

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.2731/97

New Delhi, this the 1st day of June, 2000.

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. H.O. GUPTA, MEMBER (A)

Sh. Mahesh Kumar Verma, S/O Late Sh.
Basu Dev Verma, R/O 3189, Kucha Tara
Chand, Darya Ganj, Delhi.

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

VERSUS

1. Union of India through The General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, ~~Delhi~~ New Delhi.
3. Chief Administrative Officer (Constrn.) Northern Railway, Kashmere Gate, Delhi.

... Respondents.

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

O R D E R

Hon'ble Mr. H.O.Gupta, M (A):

The applicant is aggrieved of non-implementation of the promotion order dated 19.7.91 (Annexure A-3) in the grade of Rs.1600-2660/- . In relief, he has sought directions for according him promotion w.e.f. 19.7.91 alongwith payment of arrears of pay and allowances and also payments of increased retiral benefits alongwith 24% interest thereon, on the grounds stated in the application.

2.0 The case of the applicant is that:

2.1 He was appointed as Works Mistry on 1.6.61 and by virtue of his satisfactory performance and work, he was promoted as Inspector of Works Grade-III (Rs.1400-2300) w.e.f. 19.3.79. He retired on 29.2.96.

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2.2 His promotion order to the next higher post, i.e. IOW Grade-II (Rs.1600-2660) were issued by his cadre controlling authority subject to vigilance clearance (Annexure A-3) w.e.f. 19.7.91. For the reasons best known to the respondents, vigilance clearance was not given and he was not promoted to the post of IOW Grade-II (Rs.1600-2660).

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2.3 Earlier he was suspended vide order dated 14.3.91 (Annexure A-5) but vide order dated 15.5.91 (Annexure A-6), his suspension was revoked and he joined his original post in the grade of Rs.1400-2300/-. During his suspension period, he was paid subsistence allowance at the rate of Rs. 50% of the emoluments. On resumption of duty, he was also paid difference of the pay and the subsistence allowance implying that the period of suspension has been treated as "Spent on Duty".

2.4 After about an year, on 11.5.92, he was served with a major penalty charge sheet dated 8.5.92 (Annexure A-7). The article of charges were with regard to non-observance of the procedure in connection with the issue of cement to contractor for construction of station building, i.e. issuing of gate passes without endorsing the no. of the vehicle as also the name of the driver. Vide his application dated 20.5.92 (Annexure A-8), he submitted an application denying the charges levelled against him. Thereafter no action was taken by the respondents. Subsequently, vide order dated 12.2.96 (Annexure A-11), the applicant was promoted as IOW Grade-II (Rs.1600-2660) on adhoc basis.

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2.5 In the letter dated 16.2.96 (Annexure A-12) issued from Headquarter Office (Constrn.), Kashmere Gate, Delhi and addressed to the Dy.Chief Engineer/Constrn., South Northern Railway, Jammu Tawi, it is stated that the General Manager (Vigilance) has intimated that there is no vigilance case pending against the applicant.

2.6 No action was taken by the respondents on major penalty charge sheet dated 8.5.92 (Annexure A-7) after he submitted an application on 20.5.92 (Annexure A-8), till his retirement on 29.2.96 and even after his retirement, disciplinary proceedings have not started, although respondents have promoted the applicant on adhoc basis on 12.2.96. He has represented to the authorities for implementing the promotion order issued on 19.7.91. Ultimately, respondent No.2, i.e. DRM, Delhi issued a letter dated 10.6.96 (Annexure A-13) to Dy.Chief Engineer, Jammu Tawi, under whom the applicant had last worked, asking the reasons as to why the applicant was not promoted in the grade of Rs.1600-2660/- from 19.7.91.

2.7 The applicant's retiral benefits ought to have been determined after fixation of his pay in the grade of Rs. 1600-2660/- w.e.f. 19.7.91. Even if the respondents could not relieve him to join his duties on 19.7.91, the applicant was entitled for the benefit of NBR under the Railway rules.

