

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

OA No./050/00339/2020

Due to COVID-19 Pandemic, case has been heard & decided through Video Conferencing

Date of order 15.10.2020

CORAM

Hon'ble Shri M.C. Verma, Member [J]
Hon'ble Shri Sunil Kumar Sinha, Member [A]

Prabhat Kumar S/o late Rajendra Prasad, resident of Mohall Bahadurpur Housing Colony, Bhootnath Road, Patna-800026.

.....Applicant

By Advocate : Shri Jayant Kumar Karn

Versus

1. The Union of India through the Chairman, Railway Board, Ministry of Railways, Rail Bhawan, New Delhi – 110001.
2. The Secretary, Railway Board, Ministry of Railways, Rail Bhawan, New Delhi – 110001.
3. The Joint Secretary (E)-II, Railway Board, Ministry of Railways, Rail Bhawan, New Delhi – 110001.
4. The General Manager, East Central Railway, Hajipur, P.O.- Digghi Kalan, P.S.-Hajipur, District- Vaishali at Hajipur -800101.
5. The General Manager (Personnel), East Central Railway, Hajipur, P.O.- Digghi Kalan, P.S.- Hajipur, District- Vaishali at Hajipur -800101.
6. The Dy CPO/Gaz, O/o the General Manager (P) East Central Railway, Hajipur-800101.

.....Respondents

By Advocate: Shri B.K.Choudhary with Shri D.K. Verma

O R D E R (ORAL)

M.C. Verma, M | J|: Being aggrieved by the rejection of his representation dated 14.02.2019 whereby prayer of the applicant to grant promotion with retrospective effect i.e from 29th July 2001 from the post of Senior Section Engineer (Electrical) to Group-B Assistant

Engineer in accordance with was rejected hence the instant O.A has been preferred by the applicant. The impugned order reflects that the representation of the applicant for granting promotion with retrospective effect was turned down on the ground that he had not appeared in the selection process for the post of AEE Group –‘B’ in the year 2001 conducted by the Central Railway and hence automatically he is not entitled of retrospective promotion. The matter is at notice stage hearing. Learned counsel for applicant Shri Jayant Kumar Karn pressing the O.A and given backdrop of the fact of the matter. He explained that the applicant was recruited in 1990 in Central Railway from where he was transferred to East Central Railway but his lien was maintained in Central Railway. A notification dated 21.09.2000 for LDCE was issued by Central Railway, fixing last date for receipt of application as 10.11.2000, but applicant was not informed about said LDCE and during leave, when he visited his parent Railway, he came to know about it, so he applied for said examination on 01.01.2001. That test for LDCE has been schedule for 20.01.2001 and he requested for permission to appear in the examination but permission with certain condition was granted on 22.01.2001 and thus he could not take the examination and consequently was not promoted.

2. That being aggrieved, he preferred several representation to allow him promotion and ultimately filed OA No. 287/2004 contending that fault was on the part of respondents for creating said situation, rendering him not to appear in the Limited Departmental Competitive Examination, however his OA was dismissed on 12.05.2010, holding that it is barred by limitation and for none joinder of successful candidates. That he preferred Writ petition, CWJC No. 15563 of 2013 but it was also dismissed and then he preferred SLP which though was dismissed but Hon'ble Supreme Court while dismissing the SLP observed that :-

"However, the dismissal of this special leave petition will not be an impediment for the petitioner to make a representation before the appropriate authority in accordance with law and the same shall be considered on its own merits."

3. Applicant thereafter give representation to the respondents on 14.02.2019 and said representation has been rejected by the respondents, mutatis mutandis stating that promotion can only be given after passing of the selection test and that the applicant has not appeared in the selection test for the post of SE (Electrical) Group 'B' held in the year 2001 conducted by Central Railway and hence, he is not entitled for retrospective promotion to the post of AEE and observing so, his representation was rejected. Against said rejection of his representation, applicant has preferred this OA.

4. A query was made from the counsel for applicant that during the course of hearing that whether the person can be considered for his promotion even though he has not participated in the selection process which might be on account of some fault of applicant and learned counsel answered that it can be done. He referred Rule 226.1 and Rule 228 of Indian Railways 's Establishment Manual.

5. Learned counsel for respondents vehemently opposed the maintainability of the O.A., he submits that there is no rule for promotion without participating in the selection process. He also added that previously applicant, for the same relief preferred O.A. 287/2004 has filed before this Tribunal. All these facts that under what circumstances he could not participate in the selection process had been pleaded in that case and said O.A was dismissed by the Tribunal. Being not satisfied by said dismissal order, applicant approached to Hon'ble High Court by filing a Writ Petition CWJC No. 15563 of 2013 and the said writ petition was dismissed by the Hon'ble High

Court by passing speaking order on merit. Matter did not end herein and the applicant approached the Hon'ble Supreme Court by filing SLP which was also dismissed by the Hon'ble Supreme Court. However, while dismissing SLP Hon'ble Supreme Court also observed that applicant if wish may give a representation. Applicant then preferred the representation which was rightly rejected by the respondents. Learned counsel also added that when previous matter was pending before the Hon'ble Supreme Court, the applicant did prefer another O.A bearing no. 822/2017 before this Tribunal. This O.A. also relates to retrospective promotion which is the subject matter of the present O.A. Learned counsel for applicant indicated that the prayer in OA 822/2017 is therefore is retrospective but the ground is on different ground. The present O.A relates to liberty granted by the Supreme Court.

6. Considered the submission made by the parties. Since O.A. 822/2017 is also on board today. We have had a glance at the prayer portion of that O.A. The relief 'B' prayed for in that O.A. relates to retrospective promotion in that OA. In OA 287/2004, as revealed from the pleadings. The order in SLP (Civil) No. 26565/2017 dated 23.02.2017 which yielded relating to 287/2004 passed by the Tribunal. Any how the matter is at notice stage so without falling in deep controversy whether the applicant was right or wrong in inscriptive prayer 'B' in OA 822/2017 at this stage particularly when the said OA has been admitted and been listed for final hearing. We confine ourselves to instant O.A. and its merit as noted above. Previously, the prayer for retrospective promotion has been rejected by the Tribunal in OA 287/2004, the order of the Tribunal has been affirmed by the Hon'ble High Court as well as by the Hon'ble Supreme Court dismissing the SLP. The representation preferred by the applicant after dismissal of SLP has been rejected on the ground that he did not participated in the selection process hence cannot be promoted. It is admitted fact that the applicant has not participated in the selection

proceedings though it has been stated that it was the fault of the applicant because he did not participate in the selection proceedings. Anywhere the employee who did not participate in selection process can be allowed for promotion and that too after 18-19 years. We have had a glance of rule 206.1 of Indian Railway Establishment Manual Vol.-1. The said rule deals with the case where the employees eligible to take the selection are abroad on deputation/secondment and are not likely to return in a few months time, the selection held in their absence should be finalized without waiting for their return. On their return they should be called for the first selection held thereafter and on the basis of their performance in the selection they should be considered for proforma inclusion in the panel framed during their absence abroad. Said Rule cannot be said applicable in the present scenario of the case. It was not stand of applicant to allow him to participate in the selection process. The rule 226 as has been quoted by the counsel for applicant relates to urgency promotion because of wrong assignment of seniority etc. Having taking note of entirety no indulgence of Tribunal is warranted, hence the O.A. being devoid of merit is dismissed.

(Sunil Kumar Sinha) M (A)

(M.C. Verma) M [J]

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