

Central Administrative Tribunal: Principal Bench

O.A. No. 1182/2001

New Delhi this the 8th day of August, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri V.K. Majotra, Member (A)

Kharati Lal
S/o Shri Nanak Chand
working as SPO, Hd. Qrs.
Baroda House, Northern Railways
New Delhi.

-Applicant

(By Advocate: Shri K.K. Patel)

Versus

1. Union of India
through the Chairman,
Railway Board, Rail Bhawan,
New Delhi.

2. General Manager,
Northern Railway,
Headquarters Office,
Baroda House,
New Delhi.

-Respondents

(By Advocate: Shri H.K. Gangwani)

O R D E R

Hon'ble Shri V.K. Majotra, Member (A)

The facts of this case, briefly stated, are that applicant was APO (a Group B officer) in the scale of Rs.2375-3750 revised to Rs.7500-12000 and was due to be considered for placement in the senior scale, i.e., Rs.3000-4500 revised to Rs.10000-15200 on ad hoc basis on consideration by DPC as per PS 10140. He was considered by DPCs which met from 1989 to 1997 but was not found fit by DPCs held upto 1993. In the meanwhile, he was served two charge sheets, one on 25.3.91 for major penalty and another on 24.10.97 for minor penalty. Accordingly, the recommendations of the DPC meetings in respect of the applicant were kept in the sealed cover due to pendency of these DAR cases. Vide order dated 26.3.98, applicant,

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in one of the enquiries was awarded minor penalty of stoppage of three sets of privilege passes in major penalty charge sheet. Vide order dated 24.10.97 penalty of stoppage of three sets of privilege tickets was imposed in minor penalty charge sheet. In 1997, applicant filed OA No.1704/97 before this Tribunal seeking opening of the sealed cover. The department opened the sealed cover and accorded ad hoc promotion to applicant in the senior scale vide order dated 27.8.98. The OA was disposed of vide order dated 4.9.98 (Annexure P-3) directing the respondents to take a decision regarding the date from which applicant's promotion would take effect and the consequential benefits, if any, within a period of three months from the receipt of a copy of that order. Liberty was granted to the applicant to approach the Tribunal again in accordance with law on remaining aggrieved with the decision of the respondents. Applicant has challenged Annexure P-1 dated 10.3.99 whereby respondents in pursuance of court's order dated 4.9.98 denied applicant's claim for ad hoc promotion from the date of promotion of his junior to senior scale stating that applicant had not been completely exonerated in the DAR proceedings. He has further challenged Annexure P-2 dated 12/22.9.2000, whereby applicant's representation dated 7.8.2000 for fixation of pay has been rejected and decision contained in Annexure P-1 has been reiterated.

2. Learned counsel of the applicant Shri K.K. Patel, placing reliance on Railway Board's circular dated 12.2.93 stated that as the applicant had been imposed

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minor penalty only, he is entitled for promotion to higher grade if recommended by DPC from the same date on which his immediate junior was promoted along with all consequential benefits.

3. On the other hand, learned counsel of the respondents Shri H.K. Gangwani contended that as the applicant had not been completely exonerated in departmental enquiries against him, applicant has been correctly accorded benefit of promotion prospectively. He placed reliance on instructions contained in paragraph 3.1 of Railway Board's circular dated 22.1.93. He further relied on order dated 8.10.2001 in OA-782/99 **Rajesh Kumar Goyal Vs. Union of India & Ors.** Applicant, therein, had challenged promotion of a respondent while he was undergoing penalty. The Tribunal disposed of that OA with the following observations:-

"Our attention has been invited to respondents circular dated 22.1.93 enclosed with their reply containing guidelines to be followed in case of promotion of Group 'D' and Group 'C' Railway Servants. Para 3.3. (b) thereof states that those employees who are not under suspension and against whom disciplinary proceedings for imposition of minor penalty have been initiated can be included for selection. Further Para 3.1 lays down that there is no objection to promote a Railway Servant if he is not under suspension and proceedings already initiated are for imposition of only a minor penalty.

Admittedly Respondent no.4 was not under suspension, and the penalty order dated 17.6.97 imposes only a major penalty. It is also not denied that pursuant to R-4's empanelment by letter dated 1.1.96, he was actually promoted w.e.f. 30.6.99 after expiry of WIT for 2 days w.e.f. 17.6.97.

The impugned order dated 1.1.98, therefore, warrants no interference. The OA is dismissed. No costs".

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4. Railway Board Circular dated 22.1.93 relates to procedure and guidelines to be followed in promotion from Group "B" to Group "A" and within Group "A" of Railway Officers against whom disciplinary/court proceedings are pending. Paragraph 3.1 and 3.2 of this circular read as follows:-

"3.1 If any major penalty is imposed on the Government servant as a result in the disciplinary proceedings or he is found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him.

