

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 164/92 and 166/92

DATE OF DECISION 30.11.1992

Rajamma George Applicant (s) in O.A.164/92
M.Gopinathan Applicant in O.A. 166/92

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

Versus

Union of India through the Respondent (s)
General Manager,Southern Railway,
Madrs-3 and three others. in both the O.As.

Smt.Sumathi Dandapani Advocate for the Respondent (s)
in both the O.As.

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)

Since identical questions of law, facts and reliefs are involved in these two applications, they are disposed of by a common order as follows.

2. The applicant in the first application(O.A 164/92) is the widow of a Travelling Ticket Inspector who died on 17.3.1983 while in service. In the seniority list of the merged cadre of Ticket Collectors(TC) and Travelling Ticket Examiners(TTE) which was published on 30.7.66 the husband of the applicant was shown as junior to Shri S.Sivasubramaniam. In implementation of the judgment of the Karnataka High Court in Writ Petition No.516/73 , the aforesaid seniority list was modified and the husband of the applicant became senior to Shri Sivasubramaniam and the Railway authorities vide the order dated 29.2.88 refixed the pay of the applicant's husband by giving retrospective promotion to the scale of Rs. 425-640

with effect from 29.6.76 and to the grade of Rs.550-750 with effect from 26.11.76. Consequential pensionary benefits were also given to the applicant, but the respondents did not fix the pay of the applicant's husband in the grade of Rs.700-900 with effect from 1.8.79 and informed the applicant that it will be done after completion of selection proceedings to that grade. The applicant has referred to the common judgment (Annexure A2) of the Tribunal dated 28.6.91 in O.A.254/90 etc. claiming similar benefits for her husband with consequential benefits of arrears of pay, revision of pension etc.

3. The applicant in the second application (O.A.166/92) retired as CTTI on 31.3.1985. In this case also though he was promoted with retrospective effect to the grade of Rs.425-640 and Rs.550-750 from the dates Shri Sivasubramaniam was promoted, he was not granted either arrears of pay or promotion to the grade of Rs.700-900. In this case also, he was informed by the respondents that his case of promotion will be considered after his juniors are promoted. He has also claimed the benefits of the judgment dated 28.6.91, as referred to above.

4. 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 the common judgment dated 28.6.91.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. In the aforesaid judgment dated 28.6.91 to which one of us (Shri S.P.Mukerji) was a party, the Tribunal had elaborately discussed the various rulings regarding payment of arrears consequential upon ~~the~~ retrospective promotion and ~~we~~ ^{if was} found that the provision in the Board's circular dated 15/17 September, 1964 disallowing arrears in such cases is ultra vires and ~~we~~ ^{Bench} quashed the same. The Tribunal had also repelled the argument of the respondents that retrospective promotion cannot be given to the applicants as they had retired. The Tribunal 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. ^{The Tribunal} 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.

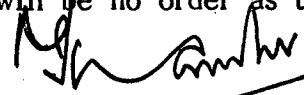
6. As regards promotion to the grade of Rs.700-900, the following extracts from ^{the} aforesaid judgment would be relevant:-

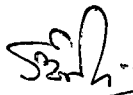
" In another case of a retired Government servant who had been compulsorily retired in 1977 and was to superannuate on 30.6.1982 in Rai Singh vs. Union of India,(1989)11 ATC 374, the Division Bench of the Tribunal presided over by Mr.Justice Amitav Banerji Hon'ble Chairman, directed retrospective promotion 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 as 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."

7. In the light of above, we allow the aforesaid two applications and direct that the applicant in the second case and the husband of the applicant in the first case, 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 their 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. The pension or family pension(in the case of the applicant in the first O.A.) as the case may be, should also be refixed retrospectively on the basis of the retrospective promotions and arrears of pension also should be paid to them. 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.


(N.DHARMADAN) 30. 11. '92
JUDICIAL MEMBER


30.11.92
(S.P.MUKERJI)
VICE CHAIRMAN