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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 2933/2004

New Delhi, this the 12th day of September, 2006

HON'BLE MR. V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

Vidya Prakash,
Chief Parcel Supervisor,
Northern Railway Station.
Delhi

R/o 10-E/Railway Quarter,
Mahabat Khan Road,
New Delhi - 2
(By Advocate : Shri M.L. Sharma)

... Applicant

Versus

Union of India through:

1. General Manager,
Northern Railway,
Headquarters Office,
Baroda House,
New Delhi
2. Divisional Rail Manager,
Northern Railway,
State Entry Road,
New Delhi
3. Shri S.L. Meena,
Chief Parcel Supervisor,
Northern Railway Division,
New Delhi
(By Advocate : Shri S.M. Arif)

... Respondents

O R D E R

By Mukesh Kumar Gupta, Member (J):

The relief prayed for in this OA reads thus:

"8.1 To allows the O.A. & to quash and set aside the impugned order dt. 12-12-1993 (A-1) and seniority dt. 23.02.2004 (A-2) inter alia,

8.2.1 to direct the respondents to assign & fix his position over Shri S.L. Meena (S.No.7) in the seniority list of 5500-9000.

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8.3 *to direct the respondents further to upgrade & fix his position over Shri Meena item no.7 in the seniority list of Chief Parcel Supervisor 6500-10500 & to fix his pay on proforma basis w.e.f. 10-4-1995 and to pay the arrears of pay & allowances from the actual date of his promotion i.e. 30-4-2002 till date under Rule 228 of IREM, 1989 (A-8) read with Hon. CAT's judgment dt 31-5-2000 (A-3)"*

2. The basic grievance of applicant is that he should have been promoted as Chief Parcel Supervisor in pay scale of Rs.6,500-10,500/- from the date Shri S.L. Meena (respondent No.3 herein) was promoted, i.e. 10.04.1995 with all consequential benefits including arrears of pay and allowances, instead of 30.04.2002 in terms of judgment of this Tribunal dated 31.05.2000 in OA No. 1758/1997.

3. Admitted facts of the case are that the applicant belonging to SC category, was selected for clerk grade Rs.110-180/260-400 on 30.03.1976. In 1981, he was selected to ^{the} post of Traffic Apprentice in grade of Rs.450-700/-, & posted as Assistant Station Master on 20.10.1985. On being medically de-categorized, he was posted as Chief Parcel Clerk in the same grade w.e.f. 09.02.1994, which scale of pay had been revised to Rs.1400-2300/-. As restructuring scheme was introduced by Railway Board order dated 27.1.1993, which came into force w.e.f. 01.03.1993 and he was not granted next scale of Rs.1600-2660/- despite his eligibility, he preferred OA No.1758/1997. The said OA had been contested by Respondents stating that though he was within the zone of consideration for grade of Rs.1600-2660 under restructuring scheme, but he could not be considered because he was undergoing various punishments and two major penalty charge sheets were pending against him at the relevant time. Taking into account all facts and circumstances, said OA was disposed of vide order dated 31.05.2000 with following directions:

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"Respondents shall consider and grant the benefit of upgradation/promotion to the applicant in the higher pay scale of Rs.1600-2660 in terms of the upgradation Scheme dated 27.1.1993 immediately after the date of currency of the penalties imposed on him, from the due date with all consequential benefits in accordance with the Rules. Necessary action in this regard shall be taken within a period of three months from the date of receipt of a copy of this order, with intimation to the applicant. Parties to bear their own costs." (emphasis supplied).

4. Pursuant thereto, he was promoted to higher scale of pay of Rs.1600-2660/- vide order dated 19.10.2000. His contention is that since his junior i.e. Shri S.L. Meena, in the meantime, was allowed promotion to Chief Parcel Supervisor Grade 6500-10500/- w.e.f. 10.04.1995, he is also entitled to said benefit. Moreover, the Tribunal vide aforesaid order dated 31.05.2000 had directed Respondents to grant him upgradation/promotion "from the due date with all consequential benefits in accordance with rules". As per seniority list issued on 16.07.2001 his name was placed at serial No.5 assigning him date of promotion in grade of Rs.5500-9000/- w.e.f. 01.03.1993. He made representations dated 05.09.2003 followed by reminder dated 30.09.2003. Shri M.L. Sharma, learned counsel contended that since he had been overlooked for promotion to higher grade due to administrative error and wrong assignment of relative seniority, he is entitled for promotion under Rule 228 of IREM, 1980 from the date of his junior's promotion, with consequential benefits.

