

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO. 1616/87

DATE OF DECISION; 27.8.1990

SHRI AMAR NATH BANSAL

APPLICANT

VERSUS

UNION OF INDIA

RESPONDENT

SHRI S.K. SAWHNEY

COUNSEL FOR APPLICANT

SHRI P.S. MAHENDRU

COUNSEL FOR RESPONDENT

CORAM:

HON'BLE JUSTICE MR. AMITAV BANERJI, CHAIRMAN

HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

JUDGEMENT

(DELIVERED BY HON'BLE MR. I.K. RASGOTRA, MEMBER (A))

Shri Amar Nath Bansal working as Head Clerk, Personnel Branch, Divisional Railway Manager's office, Northern Railway, New Delhi was due promotion as Assistant Superintendent, Rs. 550-750, (RS) w.e.f. 1.4.1986. Accordingly vigilance clearance was obtained before issuing the promotion order on 30.4.1986 and processing the issuance of promotion order was completed on 15.5.1986. However, when the promotion order was issued on 21.5.1986, his name was not included. He was served a chargesheet on 22.5.1986 for having "failed to get checked the genuineness of casual labour service cards, entries made therein and the endorsement made on the application" of certain candidates with the result that those candidate got appointment in the Railway on the basis of fake casual labour service cards. Based on this article of charge the applicant is alleged to have committed gross misconduct and failed to maintain devotion to duty and committed acts unbecoming of a public servant. The applicant

submitted his reply to the chargesheet on 2.6.1986 and requested facilities for inspection of documents relied on. There was, however, no response. At the same time the process of enquiry to finalise the case has also not yet been started. The applicant made representations on 24.12.1986 and 14.5.1987 requesting for restoration of his promotion w.e.f. 1.4.1986 in view of the non pursuit of the case set against him. As a consequence his case appears to have been recommended by the Additional Divisional Railway Manager on 14.5.1987 for granting him promotion from the due date to the D.R.M. but the recommendation was not accepted. The D.R.M. on 24.8.1990 ordered that "enquiry must be finalised within this week. Promotion can be held only after he is cleared." The applicant contends that the impugned order dated 24.8.1987 and deletion of his name from the promotion order dated 21.5.1986 are illegal and in violation of the provision of Article 14 & 16 of the Constitution.

By way of relief, he has prayed that the respondents be directed to restore his promotion to the post of Assistant Superintendent (Rs. 550-750 RS) w.e.f. 1.4.1986.

2. The contention of the respondents is that although the D & AR proceedings were contemplated for imposition of a major penalty on the applicant on 14.5.1986 and the order passed on 15.5.1986, this fact came to the notice of the competent authority on 20.5.1986 on a rechecking of the confidential record of the applicant. The name of the applicant was therefore

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deleted from the promotion order issued on 21.5.1986.

3. Shri Amar Nath Bansal, the applicant has further vide MP 2362/89 submitted that he has since been promoted to the post of Assistant Superintendent (Rs. 550-750 RS) w.e.f. 24.8.1989 on adhoc basis vide order No. 561-E/807/P-4 dated 28th April, 1989.

4. A careful appreciation of the facts of the case brings out that there was nothing against the applicant on 30.4.1987 when his case for promotion was proceeded. It was at the very last stage when contemplated proceedings came to the notice of the competent authority on 20.5.1986 that his name was deleted from the promotion order. He was chargesheeted for major penalty on 22.5.1986 and he submitted his explanation/reply on 2.6.1986. Since then there has been no progress in the matter even the process of enquiry has not started after a lapse of a period of over four years since the issue of the chargesheet. Further, from the copy of the letter No. Viz-442/83-P dated 25/29 September, 1987 addressed to Commissioner, Departmental Enquiries, it is observed that apparently there is no case against the applicant. The relevant portion of the letter is extracted below:-

"Shri A.N. Bansal was due his promotion as Assistant Superintendent in grade 550-750 (RS) on 1.4.1986. the promotion orders could not be issued due to administrative lapses and delayed upto 21.5.1986. Thereafter he was served with SF.5 on 22.5.86. On the basis of reply of charge sheet along with documentary evidences given by Shri Bansal, I (Disciplinary

Authority) am of the opinion that he is not responsible of the charges alleged upon him."

It is against the above backdrop that the applicant has been promoted w.e.f. 28.4.1989, albeit on purely adhoc basis. The progression of the case as is evident from the above completely erodes the creditability of the charges levelled against him in the charge sheet dated 22.5.1986. The applicant is due to retire on superannuation in 1991 and yet there is no progress on the chargesheet issued in May, 1986.

Having regard to the fact that there is inexplicable procrastination in finalising the charge levelled against the applicant and that he has been promoted as Assistant Superintendent w.e.f. 28.4.1989 after 3 years from the date of issue of chargesheet, which in the opinion of the competent authority is not sustainable and which has not been pursued to its logical conclusion, we are of the view that the decision to hold back the promotion of the applicant w.e.f. 1.4.1986 was arbitrary and illegal. It appears to us that the grounds that led to the promotion of the applicant in 1989 were very much there even earlier as is evident from the letter dated 22/25 September, 1987 addressed to Commissioner, Departmental Enquiries by the Divisional Personnel Officer, DRM Office, New Delhi, if not earlier. There was, therefore, no justification for denying adhoc promotion to the applicant from the due date on 1.4.1986. It will therefore be in the interest of justice to restore the promotion to the applicant from the



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due date. Accordingly, we order and direct the respondents that the applicant should be deemed to have been promoted on adhoc basis as Assistant Superintendent Rs. 550-750 (RS) w.e.f. 1.4.1986, with consequential benefits. We further direct that the disciplinary case against the applicant should be finalised within three months from the date of receipt of this order to avoid any further harassment to the applicant at the time of his retirement on superannuation.

There will be orders as to the Court

I.K. Rasgotra
(I.K. Rasgotra)
Member (A)

AB
(Amitav Banerji)
Chairman