

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 2037/88

New Delhi this the 7th Day of February, 1994.

Shri N.V. Krishnan, Vice-Chairman (A)
Shri B.S. Hegde, Member (J)

Shri Shyam Lal,
S/o Sh. Sagar Mal
R/o A-411, Shastri Nagar,
Delhi-52.Applicant

(By Advocate Sh.S.K. Bisaria, though none appeared).

Versus

1. General Manager,
Northern Railway Hqrs.,
Baroda House,
New Delhi.

2. The Divisional Rly. Manager,
Northern Railway,
New Delhi.Respondents

(By Advocate Sh.P.S. Mahendru, though none appeared.)

ORDER (ORAL)

(Mr. N.V. Krishnan)

Neither the applicant nor his counsel is present, though this case has been called twice. Likewise, none is present for the respondents. This case is listed at serial No.4 under regular matters in today's cause list with a note to the counsel to note that the first 10 cases are posted peremptorily for final hearing. In the circumstances, in the absence of the parties, we have perused the records and we proceed to dispose of the OA.

2. The applicant states that he was declared promoted from the grade of Rs.260-400 to Rs.350-560 by the order dated 10.3.1988. A copy of that order has not been annexed with the OA. He states that he joined his duties in the grade

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of Rs.330-560 in pursuance of this promotion order and worked till 16.6.88, when, it is alleged that the name of the applicant was deleted/removed by the respondents unauthorisedly and illegally. It is also alleged that he has not been paid his salary in the grade of Rs.330-560 from 10.3.88 till 16.6.88 although the applicant has worked in that grade. It is in these circumstances that this OA has been filed for a declaration that the applicant continues to remain promoted in the grade of Rs.330-560 w.e.f. 10.3.88 with continuity of service and with all consequential benefits.

3. The respondents have filed a reply, in which it is stated that the applicant was undergoing punishment for a period of $4\frac{1}{4}$ years w.e.f. 1.9.85. It is admitted that the promotion orders to the grade of Rs.1200-2040, i.e., the revised scale were issued by the Divisional Personnel Officer by his letter dated 10.3.88 provisionally subject to any new fact coming to the notice of the administration later on. As the applicant was undergoing punishment of withholding of increments temporarily for a period of $4\frac{1}{4}$ years in various cases w.e.f. 1.9.85, the applicant was not promoted to the grade of Rs.1200-2040 by the Station Superintendent, New Delhi. The facts on which the said punishment was awarded was withing the knowledge of the applicant who has since challenged the same in OA-991/86, stated to be pending before this Tribunal. It is stated that, in the circumstances, the applicant

could not be promoted to the grade of Rs.1200-2040. It is also denied that the applicant worked in the promoted grade from 10.3.88 to 16.6.88, as alleged. Since the promotion order was provisional, the name of the applicant was struck out from the same when the fact of the aforesaid punishment having been inflicted upon him came to the notice of the appropriate authority.

4. The applicant has filed a rejoinder, denying that he was undergoing punishment of $4\frac{1}{4}$ years from 1.9.85. In this connection he states that he was imposed punishment of one year relating to withholding of increments temporarily on 19.4.85, which, therefore expired on 19.4.86. The applicant, therefore, states as follows:-

"again the applicant was imposed a punishment of two years W.I.T. on 3.9.86 and that also has been completed on 2.9.86."(Sic)
Thus at present there is no punishment."

5. We have seen the record. Neither party has filed any document. However, as the respondents state that the applicant has filed OA-991/86 challenging the punishment of $4\frac{1}{4}$ years from 1.9.85. Perhaps, that submission seems to be more credible. However, it is also seen from the admission of the applicant himself that a penalty of withholding of increments temporarily for two years was imposed on him on 3.9.86. That penalty would come to an end only on 2.9.88 and not on 2.9.86, as mentioned in the rejoinder.

6. However, we are unable to accept that the applicant did not work under higher post from 10.3.88 to 16.6.88. This is due to the fact that if the respondents had knowledge about the punishment being suffered by the applicant in time, the order of promotion would not/ have been issued in the first instance. This clearly shows that an order of promotion was issued and was also implemented. The applicant came to be reverted on 16.6.88 only because a penalty was suffered.

7. Hence, we are of the view that in so far as the reversion is concerned, this OA has no merit and it is liable to be dismissed and we order accordingly. However, we find that the applicant was working on the higher post from 10.3.88 to 16.6.88, Whether rightly promoted or not, he is entitled to the salary of the higher post for this period. The difference in salary, therefore, be paid to him within two months from the date of receipt of this order. We also make it clear that this order is subject to the order that may be passed in OA-991/86, which is stated to be pending. O.A. stands disposed of accordingly.

B.S. Hegde
(B.S. Hegde)
Member(J)

N.V. Krishnan
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Vice-Chairman

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