

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA 339/2005

Tuesday.....this the 1st day of August, 2006

CORAM

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

K.Devarajan, aged 60 years
S/o late K.V.,Kunjupillai,
Retired Traffic Porter,
Southern Railway, Kanjhangad Railway
Station and Post Office, residing at
Bincy Bhavan, Pallickal NM Post Office,
Kayamkulam.Applicant

(By Advocate Mr. T.C.Govindaswamy)

V.

- 1 Union of India, represented by
General Manager, Southern Railway,
Headquarters Office, Park Town PO
Chennai.3.
- 2 The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.
- 3 The Senior Divisional Operations Manager,
Southern Railway, Palghat Division,
Palghat.
- 4 The Chief Personnel Officer,
Southern Railway, Headquarters Office,
Park Town, Chennai.3.Respondents

(By Advocate Mr. P.Haridas)


The application having been heard on 30.6.2006, the Tribunal on 01.8.2006 delivered the following:

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ORDER

Hon'ble Mr. George Paracken, Judicial Member

The applicant is a retired Railway servant who was holding the post of Traffic Porter. His grievance is that he was denied promotion while his juniors have been promoted to the non-selection post of Pointsman 'B'/Liverman-II/Cabinman-II/Gate Keeper-II way back in August, 1999. He came to know about it only in July, 2001 from another ex-serviceman working as Station Master of Pallikara. He has specifically pointed out the name of one of his juniors, Shri Rajagopal who has also been promoted in 1999. He sent Annexure.A2 representation dated 12.2.01 to the respondent No.2, namely, the Senior Divisional Personnel Officer, Southern Railway, Palakkad Division requesting him to consider his case also and to promote him from a retrospective date. His contention was that the penalty of reduction of his pay by one stage for a period for twelve months imposed upon him vide Annexure A1 penalty advice dated 18.5.1998 should not have been held against him for denying the promotion. Since no response was received from the Railway authorities, he made another representation in February, 2003 (Annexures.A3). The Southern Railway Mazdoor Union has also taken up his case vide Annexure.A6 representation dated 12.5.03. Finally, the Respondent No.2 informed the applicant vide Annexure A7 letter dated 7.7.03 that while the proposal for promotion to the post of Pointman 'B' was being made on 12.3.99 the applicant was

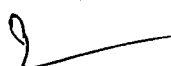


undergoing the punishment of reduction of pay for a period of 12 months and, therefore, his name was not considered for promotion and after 1999, there were no vacancies available. The applicant's contention is that the non-consideration of his name for promotion to the post of Pointsman 'B' is arbitrary, discriminatory, unconstitutional and he sought a direction from this Tribunal to the respondents to consider him for promotion as Pointsman 'B' from the date his juniors have been promoted and to grant him the consequential benefits including the benefit of promotion, arrears of pay and allowance and revision of pension and other retiral benefits.

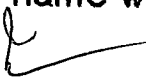
2 In the reply statement, the respondents have submitted that the present O.A is not maintainable on the ground of limitation as the order of promotion was made on 6/19.8.1999 and the applicant approached this Tribunal after long delay of five years, that too after his retirement on 31.10.2004. They have further submitted that in early 1999 while verifying the service details of the employees who would be eligible for promotion to the post of Pointsman 'B'/Cabinman-II/Liverman-II/Gate Keeper II, the applicant was undergoing the punishment of reduction of pay for a period of 12 months from 11.6.98 and in the proposal for promotions submitted by the office on the file on 12.3.99, he was not considered fit and 147 eligible employees including his juniors were proposed. On the basis of the said proposal, the promotion orders were issued on 6/19.8.99 in favour of 147 officials including one Shri V.Rajagopal,

the junior of the applicant, promoting them to the higher post, but the applicant did not make any protest at that time. The representations at Annexures A2 and A3 were also seem to have been not received by them. They have also submitted that from 1999 to 2000, 47 posts of Gate Keeper-II were transferred to the Engineering Department and 69 posts of Pointsman 'B'/Cabinman-II/Liverman-II were surrendered and therefore there were no vacancy available to consider the applicant for promotion and when the next proposal for the promotion was put up on 5.11.2004, the applicant had already retired on 31.10.2004.

