

**Reserved**  
(On 06.10.2020)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
BENCH, ALLAHABAD**

(This the 27<sup>th</sup> Day of **October**, 2020)

**Hon'ble Mrs. Justice Vijay Lakshmi, Member (Judicial)**  
**Hon'ble Mr. Navin Tandon, Member (Administrative)**

**Original Application No.330/479/2015**

Gopal Sharan son of Late Shri Ram Sharan Resident of 100-S Railway Baulia Colony, Gorakhpur.

..... **Applicant**

**By Advocate:** **Shri Anand Swaroop Gautam**

**Versus**

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager, Gorakhpur N.E.R. District – Gorakhpur.
3. Senior Divisional Commercial Manager, N.E.R., Gorakhpur.
4. Master Craft Manager, N.E.R., Gorakhpur.
5. Chief Workshop Manager (Karmik), Mechanical Workshop N.E.R., Gorakhpur.

..... **Respondents**

**By Advocate:** **Shri L.M. Singh**

**O R D E R**

**Delivered by Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)**

We have heard Shri Anand Swaroop Gautam, learned counsel for the applicant and Shri L.M. Singh, learned counsel for the respondents.

**2.** The instant Original Application (OA) has been filed by the applicant seeking the following relief(s):-

- “(i) To quash the order dated 18.02.2015 passed by the respondent No.5 (Annexure A-1 of Compilation Book No.1 to the present O.A.)*
- (ii) To promote the petitioner on the post of M.C.M. since the declaration of the seniority list.*
- (iii) To grant the salary of the applicant of the promotional post of Master Craft Man (M.C.M) from the date of seniority list dated 10.01.2011 up to the date of retirement dated 31.07.2014 with interest.*
- (iv) To grant of retiral benefits with interest from the date of retirement.*
- (v) To issue any other order or direction which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.”*

**3.** The brief facts, necessary to understand the controversy involved in the present OA, are that the applicant was initially appointed as 'Substitute Safai' on 11.07.1973. In the year 1978, he was promoted to the post of Khalasi (Helper), in 1984 to the post of Grade-III Molder and in the year 1986, was promoted to the post of Grade-II Molder. Unfortunately, on 23.03.1998, a First Information Report was lodged against the applicant alongwith some other persons, under sections 302,504,147,148,149,323,307 I.P.C., in pursuance of which the applicant was sent to jail, from where he was released on bail on 17.07.1998. The Department suspended him for 05 months, during the aforesaid period. However, his suspension was revoked after he was released on bail and he was posted as

Molder Grade-I vide order dated 19.12.1998. In the meanwhile, the applicant was acquitted from the court of Sessions Judge, Gorakhpur, in the aforementioned criminal case, vide judgment and order dated 19.08.2003.

4. On 10.01.2011, a seniority list was prepared by the Department for promotion to the post of Master Crafts Man and the applicant's name in the seniority list was shown at Sl. No.81. However, all the persons shown in the seniority list were promoted to the post of Master Crafts Man but the applicant was denied the promotion, because of his involvement in the criminal case.

5. Feeling aggrieved, the applicant made several representations to the concerned authorities on the ground that as he had been acquitted in the criminal case by the court of sessions, Gorakhpur, he was entitled for promotional post in pursuance of the seniority list, but when all his representations remained unanswered, the applicant approached this Tribunal by means of OA No.1245 of 2014, which was disposed off by this Tribunal vide order dated 07.11.2014, with the direction to the respondent No.5 (Chief Workshop Manager (Karmik) Mechanical Workshop, North Eastern Railway, Gorakhpur) to consider and decide the pending representation dated 29.04.2014 of the applicant within a period of two months.

6. In the meantime, the applicant had retired on reaching the age of superannuation on 31.07.2014.

7. The representation of the applicant was rejected by the respondents by the order dated 18.02.2015 on the ground that although the applicant has been acquitted in the criminal case by the Court of Sessions, however, an appeal against acquittal of the applicant has been filed by Department before the Hon'ble Allahabad High Court, which is pending adjudication and during the pendency of the appeal/ prosecution, the applicant cannot be promoted to the post of Master Crafts Man in the light of Para 2 and 3 of Railway Board's Circular dated 21.01.1993.

