

6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 120/86 and 198
T.A. No. C.C.P.2/86

DATE OF DECISION 23.7.87

Shri Dev Raj Sharma Petitioner

Shri B.S. Mainee Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

Shri K.N.R. Pillai Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice J.D. Jain, Vice-Chairman

The Hon'ble Mr. Birbal Nath, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *yes*

[Signature]
(Birbal Nath)
Administrative Member

[Signature]
(J.D. Jain)
Vice-Chairman

7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELH I

Regn.no. CA 120/86 and
C.C.P.2/86

Date of Decision: 22.7.87

Shri Dev Raj Sharma

...Petitioner

Versus

Union of India and others

...Respondents.

For Petitioner: Shri B.S. Mainee, Advocate

For Respondents: Shri K.N.R. Pillai, Advocate

CORAM: HON'BLE MR. JUSTICE J.D. JAIN, Vice-Chairman

HON'BLE MR. BIRBAL NATH, Administrative Member

JUDGMENT

(Judgment of the Bench delivered by Mr. Justice J.D. Jain, Vice-Chairman)

The facts giving rise to O.A.No.120/86 in brief are that the applicant, Dev Raj Sharma, was employed as an Assistant Superintendent in the ministerial cadre of Commercial Branch of the Northern Railway in the grade of Rs.550-750. It was a selection post. Later, by virtue of his seniority-cum-suitability, he was, vide order dated 29.2.80 (Copy Annexure-I), promoted to grade Rs.700-900 which is a non-selection grade w.e.f. 1.1.79. He joined his duty in the said grade on 4.3.80 and he was paid arrears of pay etc. from the date of his promotion w.e.f. 1.1.79 (Annexure-II being the copy of the order dated 30.5.80). However, the aforesaid promotion order of the applicant to the grade of Rs.700-900 was unceremoniously and arbitrarily cancelled by the respondents vide their letter dated 24/26th July, 1980 (Copy Annexure-III) on the ground that "as a case of major penalty against him was contemplated at the time of his promotion as Superintendent (Commercial) in the grade Rs.700-900(R.S.) and hence he was not eligible for such promotion". Accordingly, he was reverted to his original scale of Rs.550-750.

Later on, he was served with as many as three charge-sheets for major penalties on 17.7.80 and 11.3.82. After holding due inquiry, the disciplinary authority dropped the first charge vide order dated 26th March, 1984 (copy Annexure IV). In the second disciplinary case the applicant was awarded only a minor penalty of withholding all his privilege passes and PTOs for a period of 18 months, vide order dated 12.4.83. In the third case, the disciplinary authority imposed on him the penalty of reduction to a lower stage in his time-scale of pay for a period of one year and his pay was reduced ^{by one step} from Rs.750/- to Rs.725/- in the time-scale of Rs.550-750 (RS) for one year only. However, it was clarified that the said reduction would not have the effect of postponing his future increments and his seniority would remain unaffected on restoration (copy Annexure-VI). Eventually, however, his mercy appeal dated 22.5.84 was allowed by the General Manager vide order dated 28.1.85 (copy Annexure VIII) to the extent that the penalty was further reduced to withholding of promotion of the applicant for three months w.e.f. 20th September, 1983, i.e., the date from which the original ^{punishment of} reduction to the lower stage in the time-scale was ordered.

2. The grievance of the petitioner is that after having been promoted to the higher grade of Rs.700-900 w.e.f. 1.1.79 and having been paid all his emoluments w.e.f. the latter date, there was absolutely no valid reason or justification for the respondents to revert him to the lower grade on the facile ground that a case of major penalty charge-sheet was contemplated against him at the time of his promotion as Superintendent (Commercial) in the grade of Rs.700-900. He asserts that indeed, no

charge-sheet had been served on him till 17.7.80 as mentioned above ^{as such} and the question of any major penalty charge sheet being in contemplation at the time of his promotion to the grade Rs.700-900 did not arise. So he has called in question the legality and validity of the order of his reversion dated 24/26th July, 1980.

