

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

(12)

O.A. No. 681/92  
T.A. No.

199

DATE OF DECISION 28-5-93

<u>Shri S.N.Sharma</u>	Petitioner
<u>Shri R.K.Kamal</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India</u>	Respondent
<u>Shri I.C.Sudhir</u>	Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. N.V.KRISHNAN, VICE CHAIRMAN (A)

The Hon'ble Mr. B.S. HEGDE, MEMBER (J).

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal? ✓

## JUDGEMENT (ORAL)

(Hon'ble Shri N.V.Krishnan, Vice Chairman(A))

The applicant is currently working as Professor of Establishment, Zonal Training School, Northern Railway. He has filed this application claiming the following reliefs in para 8 of the OA.

- "8.1.- The respondents be directed to treat the promotion of the applicant to senior time scale with effect from 22-5-89 when his junior in the panel was promoted.
- 8.2 The respondents be directed to grant all arrears of pay and allowances and increments in the senior time-scale to the applicant with effect from 22-5-89 with interest at 15% per annum.
- 8.3 The respondents be directed to grant all consequential benefits, including the incentive increments in senior-scale as explained in para 4.8 of this application."

2. This application has been filed in the following circumstances.

2.1 A DPC was held on 3-5-89 for considering Group 'B' officess for promotion to the senior time scale in the

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Personnel Branch and the DPC decided to place its recommendations in respect of the applicant in a sealed cover. This is evident from and admitted in para 3 of the respondent's reply.

2.2 Shri LN Pandey, a junior of the applicant, was promoted to the senior scale in pursuance of the recommendations of the said DPC by the order dated 25-2-89- An.A-4.

2.3 A memorandum of charges, initiating a disciplinary proceeding against the applicant was issued on 8-9-89- as is evident from a reference to this memorandum in the An.A-5, final order dated 27-12-89 passed in the DE by the Disciplinary Authority. The disciplinary authority imposed the penalty of stoppage of two sets of railway passes and two sets of privilege ticket orders.

2.4 On the conclusion of the departmental enquiry, the sealed cover was opened and the recommendation of the DPC was seen. Thereupon, by the An.6 order dated 7-9-80, the applicant was placed immediately above Shri LN Pandey the same official who had already been promoted earlier from 22-5-89 by the An.A-4 order.

2.5 Finally, the applicant was promoted to the senior time scale by the Annexure A-1 order dated 29-8-90.

2.6 The applicant made representations An.A-9, A-10 and A-11 dated 7-1-91, 4-5-91 and 26-9-91, respectively for granting him promotion from the date when his junior, Shri LN Pandey, was promoted and give him the benefit of advance increments in accordance with the scheme notified at An.A-8. As no relief was given, he has filed this application seeking the following reliefs:-

- "8.1 The respondents be directed to treat the promotion of the applicant to senior time scale with effect from 22-5-89 when his junior in the panel was promoted.
- 8.2 - The respondents be directed to grant all arrears of pay and allowances and increments in the senior time scale to the applicant

with effect from 22-5-89 with interest at 15 percent per annum.

8.3 The respondents be directed to grant all consequential benefits, including the incentive increments in senior-scale as explained in para 4.8 of this application."

3. The respondents have filed their reply contesting the claims made by the applicant. An important submission made by them is that cause of action of the applicant has arisen on 3-5-89 when the sealed cover/<sup>procedure</sup> has been resorted to and therefore, this O.A. is belated. Secondly, the promotion was given prospectively after the D.E was over in terms of the circular dated 2-7-90 of the Railway Board (An.R-1).

4. We have heard the parties. The learned counsel for the applicant has rested this case entirely on the decision rendered by the Supreme Court in the case of U.O.I Vs. Janakiraman & Ors. (JT 1991 SC 527). He contends that the Supreme Court has clearly held that the sealed cover procedure can be resorted to only when a memorandum of charges has already been issued when the DPC met and not at any earlier stage. It is also held by the Supreme Court that in case the sealed cover procedure has been resorted to wrongly, the person concerned is entitled to be promoted retrospectively from the date his junior was promoted and he cannot be denied this benefit on the only principle of 'no work no wages' because this is a case where the employee was prepared to work, but work was denied to him illegally by the respondents.

5. The learned counsel for the respondents reiterated the plea of limitation. We are not impressed by this argument. The applicant was promoted only on 29-8-90 (An.A-1). It was open to the Govt. to give him retrospective promotion from 25-2-89 when LN Pande was promoted. Instead, when he was promoted from 29-8-90 by the order at An.A-1 he acquired a cause of action on that date that he is


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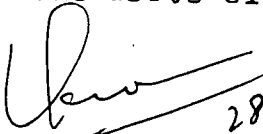
entitled to promotion on an earlier date. He filed the An.A-9 representation on 7-1-91 and keeping this in view the contention that this is barred by limitation has no force., the OA having been filed well in time in March, 1992.

6. It is clear that on 3-5-89 when the DPC met, no memorandum of charges had been issued and therefore the sealed cover procedure ought not have been resorted to. The recommendation of the counsel for the applicant should have been left open. In that event, he would have been placed even then above LN Pande as was done later on by the An.A-6 order dated 7-9-90 and when a vacancy arose on 22-5-89 he would have appointed to it, instead of it being filled by his junior Shri LN Pandey. Thus the judgement in Jankiraman's case applies to the facts of the present case.

7. We, therefore, find that the applicant was entitled to promotion w.e.f. 22-5-89 which is the date on which his junior LN Pande was promoted by the An.A-4 order. We, therefore, dispose of this application with the direction to the respondents to give the applicant notional promotion w.e.f. 22-5-89 and grant him financial benefits on account of such promotion in accordance with law and in the light of the judgement of the Supreme Court in Jankiraman's case supra within a period of four months from the date of issue of this order.

8. Application is disposed of on the above directions.

  
( B.S. HEGDE )  
Member (J).

  
28/5/93  
( N.V. KRISHNAN )  
Vice Chairman(A)