3.2 However, in the case of ad hoc promotions from Group "B" to Group "A" and promotions within Group "A" (upto and including promotions to SA Grade) those imposed with the minor penalties of censure, stoppage of passes/PTOs, recovery from pay and withholding of increments may also be promoted prospectively in their turn with reference to their position in the earlier panel (s) of the DPC. In the case of those imposed with the penalty of withholding of increment, however, they cannot be promoted before expiry of the penalty. The pay on promotion in all these cases should be fixed under the normal rules with reference to the date of actual promotion".

5. In terms of paragraph-3, if on the conclusion of the disciplinary case/criminal prosecution the Government servant is completely exonerated, the due date of his promotion has to be determined with reference to position assigned to him in the recommendations of DPC kept in the sealed cover and with reference to the date of promotion of his next junior on the basis of such position. The present case is not of complete exoneration of the applicant in disciplinary proceedings. Instructions contained in paragraph 3.1 relate to procedure to be

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followed on imposition of major penalty on the Government servant. As the applicant had been imposed a minor penalty only, these instructions are not applicable to his case. Instructions in paragraph 3.2 certainly are applicable to the case of the applicant as he is a Group 'B' officer seeking ad hoc promotion from Group 'B' to Group 'A'. It is relevant to mention here that instructions contained in paragraph 3.2 were amended vide Railway Board's letter dated 17.1.96 (Annexure P-4). The substituted instructions are extracted below:-

"However, in the case of ad hoc promotions from Group 'B' to group 'A' and promotion within Group 'A' (Upto and including promotions to SA Grade) those imposed with minor penalties of Censure, stoppage of passes, PTOs recovery from pay, reduction to a lower stage in the time scale of pay, and withholding of increments may also be promoted prospectively in their turn with reference to their position in earlier panel (s) of the DPC. In the case of those imposed with minor penalty of reduction to a lower stage in time-scale of pay or withholding they cannot, however, be promoted before the expiry of the penalty. However, where the penalty of withholding of increment is to become operative from a future date, the persons concerned should be promoted in his turn prospectively with reference to his position in the earlier panel of the DPC and the penalty imposed in the promotion grade of a period which would not result in greater monetary loss. The pay on promotion in all these cases should be fixed under the normal rules with reference to the date of actual promotion".

6. Applicant had been imposed minor penalty of stoppage of passes/PTOS. Under these instructions such persons have to be promoted 'prospectively in their turn with reference to their position in the earlier panel(s) of the DPC'. In the case of those imposed with other minor penalties such as reduction to a lower stage in time scale of pay or withholding, they cannot be promoted

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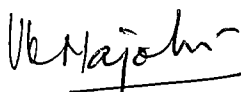
before the expiry of the penalty. These instructions are absolutely clear that promotion in the case of stoppage of passes PTOs has not to be related to the expiry of the penalty but to prospective promotion in their turn with reference to their position in earlier panel(s) of the DPC. It is appropriate to mention here that modified instructions of the Railway Board on the issue contained in Circular dated 17.1.96 (Annexure P-4) were not before this Tribunal while dealing with the case of **Rajesh Kumar Goyal** (supra). Thus, in our view, the observations of that order of the Tribunal are not applicable to the facts of the present case.


7. It is an admitted fact as per Annexure P-1, the impugned order, that applicant was found fit on 1.7.1994. As he had been imposed a mere minor penalty of SOPs/PTOs, he has to be accorded promotion in his turn with reference to his position in the panel of 1.7.94, i.e., immediately from the date his junior in that panel was granted ad hoc promotion to senior scale. He has to be given benefit of salary of the higher post in the higher scale from the date on which he would have normally been promoted but for the disciplinary proceedings. In this regard, we place reliance on **Union of India Vs. K.V. Jankiraman**, 1991 (2) SCALE SC 423, in which it was held as follows:

"24. It was further contended on their behalf that the normal rule is "no work no pay". Hence a person cannot be allowed to draw the benefits of a post the duties of which he has not discharged. To allow him to do so is against the elementary rule that a person is to be paid only for the work he has done and not for the work he has not done. As against this, it was pointed out on behalf of the concerned employees, that on many occasions even

frivolous proceedings are instituted at the instance of interested persons, sometimes with a specific object of denying the promotion due, and the employee concerned is made to suffer but mental agony and privations which are multiplied when he is also placed under suspension. When, therefore, at the end of such sufferings, he comes out with a clean bill, he has to be restored to all the benefits from which he was kept away unjustly".

8. Having regard to the reasons recorded and discussion made above, this OA is allowed quashing and setting aside order dated 12/22.9.2000 and also quashing order dated 10.3.99 to the extent that the claim of the applicant for consideration in the higher rank from the date his junior has been promoted along with consequential benefits has been rejected by the respondents. Respondents are directed to accord ad hoc promotion to the applicant in the senior scale from the date his juniors have been promoted along with consequential benefits. Respondents are further directed to implement the above orders within a period of two months from the date of communication of these orders. No costs.


(V.K. Majotra)
Member (A)


(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)

cc.