

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 787/2012

Reserved on : 18.12.2019
Pronounced on: 08.01.2020

Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhaya, Member (A)

L.K.Meena S/o Late Shri Prabhu Dayal Meena age about 55 years, R/o 41, Puran Vihar Banad Road Via Jhotwara, Jaipur working as ACM IInd NWR, Ajmer through his legal representative Smt. Reshma Devi W/o Late Shri L.K.Meena S/o Late Shri a/a 50 years, R/o 41, Puran Vihar Banan Road Via Jhotwara, Jaipur.

...Applicant.

(By Advocate: Shri Kinshuk Jain)

Versus

1. Union of India through General Manager, North Western Railway, H.Q. Office, Jagatpura, Jaipur.
2. The Divisional Railway Manager, North Western Railway, Jaipur Division, Jaipur.
3. The Divisional Railway Manager (E) North Western Railway, Ajmer.
4. The Chief Commercial Manager, North Western Railway, Jaipur.

...Respondents.

(By Advocate: Shri Anupam Agarwal)

ORDER

Per: A.Mukhopadhaya, Member (A):

Aggrieved by an order dated 23.11.2012 reverting him from Group 'B' post of Assistant Commercial Manager, (ACM), to the Group 'C' post of Divisional Commercial Inspector, (DCMI), this Original Application, (OA), was preferred by the applicant, Shri L.K.Meena, (since deceased), seeking the following relief:-

**Record pertaining to the case be called and
after perusal of the same the impugned order**

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dated 23.11.2012, (Annexure-1), be quashed and set aside.

Any other appropriate remedy/direction which is just and proper be awarded to the applicant.

2. After the death of the applicant on 04.11.2014, his wife Smt. Reshma Devi moved MA No.291/00133/2015 which was allowed on 13.08.2015 and she was ordered to be brought on record as the applicant's legal representative to pursue the present Original Application. It has been contended by the applicant that the impugned order dated 23.11.2012, (Annexure A/1), is one which had severe adverse civil consequences and was passed *suo moto* by the respondents without issuing a show cause notice to him or indeed affording him any opportunity of a hearing in accordance with the principles of natural justice; (para 5 D of OA refers). Not only this, the order is also a cryptic non-speaking one which gives no reason whatsoever as to why the respondents took the decision in question; (para 5 C of OA refers). Finally, the order, according to the applicant, also represents a violation of Railway Board Master Circular No.68, (Para 13.3 and 204 of IERM), which reads as follows:

"13.3. The recommendations of the Selection Committee should be put up to the General Manager for approval. If he does not approve of the recommendations he will record his reasons in writing therefore, and order a fresh selection. Once a panel is approved by the General Manager no amendment or alteration in the panel should

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be made except with the prior approval of the Railway Board."

3. It is contended by the applicant in this context that the original applicant was placed on a panel for promotion by approval of the General Manager and therefore that no amendment or alteration of this panel can be made except with the prior approval of the Railway Board which was not taken in this case. Accordingly, the applicant has prayed for quashing and setting aside the order and for issuance of other appropriate directions.

4. In reply, the respondents aver that the applicant suppressed material facts relevant to the case in a criminal proceeding, (Special Case No.90 of 2000), was pending against him in the Court of Special Judge for CBI at Mumbai, (pages 59 to 112 of Paper Book refer), in which the applicant was being tried under the Prevention of Corruption Act for having hatched a conspiracy and demanded a bribe of Rs.7000/- from the complainant in that case. They aver that while the original applicant was subsequently exonerated in that case such exoneration, in their view, was not clear or honourable as it was based on the finding of the CBI Court that **"the prosecution has failed to prove the charges levelled against the accused beyond reasonable doubt"** and that **"therefore, the defence story thrusting the said amount in the hands of accused no.2 to link accused no.1, (the original applicant in this case), cannot be totally**

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ruled out. Therefore, I answer point nos.1 to 3 in the negative and proceed to pass the following order:-

The accused no.1 Laxmi Kant Meena and Accused no.2 and Suresh Chand Meena are hereby acquitted under section 235(1) of Cr.P.C. 1973 of the offences punishable under sections 7, 13(1) (d) r/w section 13(2) of Prevention of Corruption Act 1988 and under sections 120-B and 192 of I.P.C..."; (pages 110 and 111 of the Paper Book refer).

