

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A. No.226 of 1997.

Friday this the 19th day of November 1999.

CORAM:

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

A.P. Chandrasekharan Elayidom,
Retd. Railway Employee,
(Permanent Way Inspector),
S/o Parameswara Panicker
Green Cottage, Alangad,
Kottappuram P.O.
North Paravoor Taluk,
Ernakulam District.

Applicant

(By Advocate Shri K.V. Jayachandran)

Vs.

1. Union of India, represented
by General Manager, Southern
Railway, Madras.
2. Railway Board represented by
Chairman, New Delhi.
3. Divisional Manager, Southern
Railway, Madurai, Tamilnadu.
4. Divisional Personnel Officer,
Southern Railway, Madurai,
Tamilnadu.
5. Sub Divisional Engineer,
Southern Railway, Madurai
Tamilnadu.

Respondents

(By Advocate Smt. Sumathi Dandapani)

The application having been heard on 19th November 1999,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

This case has a long chequered history.

2. The applicant while working as Permanent Way
Inspector, Southern Railway was removed from service in the

...2/-

year 1969 without holding any enquiry. The said order of removal from service was ultimately set aside by the Hon'ble High Court of Kerala in O.P. No.4378/1977 and the respondents were directed to hold an enquiry according to rules. Pursuant to the orders of the High Court the applicant was reinstated in service and retired on superannuation on 30.11.1984. In the meanwhile, an enquiry was held against the applicant and a penalty of reduction of pay in the minimum, for a period of 5 years was imposed on him. The applicant filed an appeal but the appellate authority confirmed the penalty. Applicant again challenged the orders before the Civil Court and ultimately on the commencement of the Administrative Tribunals' Act, the matters was transferred to this tribunal and was re-numbered as T.A. 1/1994. The Tribunal by its order dated 8.2.95 found that the appellate order was non-speaking and unsustainable and set it aside holding that the order of the disciplinary authority also got merged with it. However, liberty was given to the appellate authority to restore an appeal and to dispose of it afresh within a period of four months. As this was not done the Department filed a M.A. before the Tribunal for enlargement of time which was rejected. The respondents therefore, treated the disciplinary proceedings has come to a final conclusion and gave the applicant the arrears of pay and allowances for the period he was kept out of service treating the period of suspension as duty for all purposes.

3. The present grievance of the applicant is that the entire period from 16.1.69 to 31.11.84 has not been treated as service for salary, increments and other consequential benefits. The applicant has, therefore sought for the following reliefs

1. Declare that the applicant is in service from 16.1.1969 to 30.11.1984 in the office of the respondents and grant him all the service benefits including salary, increments and other service benefits with consequential benefits.

...3/-

- 2.. Direct the respondents to treat the applicant to the Class II Office Grade (Assistant Executive (Engineer) as promoted from 8.5.1981 and disburse the salary and other benefits entitled to the applicant with interest at market rate and disburse the same at the earliest.
3. Direct the respondents to re-calculate the terminal benefits and pay the arrears to the applicant and also to revise the pension benefits and commutation and pay the same from 30.11.1984.
4. Direct the respondents to pay off the amounts withheld from the applicant and also arrears of salary and other benefits with interest at 12%.

4. The respondents have filed a detailed reply statement contesting the claim raised by the applicant. They contend that for want of records and the post of Permanent Way Inspector Grade I being a selection post, it is not feasible to give the applicant the benefits of promotion claimed by him. They have also stated that the entire arrears of pay and allowances due to the applicant upto 30.11.84 has been disbursed to him and that a revision of pension, treating the entire period as duty, is under process.

5 The applicant has filed a rejoinder.

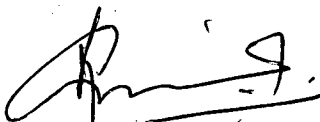
6. Having considered the facts and circumstances and the question of law emerging from the pleadings and the materials brought on record, we are of the considered view that most of the grievances of the applicant have since been redressed, though the applicant had not been actually in service for a very long time, he has now been given pay and allowances for the entire period he was kept out of service treating it as duty for all practical purposes. While the Tribunal in T.A. 1/94 set aside the appellate order as non-speaking did not consider whether the Disciplinary Authority's order suffered from any infirmity. It is only because of the respondent department's failure to proceed further the applicant obtained the advantage of treatment of

a long period as service as also huge amount as arrears of pay and allowances. It was not because the applicant was fully exonerated of all the charges. Under these circumstances, we are not satisfied that the applicant is in law entitled to promotion to higher posts as claimed by him.

7. In the conspectus of the facts and circumstances, we are of the considered view that what the applicant would entitle now would be to have his pension and other retiral benefits computed taking into account the entire period upto 30.11.84 as qualifying service for pension.

8. In the light of what is stated above, the application is disposed of directing the respondents to revise recalculating the retiral benefits of the applicant treating that he continued in service till 30.11.84 and the entire service from 16.1.69 upto 30.11.84 is also as qualifying service for pension and to make available to the applicant the monetary benefits flowing therefrom within a period of three months from the date of communication of this order. No costs.

Dated the 19th November 1999.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN