

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MRS. JUSTICE SHIRCY V.

WEDNESDAY, THE 14TH DAY OF JUNE 2017/24TH JYAISHTA, 1939

OP (CAT) .No. 170 of 2017 (Z)

AGAINST THE ORDER IN OA NO.180/00127/2014 OF THE CENTRAL
ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH DATED 20-02-2017

PETITIONER(S) :

1. GENERAL MANAGER, SOUTHERN RAILWAY
HEAD QUARTERS OFFICE,
PARK TOWN P.O.,
CHENNAI-600 003.
2. DIVISIONAL RAILWAY MANAGER
SOUTHERN RAILWAY, TRIVANDRUM DIVISION,
TRIVANDRUM-695 014.
3. SR. DIVISIONAL PERSONNEL OFFICER
SOUTHERN RAILWAY, TRIVANDRUM DIVISION,
TRIVANDRUM-695 014.
4. CHIEF PERSONNEL OFFICER
SOUTHERN RAILWAY, HEAD QUARTERS OFFICE,
PARK TOWN P.O., CHENNAI-600 003.

BY ADV. SRI.P.K.RAMKUMAR, SC, RAILWAYS

RESPONDENT:

S. RAHUMUDEEN
S/O. SHAHUL HAMEED
RETAIRED AD HOC SUPERVISOR (WORKS),
SOUTHERN RAILWAY, TRIVANDRUM
RESIDING AT RAILWAY QUARTERS NO.72-A,
ARISTO JUNCTION, THAMPANOOR,
THIRUVANANTHAPURAM-695 014.

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 14-06-2017,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMACHANDRA MENON, J.

&

SHIRCY V., J.

OP(CAT) No.170 of 2017

Dated this the 14th day of June, 2017

JUDGMENT

P.R. Ramachandra Menon, J.

The challenge is against Ext.P3 order passed by the Tribunal in O.A. No.180/00127/2014. The grievance is mainly with regard to the observation made by the Tribunal as to the course pursued by the petitioners herein [who were the respondents before the Tribunal] to the effect that the denial of promotion of the applicant was quite intentional and further, in imposing a cost of Rs.5,000/- upon them, while dismissing the original application.

2. The learned Standing Counsel appearing for the petitioners submits that the original petition is filed only to a limited extent for expunging such observation that the denial of promotion was intentional and also against imposition of cost for the alleged intentional delay. The prayers are in the

following terms:

"(i) To issue a certiorari or other appropriate writ, order or direction quashing the impugned order in OA No.180/00127/2014 dated 20th February, 2017 as far as it holds that the respondents intentionally delayed the promotion of the applicant.

(ii) To eschew that portion of the impugned order, whereby cost of Rs.5,000/- is imposed on the respondents, the petitioners herein, for causing intentional delay for the promotion of the application.

(iii) Pass such other orders that are deemed just, fair, fit and necessary in the facts and circumstances of the case."

3. The respondent/applicant joined the service of the Railways as a Gangman. Subsequently, he was promoted to the post of Adhoc Works Mistry [Supervisor Works] in the year 1989 and he was working as Supervisor. By virtue of this, being the senior most Adhoc Works Mistry, who had actually passed the trade test, he was to be considered for promotion on regular basis, but was not done so by the Railways. When the claims of the juniors by name S.Thankaraj and K. Rajan were considered and they were promoted as Junior Engineers, the respondent/applicant approached the Tribunal by filing O.A. No.275 of 2005, which was allowed, declaring the eligibility of the applicant to get promoted with reference to the date of

promotion of the junior by name K.Rajan. The observation as contained in paragraph 11 of the said verdict as extracted in Ext.P3 is in the following terms:

"11. It is declared that the applicant is entitled to grant of regular promotion from the date Shri.K. Rajan was promoted. Consequently, the applicant is also entitled to the benefit arising out of such regular promotion as was extended Shri.K. Rajan, namely promotion as Junior Engineer with effect from 01.11.2003. Such promotion shall be only notional and same shall be actual from the date of the applicant assumes duty of higher post. In addition, other consequential benefits such as entitlement to compete for Group 'B' post etc. are also available to the applicant."

