

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.327/93

Friday, this the 4th day of February, 1994.

SHRI N DHARMADAN, MEMBER(J)
SHRI S KASIPANDIAN, MEMBER(A)

AS Raman,
S/o late AC Sankaran, Aged 55,
residing at House No.1/34, Sini Nivas,
P.O.Koorkancherry, Trichur-7,
Employed as Executive Engineer
(Construction), Southern Railway,
Ernakulam Junction, Cochin-16. - Applicant

By Advocate M/s CP Sudhakara Prasad & Elvin Peter PJ

Vs.

1. The Union of India,
represented by the Secretary,
Ministry of Railways,
Railway Bhavan, New Delhi.
2. The General Manager,
Southern Railway,
Park Town, Madras-3.
3. The Chief Personnel Officer,
Southern Railway,
Park Town, Madras-3. - Respondents

By Advocate Mr Thomas Mathew Nellimoottil

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N DHARMADAN, MEMBER(J)

Applicant is at present working as an Executive Engineer in the Southern Railway. He belongs to Scheduled Caste community and he is aggrieved by the denial of promotion in the category of Assistant Engineer with effect from 12.9.1984 with all consequential benefits on the basis of Annexure-A1 judgement.

2. The facts are not in dispute. The applicant joined as Assistant Inspector of Works in the year 1961. He was duly qualified for the promotion as Assistant Engineer during the year 1981-82 and a posting in the Scheduled Caste vacancy. When the same was denied he approached High Court of Kerala by filing O.P.No.8592/82-L. Annexure-A1 is the judgement. The operative portion of the judgement is extracted below:

"7. In view of the above, I dispose of this O.P. with a direction to the authorities that the case of the two petitioners herein should be considered for selection in accordance with the rules in Exts.P12 and P13 for the year 1982, on the footing that they were eligible to come into the zone of consideration. The questions whether they could have got into the zone in 1981 itself, at least after the issuance of Ext.P13, should also be examined. Their cases should be considered and appropriate orders passed within six months from today. The two vacancies which are still vacant by reason of the interim orders passed by this court will not be filled up on a regular basis till the case of the petitioners is so reconsidered. No costs."

3. The respondents did not implement the direction in the judgement. Hence CMP No.31933/84 was filed and the High Court passed the following order on 24.6.1985:

"Heard. If there are vacancies, I see no reason why the petitioners cannot be promoted on a provisional basis. The Railways will examine the question and pass orders within six weeks."

4. Thereafter the respondents filed writ appeal and the matter was taken up before the Supreme Court. Ultimately the Supreme Court dismissed the SLP. As per Annexure-A5 order on 7.2.1991 the applicant was included in the list of Assistant Engineer below Shri HN Ramaswamy making it clear that his promotion is on proforma basis with effect from 1.2.1985 being

the date of promotion of his junior Shri CS Natarajan. Even though the applicant was given a place in the list of AEs just below Shri Ramaswamy, when a seniority list of AEs Annexure-A6 was issued, the applicant was not shown below Ramaswamy, who joined as AE on the basis of promotion on 8.9.1984. One Shri Devaraj who joined the cadre on 12.9.1984 was shown as Sl.No.6 just below Shri Ramaswamy. On the basis of the order Annexure-A5, the applicant ought to have been given the date of promotion with effect from 12.9.1985 the date given to Shri Devaraj. This is further made clear from Annexure-A8 an order passed on 3.9.1991 by the Chief Personnel Officer in connection with his promotion as Executive Engineer. That order is extracted below:

"Consequent on the interpolation of the name of Shri AS Raman in the panel formulated for regular promotion to Group 'B' service as AEN and his promotion having been regularised with effect from 1.2.85, the question of his adhoc promotion to Senior Scale has been considered by the competent authority and his name is interpolated in the select list for adhoc promotion to Sr. Scale between items 14 & 15 viz. S/Shri HN Ramaswamy and A Devaraj(SC) respectively."

