

In the Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 240/90

Date of decision: 7.1.1993.

Shri Bhim Singh

...Petitioner

Versus

Union of India through the
General Manager, Northern
Railway, New Delhi & Others

...Respondents

Coram:-

The Hon'ble Mr. I.K. Rasgotra, Member (A)

For the petitioner

Shri B.S. Maine, Counsel.

For the respondents

None

1. Whether repo-rters of local papers may be allowed to
see the Judgement? /V/
2. To be referred to the Reporter or not? /-/

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

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For the respondents

None

Judgement(Oral)

The short question which emerges after hearing the learned counsel for the petitioner, Shri B.S. Maine in this case is whether the petitioner should be promoted for which he was qualified and eligible from a date after the expiry of the minor penalty imposed on him or from a date when he became due for promotion, albeit after the period of penalty had expired?

2. Briefly the facts of the case are that the petitioner qualified in the test held for the post of Senior Clerk (Rs.330-560) on 21.10.1981. He was, however, not promoted, as in the meantime he was served a chargesheet on 13.3.1980 which culminated in imposition of penalty of recovery of an amount of Rs.1,360/- from him. While proceeding against the chargesheet dated 13.3.1980 was pending he was served another memo on 4.2.1984 which too culminated in imposition of a penalty

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but of higher order, i.e., withholding of increment for one year permanently. This penalty came into effect from 23.4.1985 - the date on which the next increment fell due. The period of penalty was thus over on 23.4.1986. In the meantime, Shri Mehar Singh who was next junior to the petitioner came to be promoted as Senior Clerk (Rs.330-560) w.e.f. 1.10.1980 and as Head Clerk w.e.f. 1.1.1984 consequent to large scale upgradation of the posts of restructuring Group 'C' and 'D' cadres vide Railway Board's order dated 16.11.1984, which came into effect retrospectively w.e.f. 1.1.1984. The case of the petitioner is that he should have been promoted w.e.f. 1.10.1980 as Senior Clerk (Rs.330-560) and as Head Clerk w.e.f. 1.1.1984 - the date when his next junior was promoted, keeping in view the fact that he had qualified and placed on the panel for promotion as Senior Clerk to that grade vide order dated 21.10.1991. He also became eligible for promotion as Head Clerk under the restructuring scheme in accordance with the modified procedure laid down by the Railway Board for filling up the post of Head Clerk. The respondents, however, promoted him as Senior Clerk w.e.f. 1.4.1986 - the date on which he became free from the punishments imposed on him and as Head Clerk from 7.8.1987.

3. The stand of the respondents in their counter-affidavit is that the petitioner could not be promoted as Senior Clerk and Head Clerk during the period when he was undergoing punishment imposed after following due process of law.

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4. The learned counsel for the petitioner referred me to the judgement of the Principal Bench in OA 1699/87 between Shri Prem Singh Verma v. Union of India rendered on 28.1.1992. A perusal of the said judgement shows that the circumstances in that case were broadly identical to the matter before us in the present petition. In paragraph-5 of the said judgement we had observed:-

"5. We have heard the learned counsel for both the parties and perused the material placed on record carefully. The applicant was admittedly punished for a period of two years whereby his increments were withheld temporarily without cumulative effect. The said penalty was imposed w.e.f. 1.10.1983 - the date on which his increment was due in the pay scale of Rs.330-560. The period of punishment expired on 30.1.1985 and the applicant became entitled to be fixed in the scale of pay as if he had not undergone the punishment of W.I.T. for two years. Since the penalty was not to operate to postpone future increments the applicant is to be fixed notionally at the stage which he would have reached had the said penalty not been imposed on him. In the meantime, the applicant became entitled to promotion w.e.f. 1.1.1984. This promotion was not given effect during the currency of the punishment (Railway Board's letter No.E(D&A)71RG6-23 dated 1.6.1971 and 22.11.1971). After the elapse of period of punishment on 1.10.1985, however, the applicant became entitled to be fixed in the pay scale of Rs.425-640 w.e.f. 1.10.1985. The respondents seem to have taken the view that the applicant cannot be promoted w.e.f. 1.1.1984, as he was undergoing punishment at that point of time and

that promotion can be allowed only after the currency of the punishment expired. This, however, is a view which cannot be sustained. Rule 11 of the CCS (CCA) Rules, 1965 lists the following penalties:

- i) censure;
- (ii) withholding of promotion;
- (iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;
- (iv) withholding of increments of pay;

Withholding of promotion itself is a minor penalty. If alongwith the withholding of increments promotion also is to be withheld it would result in double jeopardy. The respondents' view point, therefore, is not tenable in law. Accordingly, we are of the view that the applicant not only would stand restored to his original position after the currency of the minor penalty of W.I.T. expired but would also be entitled to promotion w.e.f. 1.1.1984 although he would draw the pay in the scale of Rs.425-640 in which he has to be fitted from 1.1.1984 w.e.f. 1.10.1985 only. Further promotion to the higher scale of pay of Rs.425-640 was not a normal promotion but was caused due to restructuring of the cadre leading to bulk upgradation of the posts. In that view of the matter also it will be untenable to deprive the applicant notional fixation of pay in the higher grade."

5. The learned counsel further relied on a judgement of Patna Bench of the Tribunal reported in **ATR 1992 (2) CAT 92** between **Shideswar Prasad v. U.O.I. & Ors.** decided on **23.1.1991** where the Bench relying on the judgement of the Supreme Court in **Shiv Kumar Sharma v. Haryana State Electricity Board** reported in **1988 (3) SLR SC 524** came to the same conclusion which has been arrived at in **Prem Singh Verma (supra)** case.

6. In the facts and circumstances brought out above, we are of the opinion that the matter stands concluded in this case by our judgement in **Prem Singh Verma (supra)** case. The respondents are accordingly directed to fix the pay of the petitioner w.e.f. 1.10.1980, as Senior Clerk in the pay scale of Rs.330-560 and as Head Clerk w.e.f. 1.1.1984 - the date on which his junior was promoted on notional basis. While it is on record that the petitioner was found fit for promotion as Senior Clerk in pursuance of the respondents order dated 21.10.1981, the respondents shall consider the petitioner for promotion as Head Clerk on notional basis w.e.f. 1.1.1984 in accordance with the modified procedure laid down by the Railway Board and promote him as Head Clerk, if found suitable. The financial benefit will be given to the petitioner from the date he actually resumes duty in the higher grade. The respondents are directed to implement these orders with utmost expedition and preferably within 12 weeks from the date of communication of this order. No costs.

Subhash
(I.K. RASGOTRA)
Member(A)

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