

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

Dated friday the third day of February, one  
thousand nine hundred and eighty nine.

PRESENT

Hon'ble Shri S.P. Mukerji, Vice Chairman  
&  
Hon'ble Shri G.Sreedharan Nair-Judicial Member

ORIGINAL APPLICATION No.233/86

C.Balakrishnan .. Applicant

Versus

1. Senior Divisional Personnel  
Officer, Southern Railway,  
Palghat.
2. P.P. Bhaskaran, Senior  
Goods Clerk, Southern Railway,  
Mangalore. .. Respondents

The Applicant .. In person

Counsel for the respondent  
No.1. .. M/s MC Cherian/  
Saramma Cherian/  
TA Rajan.

ORDER

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

The applicant who has been working as  
Senior Booking Clerk in the Southem Railway moved  
this application dated 16.2.86 under Section 19 of  
the Administrative Tribunals Act praying that the  
respondent should be directed to dispose of his  
representation at Exbt.A.1 in accordance with law  
and that a declaration be issued that the applicant  
was entitled to be promoted as Senior Commercial  
Clerk in the scale of Rs. 425-640 before the 2nd

respondent and others junior to the applicant were promoted. He has also prayed that promotion of respondent No.2 to this scale should be declared to be illegal. The brief facts of the case are as follows.

2. While the applicant was appointed as Commercial Clerk on 25.4.58, regularised on 25.8.58 and confirmed on 5.3.61, the respondent No.2 was appointed, regularised and confirmed as Commercial Clerk on 21.2.58, 21.7.58 and 14.11.60 respectively. That is to say that respondent No. 2 always came in for appointment, regularisation and confirmation before the applicant. The petitioner was promoted as Senior Commercial Clerk in the scale of Rs.330-560 by the order dated 23.5.79 which was given effect to on 1.9.79, from which date the applicant started drawing the higher pay scale of Rs. 330-560. However, even though respondent No.2 was promoted as Senior Commercial Clerk in the scale of Rs. 330-560 by the order dated 11.1.79 he did not accept the transfer on promotion to first Tirupur then at Booking Office, Mangalore but finally accepted his posting on representation as Senior Goods Clerk at Mangalore Goods Office and took over as such on 29.11.79. In the seniority list published in 1981 (page 26 of the paper book) whereas the applicant was shown at Sl.No.250,

respondent No.2 was shown at Sl.No.243. The applicant's contention is that because of the applicant having taken over as Senior Clerk in the higher scale of Rs. 330-560 on 1.9.79 as against 29.11.79 in case of respondent No.2, the applicant must be held senior to the respondent and therefore respondent No.2's further promotion as Senior Commercial Clerk in the scale of Rs.425-640 from 1.4.84 ignoring the applicant is illegal.

3. The respondents' contention is that the respondent No.2 was in every way senior to the applicant on the basis of his earlier date of entry as Commercial Clerk, regularisation, confirmation etc. They have argued that the order regarding promotion of respondent No.2 to the scale of Rs. 330-560 was issued on 11.1.79 as against 23.5.79 when the order of applicant's promotion was issued. They have further argued that respondent No.2 took over as Senior Commercial Clerk in the higher scale of Rs. 330-560 on 29.11.79 because of administrative reasons and not for any fault of his. They have also pointed out that the applicant did not object to the respondent No.2 being shown as senior to the applicant in the seniority list issued in 1981 and there is nothing wrong in the earlier promotion of respondent No. 2 to the higher grade of Rs.425-640 on the basis of seniority-cum-suitability. It is

32

2

also stated that the applicant could not be considered for promotion to the higher scale of Rs. 425-640 in 1984 when respondent No. 2 was so considered because the applicant was not senior enough at that stage. However, he was considered against a subsequent vacancy but was not found suitable. They have clarified that the applicant had undergone several punishments at various times on many occasions. It was revealed during the course of arguments that the applicant has since been removed from service through disciplinary proceedings.

4. We have heard the arguments of the applicant in person and the learned counsel for the respondent and gone through the documents carefully. The applicant has based his claim for promotion to the scale of Rs.425-640 solely on the ground that he is senior to respondent No.2. This is not true as the seniority list of 1981 (page 26 of paper book) shows him at Sl.No.250 whereas respondent No.2 is at Sl.No.243. It is evident from the records that the applicant had made no representation against the seniority till 1986. He cannot, by this application filed in March, 1986 challenge the seniority fixed in 1981. This is barred by Section 21 of the Administrative Tribunals Act under which cause of action which

33

2

arose more than three years before the constitution of the Central Administrative Tribunal on 1.11.1985 cannot be agitated before the Tribunal. The Supreme Court also has been discouraging reopening of stale cases of seniority and promotion because <sup>of</sup> the need to establish a sense of security and settled status amongst officials. As regards promotion of respondent No.2, the respondent No.1 <sup>has</sup> satisfactorily clarified that respondent No.2 because of his seniority and suitability was promoted on 1.1.84 <sup>while</sup> the applicant was not found suitable for promotion because of his <sup>poor</sup> performance and adverse service records and confidential reports. The applicant contended <sup>that</sup> since promotion as Senior Commercial Clerk is on the basis of seniority-cum-suitability he should not have been superseded by his juniors without <sup>any</sup> prior declaration that he <sup>was</sup> ~~is~~ unfit. Paragraph 212(a)/320(a) of the Establishment Manual as <sup>quoted</sup> ~~cited~~ by him in his supplementary affidavit dated 25th September, 1988 reads as follows.

"2. Promotion to Non-selection post-

- (ii) Promotion to non-selection posts shall be ordered on the basis of seniority-cum-suitability, the suitability being determined by the authority competent to fill the posts on the basis of the record of service and/or departmental test (by oral

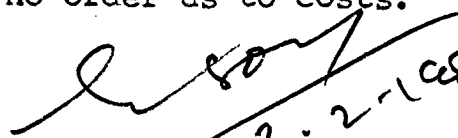
and/or written test) or departmental examination or a trade test, as considered necessary. A senior man may be passed over only if he has been declared unfit for holding the post in question. A declaration of unfitness should ordinarily have been made sometime previous to the time when the promotion of the railway servant is being considered."

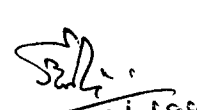
5. The learned counsel for the respondent<sup>s</sup> showed us the Confidential Report of the applicant and we find that the latest Confidential Report recorded on 30.5.83 immediately preceding 1.1.84 when respondent No.2 was promoted, shows that the applicant was found not fit for promotion. The Reviewing Officer agreed with this assessment of the Reporting Officer. Accordingly the requirement of the aforesaid rule seems to have been substantially met. The applicant also conceded that for certain irregularity in booking wagons in 1982 he was undergoing a punishment of stoppage of increment for six months from 1.8.84. His increments were similarly withheld for six months from 25.8.80 for delaying despatch of certain parcels. He had been censured repeatedly in 1975, 1976 and 1977 with stoppage of increment for three months in 1977. We have not taken into account the other punishments awarded to him after 1984 or before 1975. We are left with a feeling that the competent authority by

...7

declaring him unfit for promotion in 1984 has not acted arbitrarily. We therefore, find no case for our intervention.

6. In the facts and circumstances, we see no merit in the application and dismiss the same with no order as to costs.

  
(G. Sreedharan Nair)  
Judicial Member

  
(S.P. Mukerji)  
Vice Chairman

3.2.1989

Sn.