

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

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O.A. No. 612/1997

1997

T.A.No.

16.8.2000

DATE OF DECISION 17-7-2000

Gyani Singh

....Petitioner

Sh.M.L.Sharma

....Advocate for the  
Petitioner(s)

VERSUS

- UOI & Ors

....Respondent

Sh.R.L.Dhawan

....Advocate for the  
Respondents.

CORAM

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

The Hon'ble Sh.S.A.T. Rizvi, Member (A)

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

*Lakshmi Swaminathan*  
(Smt.Lakshmi Swaminathan)  
Member

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Central Administrative Tribunal  
Principal Bench

O.A. 612/97

New Delhi this the 16 th day of August, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).  
Hon'ble Shri S.A.T. Rizvi, Member(A).

Gyani Singh,  
Office Supdt. Gr.I (Retired),  
office of the Chief Administrative  
Officer (Const.),  
Northern Railway, Kashmiri Gate,  
Delhi.

R/o C/o Shri Nand Kishore,  
1040, J.J. Colony,  
Shakurpur, Delhi.

Applicant.

(By Advocate Shri M.L. Sharma)

Versus

Union of India through

1. General Manager,  
Northern Railway Headquarters Office,  
Baroda House,  
New Delhi.
  2. Chief Administrative Officer (Const.),  
Northern Railway, Kashmiri Gate,  
Delhi.
  3. Shri Jaswant Rai,  
Senior Divisional Personnel Officer, through  
Divisional Rail Manager,  
Northern Railway,  
Firozpur.
- ... Respondents.

(By Advocate Shri R.L. Dhawan)

O R D E R

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

The applicant is aggrieved by the order passed by the respondents dated 26.11.1996 (Annexure A-1). In this letter, the respondents have stated that the applicant could be given the benefit of promotion to the post of OS-II (Engineering), Grade Rs.1600-2660 and further as OS-I, Grade Rs.2000-3200 only if he had qualified the normal selection for the post of OS-II (Engineering) and not on the basis of his promotion as per <sup>the</sup> modified selection w.e.f. 1.3.1993.

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2. The brief relevant facts of the case are that the applicant states that while he was having lien on Ferozepur Division where he had worked from 1.4.1968 to 24.10.1973, he was transferred to the Construction Organisation at Kashmiri Gate, Delhi w.e.f. 25.10.1973. He continued in this Organisation till his retirement on 30.4.1996. While the applicant was working in the Construction Organisation, a selection for the next higher post of Assistant Superintendent, Grade Rs.1600-2660 was arranged by the Division on 6.4.1991/13.4.1991. His grievance is that although he was having lien on the Ferozepur Division, he was already granted two promotions, namely, as Senior Clerk and Head Clerk on that Division, and while holding selection for the post of Assistant Superintendent, he was also not intimated or considered for appearing in the selection. He has alleged that the action of the respondents is, therefore, arbitrary and mala fide. He had made a representation dated 27.4.1991 regarding the selection, to which the reply was given that he had already been intimated about the selection. The contention of Shri M.L. Sharma, learned counsel is that the applicant had never received any letter. He has relied on the letter issued by the Construction Organisation to the Ferozepur Division in August, 1992, that their endorsement was never received in the office of Respondent 2 due to which the applicant could not appear in the selections held on 6.4.1991 and 13.4.1991. The applicant has stated that his juniors S/Shri G.S. Tripathi and R.K. Jain were promoted as Assistant Superintendent from an earlier date and Shri Tripathi was also given next higher promotion to the post of DS-I, in the scale of Rs.2000-3200 w.e.f. 1.3.1993 while

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✓ the applicant who was all along senior to him was regularised as OS-II, Grade Rs.1600-2660. The applicant has also stated that he had made a number of representations in 1996.

3. The applicant has also relied on the letter dated 28.1.1997 issued from the Headquarters Office, Construction Organisation, Kashmiri Gate to Respondent 2. In this letter, it has been stated that the letter dated 10.4.1996 had not been received in that office. In the reply filed by the respondents, they have annexed the letter dated 10.4.1996 (Annexure R-3). In this letter, it has been stated, inter alia, that the claims of the applicant and one other person for proforma promotion to the post of OS-II (Engineering) w.e.f 27.1.1992 and further promotion as OS-I w.e.f. 1.3.1993 vice their juniors in open lines <sup>RS</sup> had been examined by the competent authority. It has also been stated that <sup>the RS</sup> written test has been fixed for 26.4.1996, asking the applicant to report to DRM Office, Ferozepur, on that date. According to the respondents, this letter dated 10.4.1996 was issued, giving more than 21 days advance notice but once again the applicant chose to sit over it rather than appearing in the selection. Shri R.L. Dhawan, learned counsel has submitted that accordingly the applicant has been given notice to appear in the written test which had been held on 26.4.1996, taking into account the fact that the applicant is retiring within <sup>RS</sup> the few days in the end of the month but he has chosen not to appear in the test. The contention of the respondents is that unless the applicant had appeared and qualified in the selection for the post of

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✓ OS-II and empanelled, he cannot be granted the benefits. According to them, the applicant did not report for the test fixed on 26.4.1996 by the letter dated 10.4.1996.

