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In the Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. CCP-115/89 In
OA-1456/87

Date: 30.4.1990

Shri Om Prakash Sharma Petitioner

Versus

Union of India Respondents

For the Petitioner Shri B.S. Mainee, Counsel

For the Respondents Shri S.N. Sikka, Counsel

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Jud1.)
Hon'ble Shri D.K. Chakravorty, Administrative Member.

O R D E R

(by Hon'ble Shri P.K. Kartha, V.C.)

The petitioner has alleged in this petition that the respondents have not complied with the order passed by this Tribunal on 17.11.1988 on MP-1903/89 and, therefore, the respondents be hauled up for having committed contempt of Court. In MP-1903/88, he had stated that disciplinary proceedings were initiated by the respondents on 18.9.1982 and were still pending. He prayed that his case for ad hoc promotion to higher post might be considered by the respondents in terms of the Railway Board's letter dated 20.9.1982. According to the letter, if disciplinary proceedings are not completed within two years, the appointing authority had to review the case of the Government servant and subject to the fulfilment of certain conditions stated therein, consider him for ad hoc promotion. The Tribunal, in its order dated 17.11.1988, directed the respondents to undertake a review in terms of the Railway Board's letter dated 20.9.1988 and give decisions thereon on or before 31.12.1988.

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2. Thereafter, the respondents filed MP-570/89 seeking extension of time upto 30.4.1989 to comply with the directions given by the Tribunal. The reason given was that they were unable to trace out the missing files.

The Tribunal allowed them time as prayed for in the M.P.

3. The stand of the respondents in the present petition is that the Railway Board's letter dated 20.9.1982, does not apply in the case of the petitioner. An employee who is working as a Senior Clerk in the grade of Rs.1200-2040, is promoted to the next higher grade of Head Clerk (Rs.1400-2500) subject to clearance from charge-sheet ~~and~~

~~and~~ and S.P.E./Vigilance clearance. There was no provision for adopting sealed-cover procedure in the case of such promotions as the post of Head Clerk is a non-selection post. Promotion is made on the basis of seniority only subject to clearance from the angles of charge-sheet and SPE/Vigilance cases. The petitioner was facing disciplinary proceedings for a major penalty at the time of filing MP-1903/88. Hence, he could not be considered for promotion as he was not clear from the purview of the Discipline and Appeal Rules.

4. The respondents have also stated in their reply that the inquiry against the petitioner has concluded and taking a lenient view, they have imposed on him only a minor penalty of recovery of part of the loss vide order dated 19.6.1989. The petitioner has also been promoted to the next higher grade of Head Clerk u.e.f. 23.8.1989.

5. We have carefully gone through the records of the case and have heard the learned counsel for both the parties. There is force in the contention of the

respondents that the instructions contained in the Railway Board's letter dated 20.9.1982 apply only to cases where sealed-cover procedure is adopted. In the instant case, no such procedure was adopted. The petitioner has also been promoted after the conclusion of the inquiry pending against him. We are satisfied that the respondents have not wilfully disobeyed the order of the Tribunal dated 17.11.1988. In view of this, the C.C.P. is dismissed and the notice of contempt is discharged. The parties will bear their own costs.

D. K. Chakravorty
(D. K. Chakravorty)
Administrative Member

30/4/1990

P. K. Kartha
30/4/90
(P. K. Kartha)
Vice-Chairman (Judl.)