5. Respondents contested the claim laid stating that after expiry of punishment on 30.09.1996, he was promoted to the Grade of Rs.5500-9000/- w.e.f. 01.10.1996 in compliance of judgment of this Tribunal as referred to above. In terms of P.S. No. 10738 (Note), if a person becomes due for promotion after finalization of disciplinary

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proceedings and the penalty imposed, he should be promoted only after expiry of the penalty. Since he has already been granted benefit of promotion w.e.f. 01.10.1996 vide order dated 19.10.2000, he was further promoted as Chief Parcel Supervisor Grade of Rs.6,500-10,500/- w.e.f. 30.04.2002. Shri S.L. Meena was promoted to said grade on 11.08.1995. Applicant's claim is uncomparable as he had been facing lawful punishment imposed on him. Therefore, he was not eligible for consideration for promotion.

6. Shri S.M. Arif, learned counsel also raised the plea of constructive resjudicata, stating that OA 1758/1997 was filed in the year 1997 whereas Shri S.L. Meena had been promoted as Chief Parcel Supervisor on 11.08.1995. As such, applicant ought to have sought promotion to concerned post also vide aforesaid OA. Having not claimed such relief, the present OA was not maintainable.

7. Applicant by filing rejoinder affidavit controverted respondents' plea and reiterated contentions so raised vide OA.

8. We have heard learned counsel for parties and perused the pleadings & material placed on records carefully.

9. At the outset we may note that respondents were directed to produce copy of order dated 19.10.2000, as stated vide reply para-4.6 but said direction has not been complied with.

10. On consideration of entire matter including rival contentions raised by parties, we notice that direction issued by this Tribunal vide order dated 31.5.2000 in OA No.1758/1997 had been to the limited extent i.e. consider and grant benefit of upgradation / promotion in the higher pay scale of Rs.1600-2660/- in terms of upgradation

scheme dated 27.1.1993 immediately after the date of currency of the penalties imposed upon him." Aforesaid direction would specifically show that there was no direction to respondents to promote him yet to another higher grade / scale of Rs.6500-10500/- as claimed in present OA. Similarly, we also observe that a seniority list of Chief Parcel Supervisor in grade of Rs.6500-10500/- had been issued vide Annexure A-5 dated 25.6.2003 wherein applicant has been placed at serial no.13 and respondent no.3 at serial no.7. It is not the case of applicant that said seniority list has been challenged by him before any court of law. Annexure A-2 circular dated 23.2.2004, vide which seniority list of Chief Parcel Supervisor was circulated, establishes that the same was a provisional seniority list and it invited representations, if any, from aggrieved officials within the period specified therein. As long as earlier seniority list dated 25.6.2003 is not challenged and disturbed, subsequent seniority list also cannot be challenged to the extent which reiterates earlier position, as noticed hereinabove. Moreover, applicant's claim is hit by doctrine of constructive res-judicata as respondent no.3 had been promoted to the grade of Chief Parcel Supervisor w.e.f. 10.4.1995 i.e. much before the date when he instituted OA No.1758/1997. As such we find substance & justification in the contention raised by respondents that such a relief ought to have been claimed in said OA. It is not the case of applicant that he had challenged his promotion to the grade of Rs.5500-9000/- w.e.f. 1.10.1996, as granted pursuant to direction issued on 31.5.2000. It is also not in dispute that post of Chief Parcel Supervisor was a selection post and, therefore, one has to acquire eligibility for consideration. Having been appointed in feeder grade of Rs.5500-9000/- only on 01.10.1996 under no circumstance would make him eligible for

promotion to the next higher post & grade of Chief Parcel Supervisor w.e.f. 10.4.1995. In any case, Shri S.L. Meena, respondent no.3 is not junior to applicant as claimed, particularly as reflected vide seniority list of said grade dated 25.6.2003, which date is discernible only from the index of OA and has not been disclosed in the pleadings. Applicant's request for change in seniority as well as retrospective promotion rejected vide communication dated 23.02.2004, did not suffer from any illegality & thus requires no interference.

11. In view of discussion made hereinabove, we are of the considered view that OA lacks merit as well and accordingly it is dismissed. No costs.

(Mukesh Kumar Gupta)
Member (J)

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(V.K. Majotra)
Vice-Chairman (A)
12.9.06