3. The next grievance of the petition which is apparently more weighty and forceful is that vide order dated 11.6.85 (copies Annexures XX-XXI) three officials, namely, Mrs. Swaran Sood, Shri Inderjit Singh and Shri Sahib Singh, who were junior to him in the grade Rs.700-900 were promoted to Class II(Gazetted) service on ad hoc basis it being stated in the order of promotion itself that they had been promoted purely on ad hoc basis and they would ^{not} be entitled in future to any claim against their senior officers. Naturally, the petitioner ~~has~~ complains of his having been passed over wrongfully and illegally because he was senior to all the aforesaid three persons and his suitability/fitness for the higher job was never questioned or in doubt and as such, he was entitled to ad hoc promotion against one of the posts as of right.

4. In the counter filed by the respondents, the foregoing facts have by and large been admitted. However, it is maintained that the petitioner was reverted from grade Rs.700-900 to the lower grade because disciplinary proceedings against him were contemplated way back in November, 1979 when a decision had been taken to issue ^{penalty} major/charge-sheets. According to them, the Rules provide that a railway servant against whom the disciplinary

proceedings are proposed to be initiated should not be promoted till the proceedings end, even if he is found fit and his name is borne on the panel. So, according to them, the earlier promotion of the petitioner was made by mistake ~~of~~ and it was immediately corrected and rectified by cancellation.

As for the relief of ad hoc promotion to Class II (Gazetted) Service, it is averred that the ad hoc promotion had to be made as there was delay in preparing a regular panel after due selection and there was some complication with regard to the applicant's seniority.

5. The respondents have explained that for promotion to Class II the seniority list is prepared by merging the seniority lists prepared separately for each promotion unit and three persons who had been promoted on ad hoc basis so far belong^{ed} to units other than the applicant's. According to them, the combined seniority list was prepared on the basis of length of service as on 31st December, 1983. Since the applicant's actual date of promotion after the completion of disciplinary proceedings was 1.1.84 his name did not figure in the said list. They admit that this was a mistake since the rule for seniority says "the list should be based on the length of service in comparable ~~to~~ grades without, however, disturbing the inter se seniority of the staff belonging to the same category." They concede that under the Rules on the conclusion of the departmental proceedings, if only a minor penalty, which permits promotion, is imposed his original panel position should be restored though fixation of pay on actual promotion is to be determined under the normal rules and no proforma ~~fixation~~ fixation is admissible. Thus, they are fair enough to say

that the applicant's position in the combined seniority has to be as per the original promotion notice (Annexure-I to the application). They further state that the applicant has been restored to the correct position in the combined seniority list and he will immediately be considered for ad hoc promotion, if necessary, by reverting his junior.

6. It may be pertinent to mention here that on 11.3.86 when the question of issue of interim order was under consideration, the respondents conceded that they had no objection to consider the applicant in accordance with the seniority shown in Annexure-I for promotion to Class II Service in T.T.&C Department on ad hoc basis pending disposal of this petition and to make all promotions so made subject to the final order in this petition. It may be noticed that Annexure-I is a copy of notice dated 29.2.80 vide which the petitioner was considered for promotion as Superintendent (Commercial) in the grade Rs.700-900 (RS) from the post of Assistant Superintendent (Commercial) in the grade Rs.550-750 on the basis of seniority. He ~~was~~ ranked at No.2 in the order of seniority and S/Shri Inderjit and Mrs. Swaran Lata Sood ranked junior to him. It bears ~~a~~ repetition that the respondents have conceded that the applicant having been restored to the correct position in the combined seniority list, he would be immediately considered for ad hoc promotion, if necessary, by reverting his junior. They have admitted the correctness of Annexure-I to the application in ^{no} uncertain terms. That being the correct position it is not intelligible why the respondents have not promoted the applicant to Class II (Gazetted) Service so far.