Shri AS Raman is given proforma adhoc promotion to Sr. Scale with effect from 29.7.89, the date on which the officer next junior to Shri Devaraj viz. Shri R Sankaran assumed higher responsibilities. Shri AS Raman will not be eligible for arrears of Sr. Scale pay till the date of assumption of higher responsibilities, i.e. till 10.4.91 AN. Till that date his pay will be fixed on proforma basis."

5. The case of the applicant has been admitted by the respondents in the reply. Their only plea is that the applicant has been given promotion with effect from 1.2.1985 on a proforma basis and hence he is not entitled to any arrears of salary towards consequential benefits. Regarding the eligibility of promotion as A.E. in the vacancy which arose on 12.9.1984, ^{1/2}

respondents have no objection in granting the same, for it is covered by Annexure-A5 and A8 proceedings.

6. It is made clear in Annexure-A1 judgement that the applicant is entitled to be considered for promotion as A.E. in the year 1981 itself. The High Court observed that the applicant comes within the zone of consideration in 1981 and the respondents ought to have considered him for promotion in 1981. In spite of the judgement Annexure-A1 and the observation in Annexure-A2, the applicant was not given proper placement in the seniority list of AEs. Applicant's claim for getting a place just below Shri Ramaswamy has been admitted by the respondents in Annexure-A5 and A8. It is only due to a mistake that the actual promotion of the applicant as A.E. was shown. As a matter of fact, on 13.9.1984 on the basis of admission of the respondents, the applicant is entitled to be promoted as A.E. actually with effect from 12.9.1984 with all consequential benefits. On a careful verification of the records, the date claimed by the applicant is found to be correct because his right to be included in the seniority list just below Shri Ramaswamy is unassailable, in the light of the proceedings referred to above.

7. Having regard to the facts and circumstances of the case, we are of the view that the respondents have to correct the mistake, if any, and grant relief to the applicant.

8. Accordingly, we direct the respondents to give the applicant retrospective promotion to the category of A.E. with

effect from 12.9.1984 and on that basis in the next higher category of Executive Engineer.

9. Regarding the arrears of pay in the post of A.E. and in the next category of Executive Engineer, the contention of the applicant is ^{that} for no fault of him, he was denied the earlier promotion and benefit of appointment thereof. Despite the judgement Annexure-A1, respondents delayed the implementation and thereby failed to comply with the direction. Hence the consequential benefits including the arrears of pay should be given to the applicant with effect from 12.9.1984. This is opposed by the learned counsel for respondents.

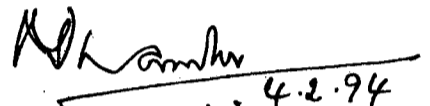
10. Having regard to the facts and circumstances and decisions of the respondents in Annexure-A5 and A8, we are of the view that applicant is entitled to the promotion as Assistant Engineer from an earlier date on the basis of Annexure-A1. But the direction in the judgement was ^{not} ⁴ implemented. Hence the applicant was forced to file C.M.P. which resulted in Annexure-A2 order dated 24.6.1985. Considering the observation in Annexure-A2 the respondents ought to have posted ^{As} ⁴ applicant as Assistant Engineer on a provisional basis at least from 24.6.1985. There is no justifiable reason to deny posting of the applicant in the promoted post at least from the date of Annexure-A2. Since there was no such explanation, we are inclined to grant the consequential benefits to the applicant with effect from

24.6.1985. Accordingly we direct the respondents to give all service benefits including the arrears of pay in the post of Assistant Engineer as also in the Executive Engineer from the respective dates as indicated above considering eligibility with reference to the date of Annexure-A2. This shall be done within a period of four months from the date of receipt of a copy of this order.

11. The OA is allowed as above. No costs.



(S KASIPANDIAN)
MEMBER(A)


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(N DHARMADAN)
MEMBER(J)

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