

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 08th day of August, 2003.

Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman.
Hon'ble Mr. D.R. Tiwari, Member- A.

Original Application No. 491 of 1996.

Ashok Kumar Pandey S/o Late Heera Lal Pandey
R/o 187, Old Bairahna, Distt. Allahabad.

.....Applicant

Counsel for the applicant :- Sri B. Tiwari

V E R S U S

1. Union of India through its Secretary,
M/o Railways, New Delhi.
2. The General Manager, Northern Railway,
Baroda House, New Delhi.
3. The Divisional Personal Manager (Settlement),
Northern Railway, Allahabad.
4. The Divisional Commercial Manager,
Northern Railway, Allahabad.

.....Respondents

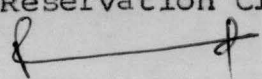
Counsel for the respondents :- Sri A.K. Pandey

O R D E R (Oral)

By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

By this O.A filed under section 19 of Administrative Tribunals Act, 1985, the applicant has prayed for a direction to respondents to give benefit of promotion to the applicant from August, 1985 with proper fixation of salary in scale of Rs. 425-640/- with all due promotional benefits. He has also prayed for consequential benefits.

2. The facts of the case are that the applicant was serving as Enquiry-cum-Reservation Clerk in Northern Railway,

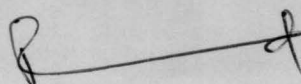


Allahabad. He was served with memo of charge dated 23.05.1985 for committing mis-conduct while discharging duty. The enquiry was held and on conclusion, the applicant was awarded punishment of withholding next increment raising from Rs. 1530-1560 in grade of Rs. 1500-2040 due on 01.01.1988. The increment was withheld for two years with cumulative effect (Annexure -I). The order of punishment was maintained in appeal and the appeal filed by the applicant was rejected (Annexure- II). Against the punishment order, applicant filed O.A No. 563/88 which was allowed in part on quantum of punishment. The matter was remitted back to the appellate authority for re-consideration of quantum of punishment after giving personal hearing to the applicant. The order of this Tribunal is being reproduced below :-

"One thing, however, we feel it necessary to mention here that the enquiry officer had found and recorded in clear and unequivocal term that the BPT was made over to the party only after collection of full amount. But the charged officer (the applicant) had prepared the BPT without realising full amount before hand which was not correct. And on that mis-conduct, the penalty was imposed on the applicant. We feel, in the facts and circumstances of the case, that the quantum of punishment, though it is for minor offence, is to the fresh not commensurate with the gravity of the omission or commission on the part of the applicant. In that view of the matter, the penalty imposed on the applicant by the impugned order contained in the appellate authority order (Annexure-14) is hereby set aside and the case is remitted back to him for re-consideration of the quantum of punishment after giving personal hearing to the applicant and this process should be completed within a period of three months from the receipt of the copy of this order.

With this observation, this application is disposed of. There will be no order as to costs."

3. From the aforesaid order it is clear that the



charge against the applicant was found proved by the Tribunal and the matter was remitted back to the appellate authority only for re-consideration/question of quantum of punishment. However, the appellate authority by order dated 23.11.1994 passed the following order :-

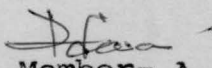
"Since no irregularity has been committed, I do not any ground for awarding any punishment to you. The punishment of W.I.P for two years imposed upon you by the Divisional Comm. Suptd./ N.Rly/Allahabad vide punishment notice No. CS/ DCS/B6/79 dt. 16.04.1987, is cancelled."

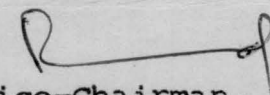
4. After the aforesaid order, the applicant claimed that he should be promoted in the scale of Rs. 425- 640/- from August, 1985 and he may be granted consequential benefits too.

5. Resisting the claim of the applicant, respondents have filed counter reply. In para 5 of the counter reply It has been stated that as a result the punishment order is not concerned at all with the fresh claim of the applicant pertaining to his service back in 1985 because the punishment order did not effect the applicant's promotion in the lower grade i.e. Rs. 425-640 (RPS). It has been further stated that applicant's promotion became due in the grade of Rs. 425-640 and the same was awarded to him from 27.08.1987. In para 7 of the CA it has been further stated that applicant has already been promoted to the grade of Rs. 1600-2600 (RPS) retrospectively w.e.f 01.03.1993 against one of the up graded post and all the arrears due to him have already been paid from the aforesaid date. It ^{has been} reiterated that in so far as the applicant's promotion to the lower grade is concerned i.e. 425-640, it may be pointed out that the applicant's promotion became due in August, 1987 and not in August, 1985, which has ~~not~~ ^{been} awarded to him w.e.f 27.08.1987.

6. Sri B. Tiwari, learned counsel for the applicant alongwith M.A 762/2003 has filed certain documents. The claim of the applicant that he ^{should be} ~~was~~ promoted w.e.f August, 1985 is based on the order dated 19.02.1985 in which his name has been shown at Sl. No. 18, but there is another order on record which shows that the order dt. 19.02.1985 was cancelled and stayed. Thereafter, another order was passed on 20.03.1985 and for remaining post, order was issued on 18.06.1985. This order is of 07.08.1985. Thus, from the document brought on record the correct position has not come before this Tribunal. Further there is a seniority list on record which is of 27.05.1993. This list is of Enquiry-cum-Reservation Clerk in the scale of Rs. 1400-2300. In this list, the name of the applicant is at Sl. No. 12 whereas the name of Sri R.J Sharma is at Sl. 13. If the ^{promotion} ~~punishment~~ to applicant had been approved in 1993, applicant could not have been shown senior to Sri R.J. Sharma. It may be noted that the punishment order was set-aside by order dated 23.11.1994, thus the contention of the applicant cannot be accepted. The scale of Rs. 425-640 become due to the applicant from 1987 is correct and the applicant has not suffered ~~for~~ ^{any} ~~any~~ disadvantage. The O.A has no merit and is accordingly dismissed.

7. There will be no order as to costs.


Member- A.


Vice-Chairman.

/Anand/