

**Central Administrative Tribunal  
Principal Bench**

**OA No. 3305/2014**

New Delhi, this the 26<sup>th</sup> day of February, 2020



**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman  
Hon'ble Mr. A.K. Bishnoi, Member (A)**

Sh. Hirdesh Kumar, Age 37 years  
 S/o late Sh. Uttam Chand  
 Sr. Section Engineer, (P. Way)  
 Office of Divisional Railway Manager  
 Northern Railway, State Entry Road, New Delhi. ...Applicant

(By Advocate : Ms. Meenu Mainee with Sh. Shiv Kumar Sharma)

**Versus**

Union of India through

1. The Secretary  
 (Railway Board), Ministry of Railways  
 Rail Bhavan, New Delhi.
2. The General Manager  
 East Coast Railway, Bhubaneswar.
3. The Divisional Railway Manager  
 East Coast Railway, Sambalpur.
4. The Divisional Railway Manager  
 Northern Railway  
 State Entry Road, New Delhi. ...Respondents

(By Advocate : Sh. Shailendra Tiwary)

## ORDER (ORAL)

**Justice L. Narasimha Reddy, Chairman :-**



The applicant was working as Senior Section Engineer (SSE) in the East Coast Railway in the year 2007. He was issued a charge memo on 29.01.2007, alleging certain irregularities as to his functioning. Promotion from the post of SSE is, to the post of Assistant Engineer (AEN). The process involved conducting of a written test and viva voce. The written test was conducted on 21.07.2007 and interview was held on 26.05.2008. The result of the selection was declared through memorandum dated 02.06.2008 and, eight officials were selected for promotion. It was, however, mentioned that the selection shall be subject to the result of the disciplinary proceedings initiated against the applicant, since he was found fit to be promoted and is being denied on account of pendency of the disciplinary proceedings. The applicant made a representation claiming relief and that was rejected through order dated 28.07.2011. This OA is filed challenging order dated 28.07.2011 and for a direction to the respondents to promote him to the post of AEN, with all consequential benefits. The applicant contends that the order dated 28.07.2011 is bereft of any reasons.

2. The respondents filed counter affidavit stating inter alia that, the denial of promotion to the applicant was on account of pendency of disciplinary proceedings against him.



3. We heard Ms. Meenu Mainee, learned counsel for the applicant and Sh. Shailendra Tiwary, learned counsel for the respondents.

4. It is a matter of record that, the applicant took part in the written test and interview and has also been found fit by the Selection Committee. This is evident from the following paragraph of the memorandum dated 02.06.2008

“2) The above selection panel will remain provisional. The qualified staff in the above provisional selection panel are advised that their position in the selection panel is liable to be altered depending upon the result of the major penalty charge sheet D&A proceedings against one of the candidates namely Shri Hirdesh Kumar (SC), SSE/USFD/KBJ/SBP who but for his major penalty D&A proceedings in SBP vide No. SF-5 No. DAR/HK/SSE/P/USFD/KBI dated 25/29.2007 would have been included in the provisional selection panel in terms of RBE No. 13/93.”

5. It is not uncommon that whenever an official is facing disciplinary proceedings, sealed cover procedure is adopted, in the context of promotion. What was done by the respondents, is a semblance of that. Therefore, much would depend upon the outcome of the disciplinary proceedings. The applicant was imposed a penalty of reduction of pay scale by two stages, for a period of six months with cumulative effect, through order dated 05.03.2009. Had the punishment remained in force, the applicant would not have been entitled, to be promoted.

6. The applicant filed OA No. 3388/2014 before this Tribunal challenging the order of punishment. The OA was allowed on



03.04.2019 and the order of punishment was set aside. In Para 11 of the OA, it was held as under:

“11. Accordingly, the OA is allowed and the impugned order is set aside. In case the applicant has been denied any promotion on account of order of punishment, the respondents shall consider the feasibility of restoring it, but the applicant shall not be entitled for back wages in this behalf.”

7. It is brought to our notice that the order passed in OA No. 3388/2014 was upheld by the Hon’ble High Court of Delhi in WP(C) No. 384/2020. With that, the impediment for his promotion, stands removed.

8. We, therefore, allow the OA and direct that the applicant shall be promoted to the post of AEN w.e.f. the date on which his junior was promoted but he shall not be entitled to be extended any backwages. However, his emoluments shall be decided by counting the entire period, by reckoning his service on the promoted post from the date on which his juniors were promoted. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.

**(A.K. Bishnoi)**  
**Member (A)**

**(Justice L. Narasimha Reddy)**  
**Chairman**

/ns/