

(Open Court)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 20th day of October, 2003.

Original Application No. 368 of 1997.

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

D.P. Chaudhary S/o Sri T.R. Chaudhary  
a/a 59 years. R/o Sobatiabagh, Allahabad.

.....Applicant.

Counsel for the applicant :- Sri S.S. Sharma

V E R S U S

1. Union of India owning and representing Northern Railway noticeto be served to the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, D.R.M Office, Lucknow.
3. The Assistant Engineer, Northern Railway, Prayag, Allahabad.

.....Respondents

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

O R D E R

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 challenged the order dated 31.08.1995 (annexure- 2) by which applicant has been denied promotion to the post of Chief Permanent Way Inspector (C.P.W.I) in scale of Rs. 840-1040 w.e.f 01.01.1984 on the ground that he was not found suitable for the grade.

2. In paragraphs 11,12 and 13 of the counter, it has

been stated that disciplinary proceedings were pending against the applicant and on conclusion of disciplinary proceedings the applicant was compulsorily retired on 21.11.1995. The memo of charge was served on applicant on 28.12.1994.

3. Sri S.S. Sharma, learned counsel for the applicant has submitted that the respondents have committed serious mistake in denying the promotion on non-selection post for which applicant became entitled on 01.01.1984, on their own showing. The counsel for applicant relying on the judgment of Hon'ble Supreme Court in case of U.O.I and Ors. Vs. K.V. Jankiraman, 1993 SCC (L&S) 387 <sup>has</sup> submitted that applicant can be denied promotion only on the basis of ~~any~~ disciplinary proceeding was pending against the applicant on the date of promotion. In this case, the applicant became entitled for promotion on 01.01.1984 on which date no disciplinary proceeding was pending against him.

4. Sri A.K. Gaur, learned counsel for the respondents on the other hand submitted that this O.A is not legally maintainable as while filing O.A No. 359/1988, applicant did not claim for promotion. It is further submitted that as the disciplinary proceedings were pending in 1995 against the applicant, the respondents did not consider the applicant for promotion taking in to consideration that applicant was facing disciplinary proceedings and was not entitled for promotion.

5. We have considered the submissions of counsel for parties. As on 01.01.1984, the applicant was not facing any disciplinary proceedings, it was non-selection post and the applicant was entitled for promotion on basis of his seniority subject to suitability, the matter requires

(Signature)

re-examination by the respondents.

6. For the reasons stated above, this O.A is allowed in part. The impugned order dated 31.08.1995 is quashed. The respondents are directed to pass fresh orders in respect of the applicant's promotion as C.P.W.I in scale of Rs. 840-1040 w.e.f 01.01.1984 and if the applicant is found entitled for promotion, he may be given consequential reliefs within period of four months from the date order is passed.

7. There will be no order as to costs.

*Haria*  
Member - A.

*R*  
Vice-Chairman.

/Anand/