

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 333/
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1990

DATE OF DECISION 15.11.1990

M.K.Unnikrishnan Nair Applicant (s)

M/s. K.Ramakumar & Advocate for the Applicant (s)
V.R.Ramachandran Nair
Versus

Union of India represented by Respondent (s)
the General Manager, Southern Railway
Madras and 3 others

Mrs. Sumathi Dandapani Advocate for the Respondent (s)

CORAM:

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

&

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

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1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

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

In this application dated 8.4.90 filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as Personnel Inspector Grade II in the Divisional Railway Manager's office at Thiruvananthapuram under the General Manager, Southern Railway has prayed that the impugned order dated 16.1.90 (Annexure-D) debarring him from promotion to the post of PI Gr.I for a period of one year and the order dated 10.3.1990 rejecting his representation for being retained on promotion at Thiruvananthapuram should be set aside and the respondents directed to retain him in Trivandrum Division itself in the post of Personnel Inspector Grade I on promotion. The brief facts of the case are as follows.

2. The applicant is at present working as Personnel Inspector Grade II (PI/^{Gr.}II) in the Trivandrum Division. His next promotion was to the post of PI Gr.I. In the order dated 15.12.89 (Annexure-A) he was included in the merit list for such promotion at Sl.No.4 and it was recorded against his name only that his performance had been outstanding. By the order dated 21.12.89 he was posted on promotion as PI Gr.I in Thrichinapally Division. His grievance is that two other persons S/Shri Sampath and Venkateswaralu were retained even on promotion in the Mysore Division where they have been working, while (on 31.1.1990) in his case when he was to retire shortly, he was transferred to another Division. Accordingly he represented on 28.12.89 (Annexure-C) indicating his domestic problems and sought to be retained in Trivandrum Division on promotion relying upon the Southern Railway's order of 18th January, 1988 at Annexure-E. In accordance with this order those who are due to retire within one year from the date of approval of promotion 'may be allowed to continue on promotion at the same station by transferring the element in the higher grade.' He also mentioned in his representation that " if this request of mine cannot be agreed to, then I am willing to forego my present promotion for the sake of continuing at TVC till my retirement". Peremptorily the respondents passed the impugned order dated 16.1.1990 at Annexure-D debarring him from promotion to PI Gr.I for a period of one year from 28.12.89 because of his unwillingness to

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carry out the promotional transfer. The applicant represented against this order on 23.1.90 indicating that in spite of his being assessed as outstanding, he has been denied the facility which has been made available to others at the fag end of his service. He ~~was~~^{is} also mentioned that because of his being assessed as outstanding, his position in the panel was raised from 7th to 4th and that had he been retained at the 7th position in the panel ^(within one year of his retirement) he would have got his promotion in April 1990[^] instead^R of December 1989. In that case his promotion and being retained at Thiruvananthapuram would have been clearly protected by the order dated 18th January 1988 at Annexure-E referred to above. His representation was rejected by the impugned order at Annexure-G. The applicant has urged that he should not be punished for his outstanding performance and discriminated adversely.

3. The respondents have conceded that because of his being declared as outstanding he has been given the benefit of seniority in the panel. He could not be retained in the Trivandrum Division as there was no vacancy of PI Gr.I in that Division. His senior who was at Sl.No.2 in the panel had also been transferred from Trivandrum to Tiruchchirappalli. They have indicated that the policy letter of 18.1.88(Annexure-E) could not be applied to the applicant as he had more than one year

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of service reckoned from the date of the promotion order
dated 21
from 19.12.1989. They have also stated that since the
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applicant had expressed his unwillingness to carry out
his promotional transfer, he was debarred from promotion
for one year in accordance with the Railway Board's
policy letter dated 21.1.65 at Ext.R3. In the rejoinder
the applicant has repeated that being the junior-most
among all in the panel, if he had not been adjudged to
be outstanding, he would have been placed at Sl.No.7
and would have been promoted only from February, 1990
and got the benefit of Annexure-E order. His being
outstanding should not be held out as a reason to
deprive him of the benefits of Annexure-E order.

Regarding posting of his senior Shri A.N.Sasidharan at
Sl.No.2 to Trichinappilly he has stated that Sri Sasidharan
was expecting a promotion as Assistant Personnel Officer
at Trichinappilly and his posting there as PI Gr.I was
in anticipation of such further promotion. He has also
produced some documents to show that the duties and
responsibilities of Personnel Inspectors in different
grades are the same and interchangeable. He has bemoaned
that the same impugned order by which he was debarred,
two officers S/Shri Sampath and Venkiteswaralu have been
retained on promotion in their old station at Mysore.
He has rebutted the averment of the respondents by stating
that Shri Sampath is still working at Mysore and Shri

Venkiteswaralu is likely to resign from the Railways.

In the additional affidavit the respondents have stated that retention of Shri Sampath at Mysore has been rectified and there is no letter of resignation from Sri Venkiteswaralu. They have, however, conceded that Shri Sampath had been promoted from Gr.III to Gr.II and retained in Mysore by exchanging a Gr.II post of Madras with a Gr.I post of Mysore to accommodate another officer at Madras who was retiring shortly.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. There is no doubt that the applicant was adjudged to be an outstanding officer and was given a higher ranking in the merit list at Annexure-A than what he would have normally got on the basis of his seniority in Gr.II. It is also conceded that the system of exchanging Gr.I and Gr.II posts in order to accommodate officers on promotion in the same station where they have been working in the lower post is also extant. The applicant is being denied the benefit of being retained on promotion in his original posting as contemplated in the order dated 18th January 1988 at Annexure-E only on the ground that when he was approved for promotion on 21.12.1989 he had more than one year of service to retire on 31.1.91. The benefit of Annexure-E would have accrued to him if he had been approved for promotion in accordance with his seniority at the 7th position instead of 4th in the panel. In that case, according to the learned counsel for the applicant, he would have been promoted to Gr.I sometime in Feb., 1990.

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i.e, within one year of his retirement on 31.1.1991.

Even otherwise he is missing the benefit of the Annexure-E order because the order of his promotion at Annexure-B was issued on 21.12.1989, i.e, just 1 year and 41 days before his date of retirement. We feel that more in equity than in law, his case deserves to be considered sympathetically. It is axiomatic that in fairness, good and meritorious service should not entail any hardship just as no one should be allowed to enjoy the fruits of one's malefaction.

5. We also have considerable reservation about the impugned order at Annexure-D by which the applicant was debarred from promotion to Gr.I merely because in his representation at Annexure-C he had stated that if his request invoking the provisions of Annexure-E is not agreed to, he was willing to forego his promotion. The willingness to forego the promotion being conditional, ^{the same} cannot strictly be relevant for denying him promotion for one year in accordance with the Board's letter dated 21.1.65 at Annexure-R3.

6. In the facts and circumstances we allow the application, set aside the impugned orders at Annexure-D and Annexure-G in so far as they relate to the applicant and direct that the applicant who has ^{now} only less than 3 months to retire, should be given promotion as PI Gr.I at

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Thiruvananthapuram with immediate effect by upgrading
his Grade II post[^]
his post or by exchanging with a Gr.I post in some other station²
or Division. The promotion, however, will have only
prospective effect from the date of communication of
this judgment irrespective of the date on which formal
orders are issued. There will be no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

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