

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 396/2005

MONDAY, THIS THE 29th DAY OF MAY, 2006

C O R A M

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

T.D. Presannan S/o T.K. Damodaran
Depot Material Superintendent
Office of the depot Material Superintendent
Railway Electrification,Ernakulam
residing at 32/1933-A-1
Surabhi Road,
Anjumana, Edappally PO
Ernakulam.

..Applicant

By Advocate Mr. Siby J Monippally

Vs.

- 1 Union of India represented by
the Chief Personnel Officer
Southern Railway (Headquarters)
Personnel Branch, Perambur
Chennai-23
- 2 Chief Project Manager,
Railway Electrification
Egmore,
Chennai-600 008

..Respondents

By Advocate Smt. Sumathi Dandapani

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

This OA is filed against the refusal of the respondents to give effect to the promotion orders issued to the applicant vide office orders dated 21.4.2004 (Annexure A-1) as modified by order dated 9.6.2004. The applicant is presently working as Depot Material Superintendent (DMS) at Stores Depot, Railway Electrification,

by

Ernakulam.

2 The applicant was initially appointed as a Depot Store Keeper-III (DSK-III) and promoted as Depot Store Keeper-II (DSK-II) on the basis of the seniority while he was working on deputation in the Railway Electrification Project, Madras. In the meanwhile the post of DOS-II was redesignated as Depot Material Superintendent-II (DMS-II). While the applicant was working as DMS-II at Ernakulam the first respondent issued office order dated 21.4.2004 promoting the applicant and certain others as Depot Material Superintendent-I (DMS-I) in the scale of pay of Rs. 6500-10,500 w.e.f. 1.11.2003. As per this order the petitioner was promoted and posted at Divisional Stores Depot, Southern Railway, Erode and he is at Sl. No. 8 in para (II) of the order. The first respondent moved Annexure A-1 order at the request of the Railway Electrification Project retaining the applicant at the same Stores Depot vide office order No. 51/2004 dated 9.6.2004 (Annexure A2) The applicant's name figures in the first paragraph of the order itself. Accordingly, the applicant had been continuing and discharging the duties and functions of DMS-I at the Stores Depot, Ernakulam. It is submitted that Annexure A-1 and A2 orders were issued on the basis of restructuring of the cadres and the post of DMS-II Stores Depot Ernakulam was converted to DMS-I w.e.f. 1.11.2003. However, the grievance of the applicant now is that even though he was discharging all the duties of DMS-I no consequential benefits have been paid to him. All other persons

promoted as DMS-I along with the applicant by the above orders including his juniors have been given pecuniary benefits. Repeated representations by the applicant in Annexure A-3, A-4 and A-5 have not yielded any result. It is contended that there is no reason or justification for the respondents to deny the benefits to the applicant when the respondents themselves have promoted him to perform the duties of DOS-I .

3 Respondents have not denied the averments of the applicant. However, they have submitted that the promotion order dated 21.4.2004 was conditional in that the promotion was subject to verification whether there were any *prima facie* cases pending against the incumbents as a result of fact finding enquiries and that they were not placed under suspension or departmental proceedings initiated against them from 1.11.2003 till date and they were not undergoing any penalty debarring them from promotion. In respect of the applicant a major penalty proceedings was pending for which a charge memorandum was issued to him on 7.10.2004. The case is in the final stage and promotion will be duly considered on finalisation of the DAR proceedings.

4 A rejoinder has been filed by the applicant stating that there was no case pending against the applicant when Annexure A-1 and A2 orders were issued. The chargesheet was served on 7.10.2004 and the issue of the charge will not take away his vested right for promotion which has crystallised on 21.4.2004. The respondents

have also not informed him in response to his representation that the promotion was withheld on account of the pendency of the case. While he was working at Palghat there was some discrepancy in the accounting of Copper Cadmium mixed scrap and the applicant brought to the notice of the Department for taking remedial measures before setting the final stores and no enquiry or investigation was conducted in this regard and there was no actual shortage of scrap and the applicant was not responsible for any such shortage or loss to the Railways.

5 We have heard the learned counsel on both sides. The applicant was duly promoted as per Annexure A-1 and A-2 orders after following the prescribed procedures by order dated 21.4.2004 and 9.6.2004. No doubt, the orders inserted a condition subject to pendency of disciplinary proceedings or currency of any penalty. The short question that arises for consideration is whether as on the date of promotion the applicant was facing any charge or any penalty has been imposed on him. It is admitted by the respondents that the chargesheet in the disciplinary case against the applicant was issued only on 7.10.2004 i.e. six months after the promotion order. Notwithstanding the contentions of the applicant that he was not guilty of the charges ^{which} it would be subject to disciplinary proceedings and a decision ~~which was~~ taken by the administration, it cannot be denied that as on the date on which he was considered and promoted there were no charges of any kind pending against him. If

at all there was a verification of the fact finding enquiry going on against the applicant the respondents should have been well aware of the same at the time of considering his promotion which should have stood in the way of considering him for promotion as DMS-I. After having promoted him and allowed him to continue by Annexure A-2 in the promoted post in the same place, he has been discharging the functions and responsibilities of higher post which fact has not been controverted by the respondents. It is in fact unjust on the part of the respondents to contend that the applicant was not eligible for promotion. The learned counsel for the applicant referred to the rulings of the Apex Court in this regard in Union of India Vs K.V. Jankiraman etc. etc. (1991 SC 2010) and in Bank of India and another Vs. Degala Suryanarayana (1999) 5 SCC 762) and the ratio of the above judgment is very clearly in favour of the applicant. In the second judgment taking note of the earlier judgment it is observed as follows:

"In the year 1986-87 when the respondent became due for promotion and when the Promotion Committee held its proceedings, there were no departmental enquiry proceedings pending against the respondent. The sealed cover procedure could not have been resorted to nor could the promotion in the year 1986-87 be withheld for the DE proceedings initiated at the fag end of the year 1991. The High Court was therefore right in directing the promotion to be given effect to which the respondent was found entitled as on 1.1.1986. In the facts and circumstances of the case, the order of punishment made in the year 1995 cannot deprive the respondent of the benefit of the promotion earned on 1.1.1986".

6 In Janakiraman's case the Hon'ble Supreme Court categorically declared as under:-

"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."

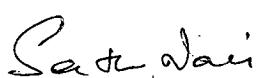
7 In the light of the above law clearly laid down by the Apex Court the applicant is entitled to promotion as given by Annexure A-1 order dated 21.4.2004. Since the above orders stipulate that the promotees are eligible for higher scale of Rs. 6500-10500 as a result of restructuring w.e.f. 1.11.2003, the applicant will also be eligible for the higher scale as stipulated therein w.e.f. 1.11.2003. He has been discharging the duties and responsibilities of the higher post. Hence he is entitled to all the promotional benefits. We therefore declare that the applicant stands promoted as DMS-I as per Annexure A-1 order w.e.f. 1.11.2003 and the respondents shall grant him all pecuniary benefits attached to the said post w.e.f. that date. This shall be done within a period of two months from the date of receipt of this order. We however, make it clear that these directions shall not stand in the way of the respondents in proceeding with the disciplinary action against the applicant in accordance with the rules.

8 The O.A. is allowed as above. No costs.

Dated 29.5.2006.


GEORGE PARACKEN
JUDICIAL MEMBER

kmn


SATHI NAIR
VICE CHAIRMAN