

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH BANGALORE

DATED THIS THE 5th DAY OF FEBRUARY 1987

Present : Hon'ble Sri Ch. Ramakrishna Rao - Member (J)  
Hon'ble Sri L.H.A. Rego - Member (A)

Application Nos. 1869 & 1703 of 1986

P. Raju (A.No. 1869/86)  
No.440, Dr. Ambedkar Nagar,  
Dorgaum Post Office  
Kolar Gold Fields  
Kolar District

P. Raju (A.No. 1703/86)  
No.16, Muniamma Garden,  
Vannarpet, Vivekanagar PO  
Bangalore 560 047 - \* Applicant

(Sri Srinivasa Murthy, Advocate)

and

1. Union of India by its  
Secretary, Ministry of Railways  
New Delhi
2. The General Manager  
Southern Railways, Madras
3. The Chief Personnel Officer  
Southern Railway, Madras - Respondents

\*x (Sri M. Sreerangaiah, Advocate)

These applications came up for hearing  
before this Tribunal and Hon'ble Sri Ch.Ramakrishna  
Rao, Member (J) to-day made the following

O R D E R

Sri Srinivasa Murthy learned counsel for the  
applicant submits that his client belongs to a  
Scheduled Caste and as per the Government notifications

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issued from time to time his client is entitled to promotion on the basis of the seniority list-cum-roster system; that he was promoted on a regular basis as Assistant Engineer ('AE') on 6.6.80; that though he was eligible for promotion to the post of Executive Engineer ('EE') others who were junior to him in the seniority list ('SL') were promoted by an order dated 22.8.83 (Annexure 'B'); that his client requested the authorities to grant him promotion; that as a result thereof he was promoted as EE on 19.1.1984 but ~~the same~~ on ~~xxx xxx~~ 27.1.84 the order promoting him was cancelled (Annexure 'G'). According to Sri Srinivasa Murthy cancellation of the promotion granted to his client was not justified and no reasons have been given in the order of cancellation.

2. Sri M. Sreerangaiah, learned counsel for the respondents, submits that the order of ~~cancellation~~ promotion (Annexure 'F') was inadvertantly issued in as much as a vigilance case was pending against the applicant and the promotion order was cancelled (Annexure 'G').

3. We have considered the rival contentions carefully. Except saying that a vigilance case is pending the respondents have not indicated at what stage ~~xxxxxx~~ the investigation of the vigilance case <sup>was</sup> ~~/ix~~ pending or stood on the date when the promotion was granted to AEs junior to the applicant. Normally, when allegations are at the investigating stage, adverse notice is not taken of such allegations by the DPC unless a prima facie case is

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established and disciplinary proceedings are initiated against the officer concerned. This is brought out clearly in the Ministry of Home Affairs (Department of Personnel & Administrative Reforms) O.M. dated 14.7.1977 wherein it is stated "sealed cover procedure should be followed in those cases, where, after investigation, the evidence collected indicates a prima facie case against the officer concerned and not when the preliminary investigation is pending and no conclusion is reached about the prima facie guilt of the officer as ~~at~~ at that stage there is no ground for treating the said officer as one 'whose conduct is under investigation'. An officer can be said to be under investigation only when a charge sheet is filed in a Criminal court or charge memo under CCA Rules is issued to the official." We consider this to be a relevant factor since the OM dated 14.7.1977 of the Ministry of Home Affairs (Deppt P & AR) lays down that when the case is under investigation and no prima facie case has been established, there is no ground for treating the officer as one 'whose conduct is under investigation.' It is common ground <sup>the</sup> between/parties that a charge sheet/memorandum was not issued on the date when the AEs junior to the applicant were promoted. We, therefore, hold that the order dated 27.1.1984 passed by the Chief Personnel Officer, Southern Railway ('R3) is void and the promotion order

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