

Central Administrative Tribunal  
Principal Bench

O.A 1758/97

New Delhi this the 31st day of May, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).  
Hon'ble Shri H.O. Gupta, Member(A).

Vidya Prakash,  
S/o Shri Munna Lal,  
R/o 10-E, Mahawat Khan Road,  
New Delhi. .... Petitioner.

By Advocate Shri H.P. Chakravorty.

Versus

1. Union of India, through  
General Manager,  
Northern Railway,  
Baroda House, New Delhi.

2. Divisional Railway Manager,  
Delhi Division N.R.  
Estate Entry Road,  
New Delhi. .... Respondents.

By Advocate Shri P.M. Ahlawat.

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the action of the respondents in not giving him the benefits of higher post in the pay scale of Rs. 1640-2660 under the cadre restructuring Scheme introduced by the letter dated 27.1.1993 w.e.f. 1.3.1993. According to him, the other persons in the zone of consideration at the relevant time, that is ~~1.3.1993~~ have been given the benefits of the cadre <sup>therefore,</sup> restructuring Scheme, and he has stated that this is in violation of the principles laid down in Articles 14 and 16 of the Constitution.

2. The brief relevant facts of the case are that it is not denied that there was a cadre restructuring order issued by the Railway Board on 27.1.1993, which was

18

(7)

circulated by the General Manager's letter dated 2/4/2.1993 and the relevant date was 1.3.1993. The respondents in their reply have stated that the applicant was working as Assistant Station Master (ASM) in the grade of Rs.1400-2300 (RPS) at that time and he was within the zone of consideration for promotion under the cadre restructuring Scheme, in the pay scale of Rs.1600-2660 w.e.f. 1.3.1993. However, it is stated that at the relevant time the applicant was facing two charge-sheets for major penalty. Hence, Shri P.M. Ahlawat, learned counsel, has contended that the applicant could not be promoted w.e.f. 1.3.1993. It is also stated that apart from the two major penalty charge-sheets, which were pending against the applicant, he was also undergoing various other punishments which are in the nature of minor penalties w.e.f. 1.10.1990, as mentioned in paragraph 3 of the reply. With regard to the two charges for major penalty which were initiated against the applicant, admittedly only the penalties of censure and withholding of passes were imposed on him, which are again minor penalties under the Railways Rules.

3. The contention of the learned counsel for the applicant is that, since the applicant was within the zone of consideration for promotion under the cadre restructuring Scheme and juniors to him had been given the benefits of upgradation in the higher grade of Rs.1600-2660 with retrospective effect from 1.3.1993, after the expiry of the aforesaid penalty orders imposed on the applicant he should have been given the benefit of upgradation in the higher scale of pay of Rs.1600-2660 w.e.f. 1.10.1996. In

8

(18)

other words, the learned counsel states what the applicant seeks is the upgradation in the higher grade of Rs. 1600-2660 w.e.f. 1.10.1996 with proforma fixation of pay w.e.f. 1.3.1993. In the meantime, the applicant had been medically de-categorised on 21.9.1993 and had joined the new post as Chief Parcel Clerk (CPC) on 9.2.1994. The applicant has stated that he has neither been given the benefit of upgradation in the post of ASM in the Operating Department, nor as CPC in the Commercial Department, to which Department he was transferred after he was de-categorised. Shri H.P. Chakravorty, learned counsel, relies on the instructions issued by the Railway Board in R.B.E. No. 13/93 dated 21.1.1993 and, in particular, paragraph 3.6. According to him, in terms of this paragraph, since the applicant's case is one of promotion to a non-selection post, in which post he has only given a minor penalty, he ought to be placed in the panel and be promoted in his turn. He also states that juniors to the applicant have since been promoted in the Operating Department and he would, therefore, be entitled for the benefits of the restructuring Scheme read with paragraph 3.6. of the REB No. 13/93.

4. We have seen the reply filed by the respondents and have also heard Shri P.M. Ahlawat, learned counsel. The respondents have contended that although the applicant was under the zone of consideration for promotion in the grade of Rs. 1600-2660 under the restructuring Scheme introduced by the Railways w.e.f. 1.3.1993, he could not be considered for promotion because he was undergoing various punishments and there were two major penalty charge-sheets pending against him at the relevant time.