- 6 -

7. During the course of arguments, the learned counsel for the respondents submitted that the order of reversion of the petitioner from grade Rs.700-900 to Rs.550-750 was made way back in July, 1980. However, the applicant did ^{not} challenge the same at any time before filing the instant application; rather he stood by and waited for the completion of disciplinary inquiries against him. As stated above, he has been exonerated in one of the charges while only minor penalties were imposed in the other two cases. Since the said penalties did not stand in the way of restoration of the petitioner his original seniority ^{the same} has been duly corrected. Indeed it is perfectly in accordance with the Railway Servants (Discipline & Appeal) Rules, 1968 as amended from time to time and the clarifications issued by the Railway Board in the Brochure on Railway Servants (Discipline & Appeal) Rules, 1968. So the question whether the order of reversion of the applicant suffered from the vice of illegality/invalidity is purely one of academic discussion and nothing more. Indeed it is too late in the day to give any relief to the petitioner with regard to the same when he did not challenge the same in time and has chosen to come up with this application for redressal of a wrong which no longer subsists.

8. However, the question of promotion of the petitioner looms large in this case inasmuch as he was admittedly senior most for consideration for ad hoc appointment, but he was not in fact considered. May be for reasons furnished by the respondents, and the officials junior to him were put on ad hoc promotion. This has certainly resulted in grave injustice to him. Para 4.1(vi)

- 7 -

~~under para 4~~, which carries the heading "PROMOTION OF RAILWAY SERVANTS, WHO ARE UNDER SUSPENSION AND/OR WHOSE CONDUCT IS UNDER INVESTIGATION", ~~which~~, inter alia, deals with the procedure to be followed in the matter of promotion from Class III to Class II of Railway Servants who are under suspension or against whom departmental proceedings have been initiated or proposed to the initiated (to selection post), provides as under:-

(vi) If the disciplinary proceedings against the person under suspension etc. for whom a vacancy has been reserved, is finalised within a period of two years of the approval of the provisional panel and he is held guilty but awarded only a minor penalty, he should automatically be assigned the position indicated by the Selection Board in the panel and his empanelment announced and he may be promoted in his turn. If his junior has already been promoted before interpolation of his name in the panel, he should be promoted, reverting the junior most person, if necessary, and his pay on promotion should be fixed under the normal rules."

On a plain reading of this sub-para, it is crystal clear that the petitioner ought to have been promoted even if it meant reversion of one of his juniors who had already been appointed. Indeed, the learned counsel for the respondents has been fair enough to concede this proposition. However, he has raised a fresh contention that the petitioner cannot be promoted in view of an order dated 2.9.86 made by another bench of this Tribunal in the application filed by one Mr. M.N. Kakkar who has challenged the combined seniority list prepared by the respondents, staying the operation of the seniority list filed in the said application (OA 659/86). However, this submission is totally misconceived inasmuch as after

having admitted in/^{no} uncertain terms that Annexure-I to the application reflected the correct seniority position and that the three persons mentioned above were junior to the petitioner it does not lie in the mouth of the respondents to reprobate the same. Indeed it is clear volte face on their part irrespective whether the seniority list filed in the case of Mr. M.N. Kakkar is correct or not. It is not comprehensible how the same is relevant for the decision in this case. It would simply amount to permit the respondents to withdraw the admission so explicit^{-ly} made in their counter. Looked at from this angle, the said seniority list has absolutely no bearing^{on} the decision of this case. What is sought in this petition is the ad hoc promotion of the petitioner to Class II (Gazetted) Service and nothing more. It will be highly unjust and improper if the persons junior to the petitioner are allowed to continue on higher post while the petitioner is denied his rightful place in the service. As stated in the well known book 'Railway Establishment Law and Practice' by M.L. Jand at page 121, normally, whenever there is a vacancy only the seniormost eligible person as per his turn should be promoted to ad hoc appointment. This is persis^{-tently} being denied to the petitioner despite the interim order dated 11.3.86 made by this court.

9. Article 16 of the Constitution gives effect to the doctrine of equality in the matter of appointment and promotion. ^{While} it permits a reasonable classification of the employees for the purposes of appointment and promotion, in ^{essence} the equality of opportunity

guaranteed by Article 16(1) means the equality of opportunity as between the employees of the same class. Thus, the action of the respondents in not promoting the petitioner on ad hoc basis is violative of Article 16 of the Constitution and he is entitled to the appropriate relief from this court.