3.0 In reply, the respondents have taken a preliminary objection of limitation and have further stated that:

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3.1 The promotion order dated 19.7.91 was subject to vigilance clearance. The charge-sheet dated 8.5.92 was issued to the applicant and, therefore, he was not promoted. In addition, the criminal case was also pending against him which was decided on 10.1.97 (Annexure A-16). In spite of this, the applicant was promoted in the pay scale of Rs. 1600-2660/- on adhoc basis w.e.f. 14.2.96 (Annexure A-11). (5)

3.2 The decision about the treatment of suspension period would be taken after the final decision on the disciplinary proceedings. The departmental proceedings could not be closed during the pendency of the criminal proceedings against the applicant. The applicant was not promoted as the criminal proceedings were pending against him and also due to pendency of the disciplinary proceedings.

4.0 Heard the learned counsel for parties and perused the records.

4.1 It is a fact that disciplinay proceedings were neither initiated nor were pending against the applicant when the promotion order dated 19.7.91 was issued to the applicant. The charge-sheet was issued to the applicant only on 8.5.92 and as per the settled law, the applicant cannot be denied his rightful promotion when no charge-sheet was pending against him on the date of promotion order. In the criminal case also it is seen that the applicant has been exonerated.

[Signature]

4.2 The suspension period cannot be said to be pending since the full wages for the suspension period has been paid to the applicant. The applicant was promoted on adhoc basis before he was to retire during the pendency of departmental proceedings. Even after his retirement, no action has been taken.

4.3 With regard to limitation, learned counsel for the applicant submitted that based on his request to various authorities, the DRM, Delhi, who was the cadre controlling authority and where the applicant has lien, vide his letter dated 10.6.96 (Annexure A-13), sought explanation as to why the applicant was not promoted in the grade of Rs.1600-2660/- w.e.f. 19.7.91. Further, the major penalty charge sheet was issued on 8.5.92, i.e. after about nine months from his promotion order was issued and no decision was taken on the charge sheet. The applicant was awaiting final outcome of the same. Therefore, the application cannot be said to be time barred. On the other side, learned counsel for the respondents has submitted that there is nothing on record to say that he represented against the denial of his promotion immediately after his promotion dated 19.7.91 and, therefore, the application is time barred. After hearing, the learned counsel for parties, we are of the view that the application is not barred by limitation.

4.4 We find that at the time of promotion order dated 19.7.91, no charge sheet was issued to the applicant. We also find that after the reply was given by the applicant on the charge sheet on 20.5.92, no action has been taken

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17

by the respondents till now. It is seen that the applicant was promoted on adhoc basis in February, 96 before his retirement. It is also seen that the applicant was not under suspension on the date, the order for his promotion was issued. It is also a fact that the major penalty charge sheet was issued, after the suspension of the applicant was revoked. There is nothing on record to negate the contentions of the applicant with regard to the treatment of period of suspension. The applicant's contention, which is not denied by the respondents, that the charge sheet was in respect of charge for not observing the necessary procedure in connection with the issue of cement to contractor for construction of station building, i.e. issuing gate passes without endorsing the no. of vehicle as well as the name of the driver. There is no charge with regard to defalcation or theft of the Govt. property. Therefore, we are of the view that the major penalty charge-sheet issued in May, 1992 and where even the enquiry has not commenced till the date of hearing of this case, should be deemed to have been dropped.

5.0 In view of the aforesaid discussions, this application is allowed with the following directions to the respondents:-

5.1 The applicants' retiral benefits shall be revised by treating him as notionally promoted w.e.f. 19.7.91 in the grade of Rs.1660-2660/- or from the date his juniors were promoted, whichever is later.

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5.2 The pension of the applicant shall be revised accordingly and all retiral arrears of increased retiral benefits shall be paid to him within a period of four months from the date of receipt of a copy of this order. He shall also be entitled for interest @ 11% p.a., if the arrears are paid beyond the prescribed period.

5.3 Keeping in view of the facts and circumstances of the case, the arrears of pay and allowances from the date the applicant is ordered to be promoted notionally would not be admissible to the applicant.

6.0 No order as to costs.


(H.O. Gupta)
Member (A)


(Mrs. Laskhmi Swaminathan)
Member (J)


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