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11/11

CENTRAL ADMINISTRATIVE TRIBUNAL : ERNAKULAM BENCH

Date of decision _____

Present

Hon'ble Shri NV Krishnan, Administrative Member
and
Hon'ble Shri N Dharmadan, Judicial Member

OA No. 294/89

T Muniyandi

: Applicant.

Vs

- 1 Union of India rep. by
the Chairman, Railway Board,
Ministry of Railways,
Rail Bhavan, New Delhi-1
 - 2 General Manager
Southern Railway, Park Town,
Madras.
 - 3 G Manivel, SPRO,
Office of the General Manager, : Respondents
Southern Railway, Park Town
Madras.
- M/s KL Narasimhan & Shaji P Chaly : Counsel of Applicant
Smt Sumathi Dendapani : Counsel (for R 1-2)
Mr Ashok M Cherian : Counsel (for R-3)

O R D E R

Shri NV Krishnan, Administrative Member.

The applicant had earlier filed an application registered as OAK 601/88 which was disposed of by the order dated 11.4.89 (Annexure III). The following directions were issued in that order.

" Since it is admitted by respondents 1 & 2 that when the question of filling up of the post was taken up the applicant was also considered and was found suitable, but could not be promoted only on account of the pendency of the aforesaid disciplinary proceedings, now that the proceedings have been dropped, the respondents 1 & 2 are bound to reconsider the decision to promote the third respondent, admittedly junior to the applicant, to the post and to appoint the applicant, though it be on ad-hoc basis".

- 2 The complaint of the applicant in this case is that
(i) om /irsiamce pf tjtat prder tje applicant has not been

promoted from 22.7.88 which is the date on which his junior, Respondent-3 was promoted and (ii) the applicant has now been posted as Senior Public Relation Officer, Trivandrum Division, whereas had he been promoted on 22.7.88, he should have been promoted to the post of Senior Public Relation Officer, Office of the Southern Railway, Madras to which the 3rd Respondent was posted in his absence, and (iii) he has not been given the monetary benefits due to him if his promotion is made from the due date.

3 It is submitted by the counsel of Respondents 1 & 2 that after the disciplinary proceedings against the applicant were dropped, the Respondents had already taken ^{also} ~~again~~ to promote the applicant and in fact ^{an} ~~an~~ ad-hoc promotion was given to him as will be seen from Annexure-I. Therefore, it was contended that even before this Bench passed the order dated 11.4.89 in OAK 601/88, the applicant had already been promoted and therefore, nothing remains for compliance.

4 We have perused the records and heard ^{the} counsel. It is true that Annexure III order of the Tribunal did not, in specific terms, directed the Respondent, 1 & 2 to promote the applicant from the date his junior was promoted.

However, that ^{is} ~~has~~ indeed the spirit of that order. Therefore,

^{as far as} the prayer by the applicant that he should be given retrospective promotion is concerned, the application is well founded. However, the two other prayers made by the

applicant namely, that he should be posted to the same station to which he would have been posted ^{at} ~~at~~ this term

Actually
physically been made on 22.7.78 and that he should be given all the consequential monetary benefits do not have any force.

5 The applicant was *not* available when the vacancy arose in Madras to which Respondent-3, his junior was promoted. When he was cleared from the disciplinary proceedings, the vacancies at Madras had already been filled. There is no rule that in such a situation he should be posted or promoted to that particular post to which he would have been posted or promoted had no disciplinary proceedings been pending against him *at* ~~under~~ the relevant time.

a whole
6 He is entitled to, promotion from an earlier date *instead of* ~~that~~ the date on which he was actually been promoted by the orders at Annexure A1 and Annexure A II, keeping in view of the fact that his junior, Respondent-3 had been promoted from an earlier date.

7 We, therefore, direct Respondent 1 & 2 to promote the applicant notionally with effect from the same date as the date on which Respondent-3 was promoted. The applicant will be entitled to fixation of his pay on the date of his actual promotion i.e., by the orders at Annexure A1 and Annexure AII on the basis of his notional promotion as directed above and all other consequential benefits except back wages.