3 We have heard Advocate Shri T.C.Govindaswamy for the applicant and Advocate Ms. Deepa G.Pal representing the counsel for the respondents Shri P.Haridas. We have also perused the departmental records made available by the respondents. There is no dispute that the applicant's juniors have been promoted while he was in service. The contention of the respondents was that when the proposal for promotion to the post of Pointsman 'B'/Liverman-II/Cabinman-II/Gate Keeper -II was initiated on 12.3.99 in the respondents' office, the applicant was undergoing a penalty of reduction in his pay for a period of 12 months and the office considered him as unfit for promotion. The question for consideration is when the post of Pointsman 'B' Liverman-II/Cabinman-II/Gate Keeper -II is a non-selection post, whether the respondents were justified in treating the applicant as unfit on



12.3.99 for promotion when the currency of the punishment was to expire on 17.5.1999. Admittedly, the proposal for promotion initiated on 12.3.99 has culminated in issuing the promotion orders only on 6/19.8.99, by which time the currency of the punishment was over. First of all when "withholding of promotion for a specified period" is one of the minor penalties mentioned in Rule 6 of the Railway Servants (Discipline and Appeal) Rules, 1968, by imposition of another punishment mentioned in the same rule, namely, "reduction to the lower stage in the time scale of the pay for a specified period." the applicant could not have been deprived of his promotion which would amount to double jeopardy which is not permissible under the law. Therefore, since the applicant has already been imposed the penalty of reduction to the lower stage for a period of 12 months, it will not come in his way for promotion to the higher post. Then the next question is whether the respondents could have kept him out of the list of eligible officers for promotion at the time when the proposal for promotion was made in March, 1999 when the currency of the punishment itself was going to be over on 17.5.1999. Admittedly, the promotion orders were issued only on 6/19.8.99, much after the expiry of the period of punishment. If the respondents were careful enough to note the date of expiry of the currency of the punishment which the applicant was undergoing at the proposal stage itself, when the actual order of promotion was made on 6/19.8.99, his name would have been automatically included in the list. Therefore,



there is no doubt that the non-inclusion of the applicant's name in the list of employees who have been promoted on 6/19.8.99 was purely because of the lapse on the part of the respondents, for which the applicant cannot be made to suffer. The other question is whether the relief sought by the applicant can be granted belatedly when there was a delay of more than five years on the part of the applicant in filing the present OA. The applicant being lower grade official in the Railways and working in isolated posts in different stations, it is quite possible that such employees won't come to know about the promotions etc., at the relevant time. When in July, 2001, the applicant came to know about the promotion of his juniors in August, 1999, he made a representation followed it by another representation and yet another one from the Mazdoor Union. The respondents have responded to them only on 7.7.03 (Annexure.A7). Even otherwise, since the applicant has already retired from service way back on 30.10.04, his promotion will not have any adverse effect neither on the settled seniority position nor on any other person as none of them already promoted is to be reverted. The applicant will be benefited only by a notional promotion which would entitle him for a slightly better retirement benefits. We, therefore, consider that the delay on the part of the applicant should be condoned in the interest of justice.

3 In the result, we allow this OA with a direction to the respondents to treat the applicant as promoted from the date his



immediate junior Shri V.Rajagopal was admittedly promoted to the higher post of Pointsman 'B'/Cabinman-II/Liverman-II/Gate Keeper-II and to give him the notional increase of pay and allowances till his date of retirement. He shall not be entitled for any arrears of pay and allowances during this period. His terminal benefits, however, shall be re-fixed and the resultant arrears on account of pension, gratuity and other retirement benefits shall be given to him. Respondents shall implement this order within a period of four months from the date of receipt of this order. There shall be no order as to costs.

Dated this the 1st day of August, 2006


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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