

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAMA BENCH

O.A.No.263/2001

Wednesday, this the 7th day of August, 2001.

CORAM

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

P.V. Narayanan, S/o Late Kunjunni Nair,
Retd. Chief Controller (Electrification),
Control Office, Palaghat.
Residing at Hareendra Karamuk Temple Road,
Chiyyaram, Trissur.

Applicant

[By Advocate Mr M.R. Rajendran Nair]

Versus

1. Union of India represented by
the Secretary to the Government of India,
Ministry of Railways, New Delhi.
2. Senior Divisional Personnel Officer,
Southern Railway, Palghat.
3. Chief Personnel Officer,
Southern Railway, Madras.

Respondents

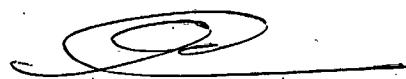
[By Advocate Mr. Thomas Mathew Nellimootttil]

The application having been heard on 21.6.2002, the
Tribunal delivered the following order on 7.8.2002.

O R D E R

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

In this case, the applicant who is a retired Chief
Controller (Electrification), Southern Railway, Control Office,
Palakkad, aggrieved by the denial of promotion to the cadre of
Deputy Chief Controller upgraded post of Section Controller
with effect from 1.8.82, the date of promotion of his immediate
juniors, has filed this Original Application under Section 19
of the Administrative Tribunals Act of 1985 seeking the
following reliefs:



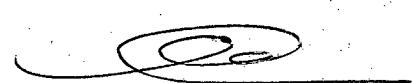
- "i. To quash Annexure A1.
- ii. Direct the respondents to grant promotion upgradation to the applicant as Deputy Chief Controller w.e.f. 1.8.1982, with consequential benefits w.e.f. 1.8.1983.
- iii. Grant such other reliefs as may be prayed for and the Court may deem fit to grant, and
- iv. Grant the cost of this Original Application."

2. The applicant made representation to this effect before the authority concerned which was rejected by the 2nd respondent as per letter dated 8.2.2001 (Annexure A-1), is under challenge in this O.A. The Railways have introduced retrospective scheme for promotion of all Section Controllers. They promoted Section Controllers including the juniors of the applicant to the upgraded post of Deputy Chief Controller with the benefit of drawal of pay and consequent benefits from 1.8.83 and proforma fixation with effect from 1.8.82 as per Office Order dated 17.5.2000 (Annexure A-2) passed by the 3rd respondent. However, the applicant was not considered. It is stated that M.O. Balakrishnan at Sl.No.91 and others were juniors to him in the cadre of Section Controller. They are now promoted to the cadre of upgraded post of Section Controller as Deputy Chief Controller with effect from 1.8.82. The applicant was not considered, though eligible to be promoted from 1.8.82, but only promoted as Section Controller on 1.3.81 and after six months service, he was granted independent works and probation was successfully declared on 1.9.81. The applicant though eligible to be promoted as Deputy Chief Controller on 1.8.82 was denied the chance. It is pleaded in this O. A. that the service records prior to the promotion to be considered by the competent authorities and the applicant had no adverse remarks in service at the relevant time, his probation was declared only on 1.9.81 as his promotion to the upgraded post was due on 1.8.82. Again, the

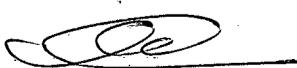


applicant submitted representation dated 26.8.2000 (Annexure A-3) before the 3rd respondent to reconsider Annexure A-2 order. He had made another representation (Annexure A-4) before the Hon'ble Minister of State for Railways to this effect and requested for fixation and parity with his immediate juniors in the cadre of Section Controller. It is said that Annexure A-4 was rejected through Annexure A-1 order on the ground that he was not promoted in 1984 as Deputy Chief Controller along with his juniors. He was promoted only in the year 1986. The Deputy Chief Controller is an upgraded post of Section Controller and there was no change in duties and responsibilities and the promotions were effected through an executive order without the consideration by a properly constituted selection board. The denial of promotion in 1984 cannot be a reason for non-consideration of his promotion from 1.8.82. The applicant contended that denial of considering his claim for fixation/promotion with effect from 1.8.82 is arbitrary, discriminatory and violative of Article 14 and 16 of the Constitution of India. The right to be considered for promotion is a fundamental right and therefore, he sought for intervention by this Tribunal to redress his grievance.

