

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.202/2001.

Wednesday this the 18th day of December 2002.

CORAM:

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

P.I.Chandrasekharan,
Chandravihar,
P.O.Peringode-679 535,
Palakkad District.

Applicant

(By Advocate Ms.Jeena Joseph)

Vs.

1. Union of India represented by
General Manager,
South Eastern Railway,
Garden reach, Calcutta.
2. The Divisional Railway Manager,
Sambulpur Division,
South Eastern Railway,
Modipada Post, Sambulpur,
Orissa-768 002.

Respondents

(By Advocate Shri Thomas Mathew Nellimootttil)

The application having been heard on 13.11.2002
the Tribunal on 18.12.2002 delivered the following:

O R D E R

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant is a pensioner who retired from service on 31.10.1995 as Deputy Station Superintendent from the Sambulpur Division. He was having 33 years of service under the Railways in various Divisions. While the applicant was working as Station Master at Therubali under Waltair Division, the said station was transferred under Sambulpur Division on 1.1.1994. During that period all candidates were called for suitability test for promotion to the post of Deputy Station Superintendent in the grade of Rs.1600-2660 vide order dated 29.7.1994. The applicant attended the said selection process and passed in the selection.



But when the provisional select list was published on 12.8.1994 to the post of Deputy Station Superintendent, the applicant's name was not included in the list, presumably due to the fact that the applicant had been transferred to Sambulpur Division. The applicant was directed to seek promotion through Sambulpur Division only. At the same time, all his juniors who were working in the Waltair Division have been granted promotion on regular basis w.e.f. 22.12.94 vide A-1 order dated 22.12.1994. If promotion was made in consideration of the seniority of the applicant, he would have been placed against S1.No.9 of Annexure A-1. The omission was occurred since he was shifted to the newly formed Sambulpur Division. The applicant was granted promotion only with effect from 6.2.1995 by A-2 order dated 28.8.1995. Though Annexure A2 order of promotion was to be effected w.e.f. 6.2.95, the applicant was not granted the same. All his six juniors, who were in the Waltair Division, have been granted promotion w.e.f. 22.12.1994. The applicant filed an Appeal before the 2nd respondent. The pensionary benefit was not granted on the basis of the promotion effected as that of his juniors. The representation made by the applicant had no response from the authorities. Under the circumstances, the applicant filed O.A.1195/99 before this Tribunal and the same was dismissed on the question of limitation.

2. The applicant thereafter took up the matter before the Hon'ble High Court of Kerala in O.P.28448/99 and the Hon'ble High Court in its order dated 17.11.1999 had directed the respondents to consider the applicant's representation A-3 dated 9.12.1999.

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As per the directions of the Hon'ble High Court, he was intimated that he was promoted to the post of Deputy Station Superintendent in the scale of Rs.1600-2660 w.e.f.22.12.1994 on proforma basis, i.e. the date on which his immediate juniors were promoted in WAT Division. But the actual benefits were sanctioned only from 6.2.1995 which was communicated by A-4 order dated 22.12.1994. Thereafter also the applicant approached the 2nd respondent claiming his promotion and benefits from 22.12.1994, on par with his juniors. The applicant filed O.A.937/2000 before this Tribunal. This Tribunal disposed of the O.A. directing the 2nd respondent to consider the representation of the applicant in accordance with the rules on the subject and to give him appropriate reply within a period of two months. Vide order dated 23.10.2000 (A5) the 2nd respondent intimated the applicant that he has been promoted to the post of Deputy Station Superintendent w.e.f. 22.12.1994. The earlier order of the 2nd respondent dated 17.8.2000 issued to the applicant reiterating that the pay was fixed on proforma basis w.e.f. 22.12.1994 but actual monitory benefits were granted from 6.2.1995. Therefore, as per A4 and A-6, the applicant was granted promotion w.e.f.22.12.1994 on proforma basis and the actual benefit was sanctioned from 6.2.1995. But vide order dated 13.9.2000 (A7) issued by the 2nd respondent, the actual benefit was altered without mentioning any date of granting the benefit. This is against the spirit of the Court orders and a Lawyer's notice was issued vide A-8 dated 18.12.2000 and the respondents changed their contention by altering the date of actual promotion to October 1995 from February 1995. This is a clear victimization



