

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA. NO.299/2006

MONDAY THIS THE 25th DAY OF SEPTEMBER, 2006

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Babu Choerankuzhy S/o Daniel
Chief Office Superintendent,
Office of the Senior Engineer (C&W)
Southern Railway, Ernakulam Junction
Residing at H.No. 88/B, Kaniampuzha Road,
Eroor PO, Ernakulam.

Applicant

By Advocate Mr. T.C. Govindaswamy

- 1 Union of India represented by
General Manager, Southern Railway
Headquarters Office
Park Town Post, Chennai-03
- 2 The Chief Personnel Officers
Southern Railway, Headquarters Office
Park Town Post, Chennai-93
- 3 The Chief Workshop Engineer
Southern Railway Headquarters Office
Park Town Post, Chennai-03
- 4 The Senior Divisional Personnel Officer
Southern Railway, Trivandrum Division,
Trivandrum.
- 5 The Senior Divisional Mechanical Engineer
Southern Railway, Trivandrum Division
Trivandrum-14

Respondents

By Advocate Mrs. Sumathi Dandapani

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant who is presently working as a Chief Office Superintendent in the scale of Rs 7450-11500 in the office of the Senior

Section Engineer (C&W) Southern Railway Ernakulam Junction is aggrieved by orders issued by the 2nd and 4th Respondents by which the applicant has been reverted to the pay scale of Rs 6500-10500 and debarred from promotion for a period of one year on the alleged ground that the applicant had not carried out the promotion to the post which the applicant has been holding for the last two years by virtue of Annexure A-3 and A-4.

2 The facts can be stated in brief as follows. The ministerial cadre to which the applicant belongs was restructured by the Railway Board with effect from 1.11.2003. The applicant was at that time working as an Office Superintendent in the scale of pay of Rs 6500-10500 and he was selected and placed in the panel for promotion to the post of Chief Office Superintendent in the scale of Rs 7450-11500 vide Annexure A-4 and was further promoted as Chief Office Superintendent dated with effect from 1.11.2003 and retained at the same station on 'as is where is' basis vide Annexure A-5. Accordingly the applicant and another Sri Shankaran were temporarily retained in Trivandrum division for a period of six months duly charging them against two vacancies of Palghat division. The applicant took over the higher responsibility of the post defacto on 22.11.2004 and his pay was fixed w.e.f. 1.11.03 and he was granted all the arrears consequent thereof. According to the applicant he was thus holding the post of Chief Office Superintendent dated since 1.11.2003 and there was no order transferring the applicant to Palghat division nor was any substitute posted against the applicant. Since the applicant was suffering from cardiac problems ,he submitted a representation to the second respondent to retain him in Trivandrum division and since there was no response to the same he requested for relief to join at Palghat division as otherwise his

seniority would be affected by the Annexure A-9 representation. The applicant was then relieved on 21.6.2005. The fifth respondent then allowed the retention of the applicant at Ernakulam vide Annexure A-10(a) order. While so, the applicant came across Annexure A-12 order directing that the applicant should be relieved by 10.10.2005 which was received in the office of the applicant only on 20.10.2005. The applicant was not relieved and no substitute was arranged. But his case has remained under correspondence with superiors. Thereafter he received the Annexure A-2 order pointing out that that he had declined promotion and was debarred from promotion for one year. He had then filed OA No. 162 of 2006 in which the Tribunal noticed that the applicant had already joined the promoted post and hence directed the 2nd respondent to consider the Annexure A-12 representation of the applicant which has now been rejected by the second respondent by the Annexure A-3 order confirming his debarment on which he has been compelled to approach the Tribunal.

3 The respondents have filed a reply statement. According to them, the Railway Board had restructured certain cadres of Groups C and D categories on account of which the number of posts of Chief Office Superintendents of Mechanical Branch rose from 13 to 23 and the Board had advised vide Annexure R-1 order that such staff who are required to join the upgraded posts may be allowed the benefit of upgradation/promotion on 'as is where is' basis for the time being and allowed to join at the pinpointed posts at the new stations within six months from the date of issue of promotion order subject to the satisfaction of the Head of the Department on merit in each case. The applicant had been allowed the benefit of promotion on as is where is basis temporarily for a period of six

months with the condition that he will join at the new station within six months from the date of issue of promotion order (para ii of Annexure A-5). The period of six months lapsed on 17.5.05. Instead of joining at Palghat division he had submitted a representation dated 6.5.05 requesting for retention at Ernakulam which was not agreed to and the Trivandrum and Chennai Divisions were advised to relieve the applicant as well as two other employees vide letter dated 1.8.05 at Annexure A-2. He was given a further period of ten days and as the applicant and another employee had not joined even after 10.10.05 Annexure A1 order debarring the applicant for a period of one year was issued. The orders of debarment were issued not only on the applicant but also on Sri Sankaran after giving them many chances. There has been no discrimination or arbitrariness.

4 The applicant has filed a rejoinder rebutting the averments of the respondents. He has averred that the contention in the statement that the applicant should have joined at the new station i.e. Palghat division by the first week of June 2005 is factually and legally incorrect because unless the applicant is relieved he cannot go and join the new post. Annexure R-2 was only a direction to the 4th respondent to relieve the applicant immediately. However the the 4th respondent did not relieve the applicant for which the applicant cannot be faulted. He has further stated that meeting the superior officers and requesting them for retention does not mean that the applicant had declined his promotion.

