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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

12
O.A.NO.1105/2001

Wednesday, this the 24th day of April, 2002

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (A)

R.C. Sagar
Working as OS-II, T Section
DRM Office, Northern Railway
Muradabad

..Applicant
(By Advocate: Shri G.D.Bhandari)

Versus

1. Union of India through the General Manager
Northern Railway, Baroda House, New Delhi
2. The General Manager
Northern Railway, Baroda House, New Delhi
3. The Divisional Railway Manager
Northern Railway, Muradabad Division
Muradabad

..Respondents

(By Advocate: Shri R.L.Dhawan)

O R D E R (ORAL)

Shri S.A.T. Rizvi, M (A):-

Under challenge in this OA is the DRM (P) Northern Railway, Muradabad Division's letter dated 8.3.2001 (A-1) by which the decision taken at the Headquarters' level in the applicant's case arising from the PNM meeting held at General Managers level on being sponsored by NRMU, has been conveyed.

2. The facts of this case relevant for adjudication of the present OA briefly are that the applicant initially appointed as Clerk in 1978 became Senior Clerk on promotion w.e.f. 14.10.1982. He became due for promotion to the next higher post of Head Clerk w.e.f. 1.1.1983 as per the roster. But after an abnormal delay of more than seven years, the applicant has been promoted

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(2)

as Head Clerk w.e.f. 3.7.1990 (R-1). A fact finding enquiry by the SPE was instituted against him on 19.10.1982. The SPE's report recommending departmental action against the applicant was transmitted on 9.10.1983. The applicant's case is that since he had become ripe for promotion in accordance with the roster point w.e.f. 1.1.1983, i.e., from a date prior to the date of receipt of SPE's recommendations, the withholding of his promotion was illegal and improper, more so, because his case for promotion had already been forwarded prior to 9.10.1983. The SPE's recommendations aforesaid led to the institution of departmental proceedings against the applicant which culminated in the appellate authority's order dated 26.7.1989 (A-7) by which the penalty imposed on him was reduced by the appellate authority to one years reduction to lower grade without affecting future benefits. The promotion order dated 3.7.1990 (R-1) has been passed after the duration of the punishment imposed on the applicant had expired.

3. The learned counsel appearing on behalf of the respondents submits that the present OA is not only barred by limitation, but also by territorial jurisdiction. According to him, the applicant was not considered fit for promotion on the basis that his work was not found to be satisfactory, and accordingly a letter was issued to him on 28.2.1983 (R-2) conveying the same. The respondents issued a further letter dated 19.3.1983 to the Divisional Secretary of the NRMU conveying the aforesaid position in respect of the applicant. In that letter, it was also clarified that

14

(3)

the matter had also been reviewed by the DRM in accordance with the rules. Thus, by March, 1983, it had been duly conveyed to the applicant that his claim for promotion had been rejected and that the competent authority's order in the matter had also been reviewed by the DRM and was upheld. This fact has not been seriously disputed and categorically enough. The applicant has, in the circumstances, approached this Tribunal more than 15 years after the rejection of his claim had been conveyed to him. Accordingly, the OA is barred by limitation.

4. The learned counsel appearing on behalf of the applicant submits that the limitation in the present case stands revived, *inter alia*, for the reason that the applicant's claim has been, after considering his representation, rejected on merits on 8.3.2001. The learned counsel for the respondents disputes this position by stating that the impugned letter of 8.3.2001 A-1) does not convey any fresh decision made at any level in the Railways. A perusal of the aforesaid letter (A-1) clearly shows that the same merely restates the existing position, when it says that 'he was not considered fit for promotion by the competent authority, i.e., Senior DOS and the matter was also seen by the DRM in February, 1983'. The impugned letter (A-1) also states that a perusal of the record showed that the applicant, who was to be considered for promotion from 1.1.1983 against the roster point for SC, was assessed on the basis of his working report as by the time he became due for promotion (1.1.1983) he had not earned any ACR as Senior Clerk due to his promotion as Senior Clerk having been made only on

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15

14.10.1982. Furthermore, by stating in the same impugned letter (A-1) that "Therefore, registration of the case against Shri R.C. Sagar was not point of with-holding his promotion", the DRM (P) Muradabad had merely conveyed that his promotion to the post of Head Clerk was not withheld on account of the registration of the case by the SPE, and that as a matter of fact he was not considered fit for promotion on the basis of his working report. The learned counsel appearing on behalf of the respondents submits that in view of what has been just stated, it is not possible to conclude that the impugned order (A-1) conveys any fresh decision in the matter. For the same reason, the impugned letter (A-1) cannot be said to have been issued after examining the merits of the applicant's representation afresh. Moreover, the applicant was eventually promoted in July, 1990 which he accepted without demur. Thus, the aforesaid plea cannot assist the applicant in beating limitation. We agree.