8. In the impugned order, it was also stated that after the decision of criminal appeal, the promotion of the applicant may be considered as per rules.

9. Now, the applicant is again before us in the second round of litigation by means of the instant OA, challenging the legality and correctness of the aforesaid order dated 18.02.2015, passed by the Department on his representation.

10. The main grounds taken by learned counsel for the applicant to challenge the impugned order are as follows:-

- (i) When the applicant had been acquitted in the criminal case, there was no reason for the respondents to deprive him from his promotional post.
- (ii) Only on the ground that a criminal appeal against acquittal of the applicant is pending, the promotional post cannot be kept in abeyance for unlimited period.

**11.** On the aforesaid grounds, it has been prayed that impugned order may be quashed and the respondents may be directed to promote the applicant on the post of Master Crafts Man, since the date his juniors were promoted to that post and to grant salary of Master Crafts Man to the applicant from that date up to the date of his retirement.

**12.** During pendency of the instant OA, the pending Government appeal against acquittal of the applicant, (Government Appeal No.448 of 2004 - State of U.P. vs. Gopal and others) was decided on 08.03.2019, by Hon'ble High Court and Hon'ble High Court upheld the acquittal of applicant.

**13.** The applicant has filed a Supplementary Affidavit for bringing on record this new development, along with the copy

of judgment dated 08.03.2019, passed by Hon'ble High Court and has prayed that as the applicant has been acquitted by Hon'ble High Court also, he is entitled for the promotion.

**14.** The respondents have not filed any Supplementary Counter Reply against the Supplementary Affidavit filed by the applicant, although the order sheets shows that the copy of Supplementary Affidavit was received by the learned counsel for the respondents on 15.07.2019.

**15.** In the counter reply, filed by the respondents, the main emphasis was laid only on the point that as a Government appeal no.448 of 2004, against the order of acquittal passed by the court of sessions, is pending before Hon'ble High court and as an appeal is a continuation of trial, the claim of the applicant for promotion, cannot be considered during the pendency of aforesaid appeal before Hon'ble High Court

**16.** A copy of the Railway Board's Circular dated 21.01.1993 (Annexure CA-3) has been filed along with the counter reply, para 2 and 3 of which are relevant, which provide that the railway servant in respect of whom prosecution for a criminal charge is pending, shall not be promoted even if already borne

on a selection panel/suitability list, till after the results of the proceedings against him are known.

**17.** Having considered the arguments advanced by learned counsel for the parties and having perused their pleadings as are available on record, we are of the firm view that when the applicant has been acquitted from all the charges by the Sessions court as well as by Hon'ble High Court, it cannot be said that a prosecution for criminal charge is still pending against the applicant. The judgment of Hon'ble High Court passed in the Government Appeal No.448 of 2004 against the acquittal has been filed by the applicant by means of a supplementary affidavit against which no supplementary counter affidavit has been filed by the Department. No such statement has been made by the respondents that against the order of Hon'ble High Court, the Department has gone to Hon'ble Supreme Court.

**18.** In view of the above, the entitlement of the applicant for notional promotion, may be considered by the department, in the light of impugned order dated 18.02.2015 itself, wherein, the concerned authority has stated that after the disposal of appeal pending before Hon'ble High Court, the case of promotion of the applicant may be considered as per the rules.

**19.** In the light of all these facts and circumstances, the matter is remitted to the competent authority amongst the respondents, to consider about the notional promotion and the consequential benefits of the applicant, to the post of Master Crafts Man, as per rules, within a period of three months from the date of receipt of certified copy of this order. It is, further, directed that the order so passed shall be communicated to the applicant without any delay.

**20.** With the aforesaid directions the **OA is disposed off** with no order as to costs.

**[Mr. Navin Tandon ]**  
Member (Administrative)

**[Justice Vijay Lakshmi]**  
Member (Judicial)

*Sushil*