

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 29th day of October 2006

Original Application No. 1426 of 1998

Hon'ble Mr. Justice Khem Karan, Vice-Chairman
Hon'ble Mr. P.K. Chatterji, Member (A)

Nankoo Prasad Gupta, S/o late Sri B.N. Gupta, R/o 140-G, Type II, DLW East Colony, Varanasi, presently working on the post of Machinist Grade II in C.N.C. Roster Shop, Staff No. 4976, DLW, Varanasi.

. . . Applicant

By Adv: Sri N.P. Singh

V E R S U S

1. The Union of India through Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
2. General Manager, Diesel Locomotive Works, Varanasi.
3. General Manager (P), Diesel Locomotive Works, Varanasi.
4. Chief Mechanical Engineer (P), Diesel Locomotive Works, Varanasi.
5. Deputy Chief Mechanical Engineer / Administrative Officer, Diesel Locomotive Works, Varanasi.
6. Shop Superintendent Modernization, Diesel Locomotive Works, Varanasi.

. . . Respondents

By Adv: Sri A. Sthalekar

O R D E R

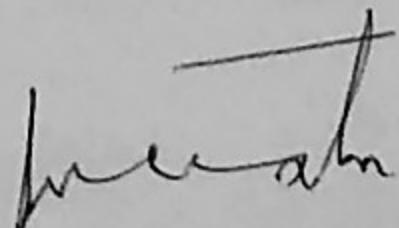
By Hon'ble Mr. P.K. Chatterji, Member (A)

The applicant in this OA joined the Railways in the DLW on the post of MCT on 24.07.1967. He was promoted to the post of MCT Gr II in the pay scale of 1200-1800 in October 1971. However, he was proceeded

against for some alleged misconduct and vide order dated 17.08.1990 he was punished with reduction to the lower grade of Rs. 950-1500 at the minimum scale of Rs. 950/- pm for 5 years with cumulative effect.

2. After expiry of 5 years period he was reverted to his original scale of Rs. 1200-1800 but it is alleged by the applicant that the respondents brought him back to the original pay scale and fixed him at the scale w.e.f. 01.10.1995 instead of 01.08.1995. The applicant has contended that his punishment was effective from 17.08.1990 and therefore he should have been restored to his original scale on 17.8.1985. By giving him his scale as per his entitlement on 01.10.1995 the respondents have extended the punishment period by three months which is arbitrary and illegal. The applicant has challenged the order dated 210 dated 24.4.1996 of the respondents whereby he has been fixed at the stage of Rs. 1440 w.e.f. 01.10.1995 (Annexure 5).

3. It has been further stated by the applicant that the post of MCT Gr I in the pay scale of Rs. 1350-2040 was notified in the year 1993. The applicant appeared in the departmental examination and was selected by the. The letter of the respondents dated 18.2.1993/11.3.1993 indicates the name of the applicant as successful candidates in MCT Gr I. However instead of promoting in the MCT Gr I retrospectively w.e.f. 1993 ie when his juniors were



promoted on the basis of the results of the departmental examination, the respondents gave him the promotion w.e.f 1.11.1995.

4. The applicant has also further stated that the action of the respondents is violative of the rule 322 of IREM Vol I which is as follows:

"Reduction in lower stage in the time scale, reduction in pay, as distant from reduction from a higher grade or class to a lower grade or class does not effect a Railway servant's position on the seniority list. The authority ordering reduction should invariably state the period for which it shall be effective and whether on restoration the period of reduction shall operate to postpone his future increments."