5 We heard the Learned counsel on both sides and have perused the records.

6 The short question arising for consideration is whether the debarment order is valid or not in the circumstances of the applicant's

case. Para 224 of the IREM vol I is the only Rule applicable to debarment of promotion. It reads thus:

PARA -224Refusal of Promotion

I Selection Posts

" (I) The employee refusing promotion expressly or otherwise (i.e. that he does not give in writing his refusal but also does not join the post for which he has been selected) is debarred for future promotion for one year but he is allowed to be retained at the same station in the same post. Promotion after one year will be subject to continued validity of the panel in which he is borne, otherwise he will have to appear again in the selection."

7 The Rule contemplates that for debarment to operate, the employee should have either refused the promotion in writing or he does not join the post for which he has been selected. In the applicant's case, he had neither refused the promotion in writing nor refrained from joining the post. In fact admittedly the applicant had been promoted on as is where is basis and retained at the station where he was working along with another and the applicant took over the higher responsibilities of the post . The order at Annexure A-1 also shows that his pay was fixed in the higher post and that he was also granted arrears due. This arrangement for retention at the existing station was apparently made in terms of the order of the Railway Board vide PB circular No 122/2004-Annexure R1 which was a general permission to given to all the employees coming under Restructuring of cadres to alleviate the difficulties in implementation. It was not a concession accorded to the applicant alone as a result of his representation as made out by the respondents.

8 It could be seen from Para II of office order dated 18.11.2004 Annexure A-5 that the applicant was ordered to be retained temporarily for a period of six months in Trivandrum Division on promotion as CHOS duly charging him against a vacancy of Palghat Division and stipulating that he

will join the pinpointed place of posting at the new station within six months. In sub para (iii) of the order it was also indicated that "action may be taken to relieve the employee in time, wherever transfer is involved.". Thus a responsibility was cast on the Administration also to make arrangements for relieving the employee in time. The fact that the employee concerned made a representation does not shift that responsibility to the employee, the respondents could have refused the request in writing, instead they had forwarded his representation to the senior officer vide Annexure A-10 requesting for a reliever also and further by Annexure A-10(a) his request was acceded to and he was allowed to rejoin. No period restricting his retention was mentioned therein. Though a communication asking to relieve the applicant seems to have been issued by the CPO as seen in the reference made in the Annexure A-11 letter, the representation of the applicant was again referred to the CWE Madras. Finally it was only by the A-12 order dated 30.9.2005, a decision was conveyed to the Divisional office that the applicant should be relieved on or before 10.10.2005. Thereafter also no action was taken by the immediate supervisor to relieve the employee forcing the CPO to issue the debarment order at A1 dated 25.10.2005. The applicant does not seem to have made any representation after the A-12 order dated 30.9.2005 was issued. In fact only on 6.1.2005 the applicant again approached the authorities against the debarment order. Therefore it is obvious that the fifth respondent had been by his actions acquiescing in not relieving the applicant though he was keeping the authorities informed of the position.

9 The respondents are harping on the argument that the applicant was relieved on 21.6. 2005 itself but are conveniently ignoring the fact that he was allowed to rejoin at the same office on 8.7.05 treating the intervening period as leave and the position was known to the CPO also as seen at

A10(a) and evidenced by the order at Annexure A-12 giving a final opportunity to the applicant to join at Palghat till 10.10.2005. The stand of the respondents that the applicant should have relieved himself and joined the new station is not correct as he can only request for relief and it is for the office in which he is working to make the necessary arrangements for relief. Having dragged his feet all along and after acquiescing in the continuation of the applicant at the Trivandrum station, the fifth respondent has also to equally share the blame in not complying with the directions of the Head office. to relieve the applicant. Hence we do not think that the default in arranging the timely relief should be laid at the door of the applicant.

10. There is yet another aspect to be considered. Condition (iii) of the Promotion order at Annexure A-5 is very specific as shown below:

“The promotion should be given effect to within 10 days from the date of receipt of orders. The employees’ relief within the period specified above should not be delayed on the score that he has preferred an appeal and it is pending disposal. Under no circumstances the above changes should be delayed in being given effect to. Any lapse without proper justification will be viewed seriously. The actual date of relief and reporting for duty should be advised to this office promptly. If he /they is /are not willing to be promoted within the specified period, the same will be treated as refusal of promotion and consequently he/they will not be eligible to be considered for promotion before the expiry of one year from the date of refusal and he/they will lose place to all juniors who will be promoted in the meanwhile.”.

The applicant had in accordance with the conditions stipulated, joined the promoted post within the period specified and this fact is not disputed. The provisions of debarment can operate at the time of actual promotion only and with reference to the higher post to which the employee is promoted and not with reference to the place of posting at a later date. Refusal to join at another place of posting (which also the respondents have not been able to prove as discussed above) after having joined the promotion post

and working for some time cannot attract the provisions of debarment but would have to be dealt with under the relevant Disciplinary Provisions. In this view of the matter also the impugned orders at Annexures A-1, A-2 and A-3 are not in accordance with the Rules and hence not sustainable.

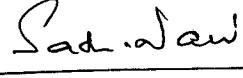
11 In the result, we quash Annexures A-1, A-2 and A-3. The respondents are directed to grant the applicant the consequential benefits as if these had not been issued at all within a period of four weeks from the date of receipt of this order. The OA is allowed. No costs.

Dated 25th....September, 2006



GEORGE PARACKEN
JUDICIAL MEMBER

kmn



Sathi Nair
SATHI NAIR
VICE CHAIRMAN