3. Respondents 1 to 3 have filed a reply statement. They have submitted that the post of Deputy Controller is controlled by Headquarters during 1984. On the basis of the Hon'ble Supreme Court decision dismissing the SLP filed against the order of Central Administrative Tribunal, Allahabad Bench, in O.A.450/90, the Railway Board had issued a letter that Chief Controller and Deputy Chief Controller who were fitted against restructured post and on proforma basis with monetary benefit from 1.8.83. The above advancement was ordered since certain other categories of staff of traffic department were restructured and orders issued as per Board's letter dated



29.7.83. As per Annexure R-1, the staff were placed in the higher grade of Rs.840-1040 and 700-900 with effect from 1.8.82 on proforma basis with monetary benefit from 1.8.83. The above letter was issued based on the details of staff who had been fitted against the restructured post with effect from 1.1.84 and the benefits were extended only to those already fitted against the restructured post. The applicant was not given the benefit of restructuring/upgradation to the post of Deputy Chief Controller on 1.1.84 due to his general unsuitability. The reasons for non-promotion was due to unsuitability which was also communicated in the CPO/MAS Office Order dated 28.3.84 and letter dated 6.4.84 (Annexure R-2 and R-3). The applicant was not promoted as Deputy Chief Controller with effect from 1.8.82 as per Annexure A-2 order. This was due to non-fitment of the upgraded post with effect from 1.1.84. The employes who were promoted as on 1.1.84 against upgraded post only have been given promotion from 1.8.82. There was no denial of promotion to the applicant. Since the applicant was not given upgradation/promotion during 1984, he was not given promotion with effect from 1.8.82 and his representation was also rejected on the basis of the Hon'ble Supreme Court decision in SLP against the judgment of the Allahabad Bench of the Tribunal in O.A.450/90. Since the applicant cannot be considered for promotion against the upgradation from 1.1.84, he also could not be considered for advancement of promotion as Deputy Chief Controller. The applicant was passed over and his juniors were promoted against the restructured post during 1984. He was not eligible to be considered for promotion from 1.8.82. The applicant believed that he has successfully completed the probation on 1.1.84 cannot be a valid reason for promotion from 1.8.82. The applicant was not considered since he was not eligible to be promoted as Deputy Chief Controller from 1.1.84 being



unsuitable for promotion. However, he was promoted as Deputy Chief Controller from 1.3.86. The applicant's plea that there was no change in duties and responsibilities between Section Controller and Deputy Chief Controller, is not correct. Since the applicant has challenged the Railway Board's letter dated 13.5.99 (Annexure R-1) and remained complacent, he has estopped from challenging the non-promotion. The non-promotion is not arbitrary, illegal or unjust. It is based on Annexure R-1 order. The promotion against restructuring was advanced from 1.1.84 to 1.8.82 on proforma basis and actual benefit from 1.8.83. Since he was passed over for promotion on the reason that he was unsuitable. He did not challenge at that time when he was passed over for promotion with effect from 1.1.84 against restructured post due to unsuitability. The post of Deputy Chief Controller is a non-selection and there was no need for properly constituted Selection Board in the case of promotion as Deputy Chief Controller and non-consideration is not violative of Article 14 and 16 of the Constitution. The promotion is also not automatic in the light of unsuitability and the applicant has no right to promotion with effect from 1.8.82, since he has already fitted from 1.8.84 and therefore, there is no merit in the O.A. and to be dismissed.

4. We have heard the learned counsel for the applicant and that of the respondents and perused the materials/evidence placed on record.

5. Learned counsel for the applicant vehemently argued that non-consideration of the applicant for promotion to the upgraded post of Deputy Chief Controller with effect from 1.8.82 is highly illegal, arbitrary, discriminative and violation of Article 14 and 16 of the Constitution.

6. Learned counsel for the respondents submitted that their action is justified since he was not originally considered for the restructured post from 1.1.84 and there is no merit in the O.A.

7. According to the applicant not considering him for promotion to the upgradation post of Deputy Chief Controller with effect from 1.8.1982 was illegal, arbitrary and discriminatory and thus violative of the fundamental right of equality opportunity in matter relating to employment under the state guaranteed by the Article 14 and 16 of the Constitution of India. According to him the respondents promoted Section Controllers including juniors to the applicant to the upgraded post of Deputy Chief Controller with effect from 1.8.82 with the benefit of drawal of Pay and consequential benefits from 1.8.1983 and he was not considered. He relied on Annexure A-2 order dated 17.5.2000 to submit that he had not been considered. He claimed that he was fully qualified in 1982. His probation in the cadre of Section Controller was successfully cleared in 1.1.1981 and there was no adverse remarks for the relevant years to be considered by the Selection Board and there was no reason to reject his claim for promotion with effect from 1.8.1982. He assailed the reason brought out by the respondents that he was not promoted along with his juniors with effect from 1.8.1982 and that Annexure A-2 was unjust and irrational. We find that his main case is that he ought to have been considered along with others for promotion. Respondents justified denial of promotion to the applicant with effect from 1.8.82 on the basis of Railway Board's letter dated 13.5.99 (Annexure R-1). In addition, respondents submitted that the order for restructuring with effect from 1.8.82 with monetary benefit from 1.8.83 was issued on 29.7.83 and the order for restructuring from 1.1.84 was



issued on 20.12.83. There was no appreciable difference between both the above dates and service records based on which promotion on restructuring was finalized would be more or less same. The applicant was not entitled for the benefits as he was found unsuitable for the upgraded posts with effect from 1.1.1984..

8. It is now well accepted that no Government employee has a right for promotion but has only a right for consideration for promotion. The question that arises in this case is whether the applicant had been considered for promotion against the restructured post of Deputy Chief Controller covered under the Railway Board's letter dated 13.5.99 (Annexure R-1).