5. The applicant has stated that as it was not specifically mentioned in the above order that the reduction shall operate to postpone his future increment and shall affect his seniority as well, it was wrong on the part of the respondents not to give him promotion to MCT Gr I in 1993 with reference to his juniors. The relief which has been sought by the applicant is as follows:

a. To issue a writ, order or direction in the nature of Certiorari quashing impugned order dated 24.4.1996.

b. To issue a writ, order or direction in the nature of Mandamus directing the respondents to restore the salary of the applicant in the pay scale of Rs. 1200-1800 since 01.08.1995 instead of 01.11.1995 and to pay arrears thereof to the applicant.

c. To issue a writ, order or direction in the nature of Mandamus directing the respondents to promote the applicant in the MCT Gr. I in the pay scale of Rs. 1350-2040 since 1993 at least when the juniors to the applicant were given the benefit of the said pay scale, and to pay arrears thereof to the applicant.

d. To issue a writ, order or direction in the nature of Mandamus directing the respondents to grant promotion to the applicant from the respective date in the High Grade/Pay Scale in

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which he is legally entitled and to pay arrears thereof to the applicant.

e. to issue any other and further suitable writ, order or direction in the facts and circumstances of the case, which this Hon'ble Tribunal may deem fit and proper.

f. To award cost of the petition."

6. The allegation have been refuted by the respondents. With regard to the question of the punishment period being effective from 5 years and 3 months the respondents have offered the following explanation:

"VI. That as per orders of the Disciplinary Authority dt. 18/08/90 (Annexure A-1 to the application), the applicant's pay was reduced to Rs. 950/- w.e.f. 17.08.90 in Scale Rs. 950-1500/- and he continued to draw Rs. 950/- upto 16/08/95 till the expiry of the punishment period of 5 years from 17/08/90 he was restored in Scale Rs. 1200-1800/- on pay Rs. 1410/- which he was drawing before 17.08.90 i.e. prior to the implementation of the punishment. As the punishment was with cumulative effect viz. to operate to postpone his future increment and seniority, he was granted next increment on pay Rs. 1200-1800 after rendering 12 months qualifying service in scale Rs. 1200-1800 viz. 01/10/89 to 18/08/90 + 17/08/95 to 16/10/95 = 12 months, his increment date was made effective from 01/10/95 as per extant rules. Further his seniority position in grade Rs. 330-480/-1200-1800/- was also fixed accordingly, counting the qualifying service rendered in scale Rs. 330-480/- 1200-1800/- after deducting the punishment period rendered on pay Rs. 950/- in scale Rs. 950-1500/- from 17/10/90 to 16/10/95"

7. Regarding his promotion to MCT Gr I from the year 1993 the explanation offered by the respondents are as follows:

"10. That in regard to para 4.12 of the application it is submitted that during the currency of punishment period in the year 1993 vacancies in machinist grade -I were notified but since, as per extant rules the persons who are undergoing in punishment for major penalty can not be considered for promotion, accordingly, the applicant was though called to appear in trade test on 11/03/99 but he was not considered for promotion as Machinist Grade-I.

11. That the contents of para 4.13 of the application are denied. It is submitted that as already stated in para 3 (VI) of

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this counter reply his seniority was re-determined in Scale Rs. 330-480/1200-1800 after deducing the period, punishment of 5 years in scale Rs. 950-1500. Accordingly to his revised seniority position in machinist grade-II the applicant did not come in turn for promotion as machinist Grade-I."

8. We have heard the arguments of both the counsels and also gone thought the pleadings and the relevant rules and citations given by the learned counsel. Regarding the extension the punishment period by 3 months, it is seen that the applicant was restored to his original scale at the expiry of 5 year period at the stage of Rs. 1410/-. His date of DNI however was w.e.f. from 1st October and therefore he was fixed at the stage of Rs. 1440/- from 1.10.1995. Therefore, it is not correct to say that the punishment period itself was extended. After restoration to the original scale the applicant had to wait for the few months for getting the next stage in the pay scale as per DNI. Therefore, we are not convinced that the respondents' action is arbitrary and illegal.

