

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 2067 of 1997 decided on 19.11.1998.

Name of Applicant : Shri A.K. Sharma

By Advocate : Shri B.S. Mainee

Versus

Name of respondent/s Union of India through GM
Northern Rly. & another

By Advocate : Shri B.S. Jain

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)
Hon'ble Dr. A. Vedavalli, Member (J)

1. To be referred to the reporter - Yes/No
2. Whether to be circulated to the other Benches of the Tribunal. - Yes/No

N. Sahu
(Mr. Sahu)
Member (Admnv) 19.11.98

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 2067 of 1997

New Delhi, this the 19th day of November, 1998

Hon'ble Mr. N. Sahu, Member(Admnv)
Hon'ble Dr. A. Vedavalli, Member(J)

Shri A.K. Sharma, S/o Shri Harihar Parsad
Sharma, Permanent Way Inspector,
Northern Railway, Sonipat, R/o E16,
Railway Colony, Narela, New
Delhi-110040.

-APPLICANT

(By Advocate Shri B.S. Mainee)

Versus

Union of India : Through

1. The General Manager, Northern Railway,
Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern
Railway, State Entry Road, New Delhi. -RESPONDENTS

(By Advocate Shri B.S. Jain)

O R D E R

By Mr. N. Sahu, Member(Admnv) -

The grievance in this Original Application is directed against the failure of the respondents to consider the applicant's claim to give him promotion from 28.3.1995 i.e. the date from which his juniors had been promoted with all consequential benefits. He seeks a direction to the respondents to hold a supplementary examination/ review DPC as it was held in 1995 when the juniors to the applicant were considered. The above claim arose out of the rejection of the request of the applicant for promotion as PWI-I . Scale Rs.2000-3200/- giving appropriate weightage over his juniors.

2. The applicant while working as PWI -III was awarded a penalty of withholding of increment

Ans

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permanently (in short 'WIP') for one year with effect from 1.10.1994. During the period of currency of punishment promotion orders of PWIs Gr.III were issued for the scale of Rs.1600-2660/- vide the orders of DRM No. 220-E/283 Rectt/PT.III/P.4 dated 27.3.1995. These orders were issued to fill in vacancies arising out of restructuring of cadres with effect from 1.3.1993. The applicant was not promoted because he was undergoing the above penalty. However, he filed an appeal. The appellate authority reduced the penalty from one year to six months and instead of withholding it permanently he made the withholding temporary. Thus, the punishment expired on 31.3.1995. It is the admitted position in this case that the penalty of WIP does not affect the seniority of the employee. After the completion of the penalty the applicant requested for his promotion to the next higher scale of Rs.1600-2600 with effect from 1.4.1995. This was not acceded to.

3. Later on the applicant also requested for his promotion to the grade of Rs.2000-3200 since his juniors, namely, S/Shri Mohd Ashiq, A.K. Mahendiratta, I.A.Khan, M.K.Arya and M.L.Meena have been placed on panel for promotion to the scale of Rs.2000-3200 by the orders of the Senior DPO No. 754 E/19/XX/P4 dated 27.10.1995. These very juniors were also promoted to the scale of Rs. 1600-2660 only on 27.3.1995. These juniors thus had not completed a minimum period of two years in this lower grade of Rs.1600-2660 before they were considered and

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empanelled in the higher grade of Rs.2000-3200.

It is under these circumstances that the applicant had filed this O.A.

4. The learned counsel for the respondents vehemently argued that this O.A. is barred by limitation. He stated that the impugned order was dated 27.10.1995. This was the date in which the result of the written test for PWI Gr.Rs.2000-3200 held on 29.7.1995 (supplementary test held on 5.8.95) were declared. It was as a result of this test that five junior PWIs were placed in the panel of PWI grade Rs.2000-3200. At this time the applicant was working in the grade of Rs.1400-2300. On 26.9.1995 he was promoted to the Non-selection grade of Rs.1600-2660. As this promotion took place on 26.9.1995 and as by this time the selection tests were completed he was not called for selection. The learned counsel Shri Jain pointedly argued that he could have approached the Tribunal and sought a direction for enabling him to appear in the written test but he did not avail the remedy at that time.

5. The applicant's case was discussed in a meeting of the Permanent Negotiating Machinery (in short 'PNM'). It is stated in the counter affidavit that it was decided that the applicant should be allowed to appear in the next selection of PWI Grade-I and if he qualifies in the first attempt his name would be interpolated in the earlier panel issued on 27.10.1995. The next selection for the post of PWI GR.I was held on 1.2.1997 and the

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supplementary test was held on 8.2.1997. The applicant appeared in the written test on 1.2.1997 but could not qualify. Under these circumstances the learned counsel for the respondents cited the decision of the Hon'ble Supreme Court in the case of Dr. H. Mukherjee Vs. Union of India and others, 1994(1) SLJ 107. There is a second point made by Shri B.S. Jain. That was that the appellate order in the applicant's case was passed only on 5.6.1995 and nothing could have been done before that date. Having failed in the written test, having participated in the test, he cannot agitate the matter afresh. It is no doubt true that the applicant had addressed a representation to the DRM on 13.11.1995 and a further representation dated 25.11.1995 to the Chairman, Railway Board and the Chief Personnel Officer. The PNM meeting was held in February, 1996. He also addressed an appeal dated 29.4.1996 to the General Manager, Northern Railway, New Delhi. The learned counsel Shri B.S. Jain submitted that these repeated representations would not extend the period of limitation. He stated that after the appellate order in June, 1995 the applicant was promoted to the higher grade of Rs.1600-2660 on 26.9.1995. The post of PWI Gr.I is a selection post and employees can be promoted only after they qualify in the selection. His juniors were called for selection because at the time the test was held they were already promoted to the grade of Rs.1660-2660. At that time the applicant was not promoted.

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6. We are satisfied that the applicant's claim for the PWI Gr.I post which is a selection post cannot now be resurrected. He has also applied and participated in the test and has failed. Promotion is not a matter of right. The applicant has only a right for consideration but has no right for promotion. Thus, the applicant has no ground to lay a claim for promotion to PWI Gr.I. We have absolutely no doubt on this score. With regard to the applicant's claim for promotion to the grade of Rs.1660-2660, the respondents should have logically implemented the rule well known to them that after the expiry of the punishment on 31.3.1995 he should have been retrospectively promoted to this grade with effect from 1.4.1995. Very belatedly, the respondents have given this promotion on 26.9.1995. This is not a selection promotion. This is based on seniority cum fitness. If the applicant was fit on 26.9.1995 he was also fit on 1.4.1995. We are satisfied that this is not hit by limitation. When the Government is at fault, limitation does not arise as held in S.R.Bhanrale Vs. Union of India and others, 1996 SCC (L&S) 1384. What is under consideration is the application of a rule and this rule permitted financial benefits of higher promotion on the basis of seniority-cum-fitness. The respondents also admitted this right of the applicant. Their only claim was that the appellate order against the penalty was received on 5.6.1995 and, therefore, they could not promote him from 1.4.1995. We are not satisfied with this explanation. Even if the applicant had not

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represented; the respondents are duty bound to implement the rule made by them particularly when they have consciously promoted his juniors. They should have voluntarily reviewed the applicant's case. To this extent the applicant's plea is allowed and he shall be promoted to the grade of Rs. 1600-2660 w.e.f. 1.4.1995. Order shall be passed to the effect and additional financial benefits be remitted to him within four weeks from the date of receipt of a copy of this order. The O.A. is disposed of as above. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)

N. Sahu

(N. Sahu)
Member (Admn)

CKV.