

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 376 of 2010

Tuesday, this the 29th day of March, 2011

Hon'ble Mr. George Paracken, Judicial Member

Hon'ble Mr. K. George Joseph, Administrative Member

M. Subramanian, aged 61 years, S/o. Muthusamy,
(Retd. Travelling Ticket Examiner/BG-IV,
Southern Railway/Madras Egmore),
Residing at Athannoor Patti Post (Colony),
Vazhappadi Taluk, Salem Dist.-
636 115.

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Applicant

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. Union of India, represented by the General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai-3.

2. The Senior Divisional Personnel Officer,
Southern Railway,
Madras Division, Chennai-3.

3. The Senior Divisional Personnel Officer,
Southern Railway,
Palghat Division, Palghat.

4. The Senior Divisional Commercial Manager,
Southern Railway,
Palghat Division, Palghat.

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Respondents

(By Advocate – Mr. Thomas Mathew Nellimoottil)

This application having been heard on 29.3.2011, the Tribunal on the same day delivered the following:



ORDER

By Hon'ble Mr. George Paracken, Judicial Member –

The applicant's grievance is that when similarly placed persons were promoted as Traveling Ticket Inspector/Head Ticket Collector in the scale of Rs. 5000-8000/- with effect from 1.11.2003, he was arbitrarily denied such promotion.

2. The brief facts of the case are that while the applicant was working as a Traveling Ticket Examiner in the scale of Rs. 4500-7000/- borne in the cadre of Ticket Checking Staff of Southern Railway, Palaghat Division he was placed under suspension in a Trap case by the vigilance organization during the period from 27.12.2003 to 9.3.2004. Thereafter, he was transferred to Madras Division of Southern Railway with effect from 11.6.2004 and he joined there on 17.6.2004. The disciplinary proceedings initiated against him in the said Trap case, finally culminated in the imposition of the penalty of compulsory retirement from service upon him with effect from 1.6.2007.

3. The respondents, vide Annexure A-1 notification dated 10.7.2003, proposed to fill up 68 vacancies (UR-53, SC-2 & ST-13) of TTI/HTC in the scale of pay of Rs. 5000-8000/-. The applicant belong to SC category. The respondents prepared a list of eligible candidates based on their seniority and the applicant's name was at serial No. 101. However, before the actual promotion has taken place, respondents, vide Annexure A-2 order dated 9.10.2003, restructured the various categories of the Railway staff including that of the Ticket Checking cadre with



effect from 1.11.2003. Paragraph 13.2 of the said order deals with the procedure of fitment, which is reproduced below:-

"13.2. Procedure for fitment : The placement of the existing incumbents will be regulated as per the procedure given below:-

(a) The existing regular incumbents of the posts of Supervisors (including Supervisors/P.Way to the extent of up-gradation of posts) will be placed in grade Rs. 5,000-8,000 without subjecting them to normal selection procedure. Their suitability shall be adjudged by following modified selection procedure according to which the selection will be based on scrutiny of service records and confidential reports only.

(b) The Supervisors (other than P. Way) who do not get promoted to grade Rs. 5,000-8,000 shall continue to hold the post in the existing grade Rs. 4,500-7,000 + Rs. 100 SA as personal to them. To this extent, the posts upgraded to grade Rs. 5,000-8,000 will be operated in the lower grade Rs. 4,500-7,000 + Rs. 100 SA till the existing incumbents vacate the same by way of promotion, retirement etc. On vacation of the posts, the same shall automatically be operated in grade Rs. 5,000-8,000."

4. By a subsequent clarification issued by the respondents, vide Annexure A-3 letter bearing RBE No. 114/2004 dated 3.6.2004, and Annexure A-4 letter bearing RBE No. 165/2004 dated 23/26.7.2004, the vacancies existing as on 1.11.2003 and arising as a result of restructuring of cadre were to be filled up by way of process of verification of service records only, irrespective of the fact, whether the posts stood classified as selection or not. In implementation of the aforesaid orders of the Railway Board, the Palaghat Division has promoted 126 TTEs/TCEs with effect from 1.11.2003 vide Annexure A-5 order dated 25.8.2004. The grievance of the applicant, as stated earlier, is that though the persons at serial No. 85 and below in the said order were junior to him, he has not been included without any valid reasons.



5. The applicant came to know about the aforesaid Annexure A-5 order while he was working there in Madras Division. Thereafter, he made the Annexure A-6 representation dated 8.10.2004 and requested the respondents to promote him also with effect from 1.11.2003 as was done in the case of his juniors. Meanwhile, the Madras Division has also issued the Annexure A-7 office order dated 28.3.2005 promoting 18 senior TCEs/TTEs in the scale of Rs. 4000-6000/- in their Division to HTCs/TTIs in the scale of Rs. 5000-8000/-, on ad hoc basis. The applicant's case was also considered by them but it was stated in the said letter that his case will be considered for promotion only on receipt of the CRs and clearance from the Palaghat Division. As the applicant was not given the promotion either from the Palghat Division or from the Madras Division he made Annexure A-8 representation dated 5.8.2005, Annexure A-9 representation dated 19.9.2005 and Annexure A-10 representation dated 11.8.2008 requesting the respondents to promote him as HTC/TTI in the scale of Rs. 5000-8000/- with effect from 1.11.2003 and to arrange to make the payment of arrears as his name was already there in the Annexure A-1 letter dated 10.7.2003 as item No. 101. Thereafter, he approached the Pension Adalat of the Railways with his grievance that his request for promotion with effect from 1.11.2003 was not considered by the respondents. The respondents rejected his representations vide Annexure A-12 letter dated 19.11.2008 for the reason that he has already been transferred along with his lien and seniority to Madras Division and relieved on 17.6.2004 and he was no more on the rolls of the Palaghat Division. The respondents have also advised the applicant, vide Annexure A-13 letter dated 1.12.2009, that he may attend the next Pension Adalat to be held at Palaghat on 15.12.2009, if he has got any further grievance.