9. The applicant has staged that the action of the respondents was violative of Rule 322 of IREM Vol I the extract which however has been given by him in the OA relates to the punishment of reduction to a lower stage of pay in the same scale. His punishment however was reduction to a lower grade and time scale. Let us now see what the relevant provision of the IREM 322 is in relation to reduction to a lower grade of time scale. The provisions is extracted is as follows:

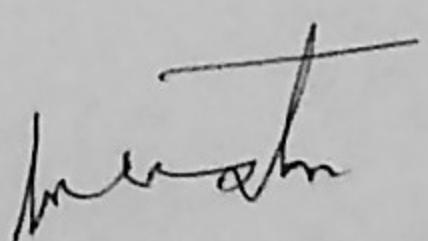
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"In cases where the penalty of reduction to a lower service, grade or post or lower time-scale is for a specified period, the employee concerned should be re-promoted automatically to the post from which he was reduced. The seniority in the Original service, grade or post or time scale should be fixed in each cases as follows:-

- i. In cases where the reduction is not to operate to postpone future increments, the seniority of the railway servant should be fixed in the higher service, grade or post or the higher time-scale at which it would have been but for his reduction.
- ii. Where the reduction is to operate to postpone future increments, the seniority of the railways servant should be fixed by giving credit for the period of service rendered by him in the higher service grade or post in higher time scale prior to his reduction.

When a railway servant is reduced from a higher grade, or class to a lower grade, whether for a specified period or indefinitely, his seniority in the lower grade shall be fixed with reference to his position which he would have been entitled to but for his promotion to the higher grade or class from which he is reduced."

10. It is seen from the punishment order that the punishment was to have cumulative effect ie it was to operate the postpone future increment. In such a situation the seniority of the applicant has to be fixed by giving credit only for the period of service rendered by him in the higher service grade or post prior to his reduction. The period for which he was downgraded has to be discounted. In other wards the applicant can't get any benefit for that period. We are of the view that the respondents have not committed any error in fixing the scale at the higher grade after restoration as the past service in the higher grade was included. They have not made any error in deciding the date of his promotion. It is true that the applicant had qualified for promotion to MCT Gr. I alongwith the other in 1993. But on that date the punishment was in effect and obviously there was no question of promoting the applicant on that date.



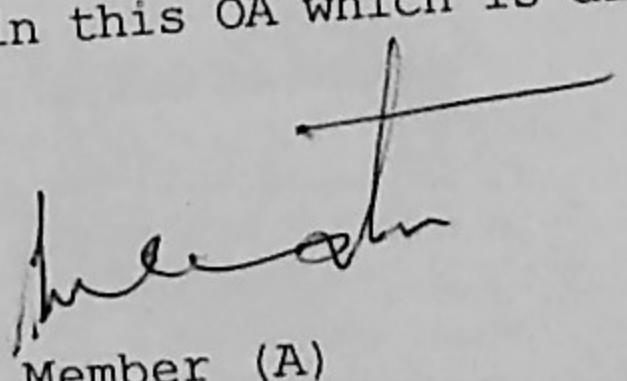
11. The applicant has also referred to two judgments of the Tribunal as follows in support of his claim the relevant portions of his pleadings are extracted below:

"(i) CAT, Calcutta Bench in OA No. 641/1947 named Arun Kumar Chakraborty Vs. Union of India and others, It's Date of Judgment is 14.01.1998.

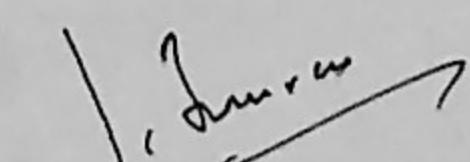
According to the Calcutta's Bench, the Principal decided and adopted is, "Reduction in Rank" for a specified Period will not affect in the Seniority which will effect in the Higher Post on Restoration basis.

"The Calcutta Bench, while allowing Seniority has also passed the orders to give retrospective promotion to the next Higher Gradual Post or Grades to which, the Applicant is entitled."

12. The applicant however, has not stated that above decision was passed in respect of Railway Officials who are governed by the Rule 322 of IREM Vol-I. Looking at the ground given by the applicant we find that he is challenging the decision of the respondents for being violative of the IREM Vol I Rule 322. We have examined thoroughly the decision of the respondents in terms of Rule 322 of IREM Vol. I. We have found, as stated above, that the decision is not in infringement of the relevant provision. As long as Rule 322 is not amended or removed, it still holds the field, and we are of the view that this OA has to be decided consistently with Rule 322 of IREM Vol. I. Upon considering the same we have not found any infirmity in the respondents' decision. So we do not find any merit in this OA which is dismissed. No cost.



Member (A)



Vice-Chairman