5. Thus, the respondents aver that in view of the nature of the exoneration as well as the suppression of material facts related to his inter Railway transfer from Western Railway to North Western Railway in 2003 and subsequent promotion in North Western Railway in 2012; (Annexures A/7 and A/8 refer), the applicant is not entitled to seek the setting aside of an order of promotion obtained by means of deliberate non-disclosure and fraud spanning a number of years. They thus pray that the OA, being devoid of merit, be dismissed.

6. Heard the learned counsels for the applicant and the respondents and perused the material available on record. Learned counsels for the applicant and the respondents reiterated the arguments given in the OA and the reply to the same respectively.

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7. During arguments, learned counsels for the applicant and the respondents produced a speaking order passed by the respondents in pursuance to this Tribunal's order in another OA No.7/2013, (Annexure C/1), as well as a copy of RBE No.13/93, (Annexure C/2), respectively which were ordered to be taken on record.

8. In addition to the grounds and arguments preferred in the OA, learned counsel for the applicant pointed out that the speaking order related to OA No.7/2013, (Annexure C/1), clearly states as follows:-

"Shri L.K.Meena has not been depanelled but only his promotion orders from Group 'B' post have been cancelled in terms of the procedure and guidelines issued by Railway Board vide RBE No.13/1993 dated 21.01.1993 wherein it is laid down that in case of promotion from Group 'C' to Group 'B' if there is any major penalty charge sheet/prosecution in criminal charges pending against any railway servant than he shall not be promoted even if already borne on a selection panel till after the results of the proceeding against him are known. Therefore, the name of Shri L.K.Meena is still borne on the panel and the post has been kept vacant till the finalisation of the case and no other candidate can be considered against the said vacancy. Hence, your claim for promotion against the post cannot be considered . Moreover, in the case of Shri L.K.Meena vs. UOI in OA No.787/2012, (*the present OA*), which is pending before Hon'ble CAT/JP. Shri L.K.Meena has produced orders of acquittal from the Special Court of CBI/Mumbai through an MA. "

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9. The applicant's counsel argued that now that the clear and unconditional exoneration of the applicant is an established and undisputed fact from the order passed by the Court of Special Judge for CBI at Mumbai on 13.12.2012, (pages 59 to 112 of Paper Book refer), there remains no reason why the respondents should not restore the *status quo ante* and treat the original applicant as having been promoted from 28.09.2012, (Annexure A/7), with all consequential benefits for him and his legal representative.

10. Learned counsel for the respondents, in his arguments, reiterated that the applicant remains guilty of suppression of material facts relating to a CBI case pending trial against him in court, both at the time of his transfer from Western Railway to North Western Railway in 2003 and subsequent promotion in North Western Railway in 2012. He also argued that the wording of the CBI Court order exonerating the applicant in that criminal case strongly suggests that the court gave him the benefit of doubt while exonerating him and therefore, given this position, since the applicant also obtained his inter Railway transfer from Western Railway to North Western Railway and subsequent promotion in North Western Railway through a deliberate non-disclosure of material facts as well as active fraud, his claim to the benefit of RBE No.13/93, (Annexure C/2), becomes unsustainable as such. **"fraud unravels everything, even a**

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statutory provision, if it is a stumbling block, because the legislative never intends to guard fraud”; (para 9 of reply refers). Citing the case of **Inderjit Singh Grewal vs. State of Punjab and Another** (2011) 12 SCC 588, (para 9 of reply to OA refers), he argued that where a person gets an order/office by making misrepresentation or playing fraud upon the competent authority, such order cannot be sustained in the eyes of the law as fraud unravels everything. He also argued that the respondents have only **“rectified the illegality which resulted on account of fraud played by the applicant”**, (para 8 of reply refers), and therefore no principles of natural justice were violated in passing the impugned order dated 23.11.2012; (Annexure A/1).