18

(19)

Learned counsel has submitted that the action of the respondents in not considering the applicant for promotion/upgradation under the restructuring Scheme was in order. According to him, since the applicant in the meantime, has been de-categorised and his cadre has been changed, he is not entitled for any benefits of upgradation Scheme or for promotion to the higher grade of Rs. 1600-2660 w.e.f. 1.3.1993. He has relied on the same instructions of the Railway Board, referred to above, but on paragraph 3.9 and Note-I below this paragraph relating to the cases of persons falling under paragraph 3.6. This refers to the procedure to be followed in the case of Railway servants who are already on a selection panel/suitability list, where proceedings are pending against him, except where the proceedings already initiated are for the imposition of a minor penalty. In the present case, admittedly the proceedings initiated against the applicant were for a major penalty and not for a minor penalty and his name had not been considered for placement in the select panel or suitability list earlier.

5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

6. Note-I below paragraph 3.9 of the Railway Board's instructions dated 21.1.1993, relied upon by the respondents provides as follows:

"Note (1):- If a person becomes due for promotion after the finalisation of the disciplinary proceedings and the penalty imposed is one of the following, he should be promoted only after the expiry of the penalty:-

Y/

20

(i) withholding of promotion; (ii) withholding of increment; (iii) reduction to lower stage in time scale; (iv) reduction to a lower time scale, grade of post. Provided that where the penalty imposed is 'withholding of increment' and it becomes operative from a future date, the person concerned should be promoted in his turn and the penalty imposed in the promotion grade for a period which would not result in greater monetary loss. If the penalty imposed is 'censure', 'recovery from pay' or 'stoppage of passes/PTOs', he may be promoted when due".

7. From the facts mentioned above, it is seen that the respondents' main contention is that after his medical de-categorisation and change of cadre from the post of ASM to that of CPC w.e.f. 14.1.1994, he could not be considered for promotion under the cadre restructuring Scheme, in the scale of Rs.1600-2660 as he was not in the Commercial Department on 1.3.1993. However, admittedly on that date, he was an ASM and was facing various departmental proceedings and was also undergoing various penalties of withholding of increments. It is relevant to mention that the change of cadre has been done only on medical de-categorisation and accepted by the competent authority in accordance with the Rules. The applicant continues as a Railway employee during the relevant time. It is also an accepted fact that the restructuring Scheme introduced by the Railway Board's letter dated 27.1.1993 w.e.f. 1.3.1993 relates to the cadre of both ASMs and Parcel Clerks. In other words, the Scheme relates to the staff working in either of the two cadres with which we are concerned.

8. In the present case, the applicant had been given various minor penalties, including censure and withholding of increments and passes. From the proviso to Note-I below paragraph 3.9, it is seen that in such cases

By

(21)

the applicant can be promoted when due after the expiry of the penalty orders imposed on him in the disciplinary proceedings. Admittedly, the applicant was in the consideration zone under the restructuring Scheme w.e.f. 1.3.1993 when he was ASM. As mentioned above, since the de-categorisation on medical grounds and subsequent change of cadre of the applicant has been done in accordance with the Rules by the respondents, we are unable to accept the contention of the learned counsel for the respondents that the benefit of the aforesaid instructions cannot be given to him only because of the change of cadre from one Department to another. In terms of the aforesaid instructions, the applicant would, therefore, be entitled for promotion to the higher grade when due, that is after the currency of the penalties imposed on him. No rules or instructions have been brought to our attention to show that the position is otherwise. It is also relevant to note that the respondents themselves have stated that the applicant was in the zone of consideration under the restructuring Scheme but could not be given the benefit only because of the disciplinary proceedings and penalties which were pending against him at the relevant time in March, 1993.

9. Therefore, taking into account the facts and circumstances of the case, the O.A. is allowed and disposed of with the following directions:

consider and  
"Respondents shall/ grant the benefit of  
upgradation/promotion to the applicant in the  
higher pay scale of Rs. 1600-2660 in terms of the  
upgradation Scheme dated 27.1.1993 immediately

18.

(22)

after the date of currency of the penalties imposed on him, from the due date with all consequential benefits in accordance with the Rules. Necessary action in this regard shall be taken within a period of three months from the date of receipt of a copy of this order, with intimation to the applicant. Parties to bear their own costs.

(H.O. Gupta)  
Member (A)

Lakshmi Swaminathan  
(Smt. Lakshmi Swaminathan)  
Member (J)

'SRD'