

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA-2049/93

10

New Delhi this the 20th Day of April, 1995.

Hon'ble Sh. N.V. Krishnan, Vice-Chairman (A)
Hon'ble Dr. A. Vedavalli, Member (J)

Ved Ram Sharma,
Retd. Chief Goods Clerk,
Railway Station Aligarh.

C/o Sh. B.S. Mainee,
Advocate,
240 Jagriti Enclave,
Delhi-110 092.

...Applicant

(By Advocate Sh. B.S. Mainee)

Versus

Union of India through:

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Divl. Rly. Manager,
Northern Railway,
Allahabad.

...Respondents

(By Advocate Sh. H.K. Gangwani)

ORDEDR(Oral)

(Mr. N.V. Krishnan, Vice-Chairman (A))

The applicant was, admittedly, promoted by the orders issued on 6.7.89 as Goods Superintendent and transferred to Railway Station Bhartna. However, before he could be relieved to take over charge of the post on promotion, he was suspended by the Annexure A-1 order dated 3.8.89 w.e.f. 18.7.89 pending a departmental enquiry. The suspension was revoked w.e.f. 30.8.89 (Annexure A-2). In the disciplinary proceedings, the applicant was, admittedly, exonerated of the charges framed against him. This was communicated to him by the letter dated 8.7.92 of the Senior D.P.O. Allahabad (Annexure A-8).

✓

(2)

2. The respondents have admitted in their reply that the applicant was exonerated on 8.7.92. The applicant retired on 31.7.92. He made representations that the benefit of promotion already ordered be given to him. As those representations were not replied to, this OA has been filed for a direction to the respondents to promote the applicant as Goods Superintendent grade Rs.1600-2660 w.e.f. 8.7.89 with all consequential benefits of arrears etc.

3. We have heard the parties.

4. The only plea of the respondents is that when he was exonerated there was no vacancy of Goods Superintendent (Rs.1600-2660) and, therefore, he could not be promoted immediately after he was exonerated. Thereafter, the applicant retired on 31.7.92 and, therefore, he could not be promoted.

5. We are unable to appreciate the stand of the respondents. The applicant was exonerated on 8.7.92 and, immediately, he became eligible for the promotion which was ordered on 8.7.89. As a matter of fact, this is similar to a situation where, before a promotion is ordered on the basis of a ^{u D.P.C} DE in which the officer is found fit for promotion, a DE is held and therefore, the recommendations for promotion is treated to be placed in a closed cover. That cover is opened only after the disciplinary proceedings are over and given effect to, if the employee is exonerated. As the applicant was exonerated on 8.7.92 he was entitled to get the promotion from 9.7.92, if

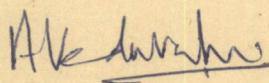
u

(3)

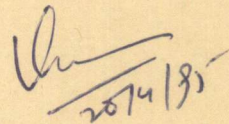
necessary by reverting the juniormost person or by creation of a supernumerary post. The principles governing such cases have been laid down by the Supreme Court in Jankiraman's case (AIR 1992 SC 2130) which also indicate as to how the question as to whether salary on the post of promotion from a retrospective date has to be decided.

6. In the circumstances, we allow this application. As the applicant has already retired, he cannot be reinstated. He is entitled to notional promotion from 30.8.89 (i.e. the date on which his suspension was revoked) or the date on which his immediate junior took charge of the post of promotion in pursuance of the ^{orders} ~~arrear~~s of promotion issued on 6.7.89, whichever is later. The respondents should also pass an order indicating the salary that he would get on promotion. The pension already paid to him shall be revised consequentially. All the necessary orders shall be passed within a period of two months from the date of receipt of this order and the arrears payable shall be given to the applicant within one month thereafter, failing which interest at the rate of 12% shall be paid thereafter.

7. The O.A. is disposed of as above. No costs.



(Dr. A. Vedavalli)
Member(J)


20/4/85

(N.V. Krishnan)
Vice-Chairman(A)

'Sanju'