

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO.2694/2002

NEW DELHI THIS.....⁵¹⁻ DAY OF July 2005

(31)

HON'BLE SHRI JUSTICE M.A. KHAN, VICE CHAIRMAN(J)
HON'BLE SHRI S.A. SINGH, MEMBER (A)

Shri D P Verma,
Booking Supervisor, Northern Railway,
Railway Station, Gurgaon.

.....Applicant

(By Advocate: Shri B S Mainee)

VERSUS

1. The General Manager,
Northern Railway, Baroda House,
New Delhi
2. The Divisional Railway Manager,
Northern Railway, Bikaner (Rajasthan)

(By Advocate: Shri R L Dhawan)

ORDER

BY HON'BLE SHRI S A SINGH, MEMBER (A)

The applicant is a Booking Supervisor of Northern Railway and aggrieved by the impugned order dated 17.11.2000 and 1.8.2001 wherein his representation for promotion and fixation of pay on promotion as Booking Supervisor in Grade Rs.5500 – 9000/- (RP) has been rejected.

2. The applicant has prayed that his name be included in the promotion list issued on 5.8.1994 and fix his salary on par with his juniors who had been given ad hoc promotion. It is the averment of the applicant that he had been declared successful in the selection of Booking Supervisor in the grade of Rs.1600-2600 / 5500-9000 by the respondents by their order dated 26.2.91 but he was not promoted

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because of punishment of reduction to a lower grade for a period of 6 months. This punishment was completed on 19.3.1993. Hence he should have been promoted as Booking Supervisor w.e.f. 20.3.1993 and pay fixed accordingly.

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3. He was promoted as Booking Supervisor in the grade of Rs. 5500 - 9000/- vide respondents' letter dated 9.10.1998 fixing his pay at Rs.6375/- The applicant pleads that after 20.3.1993 there was no punishment pending against him and at the time of re-structuring orders were issued vide DPO's order 13.4.1994 his name should have been included just below the name of Shri Dwarika Prasad Sharma but this was not done. Further his name was again ignored in DPO's letter dated 5.8.1994 when it should have been placed just below the name of Shri Balbir Singh and above Shri Ram Saran. Therefore, he should be given promotion as Booking Supervisor w.e.f. 20.3.1993 and his pay should be fixed accordingly.

4. The respondents have contested the averments of the applicant stating that the application was barred by limitation and is not maintainable under section 21 of AT Act. The respondents pleaded that the applicant had submitted his representation on 30.7.1999 (copy of which is at R-II). Therefore the present OA has been filed after expiry of limitation period and in the MA for condonation of delay sufficient reasons have not been given for granting this plea. The respondents relied upon the case of **P K Ramachandran Vs State of Kerala (JT 1997 (8) SC 189)** where the Supreme Court had laid down that "*law of limitation may harshly affect a particular party but it has to be applied with its rigor when the statute so prescribed and the courts have no power to extend the period of limitation on equitable grounds.*" They also relied upon the case of **Rattan Chandra Samanta & Ors Vs Union of India & Ors. JT 1993 (3) SC 418** where it is held that delay deprives a person who has lost his remedy by lapse of time, loses his right as well.

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5. Before taking up the case of merit, we will go into the case of limitation. The applicant in his MA No. 2290/2002 for condonation of delay stated that his case was finally rejected on the basis of letter-dated 1.8.2001, which was served on the applicant through Sr. Supdt. Gurgon on 8.8.2001. The applicant had filed the application on 27.09.2002, which is about 20 days after expiry of the period of one year. This delay according to the applicant is because of erroneous advice given by local advocate that the limitation period is 1½ year from the date of issue of order. The applicant was promoted by respondents' letter dated 9.10.88 and he made a representation on 30.7.1994 requesting the respondents to fix his salary at par with his juniors. When the applicant received no reply he sought an interview with DPO Bikaner on 6.9.2000, as a result of which, the respondents passed order-dated 17.11.2000 (Annexure A-I).

