

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 289/1990
~~T. A. No.~~

199

DATE OF DECISION 28.8.1991

K.Krishnankutty Menon Applicant (s)

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

Versus

The Union of India through
the General Manager,
Southern Railway, Madras -3 and 2 others

M/s. M.C.Churian, Saramma Churian & Advocate for the Respondent (s)
T.A Rajan

CORAM:

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? M
4. To be circulated to all Benches of the Tribunal? M

JUDGEMENT

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

In this application dated 5th April 1990 filed under Section 19 of the Administrative Tribunals Act the applicant a retired Railway employee has prayed that the impugned order dated 24.11.1988 at Annexure A5 rejecting his representation for retrospective promotion to the grade of Rs.2000-3200 be set aside and the respondents directed to refix his pay in that ^{grade} ~~case~~ _{scale} with effect from 22.3.87 and revise his retirement benefits. According to the applicant he was promoted to the scale of Rs.2000-3200 on 25.5.87 and his pay was fixed at Rs.2375/- . He retired from service on 31.12.87 . He claims promotion to that grade

with effect from 22.3.1987 and proforma fixation of his pay on that basis and consequential increase in retirement benefits. His case is that he was promoted as Station Master in the grade of Rs.550-750 vide the order dated 18.3.85 at Annexure A1 and he took charge of the post on 22.3.85. While he was working in that grade, in accordance with the order dated 12.12.86 at Annexure-A2 five persons were promoted to the next higher grade of Rs.700-900(revised to Rs.2000-3200) who were junior to him. It was stated in that order that the promotion of the officials at items 4 and 5 who were junior to the applicant, were without prejudice to the seniority of the applicant who would be considered for promotion on completion of two years of service in the grade. By another order dated 7.2.87 at Annexure A3, three more officers junior to the applicant were promoted to the grade of Rs.2000-3200. Again in that order it was repeated that the applicant will be considered for promotion on completion of two years of service in the grade. It was only in accordance with the order dated 20.5.1987 at Annexure A4 that the applicant was promoted to the higher grade and his pay was fixed at Rs.2375/- with effect from 25.5.87. He made a representation on 14.6.87 seeking proforma fixation of his pay as if he was promoted to the higher grade with effect from 22.3.87 when he completed two years of service. In the seniority list published on 26.8.87 also, according to the applicant, he was shown senior to the juniors who were promoted by orders at Annexures A2 and A3 and the date of his promotion was

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shown as 30.3.1987. He retired on 31.12.1987 but his average emoluments ^{were} ~~was~~ computed on the basis of his actual pay in the lower grade from 1.3.87 to 24.5.87 and in the higher grade from 25.5.87 to 31.12.87. His representation was rejected by the impugned order dated 24.11.88 at Annexure-A5. His appeal to the Chief Personnel Officer has not been replied to. The applicant has argued that in accordance with the Railway Board's letter dated 15/17 September, 1964 (Annexure A7) persons who lost their promotion on due dates on account of administrative error, should be given correct seniority vis a vis their juniors and pay in the higher grade on promotion is to be fixed proforma on the basis of the correct date of promotion. He has also referred to the further orders issued by the Chief Personnel Officer dated 17th September, 1965 at Annexure A8 laying down that once sanction is accorded for refixation of seniority, the proforma fixation of pay in terms of the Board's letter at Annexure A7 should also be done simultaneously. He has referred to the assurance given in the orders at Annexures A3 and A4 that the promotion of his juniors will be without prejudice to the applicant's seniority. He claims that he is entitled to be promoted with effect from 22.3.87 when he completed two years of service and the delay in promoting him from a later date on 25.5.87 should not make him suffer in seniority, pay and pensionary benefits.

