

CENTRAL ADMINISTRATIVE TRIBUNAL,  
ERNAKULAM BENCH

O.A. No.377/97

Monday, this the 18th day of October, 1999.

CORAM

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

HON'BLE MR G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

A.P. Narayanan, S/o V.K.N. Nair,  
Retired Boiler Maker Grade-I,  
Palghat Division.  
Residing at: Ayanamparambath House,  
Post: Mala, Via- Trithala,  
Ottapalam Taluk, Palghat District.

... Applicant

By Advocate Mr T. C. Govindaswamy.

Vs

1. Union of India through  
the General Manager,  
Southern Railway,  
Park Town P.O., Madras-3.
2. The Divisional Railway Manager,  
Southern Railway,  
Palghat Division, Palghat.
3. The Divisional Personnel Officer,  
Southern Railway,  
Palghat Division, Palghat.

... Respondents

By Advocate Mr P.A. Mohamed.

The application having been heard on 18.10.99, the  
Tribunal on the same day delivered the following:-

O R D E R

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

Applicant seeks to quash A3 and to direct the  
respondents to consider and promote the applicant to the  
post of Boiler Maker Grade-I in the scale of Rs.1320-2040  
with effect from 29.11.94 with consequential benefits.

2. The applicant is a retired Boiler Maker Grade I  
in the Mechanical Department of Palghat Division of Southern  
Railway. He retired from service on superannuation on 31.7.95.  
Since the applicant is aggrieved by non-promoting him to the  
post of Boiler Maker Grade-I, he approached this Bench of the  
Tribunal by filing O.A. 823/95. That O.A. was disposed of

finding that he is clearly entitled to be considered for promotion against the vacancy that arose on 29.11.94 since on that date he was the senior-most person eligible to be considered for promotion. That O.A. was disposed of permitting the applicant to submit a representation to the 2nd respondent and directing the 2nd respondent to consider and dispose of the representation within two months in the light of the observations contained in the order. In pursuance of the same, A3, the impugned order has been issued by the second respondent wherein the request of the applicant has been turned down.

3. Respondents have raised contentions in the reply statement identical to the contentions raised in the reply statement in O.A. 823/95.

4. In para-4 of the order in O.A. 823/95 to which one of us was a party, it is stated thus:

"4. In any case, we consider that applicant became eligible for promotion on 29.11.94 on successful completion of the trade-test and on that day it is clear that there was a vacancy available which arose on 1.6.94. Applicant is clearly entitled to be considered for promotion against that vacancy on 29.11.94, since on that date he was the seniormost person eligible to be considered for promotion."

5. As per the order in the said O.A. the 2nd respondent was directed to consider and pass appropriate orders in the light of the observations made therein. From a perusal of A3 it is clearly seen that the second respondent instead of disposing the representation submitted by the applicant in the light of the observations made in O.A. 823/95 has simply stated the contentions raised in the reply statement in the O.A. and thereby refused to grant the request of the applicant. We are constrained to say that when this

Bench of the Tribunal directed the the 2nd respondent to dispose of the representation of the applicant in the light of the observations contained in the order, the 2nd respondent ought not to have simply reproduced all the contentions raised in the reply statement in O.A. 823/95 and should have granted promotion to the applicant with effect from 29.11.94 unless there was any vigilance case or departmental action etc. against him. The rejection of the representation of the applicant as per A3 is not on any of those grounds. The 2nd respondent cannot sit in appeal against an order of this Tribunal. He is bound to comply with it. If respondents were aggrieved by the order passed in O.A. 823/95, they could have taken up the matter before the higher forum. Admittedly, they have not done it. The way in which the representation of the applicant has been disposed of as per A3, compels us to say that the practice as adopted in disposing A-3 is only to be deprecated.

6. There is no case for the respondents that the applicant was facing at the relevant point of time any vigilance inquiry or there was of any departmental inquiry against him.

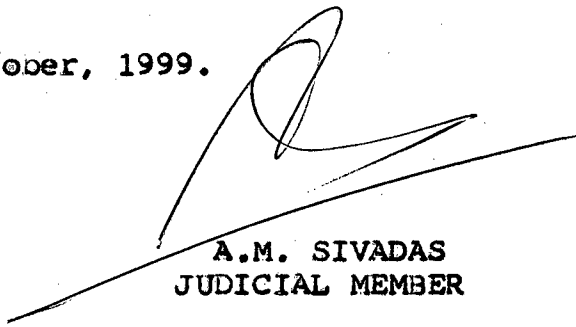
7. Accordingly, the Original Application is allowed quashing A-3 directing the respondents to consider and promote the applicant to the post of Boiler Maker Grade-I in the scale of Rs. 1320-2040 with effect from 29.11.94 with consequential benefits. This exercise shall be completed within two months from to-day.

8. Respondents shall pay costs of Rs.750/- to the applicant. The costs shall not borne from the Exchequer

and department shall recover the same from the pay of the 2nd respondent, since the person only responsible for the issuance of A3 is the 2nd respondent.

Dated the 18th of October, 1999.

  
G. RAMAKRISHNAN  
ADMINISTRATIVE MEMBER

  
A.M. SIVADAS  
JUDICIAL MEMBER

P/181099

List of Annexure referred to in the order.

A1, True copy of the judgment in O.A. 823/95 dated 7.11.95 passed by the Hon'ble Tribunal.

A3, True copy of the Order No.J/P OA 823/95 dated 15.1.97 passed by the second respondent and communicated by the 3rd respondent.