8 The application is disposed of accordingly and there will be no order as to costs.

CENTRAL ADMINISTRATIVE TRIBUNAL : ERNAKULAM BENCH

Date of decision : 28-11-89

Present

Hon'ble Shri NV Krishnan, Administrative Member
and

Hon'ble Shri N Dharmadan, Judicial Member

OA No.294/89

T Muniyandi : Applicant.

Vs

- 1 Union of India rep. by
the Chairman, Railway Board,
Ministry of Railways,
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 - 2 General Manager
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O R D E R

Shri NV Krishnan, Administrative Member.

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" Since it is admitted by respondents 1 & 2 that when the question of filling up of the post was taken up the applicant was also considered and was found suitable, but could not be promoted only on account of the pendency of the aforesaid disciplinary proceedings, now that the proceedings have been dropped, the respondents 1 & 2 are bound to reconsider the decision to promote the third respondent, admittedly junior to the applicant, to the post and to appoint the applicant, though it be on ad-hoc basis".

- 2 The complaint of the applicant in this case is that
(i) in pursuance of that order the applicant has not been

promoted from 22.7.88 which is the date on which his junior, Respondent-3 was promoted;

(ii) The applicant has now been posted as Senior Public Relation Officer, Trivandrum Division, whereas had he been promoted on 22.7.88, he should have been ^{posted as if} ~~promoted to the~~ ~~post of~~ Senior Public Relation Officer, Office of the Southern Railway, Madras to which the 3rd Respondent was posted in his absence, and

(iii) He has not been given the monetary benefits due to him if his promotion is made from the due date.

3 It is submitted by the counsel of Respondents 1 & 2 that after the disciplinary proceedings against the applicant were dropped, the Respondents had already taken action to promote the applicant and in fact an ad-hoc promotion was given to him as will be seen from Annexure-I. Therefore, it was contended that even before this Bench passed the order dated 11.4.89 in OAK 601/88, the applicant had already been promoted and therefore, nothing remains for compliance.

4 We have perused the records and heard the counsel. It is true that Annexure III order of the Tribunal did not, in specific terms, direct~~ed~~ the Respondents 1 & 2 to promote the applicant from the date his junior was promoted.

However, ^{it is} ~~that~~ is indeed, spirit of that order. Therefore, as far as the prayer by the applicant that he should be given retrospective promotion is concerned, the application is well founded. However, the two other prayers made by the applicant namely, that he should be posted to the same station to which he would have been posted had this promotion

actually been made on 22.7.88 and that he should be given all the consequential monetary benefits do not have any force.

5 The applicant was not available when the vacancy arose in Madras to which Respondent-3, his junior was promoted. When he was cleared from the disciplinary proceedings, the vacancies at Madras had already been filled *up by promoting others earlier.* There is no rule that in such a situation he should be posted or promoted to that particular post to which he would have been posted or promoted had no disciplinary proceedings been pending against him at the relevant time.

6 He is entitled to ^{a notional} promotion from an earlier date instead of ~~the~~ the date on which he was actually ~~been~~ promoted by the orders at Annexure A1 and Annexure A II, keeping in view of the fact that his junior, Respondent-3 had been promoted from an earlier date.

7 We, therefore, direct Respondents 1 & 2 to promote the applicant notionally with effect from the same date as the date on which ^{the} Respondent-3 was promoted. The applicant will be entitled to fixation of his pay on the date of his actual promotion (i.e., by the orders at Annexure AI and Annexure AII) ^{with reference to the date} ~~on the basis~~ of his notional promotion as directed above and all other consequential benefits, except back wages.

8 The application is disposed of accordingly and there will be no order as to costs.

N Dharmadan
(N Dharmadan)
Judicial Member
28.11.89

NV Krishnan
(NV Krishnan)
Administrative Member
28.11.89