

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 154/92

DATE OF DECISION 19.1.93

K. Vagudevan Nair _____ Applicant (s)

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

Versus
Union of India,
through the General Manager, _____ Respondent (s)
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. N. DHARMADAN, JUDICIAL MEMBER

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

JUDGEMENT

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

In this application dated 22nd January ,1992 the applicant who retired from the Southern Railway on 31.12.84 as Chief Travelling Ticket Inspector has sought the following reliefs:-

- "a) to direct the respondents to extend the same benefits in A6 judgment to the applicant also viz.
- (i) To promote the applicant to the grade of Rs.700-900 (Rs.2000-3200) with effect from 1.8.79 with all consequential benefits of arrears of pay and revision of pension.
- (ii) To pay the applicant arrears of pay on the basis of his retrospective promotion to the scale of Rs.425-640 with effect from 29.6.76, to the scale Rs.550-750 with effect from 26.11.76 and also to the scale Rs.700-900 with effect from 1.8.79 since the applicant retired from service only on 31.12.84.
- (iii) To issue such other orders or directions as deemed fit and necessary by this Hon'ble Tribunal in the facts and circumstances of this case.

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He has relied upon the common judgment dated 28.6.1991 rendered by the Ernakulam Bench of the Tribunal in O.A. 254/90 and three other applications. A copy of the judgment has been annexed as Annexure A6. When the case was taken up for arguments, the learned counsel for the respondents did not seriously contend that the circumstances of this application for the purpose of the reliefs claimed are different from the circumstances of the aforesaid O.A. 254/90.

2. Having heard the arguments of the learned counsel for both the parties and gone through the documents carefully, we are convinced that this application is on all fours with the four applications decided by the common judgment dated 28.6.91 at Annexure A6. so far as the reliefs claimed are concerned. The ratio in that judgment is that if due to erroneous determination of seniority, one Shri Sivasubramaniam had been promoted to the scale of Rs.425-640 on 29.6.76, to the scale of Rs.550-750 with effect from 26.11.76 and Rs.700-900 with effect from 1.8.79, the applicants who became subsequently senior to Shri Sivasubramaniam by the correction of erroneous seniority, the applicants were also be entitled to promotion to those grades with effect from the same dates on which their junior Shri Sivasubramaniam was promoted. Relying upon a number of rulings of the Supreme Court and other Benches of the Tribunal, it was found that the applicants would be entitled not only to notional promotion with effect from the dates of promotion of Shri Sivasubramaniam, but also arrears of pay. It was also found that merely because some of the applicants therein had retired in the mean time, cannot be a ground to deny them the benefits of promotion to which

they were entitled while they were in service. The following observations from our judgment will be pertinent:-

"11. In view of the unequivocal and consistent rulings of the Supreme Court, High Courts and this Tribunal, we hold that the applicants on their retrospective notional promotions to the higher grades of Rs.425-640 with effect from 29.6.1976, Rs.550-750 with effect from 26.11.1976 and Rs.700-900 with effect from 1.8.1979 cannot be denied the arrears of pay in those grades calculated from the respective dates of promotion and that the following provision in the Railway Board's letter No.E(NG)63 PMI/92 dated 15/17 September 1964 is not legally sustainable.

"No arrears on this account shall be payable, as he did not actually shoulder the duties and responsibilities of the higher posts."

"12. The other point to be decided in these cases is whether the applicants can be denied arrears of retrospective promotion merely on the ground that they had retired though subsequent to the date on which the promotion became due. We have no hesitation in holding that 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 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 had retired on superannuation. In *Maharaja Sayajirao University of Baroda & others vs. R. S. Thakkar*, 1(1988) ATLT (SC) 267, the Supreme Court upheld the order of High Court of Gujarat granting back wages to the respondents who had retired during the pendency of the litigation. In *State of Mysore vs. C. R. Sheshadri*, 1974(1) SLR 407 it was held that where the official seeking relief retired during the pendency of appeal by State before the Supreme Court, the respondents have to consider the claims of the official for notional

promotion from his due date and to make payment of what was due to him. 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 A5 in O.A.254/90. Even though the applicants in those 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 inasmuch 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

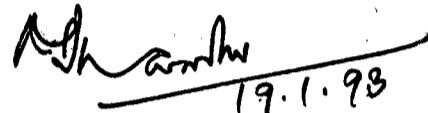
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the order dated 13.9.90 (Annexure A8 in O.A. 254/90) promoting their juniors to that grade, the respondents are now on their own assurance bound to consider the applicants also for promotion with effect from 1.8.79 despite the fact that they have retired. The plea of their retirement for denying them retrospective promotion therefore cannot be sustained by the respondents own assurance as indicated above."

In those applications this Tribunal further directed that even though some of the applicants had not been promoted to the scale of Rs.700-900 (Rs.2000-3200), in view of the judgment of the Madras Bench of the Tribunal which gave promotion to that grade even to those who had been considered and not promoted, such promotion was given without any further selection proceedings as it was thought that "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". The applicant before us had already been promoted to the grade of Rs 700-900 though from a date later than 1.8.79. There is, therefore, all the more reason that he should be given promotion to that grade with effect from 1.8.79, i.e, the date on which Shri Sivasubramaniam was promoted.

3. In the conspectus of facts and circumstances, we allow this application directing the respondents to promote the applicant to the grade of Rs.425-640 with effect from 29.6.76, to the scale of Rs 550-750 with effect from 26.11.76 and to the scale of Rs.700-900 / (Rs.2000-3200) with effect from 1.8.79 and refix his

pension on the basis of his pay so fixed, for the purpose of determination of his pension on his superannuation on 31.12.84. However, arrears of pension and relief on ^{for the period commencing} pension should be paid to him ^{from the date} three years prior to 24.1.1992 when the application was filed before the Tribunal. No arrears of pay and allowances or pension prior to that period can be given to him as the same is time-barred. There will be no order as to costs.


19.1.93
(N. DHARMADAN)
JUDICIAL MEMBER


19.1.93
(S. P. MUKERJI)
VICE CHAIRMAN

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