6. Learned counsel for the applicant Shri Mohana Kumar has submitted that the denial of promotion to the applicant cannot be justified in any manner as there were no disciplinary case pending against him neither on the due date of his promotion, i.e. 1.11.2003 nor on the date of issuance of the Annexure A-1 notification dated 10.7.2003. The applicant was placed under suspension in the trap case only from 27.12.2003, thus, there was no question of denying him the promotion. Shri Mohana Kumar has also relied upon the judgment of the Hon'ble Apex Court in the case of Union of India Vs. K.V. Jankiraman – AIR 1991 SC 2010, in this regard. The relevant part of the said judgment is as under:-

"6. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many-cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalize the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows:



"(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

(2)

(3)

(4) the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before ."

There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion no. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.

We, therefore, repel the challenge of the appellant-authorities to the said finding of the Full Bench of the Tribunal."

7. The Senior Divisional Personnel Officer, Palaghat Division has filed a reply on behalf of all other respondents including the Madras Division. He justified the respondents' position in not promoting the applicant from 1.11.2003 vide Annexure A-5 order dated 25.8.2004 along with his colleagues including his juniors on the ground that on verification of the relevant records of the applicant, it was found that he was transferred from Palaghat Division to Madras Division on administrative/vigilance grounds with effect from 11.6.2004. Therefore, he was not on the rolls of the Palghat Division on 25.6.2004 i.e. at the time of initiating the promotion proposal and hence his name was not considered for promotion. They have also submitted that when he was transferred to Madras Division, his lien in the grade was also transferred. Later on, in the proceedings initiated against him under the Railway Service (Disciplinary & Appeal) Rules, his service was also terminated with effect from 1.6.2007 by awarding him the penalty of



compulsory retirement from service. Therefore, he is not eligible for any promotion as claimed by him. Learned counsel for the respondents has also submitted that even if he was promoted, he could not have been allowed to shoulder any higher responsibility because of the pendency of the disciplinary case against him.

8. We have heard the learned counsel appearing for the parties and perused the pleadings and records of the case. The undisputed facts of the case are that the respondents have effected promotion of the TTEs/Sr.TCs to the post of TTI/HTC in the scale of pay of Rs. 5000-8000/- with effect from 1.11.2003. The only reason given by the Palaghat Division in not promoting the applicant on 1.11.2003 is that he was no more in Palaghat Division on that date. Hence, the Madras Division considered his case of promotion as seen from the Annexure A-7 OO No. M/P(S)/58/2005 dated 28.3.2005 but the reason given by them for not promoting him was that his confidential reports and clearance from Palaghat Division were still awaited. We see that there were no real efforts from either the Palaghat Division or the Madras Division to complete the formalities and grant promotion to the applicant from the due date. As submitted by the learned counsel for the applicant, the applicant was admittedly not under cloud on the crucial date of promotion i.e. 1.11.2003. He was placed under suspension only from the subsequent period i.e. from 27.12.2003 to 9.3.2004 on being caught in a trap case. Later on, he was transferred to the Madras Division on administrative ground on 11.6.2004. It is a different matter that the disciplinary case initiated against him culminated in the order of penalty of compulsory retirement from service w.e.f. 1.6.2007. Following the principles laid down by the Apex Court in Jankiraman's

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case (supra), since there are no disciplinary case pending against the applicant as on 1.11.2003, he should have been promoted along with his colleagues vide the impugned Annexure A-5 No. O/P535/II/TCs/TTI/Vol.I, dated 25.8.2004 issued by the Palaghat Division or by the Annexure A-7 office order OO No. M/P(S)58/2005 dated 28.03.2005 by the Madras Division. The reason given by the Madras Division that he could not be promoted for want of CR and clearance from the Palaghat Division is totally irresponsible. In fact they have not made any attempt to collect those details from Palaghat Division and to promote him later.

9. In the above facts and circumstances of the case, we allow this OA. We hold that the respondents ought to have considered the applicant's case for promotion along with his seniors and juniors and he should have promoted him as TTI/HTC in the scale of pay of Rs. 5000-8000/- with effect from 1.11.2003. In any case, we do not find any justification on the part of the respondents in not granting him promotion so far. We, therefore, declare that the applicant is entitled to be considered for promotion as TTI/HTC in the scale of pay of Rs. 5000-8000/- with effect from 1.11.2003 at par with his immediate juniors in Palaghat Division. Consequently, the respondents are directed to consider the applicant for promotion to the aforesaid post with effect from 1.11.2003 and grant him all consequential benefits including the benefit of arrears of pay and allowances and retirement benefits arising therefrom. Though this is a fit case for awarding interest on the delayed payment, we refrain from doing so as the applicant himself has not prayed for it in this OA. Since both Madras Division and Palghat Division are involved in this case, we direct that the respondent No.1, namely, Union of India, represented by the General Manager, Southern Railway, Headquarters Office, Park Town

P.O., Chennai-3 shall ensure that the concerned authority shall comply with the aforesaid directions of this Tribunal within a period of three months from the date of receipt of a copy of this order.

10. There shall be no order as to costs.


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(GEORGE PARACKEN)
JUDICIAL MEMBER

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