

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 212 of 1990.
~~XXXX~~

DATE OF DECISION 30th JULY 1991.

P. Thyagarajan and others Applicant (s)

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

Versus

Union of India through the Respondent (s)
General Manager, Southern
Railway, Madras and others

Smt. Sumati Dandapani Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. **S.P. Mukerji** - Vice Chairman

and

The Hon'ble Mr. **A.V. Haridasan** - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

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

The three Chief Travelling Ticket Inspectors (CTTI) of ^{the} Southern Railways in this application dated 15.3.1990 have prayed that the respondents be directed to fix their pay as C.T.T.I in the scale of Rs.700-900 with effect from 1.8.79 and consequentially to pay them full arrears of pay along with 12 per cent interest. They have also challenged that portion of the Railway Board's letter of 15/17-9-64 (Annexure.A.3) which prohibits payment of arrears where pay is enhanced with retrospective effect and allows ^R the enhanced pay only from the date of actual promotion. They have also challenged the note below Annexure-A.4 by which they were promoted to the higher

grades of Rs.425-640 and Rs.550-750 retrospectively but were allowed arrears only from the dates of shouldering higher responsibilities in the higher grades.

2. The brief facts of the case are as follows. The applicants were promoted as Travelling Ticket Examiner in the scale of Rs.425-640 during January/April, 1981. They were all promoted to the next higher grade of Travelling Ticket Examiners of Rs.550-750 on 1.1.1984. They were promoted as C.T.T.I in the scale of Rs.700-900 (revised Rs.2000-3200) on various dates between April, '86 and September, '88. On account of the merger of the cadres of Travelling Ticket Examiners and Ticket Collectors from 1.1.65 a combined Seniority List was published on 30.7.66 in which they were shown as junior to one Shri S.Siva-subramaniam. Consequent on a judgment by the Karnataka High Court the Railways had to revise the seniority of the Ticket Checking staff as on 1.1.65 and in the revised Seniority List Shri Siva Subramaniam was placed below all the three applicants before us. One Shri Raman, like the applicants before us ^{who earlier} ~~having been~~ placed below Shri Siva Subramaniam was placed above him in the revised Seniority List moved the Madras Bench of the Tribunal claiming fixation of pay in different grades of Rs.425-640, Rs.550-750 and Rs.700-900 from the same dates ^{on} ~~which~~ Shri Siva Subramaniam was promoted to these grades on the basis of the old Seniority List namely dated 29.6.76 (Rs.425-640), 26.11.76 (Rs.550-750) and 1.8.79 (Rs.700-900). The Tribunal allowed the application on 14.11.86 (Annexure-II). ^{The} Southern Railways thereafter decided to give proforma promotion to all cases

of T.T.Es whose seniority had been similarly revised entitling them to upward revision of pay. The applicants' grievance is that on the basis of this decision, whereas the 4th respondent refixed the pay of the applicants in the grades of Rs.425-640 and Rs.550-750 by giving them notional promotion to these grades with effect from 29.0.76 and 26.11.76 respectively when Shri Siva Subramaniam had been so promoted, similar notional promotion and re-fixation of their pay in the grade of CTTI in the scale of Rs.700-900 was not effected. Their further grievance is that they were not given arrears of pay even in the first two grades from the dates of their notional promotion. They have referred to another case of four Travelling Ticket Examiners who moved the Madras Bench of the Tribunal for similar relief in O.As 466/87, 467/87, 469/87 and 470/87. That Bench of the Tribunal in its order dated 22.3.88 (Annexure.A.5) allowed the applications directing notional fixation of the pay of the applicants in the aforesaid three grades with effect from the dates Shri Siva Subramaniam was promoted to those grades and directed that "consequential arrears and revision of pensionary benefits be allowed to them." The applicants have argued that in O.A.470/87 even though the applicant Shri Ramaswamy had retired while working in the grade of Rs.330-560, the Madras Bench of the Tribunal in the aforesaid judgment had allowed his pay also to be fixed in the scale of Rs.700-900 with effect from 1.8.79. Therefore, there is no reason why the applicants who are still in service and are actually working in the grade of Rs.700-900 should not be given similar promotion with effect from 1.8.79. The applicants were not promoted when Shri Siva Subramaniam was promoted to that grade not because of the

applicants being unsuitable but because of the wrong seniority assigned to them. The respondents having given them notional promotion to the grade of Rs.425-640 which is a Selection Grade and Rs.550-750 which is a non-Selection Grade retrospectively, cannot deny them the notional retrospective promotion to the grade of Rs.700-900 merely on the ground that that was a selection grade. Their further plea is that Shri Siva Subramaniam was promoted to the grade of Rs.700-900 without undergoing any process of selection because that grade had not been declared as a selection post at that time. To deny the applicants notional promotion with effect from 1.8.79 on the ground that they have to undergo a process of selection is illegal and discriminatory. The applicants were promoted by the respondents themselves in the grade of Rs.700-900 during 1986 and 1988 on an adhoc basis only because no regular D.P.C. meeting had been held between 1984 and 1990. But the applicants were promoted after assessing their general suitability to hold the post in that grade. There is no reason to deny them notional promotion to that grade with effect from 1.8.79.