5. On the issue of territorial jurisdiction, the learned counsel appearing on behalf of the respondents submits that the impugned order dated 8.3.2001 has been issued by the DRM, Muradabad, who is the competent authority in the matter. The applicant himself, according to him, works at Muradabad and is subject to the jurisdiction of the DRM, Muradabad. He is also a resident of Muradabad. His grievances relate entirely to the jurisdiction of the Muradabad Division. The applicant has not filed any application for transfer under Section 25 of the Administrative Tribunals Act, 1985. The OA is, in the circumstances, barred by

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(5)

territorial jurisdiction and deserves to be dismissed on this ground alone. The learned counsel for the applicant submits that the territorial jurisdiction of the Principal Bench gets attracted in the present case as the impugned letter of 8.3.2001 (A-1) conveys a decision of the General Manager of the Northern Railway, who is Headquartered at Delhi. We have already noticed in the above that the impugned letter of 8.3.2001 does not in fact convey any decision of the General Manager, Northern Railway. The same merely recalls the details of the action already taken in the past way-back in 1983 and does nothing more. The ultimate remedy in the matter lies with the DRM, Muradabad. In the circumstances, we agree with the learned counsel for the respondents that the territorial jurisdiction of the Principal Bench does not get attracted in the manner argued by the learned counsel for the applicant. The OA, therefore, fails on the ground of territorial jurisdiction as well.

6. On considering the submissions made by the learned counsel on either side on the merits of the applicant's case, we find that though the applicant may have become ripe for promotion to the post of Head Clerk as on 1.1.1983, and a vacancy may also have existed on the same date, yet it cannot be argued that the applicant had a vested right to get promoted from that very date. The respondents having become aware of the fact finding enquiry instituted against the applicant by the SPE in October, 1982 were, by the very nature of things, correctly advised not to hasten the process of applicant's promotion to the post of Head Clerk. In

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October, 1983, the SPE's recommendations became available in pursuance of which regular departmental proceedings were to be initiated against the applicant. The same were indeed initiated in 1984 and the applicant was penalised as already stated by the appellate authority's order dated 26.7.1989 (A-6). In due time, thereafter, he has been promoted to the post of Head Clerk by respondents' order dated 3.7.1990. Thus, to all intents and purposes, the action in the matter has proceeded in accordance with the requirement of the situation and consistently with the rules pertaining to the conduct of disciplinary proceedings in cases in which SPE is called upon to investigate. 17

7. The learned counsel appearing on behalf of the applicant has raised an issue about the performance of the applicant during 1982-83. His contention is that having regard to the available record, the applicant's performance could not have been said to be unsatisfactory and, therefore, his claim for promotion could not be rejected in 1983 on the ground of being found unfit. In this connection, he has drawn our attention to the documents placed at A-8. These two documents placed at pages 23 & 24 of the paper book do go to show that the applicant did not earn any ACR for the period ending 31.3.1983. According to the learned counsel, this situation should mean and imply that the applicant's performance during the period in question was satisfactory and he should, therefore, have been promoted. We do not agree. Merely because an official's ACR is not recorded for a particular period, it cannot,

2

(7)

in our judgement, imply that his performance during the period in question should be deemed to be satisfactory. Secondly, as revealed by the documents placed at pages 23 & 24, it is at the level of the reporting authority that the applicant's ACR for 1982-83 remained incomplete. The next higher authorities in the hierarchy qua reviewing/accepting authorities may well have entered their remarks in the ACR to complete the assessment of the work and conduct of the applicant for the year. In any case, the competent authority supposed to take a decision in the matter of promotion can always assess the work and conduct of an official even in the absence of the ACR for a particular period and can arrive at his own conclusion with regard to the work and conduct of the official and based thereon decide the matter. This is what the respondents appear to have done in the present case. Moreover, neither the rules governing promotion nor those relating to writing of the ACRs have been placed on record to enable us to come to a precise and definite conclusion about the worth of the ACR related documents (not ACR) placed at pages 23 & 24 of the paper book or about the role which the aforesaid documents could play in the matter of his promotion. In these circumstances, we find nothing wrong with the respondents' action in this regard. Accordingly, the aforesaid plea taken by the learned counsel for the applicant is found to be untenable and is rejected.

8. The respondents have no doubt remained engaged both before and after the applicant was promoted in July, 1990 in ascertaining whether according to the rule

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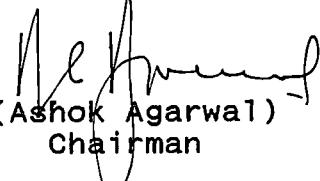
19

(8)

position mere registration of a case by the SPE in October, 1982 could prevent the consideration of his claim for promotion w.e.f. 1.2.1983, but that by itself cannot assist the applicant in getting his promotion antedated to 1.2.1983 even if it is found that the rules favoured the applicant's plea in that regard. That another person who was similarly involved in SPE investigation got away with promotion in January, 1983 will also not help the applicant. The fact remains that before the applicant could be promoted a departmental enquiry had begun against him in 1984 which concluded in 1989 whereafter he was promoted in July, 1990.

9. In the light of the foregoing, we find no merit nor any substance in the present OA which is dismissed without any order as to costs.


(S.A.T. Rizvi)
Member (A)


(Ashok Agarwal)
Chairman

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