taken against the applicant for approaching this Tribunal. The reply issued by the 2nd respondent is A-9 dated 9.1.2001. It is reiterated in the said reply that the applicant has been promoted to the post of Deputy Station Superintendent w.e.f.22.12.1994 on proforma basis and enhanced pay was allowed to him w.e.f. 24.10.1995, as from this date only he had shouldered the duties and responsibilities of the higher post. The genuine case of the applicant is that he is entitled to get promotion w.e.f.22.12.1994. Aggrieved by the said orders the applicant filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs.

- i. quash Annexures A2,A4,A5,A6, A7 and A9.
- ii. direct the respondents to grant pensionary benefits taking into account his due promotion from 22.12.1994 and pay all consequential benefits like arrears of salary, arrears of pension, DCRG, commutation, Leave Salary difference etc.
- iii. declare that the applicant is entitled to get his pay re-fixed w.e.f.22.12.1994 and consequent re-fixation of pensionary benefits on retirement;
- iv. pass such any other order or direction which are deemed fit and fair in the circumstances of the cases.

3. The respondents have filed a detailed reply statement contending that the application is filed without any bonafide and the impugned orders are issued in accordance with the provisions on the subject and the applicant cannot assail the same on the grounds urged in the application. The granting of cash award if any, has no relevance in this case. It is further contended that the Sambulpur Division is a new Division and formed with taking certain portion of Waltair and Chakradharpur Division. The applicant was working at Therubali station under the jurisdiction

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of Waltair Division. The station was handed over to Sambalpur Division on 1.1.1994 and the staff who were working under the administrative control of "Sambalpur Division, their seniority and lien etc. were maintained by the parent Division till finalisation of cadre of newly formed Sambalpur Division. He was called for the suitability test of the post of Deputy Station Superintendent in scale of Rs.1600-2660 by the Waltair Division and declared suitable for the above post. Accordingly, he was promoted to the post of Deputy Station Superintendent w.e.f.6.2.1995 by A2 order. In compliance with the Hon'ble High Court's Judgement, the date of promotion was revised to 22.12.1994 on proforma basis and actual monetary benefit was granted with effect from 6.2.1995. Based on his representation, his case was reviewed and as per Annexure A-7 order dated 13.9.2000, he was promoted w.e.f. 22.12.1994 on proforma basis and actual benefits were given from the date of taking over independent charge of higher post. The applicant had taken independent charge of the promotional post on 24.10.1995 and therefore, he is entitled for monetary benefits on his promotion to the post of Deputy Station Superintendent only from 24.10.1995. As per A4, he was promoted to the post of Deputy Station Superintendent in scale of Rs.1600-2660 w.e.f.22.12.1994 on proforma basis i.e. the date his immediate juniors were promoted in Waltair Division and actual benefit was granted from 6.2.1995. But actual date of effect of promotion was erroneously issued, i.e. 6.2.1995 was mentioned in A4, which was subsequently revised and issued vide fresh office order dated 13.9.2000 (A7). The applicant is not entitled to get monetary



benefits w.e.f. 22.12.1994, as he has not shouldered higher responsibility in promotional grade. Actual financial benefit is granted w.e.f. 24.10.94 i.e. the date he had taken higher responsibility on promotional grade. As per A-7 he was informed that he would be entitled to the actual benefits of this promotion from the date of his taking over higher responsibilities of the post of which he was promoted. As per the law on this subject, he can claim the benefit only from the date of his shouldering higher responsibilities. There is no merit in the O.A. and therefore, he is not entitled to any benefits claimed in the O.A. As per Annexure R-1 circular dated 1.10.1964 he is not entitled to the monetary benefits as claimed by him.