11. A perusal of the record in this case however clearly supports the applicant's contention that the impugned order is a cryptic and non-speaking one in that no reason is given in the order itself for the original applicant's reversion. As regards the respondents' contention that the applicant obtained his inter-Railway transfer and subsequent promotion by way of deliberate non-disclosure and fraud, despite pointed questions from the court, the respondents were unable to give any details of the specific rules or procedures which mandate that the applicant is required to provide such information *suo motu* during either process of

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transfer or promotion or indeed any standard format in which such information is required to be disclosed.

12. Given this position, it is difficult to see how the respondents' allegation of a continuing fraud having been played by the applicant upon them can be sustained especially where prior to his promotion in NWR, the original applicant was accorded vigilance clearance by the respondents; (Annexure A/5 dated 12.09.2012 refers). Again, a perusal of the CBI Court order dated 13.12.2012, (pages 59 to 112 of the Paper Book) refers), reveals as follows:

"the prosecution has failed to prove the charges leveled against the accused beyond the reasonable doubt. There is absolutely no evidence adduced by the prosecution about the conspiracy between the accused nos1 and 2 as alleged. The evidence of PW-1 about the demand and acceptance of bribe amount is not corroborated in material particulars. The facts mentioned earlier do not prove beyond the reasonable doubt the demand of bribe amount by the accused no.1 through accused no.2 as alleged. Therefore, the defence story thrusting the said amount in the hands of accused no.2 to link account no.1 cannot be totally ruled out. Therefore, I answer point nos.1 to 3 in the negative and proceed to pass the following order:-

The accused no.1 Laxmi Kant Meena and Accused no.2 and Suresh Chand Meena are hereby acquitted under section 235(1) of Cr.P.C. 1973 of the offences punishable under sections 7, 13(1) (d) r/w section 13(2) of Prevention of Corruption Act 1988 and under sections 120-B and 192 of I.P.C."
- (pages 110 and 111 of the Paper Book refer).

13. A plain reading of the relevant portion of this judgment, as reproduced above, does not in any way support the respondents' case that the exoneration of the applicant in the criminal case in question was in any way conditional or granted by giving him the benefit of doubt. In the circumstances, the entire argument of the respondents that the exoneration/acquittal of the applicant was not a clear and honourable one is found to be without basis in fact and law.

14. We have also noticed that RBE No.13/93, (Annexure C/2), specifically provides as follows:

"5.3 If the Railway servant concerned is acquitted in the criminal prosecution on the merits of the case or is fully exonerated in the departmental proceedings, the ad-hoc promotion already made may be confirmed and promotion treated as regular one from the date of ad-hoc promotion with all the attendant benefits. In case the Railway servant could have normally got his regular promotion from a date prior to the date of his ad-hoc promotion with reference to his position in the selection panel/suitability list and the actual date of promotion of the person ranked immediately junior to him in the same panel/select list, he should also be allowed due to seniority and benefit of proforma promotion as envisaged in paras 3.5 and 3.6 above. "

15. Thus, from a plain reading of the above mentioned provision of the respondents' own RBE No.13/93 dated 21.01.1993, it is abundantly clear in this case that the original applicant, who has

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undeniably been acquitted in the criminal prosecution in question based on the merits of the case and against whom any charge of fraud by misrepresentation does not sustain, should be restored his regular promotion in the manner prescribed in para 5.3 of RBE No.13/93.

16. In the result, the OA succeeds and the impugned order dated 23.11.2012 reverting the original applicant from a Group 'B' post to a Group 'C', post, (Annexure A/1), is hereby quashed and set aside with all consequential benefits being allowed to the original applicant. The respondents are directed to carry out the exercise to determine these benefits and confer/disburse the same including, but not being restricted to, arrears of pay and allowances, benefits payable on retiral/death and family pension *et al* to the legal heir of the original applicant as per rules and policy in force. The entire exercise shall be carried out within a period of two months from the date of receipt of a certified copy of this order.

17. There shall be no order on costs.

(A.Mukhopadhaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

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