9. There is no dispute that the applicant had been considered for the restructured post of Deputy Chief Controller with effect from 1.1.84. The Railway Board by Annexure R-1 letter had advanced the date of effect of restructuring of the cadre of Deputy Chief Controllers at par with other categories and that the restructuring order with effect dated 29.7.83 pursuant to the decision of the Allahabad Bench of this Tribunal in O.A. No. 450/1990. As the respondents had justified their action on the basis of the Railway Board's letter dated 13.5.99 (Annexure R-1) and Government employees have only a right for consideration for promotion only in accordance with the instructions laid down by the Government we are of the view that the applicant's claim made through this O.A. has to be examined with reference to Annexure R-1 letter dated 13.5.99. The said letter dated 13.5.99 reads as under:

A handwritten signature in black ink, appearing to be a stylized 'A' or 'D', is written over a horizontal line.

"GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
RAILWAY BOARD

No. PC-III/99/CKC/I

Rail Bhawan, New Delhi, dated 13.5.00

The General Managers
All India Railways &
Production Units
(as per mailing list)

Sub: O.A. No. 450/1990-Shkri Uma Shankar
Sharma and Others VS. UOI before
CAT/Allahabad

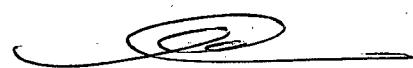
Consequent upon dismissal by the Hon'able Supreme Court of the SLP filed by the Railway Administration against the judgment dated 16.1.97 delivered by Hon'ble CAT, Allahabad in the above cited matter, it has been decided that the Controllers Cadre (Traffic Department) as indicated in para 1(item 1) of Board's letter NO. PC-III/SO/UPG/19 dated 29.12.83 should be restructured with reference to the sanctioned strength as on 1.8.83 on the lines of the Traffic Cadres restructured vide Board's letter No. PC-III/So/UPG/19 dated 29.7.83. The staff who will be placed in the revised grades will be eligible to draw pay in higher grade from 1.8.83 with the benefit of proforma fixation from 1.8.82. The benefit of proforma fixation will be admissible only to those staff who are placed in the vacancies arising directly as a result of these orders. The pay of the staff who had been promoted in the normal course to higher grades during the period 1.8.82 to 31.7.83 will be stepped up under the normal rules with reference to the pay of their juniors, whose pay is fixed under these orders. It is also made clear that the date of entry of the Controllers in the grade will be treated as 1.8.83 and accordingly the seniority will be assigned from 1.8.83 in the lines of the clarifications issued vide Board's letter NO. PC-III/87/UPG/I dated 13.7.87.

Above instructions may be implemented immediately and compliance reported to Board's office.

The receipt of the letter may be acknowledged.

Sd/- S.C. Manchanda
Executive Director Pay Commission-II
Railway Board.

10. On a careful consideration of the above letter we find that there is no indication that the employees had to be considered with reference to the Service Records as on 1.8.82 for giving the benefit of the above order as claimed by the



applicant. In fact what we find from the letter is that the instructions are that those who have been promoted with effect from 1.8.82 to 1.8.83 in normal course to the higher grade would get stepping up with reference to the pay of the juniors whose pay was fixed under these orders. It is made clear that the date of entry of the juniors in the grade would be treated as 1.8.83 and accordingly seniority would be assigned from 1.8.83. This would indicate that the service records as on 1.8.83 are only to be considered for the purpose of promotion against the upgraded posts of Deputy Chief Controllers. In this view of the matter we do not find any infirmity in the plea of the respondents that since there was no appreciable difference between the date 29.7.83 and 20.12.83, the applicant being not found suitable for promotion with effect from 1.1.84 would hold good even for promotion with effect from 1.8.83 with proforma fixation with effect from 1.8.82. In this view of the matter we do not find any infirmity in Annexure A-1 order dated 8.2.2001.

11. In the conspectus of the facts and circumstances of the case this Original Application fails and is only to be dismissed. Accordingly, we dismiss this Original Application, with no order as to costs.

Dated the 7th of August, 2002.


K.V. SACHIDANANDAN
JUDICIAL MEMBER


G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

P.

APPENDIX

Applicant's annexure

- A-1 Copy of the Order No.J/P 535/VIII/7/Vol.dt.8.2.2001.
- A-2 Copy of the relevant portion of of Order No.T.51/2000 dt. 17.5.2000 issued by the 3rd respondent.
- A-3 Copy of the representation dt.26.8.2001 submitted by the applicant to the 3rd respondent.
- A-4 Copy of the representation dated Nil submitted by the applicant before the Hon'ble Minister for Railways.

Respondents' annexure

- R-1 Copy of letter No.PC-III/99/CRC/1 dt. 13.5.99 issued by the Railway Board.
- R-2 Copy of the order No. T.36/84 dt. 28.3.84 issued by the Southern Railway.
- R-3 Copy of the order No.T.31/84 dt. 6.4.84 issued by the Southern Railway.