

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

MONDAY THE TWENTY FOURTH DAY OF JULY.

ONE THOUSAND NINE HUNDRED AND EIGHTY NINE

:PRESENT:

THE HON'BLE MR. B. N. JAYASIMHA: VICE-CHAIRMAN

AND

THE HON'BLE MR. D. SURYA RAO: MEMBER (JUDL)

AND

THE HON'BLE MR. D. K. CHAKRAVORTY: MEMBER (ADMN.)

AND

THE HON'BLE MR. C. NARASIMHA MURTHY: MEMBER (JUDL).

TRANSFERRED / ORIGINAL / MISCELLANEOUS / CONTEMPT / APPLICATION

NO 563 OF 1987.

BETWEEN:-

A. Ratna Babu, ✓

.....Applicants

(Applicants in T.A/O.A.

No. ✓ OF 198

on the file of the

Tribunal).

AND

- 1) The Senior Divisional Personnel Officer,
South Central Railway, Vijayawada. ✓
- 2) The Senior Divisional Mechanical Engineer(Loco)
South Central Railway, Vijayawada. ✓
- 3) The Loco Foreman,
Loco shed, South Central Railway,
Vijayawada. ✓

.....Respondents

(Respondents-in-dos)

W.D.J.

ORDER OF THE TRIBUNAL DELIVERED BY HON'BLE SHRI D.SURYA RAO,
MEMBER (JUDL.)

The applicant herein joined the Railways as Casual Labourer in the year 1972. He was later regularised as Khalasi and in 1978 he was promoted as Engine Cleaner. Between 1979 and 1982 he worked as Fireman 'C' on temporary basis. ~~Subsequently~~ After reversion again as Engine Cleaner, criminal proceedings were started against him viz., C.C.No.413 of 1984 in the Judicial 1st Class Magistrate for Railways at Vijayawada alleging that on 27.7.1984 he had sold 5 litres ~~each~~ of axle oil to ~~each~~ ^{Ced of} two individuals viz., N.Venkateswara Rao and M.Suryanarayana. The applicant states that eversince then, no summons were issued nor trial commenced. Time and again when his juniors have been promoted in the years 1985, 1986 and 1987 he was denied promotion on the ground that the theft case against him is pending. The applicant made representations on several times and even got a notice issued from Advocate claiming that he should be given promotion as Fireman 'C'. It is contended that in a similar case viz., C.C.No.331/84 one Mr. Mohd. Ali who was caught red-handed in a theft case, he was given promotion as Steam Man by an order dated 26/27.12.85. However, the applicant continues to be denied promotion on

the ground of pendency of the theft case. The applicant also assails the merits of the case relating to the recovery of the oil and his complicity in the matter. It is contended that pendency of a criminal case is not a bar for considering an employee for promotion. It is further contended that according to the Full Bench Judgment of the Tribunal in ATR 1987(1) CAT 547 when a criminal case or departmental inquiries are not completed within two years, an employee has to be considered and he should be given promotion. In these circumstances, it is prayed that a direction be issued to the respondents to promote the applicant as Fireman 'C' with effect from 1-10-1985.

2. On behalf of the respondents, a counter has been filed stating that two individuals were arrested on 27.8.1984 for being unlawful possession of five litres of Axle Oil each. The inquiries revealed that they had obtained the same by paying Rs.10/- to the applicant. All the three were arrested and released on bail. Thereafter, Criminal Case, C.C.No.413/84, was filed and is still pending. It is further stated that the applicant was subsequently served with a charge memo for major penalty on 9.10.1987 (i.e., after filing of the application). It is admitted that the applicant was overlooked on several occasions from 1985 for promotion ^{with} ~~on~~ the ground ^{of} that the pendency of the Criminal Case or because of/discriminatory action for major penalty ~~was~~ contemplated against him. It is stated

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that when a criminal case on a grave charge is pending against the applicant and the disciplinary proceedings are contemplated, the competent authority is entitled to take the decision that he is not fit for promotion. After the criminal case and the disciplinary proceedings are terminated, he would be considered for promotion with proforma benefits of seniority and pay fixation. In the meanwhile, however, the applicant is not entitled to any relief. In regard to Mr. Mohammad Ali who was accused in the criminal case, it is stated in the counter that he was promoted erroneously and action is on hand to revert him after following the procedure.

