

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.215/97

(9)

New Delhi, this the 15th day of May, 2000.

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. V.K.MAJOTRA, MEMBER (A)

Sh. B.R.Kapoor, S/O Sh. Desh Raj
Kapoor, Ex. Loco Inspector, Central
Railway, New Delhi.Applicant.
(By Advocate: Mr. B.S.Mainee)

VERSUS

Union of India : Through

1. The General Manager, Northern Railway, Bombay V.T.
2. The Divisional Railway Manager, Central Railway, Jhansi.Respondents.

(By Advocate: Mr. B.S.Jain)

O R D E R (ORAL)

Hon'ble Mrs. Lakshmi Swaminathan, M (J):

The applicant is aggrieved by the action of the respondents in not promoting him in the grade of Rs. 2375-3500/- w.e.f. 25.2.92, i.e. the date when his junior Sh. H.K.Bhatt was promoted to that grade on adhoc basis. He has submitted that subsequently he has been promoted w.e.f. 1.4.94 but the respondents have failed to give him the benefit of the promotion which was given to his junior, Sh. H.K.Bhatt, when he got the adhoc promotion on 25.2.92.

2. The brief facts of the case are that the applicant was posted as Loco Inspector at New Delhi under Jhansi Division, Central Railway. The DPO, Jhansi Division, had promoted his junior, Sh. Bhatt, as Sr. Loco Inspector in the grade of Rs. 2375-3500/- on adhoc basis. This action has been impugned by the applicant

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stating that as he was senior to Sh. Bhatt, he ought to have been considered for the adhoc promotion. He had made a representation to the respondents in this regard and our attention has been drawn by the learned counsel for the respondents to the letter issued by them dated 27.10.94 (Annexure A-3). In this letter, it has been mentioned, inter alia, that the applicant has been requesting that he may also be given the promotion in the grade of Rs.2375-3500/- from September, 1993, when his juniors, including Sh. H.K.Bhatt, had been promoted in that grade. In this letter issued from ORM Jhansi, it is stated that as per the seniority list of Loco Supervisors in the grade of Rs.2000-3200/-, the applicant is senior to all the above supervisors, namely, S/Sh. H.K.Bhatt, P.N.Mishra and O.P.Sabarwal, who have been promoted on adhoc basis in the higher grade on 31.3.94. The applicant has retired from service on superannuation w.e.f. 31.10.94. The applicant had also made a representation to the respondents. By the respondents' Office Order dated 5.9.95 (Annexure R-III), they have taken a decision to grant the applicant proforma seniority and proforma fixation of pay over his junior Sh. Bhatt. In this Order, it is stated that the applicant has been given proforma promotion as Sr. Loco Inspector in the grade of Rs. 2375-3500/- from the date his junior Sh. Bhatt was promoted in that grade.

3. Sh. B.S.Jain, learned counsel for the respondents, has submitted that after the above order has been passed, the applicant's pay and pensionary benefits have been paid by the respondents on the basis that he

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had been promoted on proforma basis w.e.f. 17.12.93. On the other hand, learned counsel for the applicant has contended that the action of the respondents in not giving the adhoc promotion to the applicant with effect from the date given to Sh. H.K.Bhatt on 25.2.92 is arbitrary and illegal. He has also relied on the judgement of the Hon'ble Supreme Court in M.R.Gupta Vs. Union of India, (1995 (5) SCALE 29 (SC)) to controvert the submissions made by the learned counsel for the respondents that the OA is barred by limitation. He also relies on the undated representation (Annexure-A to the rejoinder), which he states has been given subsequent to the Office Order dated 5.9.94. Relying on these, learned counsel has submitted that neither the OA is barred by limitation nor does it suffer from any latches and delay.