2. In the counter affidavit it has been stated that the applicant was promoted vide the order dated 22.12.84(Ext R1(a)) to the grade

of Rs.550-750 but he did not carry out the promotion cum transfer order while his juniors took over the posts in higher grade on transfer. The applicant took over in the grade of Rs.550-750 in the same station with effect from 22.3.85. For regular or adhoc promotion as Station Master in the scale of Rs.700-900 a minimum of two years of service in the grade of Rs.550-750 was necessary. Because of his own fault, the applicant completed two years of service later than his juniors who were thus given adhoc promotion by the orders at Annexures A2 and A3. The applicant could be promoted on an adhoc basis only on 20.5.87 after he had completed two years of service in the lower grade. He could be allowed the pay scale in the higher grade only from the date he assumed the higher responsibility which in case of the applicant was on 25.5.87. The applicant did not participate in the selection for regular promotion despite a number of chances given to him and he ^{would} ~~was~~ otherwise have been reverted to the lower scale but before his reversion he retired on 31.12.87. The respondents have argued that the applicant cannot claim promotion to the higher grade right from the date he became eligible. He was promoted within two months of his becoming eligible, ^{to} ~~to~~ the next available vacancy. On 22.3.87 there was no vacancy in the higher grade of Rs.700-900/Rs.2000-3200, ^{hence} ~~the~~ provisions of Annexures A7 and A8 cannot be invoked by the applicant as there was no administrative error involved in the matter. They have clarified that in the seniority

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list published on 26.8.87 the date of applicant's promotion was wrongly shown as 30.3.87 instead of 25.5.87. The applicant cannot claim benefits from that error.

3. In the rejoinder the applicant has averred that as on 22.3.87 there were two vacancies in the grade of Rs.2000-3200 and even assuming that there were no vacancies, he should have been accommodated by reverting his junior. He claims a right because of the fact of his juniors having been promoted before 22.3.87.

4. In the additional counter the respondents have stated that the applicant was never given any assurance that he will be promoted from 22.3.87. The orders at Annexures A2 and A3 protect only his seniority. They have denied that there were two vacancies in the higher grade on 22.3.87. He was given the first vacancy in the higher grade after he became eligible on 22.3.87.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The applicant cannot question the adhoc promotion of his juniors vide the orders at Annexures A2 and A3 when the applicant because of his own fault had not completed two years of service to be eligible for such promotion. He cannot have the best of both the worlds. When he was promoted ^{on transfer} to the scale of Rs.550-750 vide the order dated 22.12.86 along with others, his juniors accepted the promotion on transfer but the applicant did not. He waited till 22.3.85 when the promotion post at the

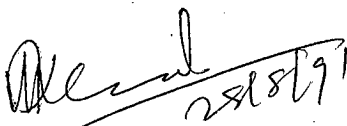
station of his choice where he was working was made available to him by downgrading the higher post. Thus he completed two years of qualifying service for promotion ^{to the next higher post grade} later than his juniors. He cannot claim retrospective promotion merely because he happened to be senior to those who had been promoted earlier. The assurance given at Annexures A2 and A3 when his juniors were promoted was to the effect that the promotions of his juniors will be without prejudice to the applicant's seniority "who will be considered for promotion on completion of two years service in the grade". There is no assurance that the applicant would be accommodated as soon as he completed two years of service in the lower grade by reverting his juniors. There is no assurance ^{either} that he will be granted ^A proforma promotion to the higher grade with retrospective effect . We are also convinced that the applicant cannot invoke the benefit of corrected seniority and proforma fixation of pay based on the Railway Board's order at Annexure A7 and the circular at Annexure A8. These ~~refer~~ ^{to} cases where a person has "lost promotion on account of administrative errors". The applicant did not lose his promotion because of administrative error but because of the fact that he had not completed two years of service when his juniors were promoted against vacancies which were then available. The short-fall in the two year period of qualifying service is applicant's own making as he wanted promotion

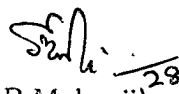
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without any transfer. The respondents have clearly stated that after the applicant completed two years of service and became eligible on 22.3.87, he was given the first available vacancy which came about in May 1987. The applicant cannot by any stretch of imagination be presumed to have suffered on any account due to the fault of anyone except his own self.

6. In the facts and circumstances we see no merit in the application and dismiss the same without any order as to costs.


(A.V. Haridasan)
Judicial Member


(S.P. Mukerji)
Vice Chairman

n.j.j