4. The petitioners herein sought to challenge the said verdict by filing WP(C) No.23253 of 2008 before this Court. Interference was declined and the said writ petition was dismissed as per judgment dated 11.04.2013, directing the Railways to expedite the finalisation of the entitlement in accordance with the direction given by the Tribunal at the earliest, at any rate, within the period as specified therein. This was obviously for the reason that the respondent/applicant had retired from the service on 30.04.2007. Since the Railways did not give effect to the judgment passed by this Court as well,

the applicant moved this Court by way of Contempt of Court proceedings. It was at that point of time, that the petitioners produced Annexure A3 Pension Payment Order, stating that the order had already been complied with, which made this Court to close the Contempt of Court proceedings.

5. The applicant came to note that, despite the alleged compliance of the order, he was never promoted to the post of Junior Engineer with effect from 01.11.2003 as ordered by the Tribunal, which was upheld by this Court. In the course of further proceedings, the petitioners issued Ext.P4 promotion order dated 03.06.2013, which led to further proceedings, particularly when the retirement benefits by way of gratuity, Provident Fund etc. were not given to the applicant with effect from 01.11.2003. The prayers raised before the Tribunal in this regard were resisted by the Department, stating that they had already given effect to the order and that it was the applicant, who was misrepresenting things before the Tribunal. The matter was considered, upon which it was noted by the Tribunal that the applicant was still described as 'Supervisor' in the order stated as issued in implementation of direction. Taking note of

the facts and circumstances, the mistake was stated as rectified by the Railways and ultimately the matter led to Ext.P3.

6. It is true that there was a contention on the part of the Railways that the delay was also because of some intervention made by the Family Court, interdicting the Railways from disbursing the retirement benefits. The Tribunal took note of the fact that the Tribunal had directed the respondents in the OA to take appropriate action for causing the disbursement of the retirement benefit as per the Rules. It was referring to the sequence of events, particularly the nature of contention raised by the petitioners/Railways, seeking to justify their stand, that the adverse observations were made in paragraph 10 and elsewhere to the effect that there was a conscious attempt on the part of the Railways with regard to the promotion to be given to the applicant, as ordered by the Tribunal under Annexure A1 order and as per Annexure A2 judgment. The said callous action/inaction was deprecated as evident from the proceedings. The observations in paragraphs 11 & 12 also will be worthwhile to be extracted as given below:

"11. It is worth noting that the

respondents had produced Annexure A3 PPO dated 01.07.2013 before the High Court to make it appear that they had complied with the order of the High Court. Further a perusal of Annexure A3 shows that the applicant's designation is still shown as "Supervisor" although he was promoted as Junior Engineer with effect from 01.11.2003 as per Annexure A4 order dated 03.06.2013. Learned counsel for the applicant submitted that his pay has not been revised indicating the scale which is payable to a Junior Engineer.

12. The respondents contend that on 30.04.2013 the pension payment advice dated 29.04.2013 was prepared and thereafter the same was revised after issuance of Annexure A4 promotion order. It is worth noticing that despite the order of the High Court in Annexure A2 judgment the respondents did not promote the applicant before his retirement. The pleadings in the reply statement in this case have been drafted in such a way as to make it appear that the respondents have committed no delay in giving effect to Annexure A1 order of this Tribunal. In paragraph 4 of the reply statement the respondents even went to the extent of stating that even though he was promoted as Junior Engineer with effect from 01.11.2003 as indicated in Annexures A3 and A4, the applicant is stating blatant lies and therefore, "the present OA does not call for any further examination". The dates of implementation of this Tribunal's order and High Court's order are obvious enough to show that the respondents have been consciously making every effort to see that the applicant is not given the benefit of promotion prior to his retirement. Annexure A4 promotion order was issued nearly two months after his retirement. When Annexure A3 revised PPO was issued applicant's designation was again shown as Supervisor

instead of Junior Engineer.”

It was in the above circumstances, that a definite finding was rendered by the Tribunal as to the course and conduct to be deprecated; in turn ordering cost of Rs.5,000/-. The observations made by the Tribunal are intrinsically connected with the factual sequence and hence this Court does not find it as a fit case to expunge the same. The Tribunal is perfectly justified in awarding the costs, as well.

In the above facts and circumstances, we find that the original petition is devoid of any merit and it stands dismissed.

Sd/-

**P.R.RAMACHANDRA MENON,
Judge.**

Sd/-

**SHIRCY V,
Judge.**