10. Generally speaking, in a situation like the present the court issues a direction to the respondents to reconsider the petition for ad hoc appointment to the concerned post ^{from back date} ~~post~~. However, the instant is a case of somewhat extraordinary nature, in that, he has been denied his due place in Class II Service despite order dated 11.3.86 which was evidently made on an assurance given by the respondents that they would consider him for appointment on ad hoc basis, the said assurance in turn having emanated from their admission that the petitioner was the seniormost and Annexure-I to the application reflected correct position of his seniority. It is rather astounding that despite the clear assurance given by the respondents and admission made by them, they chose to prepare another seniority list totally on their own ^{although} ~~although~~ they were not at all required to do so, at least so far as the instant case is concerned. Officials junior to the petitioner mentioned above have been enjoying the benefit of the higher post since 11.6.85, i.e. ^{for} ~~for~~ more than two years. We are told that the petitioner is due for retirement on superannuation by the end of the next month, viz., 31st August, 1987. It will be therefore too harsh for him if he is denied promotion even on ad hoc basis till

- 10 -

When the date of his superannuation. ~~the~~ the respondents have not taken any action in the matter for more than a year and a quarter after order dated 11.3.86, there is no point in issuing a direction to them to reconsider the petitioner for ad hoc appointment to Class II service. It is admitted that he is the seniormost official and also fit for promotion. Nothing more remains to be verified and ascertained so far as his eligibility for appointment on ad hoc basis is concerned. We have seen his annual confidential reports for the relevant years. He has been graded 'good' and fit for promotion. Under the circumstances, we deem it just and proper to hold and declare that the petitioner shall be deemed to have been promoted to Class II (Gazetted) Service w.e.f. 11.6.86, ^{Jo} i.e., the date on which he would have been normally promoted to the said post. We draw sustenance for the view we are taking from the ratio of the decision of the Supreme Court in State of Gujarat Vs. S. Tripathi and others, reported as (1986)2 SCC 373. He shall be entitled to salary and other emoluments payable to ^{other} officials in that service, for instance, his juniors who had already been promoted for the entire period. We are ordering so because the respondents have failed to rectify the mistake even though they had ascertained the seniority of the petitioner way back in March, 1986, if not earlier. The respondents shall pay arrears of salary etc. within three months from today. We may, however, clarify that our aforesaid order shall be without prejudice to regular appointments which may be made on merits to the said service in accordance with the rules. This petition stands disposed of accordingly.

CCP No.2/86

This application for contempt of court action

- 11 -

against the respondents flows from the foregoing facts; the grievance of the petitioner being that the respondents have not complied with the order dated 11.3.86 of this court deliberately and they are putting off his appointment to Class II Service on ad hoc basis on lame excuses and pretexts. From the conspectus of the circumstances adverted to above, it is abundantly clear that the delay on the part of the respondents in not complying with the order dated 11.3.86 of this Court, which, as already observed, was made in view of the concessions and admissions made by the respondents smacks of deliberate and willful defiance. No explanation is forthcoming how they thought of preparing another seniority list so far as the petitioner is concerned despite the assurance given by them to the Court regarding reconsideration of his appointment on ad hoc basis. Evidently, it betrays total indifference and apathy on the part of the authorities concerned towards the order made by the Court. It appears that the General Manager who is facing this contempt application did not apply his mind to the consequences of ignoring the order of the Court and going ahead with the preparation of a fresh seniority list which could be ^{the} brain-child of someone in the department. Under the circumstances, we find that there is a prima facie case of contempt of court as against Shri S.K. Datta the then General Manager, Northern Railway.

Let rule nisi be issued to the General Manager, Northern Railway to show cause as to why he should not be punished for disobeying the order dated 11.3.86 of the court, returnable by 20th September, 1987.

25/7/87
(Birbal Nath)
Administrative Member

J.D. Jain
(J.D. Jain)
Vice-Chairman