3. The respondents have stated that on the basis of the judgment of the Tribunal in O.A.141/86 and the decision of the Railways dated 19.1.87, 21 employees of ^{the} erstwhile Madras Division now working in the Trivandrum Division including the applicants were granted benefit of notional promotion and consequential benefits in the grades of Rs. 425-640 and Rs.550-750 from the date Shri Siva Subramaniam was promoted to these grades. The arrears of pay consequent on the proforma promotion, however, was allowed from the

dates the applicants shouldered the higher responsibilities in the respective grade. The respondents have conceded that the four applicants in O.As 468/87, 466/87, 469/87 and 470/87 were subjected to selection along with Shri Siva Subramaniam on 11.7.75 for the grade of Rs. 425-649 but they were not selected. But in spite of that the Tribunal directed their promotion to that grade and even to higher grades of Rs.550-750 and Rs.700-900 with arrears observing that their non-selection could be as a result of non-passing the test or could ^{as well} be because of their lower seniority. The respondents have stated that this view was taken by the Tribunal because the Railways had not produced any file to show why they were not selected. They have argued that since the grade of Rs. 700-900 is a selection post, which is evident from the alert notice given on 14.7.82 (Exbt.R.1), unless the applicants appeared for selection ^{they} ~~if~~ cannot be ^{given} notional promotion with effect from 1.8.79. Their further argument is that the four applicants in the aforesaid four cases had been regularly promoted to the scale of Rs.700-900 ^{have} before they ~~are~~ retired. The applicants before us according to them have not been regularly selected in the grade of Rs.700-900 (Rs.2000-3200) but are officiating on an ad hoc basis, hence they cannot claim the same treatment as was given to the four applicants before the Madras Bench of the Tribunal. They have justified non-payment of arrears in the first two grades on the basis of the Board's letter of September, 1964 at Annexure-A.3. They have stated that the applicants will be eligible for proforma fixation of pay in the scale of Rs.700-900 with effect from 1.8.79 only if they are selected for the post of C.T.T.I. in the grade

of Rs.700-900 (2000-3200). The selection meetings were held on 15.3.90, 9.4.90 and 9.7.90 but the applicants before us refused to attend the selection and sought proforma promotion without appearing in the selection. They have reiterated that Rs.425-640 is a selection post, Rs.550-750 is a non-selection post and Rs.700-900 is a selection grade and the applicants will have to undergo the process of selection before claiming proforma promotion to selection grade.

4. In the rejoinder the applicants have argued that even though the four applicants in O.A.467/87 etc., were not selected having been called for selection due to their low seniority position and still allowed notional promotion by the Madras Bench of the Tribunal, there is no reason why the applicants before us who were not even called for selection along with Shri Raman should not be given the same benefit. Their argument is that the applicants stand on the same footing as the applicants in O.A.467/87 etc. They have further argued that in accordance with paras 209 and 210 of the Indian Railway Establishment Manual, a selection post will be that post which is declared as such by the Railway Board. There is no declaration by the Railway Board to designate the post of G.T.T.I as a selection post. Accordingly this has to be deemed to be a non-selection post. The alert notice given in 1982 (Exbt.R.1) cannot prove that the post was a selection post in 1979. Being a non-selection post and the applicants having been already promoted to the grade of Rs.700-900 during 1986-87, their suitability cannot be questioned for promotion to that grade. It will be impossible for the applicants to be interviewed

in 1991 for selection in 1979. They have also referred to the applications filed by similarly situated Travelling Ticket Inspectors who retired during the period from 1984 to 1989 and who moved this Tribunal in O.A.652/90 and O.A. 254/90. The applicants before us have quoted para 16 of the counter affidavit of the Railways submitted in O.A. 652/90 in which they have stated that the applicants therein "will be considered for proforma fixation in the scale of Rs.700-900 only if his juniors are selected". In another para of the same counter affidavit the respondents have stated that "the applicant's case will be considered for proforma fixation in the scale of Rs.700-900 with effect from 1.8.79 only if his juniors are selected for the post of C.T.T.I in the scale of Rs.2000-3200 par with his junior Shri Siva Subramaniam of MDU Division." The applicants before us have stated that the applicant in O.A.652/90 retired from service on 31.8.1989 while officiating on adhoc basis in the scale of Rs.700-900 (Rs.2000-3200). If he could be given proforma promotion in the scale of Rs.700-900 with effect from 1.8.79 when his junior was promoted, there is no reason to deny the same to the applicants before us. They have denied that they have refused to attend the selection, stating that they appeared before the Selection Committee and jointly submitted a representation to the Selection Committee requesting it to exempt them from selection, whereafter the Selection Committee did not interview the applicants.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. This very Bench of the Tribunal decided similar applications in their judgment dated 28.6.1991 in O.A.254/90, OA 759/90, O.A.652/90 and O.A.481/90.

