between two persons equally entitled to retrospective promotion from a particular date, one is promoted retrospectively while the other is denied retrospective promotion, merely because in the meantime he has retired on superannuation. We relied upon the ruling of the Supreme Court in Maharaja Sayajirao University of Baroda & others. vs. R.S.Thakkar 1(1988)ATLT (SC) 267 and other rulings of this Tribunal.

4. As regards promotion to the grade of Rs.700-900, the following

extracts from our aforesaid judgment would be relevant:-

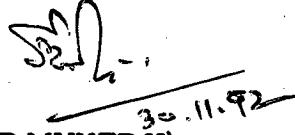
"In another case of a retired Government servant who had been compulsorily retired in 1977 and was to superannuate on 30.6.1982 in Rai Singh vs. Union of India,(1989)11 ATC 374, the Division Bench of the Tribunal presided over by Mr.Justice Amitav Banerji, Hon'ble Chairman, directed retrospective promotion and consequential benefits with effect from 12.8.1977. Accordingly, we find no justifiable ground whatsoever in denying retrospective promotion to the scale of Rs.700-900(Rs.2000-3200) to some of the applicants before us with effect from 1.8.1979 merely on the ground that they had since retired though long after 1.8.1979 while at the same time giving them notional promotion to the other two higher grades of Rs.425-640 and Rs.550-750 from 1976. In any case the matter seems to have been clinched by the judgment of the Madras Bench of the Tribunal in O.A.466 etc. of 1987 copied at Annexure A-5 in O.A.254/90. Even though the applicants in these cases had not been selected to the higher grades, the Tribunal directed that the pay of the applicants entitled to be promoted with effect from 1.8.79 to the scale of Rs.700-900, also should be fixed with effect from 1.8.79 and consequential arrears and revision of pensionary benefits allowed to them. The claims of the applicants before us are even better than those appearing before the Madras Bench in as much as while the latter were considered but not promoted to the grade of Rs.700-900, the applicants before us were never considered and left out for promotion to the grade of Rs.700-900 before retirement, the promotion was from a later date and not from 1.8.79. The respondents themselves in the counter affidavit indicated that the applicants will be considered for notional promotion to the grade of Rs.700-900 if their juniors are later promoted to that grade. Since the applicants have produced the order dated 13.9.90 (Annexure A-8 in O.A.254/90) promoting their juniors to that grade, the respondents are now on their own assurance bound to consider the applicants also for promotion with effect from 1.8.79 despite the fact that they have retired. The plea of their retirement for denying them retrospective promotion, therefore, cannot be sustained by the respondents own assurance as indicated above.

13. Even though a direction to the respondents to consider the applicants for retrospective promotion to the grade of Rs.700-

900(Rs.2000-3200) would have sufficed, keeping in view of the fact that the Madras Bench of the Tribunal had directed retrospective promotion even to those who had been considered and not promoted to that grade, it will not be fair to the applicants before us who had never been considered for such promotion if a similar direction of promoting them with effect from 1.8.79 is not given in their case also. It will be also impractical at this stage to subject the applicants, who have already retired, to a selection process for promotion to the grade of Rs.700-900 with effect from 1.8.79."

5. In the light of above, we allow the application and direct that the applicant should be given retrospective promotion to the grade of Rs.700-900 with effect from 1.8.79 and arrears of pay on the basis of his retrospective promotion to the grade of Rs.425-640 from 29.6.76, in the grade of Rs.550-750 from 26.11.76 and Rs.700-900 with effect from 1.8.79 should also be paid to him. His pension should also be refixed retrospectively on the basis of the retrospective promotions and arrears of pension also should be paid to him. Action on the above lines should be completed within a period of three months from the date of communication of this order. There will be no order as to costs.


(A.V.HARIDASAN)
JUDICIAL MEMBER


(S.P.MUKERJI)
VICE CHAIRMAN