

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE

DATED THIS THE 20TH DAY OF NOVEMBER 1986

Present:

Hon'ble Mr. Ch. Ramakrishna Rao ... Member (J)
Hon'ble Mr. P. Srinivasan ... Member (A)

APPLICATION NO. 1657/86(F)

Shri M.F. Ansari,
Driver,
Southern Railways,
Yeshwanthpur,
BANGALORE ... Applicant

(Shri M.R. Achar, Advocate)

vs

(1) Divisional Railway Manager,
Southern Railway,
Bangalore Division, Bangalore.

(2) Divisional Personnel Officer,
Southern Railway,
Bangalore Division, Bangalore. ... Respondents

(Shri M.Sreerangaiah, Advocate)

This case came up before this Tribunal for
hearing today and Member (A) made the following:

ORDER

The applicant who was working as Driver C in
the erstwhile Mysore Division of the Southern Railway was
removed from service by an order dated 3-2-1981. Subsequently,
this order was set aside by the High Court of Karnataka.
The High Court of Karnataka granted certificate of fitness
to the respondents' Railways to take the matter to the
Supreme Court and the appeal is now pending before the
Supreme Court. Neither the High Court of Karnataka nor
the Supreme Court granted stay of operation of the judgement
of the High Court. This meant that the decision of the
High Court quashing the order removing the applicant from
service had to be implemented subject to the decision of
the Supreme Court in appeal. It also meant that the
applicant, having been restored to his original position

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of seniority as Driver 'C', should have been given all promotions that were due to him from that position of seniority if he had not been from service. The next promotion from the post of Driver C is to the post of Driver B and then to the post of Driver A. The applicant was above a certain Shri M. Nagarajan in the seniority list of Driver C when he was removed from service. In this application, his grievance is that his case for promotion to higher posts from the dates from which his immediate junior Shri M. Nagarajan was given promotion to such posts after 3-2-1981 had not been considered as should have been done subject of course to the outcome of the appeal before the Supreme Court. The applicant was promoted as Driver B by an order dated 25-6-1986 but Shri Nagarajan had been promoted to that post much earlier. Again Shri Nagarajan was promoted to the still higher post of Driver A by an order dated 8-9-1982. By a subsequent order dated 29-3-1983 Shri Nagarajan's pay on promotion was fixed on the basis that he was deemed to have been promoted as Driver A from 1-6-1981 but he was not allowed to draw any arrears in respect of the period prior to 14-9-1982. In other words, his pay in the higher post as on 14-9-1982 was fixed as if he had been promoted to that post with effect from 1-6-1981. The applicant has not been given promotion as Driver A till date.

2. Shri M.R.Achar, learned counsel for the applicant, contends that the respondent Railway had not given effect to the judgement of the Karnataka High Court which cancelled the order removing the applicant from service, even though the operation of the judgement has not been stayed. In the course of a contempt petition filed by the applicant and some others, the High Court passed an order dated 26-9-1983 in which it said, inter alia, that "it is now reported that the Supreme Court has not stayed the order of this court". That being so, the applicant should

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have been considered for all promotions made after 3-2-1981 which were due to him in his position of seniority immediately above Shri Nagarajan.

3. Shri M. Sreerangaiah, learned counsel for the respondents, strongly opposed the contentions of Shri Achar. The applicant had been duly promoted as Driver B from 25-6-1986. According to the present rules, a person has to pass a selection test before he can be made Driver A. The applicant was asked to take ^{the} test as per Annexure D to the petition but he did not take the test. Therefore he could not be promoted as Driver A. He admits that when Shri Nagarajan was promoted as Driver A, the post of Driver A was not a selection post and so he was not required to pass a selection test. Shri Sreerangaiah also points out that a person has to work for two years as Driver B before he could be made Driver A. The applicant not having worked as Driver B for two years could not be promoted as Driver A.

4. We have considered the matter carefully. We are of the view that as soon as the order removing the applicant from service was struck down by the High Court of Karnataka, the applicant should have been given all consequential benefits to which he would have been entitled, if he had not been removed from service, because the operation of the judgement of the High Court had not been stayed and had therefore to be given effect to fully. In other words, the applicant should have been considered for all promotions which were due to him in accordance with the rules prevailing on the respective dates on which his immediate junior was given such promotions. If Shri Nagarajan was required to pass a selection test when he was promoted as Driver A, then the applicant would also be required to do so. If Shri Nagarajan was not required to

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pass a selection test, then the applicant should also not be required to undergo the test. So far as experience as Driver B is concerned, the applicant is not at fault that he was not promoted as Driver B in time. Further we find from the records produced by both the parties that Shri Nagarajan was promoted as Driver B from 1-6-1981 and was given proforma promotion as Driver A from the same date. This being so, we are of the view that the applicant if found otherwise fit, should also be given proforma promotion as Driver A from the same date. His case for promotion as Driver B should be considered from the date Shri Nagarajan was promoted to that post and if he is found fit such promotion according to the rules prevailing at that time, he should be paid arrears of salary and allowances from that date. Similarly he should be considered for promotion as Driver A from the date Shri Nagarajan was given proforma promotion to that post and if found fit according to the rules then in force, his pay in that post should be fixed as was done in the case of Shri Nagarajan and all consequent arrears paid to him. Needless to say, all this will be subject to the outcome of Civil Writ Petition No.6075 of 1983 now pending before the Supreme Court.

5. In the result, the application is allowed as indicated above. There will be no order as to costs.

Ch. Ramakrishna Rao
(Ch. Ramakrishna Rao)
MEMBER (J) 20.11.86

P. Srinivasan
(P. Srinivasan)
MEMBER (A) 20.11.86