6. The applicant being not satisfied with this order made representation on 22.1.2001 and this was finally rejected vide impugned order dated 1.8.2001. The applicant thereafter, has filed the present OA. Though repeated representations do not give rise to condonation of delay, however, this is a matter concerning fixation of pay and should be considered as the recurring cause of action. We therefore, have taken a lenient view in the interest of justice and condone the delay.

7. It is the contention of the respondents that Shri Ram Saran (SC) was junior to the applicant in the initial grade of Rs. 975-1540/- . However, being SC candidate he was promoted earlier to the applicant as Senior Booking Clerk and Head Booking Clerk on 29.4.1978 and 1-1-1984 respectively. In 1992 a selection was conducted for the post of Booking Supervisor in the grade of Rs. 1600-2660/- on the basis of seniority grade of Rs.1400-2300/- . Ram Saran being senior in the grade of Rs. 1400-2300/- as he was borne on the panel of Booking Supervisor and the applicant could




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not find place on the panel due to non-qualifying the professional aptitude test. However, w.e.f. 1.3.1993 re-structuring of the cadre was done but the applicant could not be promoted for the reason that on this date a major penalty charge sheet was pending against him. He was awarded the punishment of reduction to lower time scale for one year with postponing future increments and loss of seniority imposed by order dated 18.1.1993 (copy of which placed at R-III). On appeal this punishment was reduced to reduction to lower time scale for six months with postponing future increments and loss of seniority. In 1994 ad hoc promotions were given because of non holding of the selection for the post of Booking Supervisor, so the applicant was also considered along with others but could not be given promotion as another SF-5 was pending against him. After two months of issuing ad hoc promotion order, the disciplinary authority disposed of SF-5 but in July 1995 the applicant was again served with SF-5 for major punishment because of a vigilance case. He was awarded punishment of reduction in the same time scale by one stage for a period of 4 years without postponing future increments which was reduced to "CENSURE" on appeal. So in view of this, the applicant was not senior to Shri Ram Saran (SC) who retired ad hoc Chief Booking Supervisor in March 1995. The pay of the applicant has, therefore, been correctly fixed.

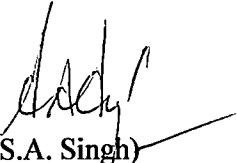
8. We have heard the counsel for the parties and perused the documents placed on record. The applicant has prayed that his name should be included in the promotion list of persons who were given ad hoc promotion on 5.8.1994 and pay fixed accordingly. He has claimed that on 20.3.1993 no punishment was pending against him and as such when orders for re-structuring were passed on dated 13.4.1994, he should have been included just below Dwarika Prasad Sharma. We find that this does not hold as he was awarded the punishment of reduction to lower



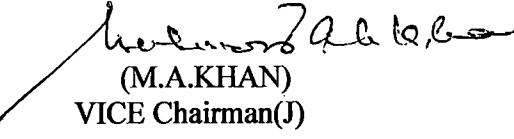
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time scale for one year with postponing future increments and loss of seniority vide Sr. DCM OIP letter dated 18.1.1993 which was reduced on appeal to reduction to lower time scale for six months with postponing future increments and loss of seniority. Hence to claim that on 20.3.1993 no punishment was pending against the applicant is not borne out by the facts. The applicant had also relied on DOPs letter dated 28.6.94 where his name was shown at Sr. No. 13 below Balbir Singh and above Shri Ram Saran. However, this also dose not hold water as the respondents vide their letter dated 2.5.95 had modified the letter of 28.6.1994 and the seniority of the applicant was depressed by six months on 17.7.93, and he was placed below Shri Harbans Lal and above Shri Jai Narain Yadav at srl No. 19 & 20 of the seniority list. The applicant did not challenge this at appropriate time.

10. In view of foregoing we find the OA is without merit and is dismissed. No costs.


(S.A. Singh)

Member (A)


(M.A.KHAN)

VICE Chairman(J)

Patwal/