4. The learned counsel for the applicant has submitted that the aforesaid letter does not give the necessary period of 21 days notice, as required under the Rules, although no such rule was produced. However, it is noticed from the reply of the respondents themselves that they have also referred to giving more than 21 days advance notice to the applicant, by issuing their letter dated 10.4.1996 from their Ferozepur Division to Construction Organisation, Kashmiri Gate, New Delhi. Considering the fact that the letter itself is dated 10.4.1996 and the written test was fixed for 26.4.1996, the contention of the respondents that they had given more than 21 days advance notice, even presuming that the letter has reached on the same date, cannot be accepted on <sup>the B.</sup> facts. Shri R.L. Dhawan, learned counsel had contended that from the hand written endorsement in the letter, it is to be noted that the contents of the letter had been conveyed on phone at 1635 hours on the same date to the office of Respondent 2. Even if that is so, the averment of the respondents that they had given more than 21 days advance notice to the applicant to appear in the test which was scheduled to be held on 26.4.1996, cannot be accepted, ~~on the facts~~ <sup>B.</sup> In the circumstances of the case, Shri M.L. Sharma, learned counsel has submitted that as no such intimation was received in the Construction Office where the applicant was working, the applicant cannot be penalised for not attending the written test for promotion to the post of OS-II (Engineering). He has, therefore, prayed that the impugned

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✓ Annexure A-I order may be quashed and the applicant may be granted promotion as OS-I in the scale of Rs.2000-3200 w.e.f. 1.3.1993, that is the date when his junior was promoted after treating him as <sup>18/</sup> a regular Assistant Superintendent in the scale of Rs.1600-2660 from the date of promotion of his juniors. Learned counsel for the applicant has also submitted that there has been delay on the part of the respondents in making payments of gratuity and other retiral benefits on his retirement from service w.e.f. 30.4.1996. He has, therefore, claimed that a direction may also be given to the respondents to pay interest @ 18% on the delayed payment of retiral benefits, pension and gratuity from 1.5.1996 to October, 1996. He has relied on the judgement of the Supreme Court in **Balkrishan Vs. Delhi Administration** (AIR 1990 SC 100) and has submitted that the applicant who was senior to certain other persons who have been given promotion cannot be ignored and no junior can be confirmed or promoted without considering the senior.

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

6. In the letter dated 14.2.1995, issued by the Northern Railway, Ferozepur Division, they have stated that regretfully the applicant among certain other staff, who were holding lien in that Department, were not called for the selection held earlier due to an administrative error. In the reply, the respondents have stated that the applicant had been ignored in the selection for the post of OS-II in March, 1993 and not in March, 1991 when he himself had failed to turn up. Their contention is that in spite of the applicant having been called for the selection held in

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✓ March, 1991, he did not turn up, for reasons best known to him. However, in view of the later letter issued by the respondents dated 10.4.1996 on which they have placed great reliance, their contention that the applicant had been informed but chose to ignore the selection held in March, 1991 cannot be accepted. In the letter dated 10.4.1996, they have considered the claims of the applicant and one Shri Surjit Singh, for proforma promotion to the post of OS-II (Engineering) w.e.f. 27.1.1992 and further as OS-I w.e.f. 1.3.1993 vice their juniors in open lines. The respondents have stated that these benefits can be allowed only if the staff working in Construction Organisation had qualified the normal selection for the post of OS-II and not on the basis of the modified selection. Accordingly, they have decided to hold the written test for these two persons on 26.4.1996. We are not impressed by the contentions of the learned counsel for the respondents that a telephonic message has reached the office where the applicant was working at that time, that is, the Construction Organisation at Kashmiri Gate on the same date, and he had been duly informed. Nothing has been placed on record that the applicant has received this intimation about holding ~~the~~ the selection test on 26.4.1996. This is also borne out in the letter issued by the Headquarters Office, Kashmiri Gate, ~~in~~ ~~August 1992~~ <sup>1992</sup> that the letter was not received in their office. Therefore, the reason given in the impugned letter dated 26.11.1996 based on the letter dated 10.4.1996 that as the applicant did not report for the test, hence his claim is irrelevant, is not tenable. It is apparent from the facts that the notice has not been duly served on the applicant and got noted by him, as stated in the letter itself. It is also relevant to mention that while fixing

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the selection test on 26.4.1996, nothing has been mentioned about the previous test which was held in March, 1991 which, according to the respondents, the applicant chose not to appear in. Therefore, the contention of the respondents that the applicant had falsely sought to create an impression that the office admitted its error in ignoring the applicant in the selection held in March, 1991, would not be relevant to dismiss the applicant's claim.

7. From the above discussion of the facts, it is, therefore, clear that the applicant did not get the intimation for the written test which was fixed on 26.4.1996 in time to enable him to appear in the same for being considered for promotion under the normal rule for selection to the post of OS-II. In the facts and circumstances of the case, considering that the applicant has also retired from service and the admitted administrative lapses on the part of the respondents, the applicant shall be entitled to be considered for promotion to the grade of OS-II under the normal rule from the date when his junior was so considered.

8. For the reasons given above, the respondents shall grant promotion to the applicant as OS-II and OS-I from the dates when his juniors were promoted as if under the normal rules. Consequently, the applicant shall be entitled to the benefit of difference in the pay scales in the higher posts from the due dates and also revision of pension after his retirement in accordance with the relevant rules and instructions. Necessary action in this regard shall be taken within three months from the date of receipt of a copy of this order, with intimation to the applicant.

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In the circumstances of the case, the applicant shall also be entitled to be paid simple interest at the rate of 12% per annum on the amounts as above, from the due date to the date of actual payment.

Parties to bear their own costs.



(S.A.T. Rizvi)  
Member(A)



(Smt. Lakshmi Swaminathan)  
Member(J)

'SRD'