The only difference between the applicants before us now and the applicants in those applications ^{is} ~~that~~ while the ^{latter} ~~has~~ retired, the applicants before us are still in service. After surveying the various judicial pronouncements on the question of payment of arrears of pay on retrospective promotion, ^{in that judgment} we ~~observed~~ as follows:

"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 29.6.76, Rs.550-750 with effect from 26.11.76 and Rs.700-900 with effect from 1.8.79 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."

6. On the question of retrospective promotion to the grade of Rs.700-900 (Rs.2000-3200) without subjecting the applicants to a process of selection, the relevant portions of our common judgment in the aforesaid cases are quoted below:

"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. Though some of the applicants were given adhoc promotion to 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 A8 in OA 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 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 cases 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. We are further convinced about the rights of the applicants to retrospective promotion to the grade of Rs. 700-900 by the fact that the respondents have not been able to rebut the contention of the applicants that in 1979 the post in the scale of Rs.700-900 of C.T.T.I. had not been declared to be a selection post under paras 209 and 210 of the Railway Establishment Manual. The alert notice issued in 1982 for selections would pertain to the position in 1982 but would not qualify the position in 1979. It is also not clear to us why the Railways in cases of the retired adhoc C.T.T.I. in O.A.652/90 etc., had assured that if any of his junior is selected and empanelled for selection to the scale of Rs.700-900, the case of retired C.T.T.I who was applicant before the Tribunal in that case will also be considered for granting proforma promotion with effect from 1.8.79, but are insisting upon the applicants before us being subjected to selection in 1991 for promotion in 1979 when the post was not a selection post. There is no logic in discriminating between a retired C.T.T.I and a serving C.T.T.I both having been held the grade on an adhoc basis, and subjecting one to selection in 1990 and exempting the retired one from ~~the~~ selection, for the purpose of proforma promotion in 1979. The respondents themselves having given proforma retrospective promotion to the applicants

in the grade of Rs.330-560, which is admittedly by them is a selection grade without subjecting them to in selection cannot deny the applicants' proforma promotion to the grade of Rs. 700-900 as in 1979 without subjecting them to selection.

8. In the facts and circumstances, we allow this application with the following directions:

- (a) The following provisions in the Railway Board's Circular dated 15/17.9.1964 are set aside:-
"No arrears on this account shall be payable, as he did not actually shoulder the duties and responsibilities of the higher posts."
- (b) The applicants should be promoted 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.
- (c) The applicants are entitled to arrears of pay on the basis of their retrospective promotion to the scale of Rs.425-640, with effect from 29.6.76, to the scale of Rs.550-750 with effect from 26.11.76 as also to the scale of Rs.700-900 with effect from 1.8.79 if they had not superannuated before any of these dates.
- (d) Arrears of pay, allowances and pensionary benefits should be determined, sanctioned and disbursed within a period of six months from the date of communication of this order.
- (e) There will be no order as to costs.


(A.V.HARIDASAN)
JUDICIAL MEMBER


(S.P.MUKERJI)
VICE CHAIRMAN

30-7-1991

Ks.

28.50/92

17-6-92

Mr. Sivan Pillai

Mr. Ramakrishnan vs. Smt. Dandapani

The learned Counsel for the respondents undertakes to file reply within two weeks with copy to the learned Counsel for the applicant.

With further discussions on 9.7.92

AVH
17.6.

SPM
17.6

SPM & AVH

Mr. P Sivan Pillai for applicant

Mrs. Sumathi Dandapani for respondents

The learned counsel for the respondents indicated that in compliance ^{of} our order, arrears of pay and allowances have already been paid to the petitioner. It is admitted by the learned counsel for the original applicant. The learned counsel for the respondents, however, states that because of the formalities to be completed, payment of pension and pension arrears was not done ^{and} the sanction of revised pension and arrears ^{will} be issued and paid to the petitioner within a period of 2 months from today. On the basis of the assurance ^{we} direct that the CCP be listed before us for final disposal on 14.9.92. Order by hand to both the parties.

(AV HARIDASAN)
JUDICIAL MEMBER

9.7.92.

(SP MUKERJI)
VICE CHAIRMAN

20.10.92 on
14/7/92

Adjourned to
7-10-92 by
notice.

7-10-92

(7)

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Mr Sivan Pillai
Mrs Dandapani

The alleged cotemner has filed an affidavit on 8.9.92 enclosing a copy of the order by which the directions contained in the original order was fully complied with. He has also expressed regret for the late implementation and has stated that the delay was not wilful. Since the directions have been fully complied with, we accept the averments made in the affidavit by the alleged cotemner, close the CCP and discharge the notice.

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(AV Haridasan)
J.M.


(PS Habeeb Mohamed)
A.M.

7-10-92

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