4. Respondents in their reply have submitted that the promotion of Sh. H.K.Bhatt on adhoc basis was on a local arrangement basis and the applicant was not considered for this promotion. They have also stated that the applicant would not have agreed to the promotion on adhoc basis as he had gone to Bhopal on his own request and was not locally available for adhoc promotion. To this, learned counsel for the applicant has submitted that as the concerned persons belong to the same Division, the applicant ought to have been asked whether he would go on adhoc promotion or not at the relevant time which has not been done. They have submitted that Sh. H.K.Bhatt was regularised w.e.f. 17.12.93 vide order dated 28.10.93. They have also submitted that when it came to their notice that the

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applicant has not been considered for regular promotion, he was immediately promoted on adhoc basis w.e.f. 31.3.94 and subsequently regularised w.e.f. 17.12.93 in the grade of Rs. 2375-3500/-, i.e. from the same date as the regular promotion of Sh. H.K.Bhatt. Learned counsel for the respondents has also submitted that they have taken further action with regard to fixation of the applicant's retiral benefits and pension in the most advantage stages to the applicant. According to them, the applicant has been given retirement benefits on the basis of his pay on 31.3.94 instead of his promotion from 17.12.93 as it was more beneficial to him. Learned counsel for the respondents has, therefore, submitted that as the applicant's claim for promotion and other benefits following his retirement, have been done in the circumstances described in the counter affidavit, the applicant should have no further grievance and he has, therefore, prayed that the OA may be dismissed.

5. Learned counsel for the applicant has also been heard in rejoinder. The relief in Para 8.2 of the OA is not pressed by Sh. B.S.Mainee, learned counsel as he has stated that the same has already been given by the respondents to the applicant.

6. We have carefully considered the submissions made by both the learned counsel for the parties and perused the records.

7. The applicant's main grievance in this case is that the respondents have failed to give him the benefits

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of promotion to the post of Sr. Loco Inspector w.e.f. 25.2.93 when his junior Sh. H.K.Bhatt was promoted with all consequential benefits. With regard to this claim, it is seen from the letter issued by the respondents (Annexure A-3) that they have accepted this position. At the relevant time, the applicant as well as Sh. H.K.Bhatt were working in the same Division and we are, therefore, not impressed with the submissions made by Sh. B.S.Jain, learned counsel, that if the applicant had been asked at that time, he would not have agreed to the promotion on adhoc basis as he had gone to Bhopal on his own request and was not locally available for the adhoc promotion. From the facts of this case, it appears that the respondents themselves have realised their mistake in not considering the applicant's case for promotion to the post of Sr.Loco Inspector when they promoted his junior Sh. H.K.Bhatt. We say so, because in the order dated 5.9.95 passed by the respondents, it is stated that the Headquarters had taken a decision to grant proforma seniority and fixation to the applicant over his junior in the grade of Rs. 2375-3500/- w.e.f. 17.12.93, i.e. the date when Sh. H.K.Bhatt was promoted on regular basis. After this Office Order has been passed, the OA has been filed on 27.1.97. In the meantime, the respondents were also considering the applicant's request for promotion, as seen from the letter issued by DRM, Jhansi, dated 27.1.94 (Annexure A-3). Taking into account the facts and circumstances of the case, we are, therefore, unable to agree with the contentions of the learned counsel for the respondents that the OA is to be dismissed only on the ground of the preliminary objection

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of bar of limitation as the applicant is claiming promotion w.e.f. 24.2.92. This question has been considered by the respondents themselves, who have granted the same to the applicant w.e.f. 17.12.93, though not on adhoc basis but on regular basis. We are fortified in our view by the orders of the Apex Court in M.R.Gupta's case (Supra). In the facts and circumstances of the case and respondent's own Office Order dated 5.9.95, the applicant shall be entitled to the difference in pay in the promoted post w.e.f. 17.12.93 till he was actually promoted to that post on 31.3.94.

8. In the result, for the reasons given above, the OA succeeds and is allowed to the extent that the applicant shall be entitled to the benefits of promotion in the post of Sr. Loco Inspector in the grade of. Rs. 2375-3500/- w.e.f. 17.12.93 with all consequential benefits. The respondents shall pay the difference in the promoted post with effect from this date as due to him under the Rules within a period of two months from the date of receipt of a copy of this order. No order as to costs.

Majotra
(V.K.Majotra)
Member (A)

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

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