

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 288/97

Monday, this the 27th day of September, 1999.

CORAM:

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

HON'BLE MR G RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K. Balasubramanian,
Junior Clerk,
Divisional Office,
Works Branch, Southern Railway,
Palghat Division, Palghat.

...Applicant

By Advocate Mr. Majnu K. math

Vs.

1. The Union of India represented by
The Chairman,
Railway Board,
New Delhi.
2. Divisional Railway Manager,
Southern Railway,
Palghat Division, Palghat.
3. Divisional Personnel Officer,
Southern Railway,
Palghat Division, Palghat.

...Respondents

By Advocate Mrs. Sumathi Dandapani

The application having been heard on 27.9.99, the
Tribunal on the same day delivered the following:

ORDER

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

The applicant seeks to quash A-5 dated 28.11.96 and to
direct the respondents to consider him as having promoted
from the date he should have been promoted against the vacancy
that arose between 1.10.74 and 31.10.80 based on A-1 selection
list and also give him all connected benefits such as pay
fixation, promotion, etc.

2. The applicant was working as a Junior Clerk in the Divisional Office, Southern Railway, Palghat at the time of filing of this O.A. The applicant represented to the respondents to promote him on the ground that he is eligible and entitled for promotion. As the respondents did not respond, he filed O.P. No. 3758/84 before the High Court of Kerala which was transferred to this Bench of the Tribunal and was renumbered as T.A.K. No.385/87. That was disposed of as per A-2 order. The applicant again represented to the respondents to promote him but of no avail. The promotion claimed by him is with retrospective effect. In A-5 impugned order, it is stated that the applicant has derived the benefits as directed in A-2 order.

3. Respondents resist the O.A. contending that the applicant is not entitled to retrospective promotion as claimed by him since as per A-2 judgement, nothing has been stated by this Tribunal to the contrary. The relief for retrospective promotion has not been claimed in the earlier O.A. and thus this O.A. is barred by constructive resjudicata. The applicant was promoted as per directions contained in A-2 judgement. A-2 judgement says only that the applicant is to be considered for promotion in the next vacancy that arises after 1.2.89.

4. A-2 order was passed in T.A.K. No. 385/87 (O.P. No. 3758/84). The reliefs now sought by the applicant could have been very well claimed in the said O.A. That has not been claimed. In such a case, this O.A. is hit by constructive resjudicata.

5. The relief granted as per A-2 order reads thus:

" We do so and direct the respondents to consider the applicant for pro-

motion to Class III in the next vacancy that arises in that Class."

From this it is evident that the applicant is not entitled to get promotion in respect of any vacancy that arose between 1.10.74 and 31.10.80.

6. The learned counsel appearing for the applicant submitted that he wants to produce a copy of the O.A. which resulted in A-2 order inorder to show the exact nature of the pleas raised there. It can only be that either he has raised the plea which is now raised here or he has not raised. If he has claimed that relief, it is not granted is evident from A-2. In such a case, if he was aggrieved, he should have taken up the matter before the higher forum and cannot come forward with this O.A. for the same relief. The principle of resjudicata applies then. If he has not raised it, the principle of constructive resjudicata applies. So, in either case, his position does not improve.

7. The applicant wants to get promoted retrospectively based on his seniority position in A-1. He is Serial No.13 in A-1. Altogether, there are 42 persons figuring in A-1. The learned counsel appearing for the applicant submitted that all the 42 persons figuring in A-1 have been promoted. If the reliefs sought by the applicant are granted, it will be affecting the seniority position of Serial Nos. 14 - 42 in A-1. They are not brought in the party array. Absolutely, no reason is stated for not bringing them in the party array. An order cannot be passed behind the back of the persons who are likely to be affected.

8. The learned counsel appearing for the applicant submitted that the applicant should be retrospectively promoted without affecting the seniority of the persons figuring in Serial Nos. 14 - 42 in A-1. If that is the position, we have to see what will be the plight of all those persons who have been promoted after Serial No. 42 in A-1 was promoted. If this relief is to be granted, those who are promoted after the last person mentioned in A-1 has been promoted should also be in the party array. It cannot be the case that the applicant can seek an order in his favour behind the back of others who are likely to be affected.

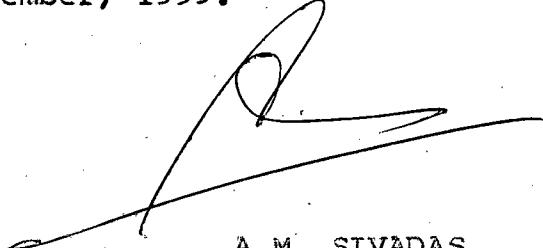
9. We do not find any merit in this O.A.

10. Accordingly, the O.A. is dismissed. No costs.

Dated this the 27th day of September, 1999.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

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LIST OF ANNEXURES REFERRED TO IN THIS ORDER

1. Annexure A-1:

True copy of the memorandum No.J/P.531/VIII/Vol.3 dated 9.11.1982, issued by the 3rd respondent.

2. Annexure A-2:

True copy of the Order in T.A. No.K-385/87 dated 1.2.1989, of Central Administrative Tribunal, Ernakulam Bench.

3. Annexure A-5:

True copy of the Order No.J/P.612/IX/Seniority dated 28.11.1996, issued by the 2nd respondent.