3. We have heard the learned counsel for the applicant Shri P.Krishna Reddy and the learned Standing counsel for the respondents Shri P.Venkatarama Reddy, SC for Railways. The applicant has claimed in the relief portion, a direction from the Tribunal to promote him as Fireman 'C' from 1.10.1985 i.e., the date from which his junior was promoted. The applicant has not brought any order or direction which would entitle him to promotion to the effect that ~~anyone~~ when a junior is promoted when criminal case/departmental proceedings for serious acts of misconduct are pending against him. However, it is contended by Shri Krishna Reddy that the criminal case was launched or instituted five years ago and on this ~~as~~ ground, to deny him promotion is inequitable and illegal. In this context, we may refer to the Railway Board's letter No.E(D&A) 82/RCT-28 dated 20.9.1982. This letter clarifies that in cases where disciplinary/court proceedings are not concluded after

the expiry of two years and the concerned official is not under suspension, the appointing authority may review his case to consider- (a) whether the charges are grave enough to warrant continued denial of promotion and the promotion of the officer will be against public interest (b) whether there is no likelihood of the case coming to a conclusion in the near future, and (c) the delay in finalisation of proceedings, whether departmental or in a court of law is not directly or indirectly attributable to the official concerned. The letter further lays down that in case the appointing authority comes to a conclusion that it would not be against the public interest to allow adhoc promotion to the official, his case should be placed before the next DPC held in the normal course to decide whether the official is suitable for promotion on adhoc basis. Thereafter, if he is considered suitable by the DPC, his actual promotion will be subject to the decision of the appointing authority which should take into account the seriousness of the charges, the nature of the evidence available, the stage which the disciplinary/court proceedings has reached, the probable nature of the punishment that may be imposed on the official if charges against him are established, the likelihood of mis-use of official position if the official is given adhoc promotion and the record of service available upto date. These orders of the Railway Board are in para-materia with the instructions of the Government of India contained in Department of Personnel & Administrative Reforms instructions dated 30.1.82.

TO

- 1) The Senior Divisional Personnel Officer,
South Central Railway, Visayawada. ✓
- 2) The Senior Divisional Mechanical Engineer (Loco)
South Central Railway, Visayawada. ✓
- 3) The Loco Foreman,
Loco Shd, South Central Railway,
Visayawada. ✓
- 4) One copy to Mr. P. Krishna Reddy, Advocate,
3-5-899, Himayatnagar, Hyderabad - 500029.
- 5) One copy to Mr. P. Venkata Rama Reddy, Sector Phys, CAT, Hyderabad.
- 6) One copy to Hon'ble Mr. D. K. Chakravorty, Member (A), CAT, Hyderabad.
- 7) One spare copy. ✓

Stamps
J. D. S.
3/10/85


APC
Received 27/8/85
A.T. 552

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These instructions are clearly equitable instructions passed to obviate injustice caused due to long delay in conclusion of Court proceedings/departmental proceedings. We find from the records produced in the instant case and the orders passed from time to time that the applicant is being denied promotion merely because of the pendency of the criminal case. No review of his case has been conducted after two years i.e., after 1987 as required under the Railway Board's letter dated 20.9.1982. Insofar as earlier orders of 1985 and 1986 are concerned, the applicant is not entitled to claim review as a matter of fact. However, as stated supra, on 24.7.1987 he was overlooked merely on the ground that either disciplinary action is contemplated or criminal case is pending against him. It is clear that in doing so, the applicant was being denied the rights or benefits of review available to him in terms of Railway Board's letter dated 20.9.1982. The application is accordingly allowed not as prayed for but to the limited extent that a direction do issue to the respondents to consider the applicant for adhoc promotion from the year 1987, in terms of Railway Board's instructions dated 20.9.1982 referred to above. There will be no order as to costs.

(Dictated in the open Court).

D. K. Chakravorty
(D.K.CHAKRAVORTY)
Member (Admn.)

D. S. R. Rao
(D.SURYA RAO)
Member (Judl.)

Dated: 24th July, 1989.

P.T.O.

S. Venkateswaran
DEPUTY REGISTRAR (S)