4. We have heard Ms.Jeena Joseph, the learned counsel for the applicant and Shri Thomas Mathew Nellimootttil, ACGSC appearing for the respondents. Learned counsel for the applicant submits that the applicant has got a vested right to get his pension commuted in accordance with the proper pay fixation. For the mistake committed by the authorities themselves to fix the pay of the applicant correctly and properly and consequential benefits of pension, the applicant cannot be made to suffer. The applicant was denied promotion w.e.f.22.12.1994 when all his juniors in the Waltair Division were enjoying the same in view of A-1. He was denied promotion only for the reason that he has been posted to newly formed Sambulpur Division. Since the applicant was working in Waltair Division and transferred to Sambulpur Division not on his request, he is entitled to get



promotion and consequential benefits just like any other staff in the Waltair Division. As per A4 and A-6, the respondents granted promotion to the applicant w.e.f. 6.2.1995 and in A2 it is made clear that the applicant was found suitable for promotion from 6.2.1995 and there is no justification to alter the date of promotion to 24.10.1995 as per A-9. From A-5 and A7, it is not clear as on what date he was granted promotion.

5. Learned counsel for the respondents, on the other hand, submitted that, once he has been accepted the transfer to Sambulpur Division, he cannot claim the benefit as that of the erstwhile Division in the Divisional Seniority and thereof. The effect of date mentioned in A2, i.e. 6.2.1995, was erroneous which was subsequently corrected in A-7 dated 13.9.2000 and he is entitled for promotion only from 24.10.95 onwards when he was taken over higher responsibility on promotional post.

6. We have given due consideration for the arguments advanced by the learned counsel, the pleadings, the evidence and material placed on record.

7. The promotion increases efficiency of the public servants though the promotion is based on different criterion. It is an incidence of service and also an expectation in the employees. In 2000(8)SCC 393 the Apex Court held that under Article 16 of the Constitution the right for promotion is a fundamental right. It is not a mere consideration for promotion that is important when the consideration must be fair according to the established

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principle governing the service jurisprudence. This is a case where the applicant was working in Waltair Division and for administrative convenience and for expansion of the Railways he was transferred to Sambulpur Division and all his juniors in the Waltair division were promoted, when his seniority was maintained in the Waltair division for some time. He had 33 years of service and his specific pleading is that had he been continued in the other division (Waltair division), he would have been promoted ahead of his juniors who were promoted in that division. Therefore, he had been denied the promotion on the mere fact that he was transferred to a different division. These aspects are not disputed by the respondents. On the other hand, they have had a go-bye to it.

8. Now as per A2 dated 28.8.95, the applicant was promoted as Dy. Station Superintendent in the scale of Rs.1600-2660 (RPS) on regular measure and posted in the same station w.e.f.6.2.1995. Since he has been found suitable for promotion to the post of Dy.SS in the said scale vide DPO/WAT's O.O.No.Estt/Optg/A/15 dated 6.2.95 and vide endorsement No.WPY/307/93 dtd.6.2.95, the respondents also allowed him to exercise option for fixation of pay under Rule 2018(B) R-11 FP 22(C) on the date of accrual of the next increment in the lower grade in terms of Estt.Srl.No.231/61 within one month. This was reiterated in A4 when he made a claim that he should have been promoted from 22.12.1994 when his immediate juniors were promoted in Waltair Division. The operative portion of A-4 reads as follows:

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"Sri.R.N.Pillai, SM/AMB in scale Rs.5000-8000/(RPS) is promoted to the post of Dy.SS in scale Rs.1600-2660/-(RSRP) (IV PC) w.e.f.22.12.93 on proforma basis i.e. the date of his immediate juniors promoted in WAT Division vide DPO/WAT's O.O.No.WPY/307/93 dated 22.12.94 and actual benefit from 6.2.95 in terms of this office Memo No.DPO/SBP/Optg./63/95 dated 28.8.95."

