

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 356  
T.A. No.

198 8.

DATE OF DECISION November 24, 1988.

Shri P.K.Jain,

Petitioner

In person

Advocate for the Respondent(s)

Versus

Union of India & Anr.

Respondent(s)

Shri O.P.Kshatriya,

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. Ajay Johri, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

MGIPRRND-12 CAT/86-3-12-86-15,000

31  
(Ajay Johri)  
Member (A)

AB  
(Amitav Banerji)  
Chairman.

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
DELHI.

OA 356/1988.

November 24, 1988.

Shri P.K.Jain .... Applicant.

Vs.

Union of India & Anr. .... Respondents.

Coram:

Hon'ble Mr. Justice Amitav Banerji, Chairman.  
Hon'ble Mr. Ajay Johri, Member (A).

For the applicant .... In person.

For the respondents .... Shri O.P. Kshatriya,  
Counsel.

(Judgment of the Bench delivered by  
Hon'ble Mr. Justice Amitav Banerji,  
Chairman).

The applicant was employed as Booking Supervisor of the Northern Railway, Railway Station Delhi Main. In 1987, a selection for promotion to the post of Chief Booking Supervisor was held and on 24.2.1987 (Annexure 'A') an order was passed in which the applicant's name was shown at Serial No.24. The order said <sup>that</sup> as a result of the selection for the post of Chief Booking Supervisors Grade 700-900 (RS) held on 25.11.85, 26.11.86 and 21.1.87, 25 candidates (mentioned in the list) were placed on the provisional panel. It appears that on 27.2.1987, a posting order was issued for Chief Booking Supervisor for 24 persons and it did not include the name of the applicant. There was a note which reads as follows:

*"Shri Prem Kumar/Piayree Lal Booking Supervisor Gr. 550-750(RS) Delhi is undergoing punishment of WIT one year w.e.f. 1/6/86. He will be considered for promotion after expiry of punishment."*

This Note shows that Shri Prem Kumar, Booking Supervisor was undergoing punishment of WIT for one year with effect from 1.6.1986. It also made clear that he would be considered for promotion after the expiry of the punishment. It is, therefore, obvious that he was not given a posting order because he was undergoing punishment, the period of which expired on 31.5.1987.

The applicant filed this application under Section 19 of the Administrative Tribunals Act, 1985 on 26.2.1988. The applicant's case was that he was entitled to promotion and posting after his selection and withholding of his promotion was mala fide. It was urged that in any event he was entitled to be promoted on the expiry of the period of punishment i.e. with effect from 1.6.1987.

The applicant also indicated that there was an earlier vigilance proceedings in which he had been exonerated on 21.7.1986. Consequently, he prayed that the Tribunal may declare the applicant as successful candidate for promotion to the grade of Rs.700-900 with other candidates already promoted.

The respondents entered appearance and filed a reply on 12.5.1988. In the reply, it was stated that the applicant could not be promoted as Chief Booking Supervisor as he was undergoing punishment

of withholding of his increment with effect from 1.6. 1986 to 31.5.1987 and further in view of the fact that a vigilance case against the applicant involving major penalty was being reviewed by the General Manager, Northern Railway and as such, he was not promoted. In other words, the plea was that the promotion of the applicant had been withheld as vigilance case against him was under review by the General Manager. It was pointed out that a vacancy has been reserved for the applicant and his case should be considered for promotion to the post of Chief Booking Supervisor as soon as his case is considered by the Reviewing Authority i.e. the General Manager. Lastly, it was urged that the applicant was not entitled to any relief even before the outcome of the vigilance case against him had been finalised.

Having heard the applicant in person and Shri O.P.Kshatriya, counsel for the respondents, we are of the view that a very short question is involved in this case. The question is whether the applicant's promotion could be withheld on or after 1.6.1987 merely because a proceeding in review in an earlier order exonerating him from the vigilance proceedings would stand as a bar to his promotion.

QD

There is no dispute that when the order

dated 24.2.1987 was passed, it showed that he had been selected for being promoted as Chief Booking Supervisor. There days later came the posting order in which his name was withheld. The Note which has been quoted above shows that his case had been held up as he was undergoing punishment of WIT and the period of punishment would come to an end on 31.5.1987. These facts make it clear that he became entitled for posting on 1.6.1987 unless there was something else or some other bar against him. It appears that the General Manager of the Railways as a Reviewing Authority was considering the earlier order of exoneration in a vigilance case passed on 21.7.1986. No orders had been passed before 31.5.1987 by the General Manager in the matter which was pending before him. That order has been passed on 25.10.1988 by the General Manager which reads as under:

"Under the circumstances, the EO's finding is incomplete and charges should be taken as proved. However, in view of the nature of charges, a punishment of 'withholding of increment without cumulative effect for one year' will be sufficient. I also understand that Sri Jain's previous record has been poor; he has been punished on as many as 10 occasions".

This makes it clear that there was no order passed inflicting any punishment or taking any action against the applicant between 1.6.1987 and 24.10.1988. In other words, there was no bar in giving him the promotion

and giving him the posting. He should have been promoted with effect from 1.6.1987.

The contention of the 1d. counsel for Railway respondents that the review which was pending before the General Manager was a bar to his being promoted or posted. We cannot agree. If there was a punishment imposed before 31.5.1987, that would be an effect and would bar his promotion but since there was no such order, his promotion could not be denied. It must be borne in mind that in earlier vigilance proceedings there was an order of exoneration dated 21.7.1986. Right or wrong, that order did not impose any punishment. The subsequent infliction of punishment by order dated 25.10.1988 would not ipso facto mean that there was an order of punishment in vogue on 1.6.1987. A question was raised about the posting of the applicant. That, of course, is in the domain of the respondents and we do not indicate anything about it.

For the reasons indicated above, we are of the view that this application should be allowed to the extent that the applicant was entitled to promotion in the grade of Rs.700-900 with effect from 1.6.1987. The parties are directed to bear their own costs. This order shall be implemented within a period of one month from the date of its receipt.

*3/11/88*  
(Ajay Johri)  
Member (A)

24.11.1988.

*Ab*  
(Amitav Banerji)  
Chairman  
24.11.1988.