9. In compliance of the judgement of the Hon'ble High court the date of promotion was revised to 22.12.94 on proforma basis and the actual monetary benefits were granted from 6.2.95 as per A-7 order dated 13.9.00. But, though the promotion was effected on 22.9.95, the monetary benefits were granted only from the date of his taking over the independent charge on higher responsibility ie. on 24.10.95.

10. The respondents have relied on Annexure R-1 order and contended that the fixation has been made and the benefit was given from the date of his shouldering the higher responsibility. The applicant challenged that order before the Tribunal and this Tribunal directed to dispose of the representation. Accordingly, A-5 order was passed and therefore, the respondents had not granted the benefit. In Annexure A2, it is very clear that the applicant was found suitable to be promoted from 6.2.95. This endorsement of the DPO/WAT's O.O.No.Estt/Optg/A/15 is dated 6.2.95. Therefore, in any case, he is eligible to be promoted w.e.f.6.2.95 when the authority found him fit for promotion. Probably, the alleged juniors in the different divisions would be found fit by the Selection Committee to be promoted much an earlier date which may not be strictly applicable to the case of applicant who is working in a different division. But any deviation to deny the benefit to the applicant from 6.2.95 will



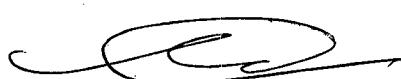
be against natural justice and norms of the administrative law. Therefore, we are of the view that Annexure A2 order should be implemented in its true spirit. In the facts and circumstances of the case, we have no hesitation in holding that the applicant is entitled to get all benefits including the monetary benefits w.e.f. 6.2.95.

11. Learned counsel for the applicant has drawn our attention to various decisions reported in (i) 1993 (2) KLT 287, Sivarajan vs. State of Kerala and (ii) 1997 (1) KLT 601, Somukuttan Nair vs. State of Kerala, wherein Hon'ble High Court of Kerala has held that a particular individual/employee is entitled to get earlier date of promotion and such promotion was unjustly denied, is entitled to get monetary benefits.

12. In the conspectus of the facts and circumstances, we direct the respondents to grant all benefits including the monetary benefits w.e.f. 6.2.95 and consequential pensionary benefits flowing out of this order. The amount and the pension shall be worked out and granted to the applicant as observed above, at the earliest, in any case, within a period of three months from the date of receipt of a copy of this order.

13. O.A. is allowed as above.. Under these circumstances, we direct the parties to bear their own costs.

Dated the 18th December, 2002.



K.V.SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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Applicant's Appendix

A1: A true photocopy of the order O.O.No.WPY/307/93 dtd.22.12.1994 issued by the Divisional Personnel Officer,/Waltair.

A2: A true photocopy of the order No.O.O.No.DPO SBP/Optg./63/95 dated 28.8.95 issued by the 2nd respondent.

A3: A true photocopy of the representation dated 9.12.1999 submitted by the applicant.

A4: A true photocopy of the Office order No.87/99 dated 21.12.99 issued by the 2nd respondent.

A5: A true photocopy of the order No.P.Sett/CC/Rev/PIC dated 23.10.2000 issued by the 2nd respondent.

A6: A true photocopy of the order No.DPO/SBP/Optg/Dy.SS/Pay.fix/2K dated 17.8.2000 issued by the 2nd respondent.

A7: A true photocopy of the order No.98/2000 dated 13.9.2000 issued by the 2nd respondent.

A8: A true photocopy of the lawyers notice dated 18.12.2000 issued to the respondents.

A9: A true photocopy of the order No.P/Ruling/PIC/01 dated 9.1.2001 issued by the 2nd respondent.

Respondents' Appendix

Annexure R-1: True copy of the Establishment Serial No.273/64 Circular No.P/R/14/257 dated 1.10.1964.