

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 9th April, 2002.

Original Application No. 463 of 2001.

CURAM :-

Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mrs. Meera Chhibber, J.M.

Prem Shanker Prasad  
Son of Yadunath Prasad,  
R/o New Loco Colony,  
Q.N. 231-B, Northern Railway,  
Varanasi.

(Sri KK Mishra, Advocate)

. . . . . Applicant

Versus

1. Union of India through Secretary,  
Ministry of Railways, Govt. of India,  
Baroda House, New Delhi.
2. Additional Railway Manager,  
Northern Railway, Lucknow.
3. Assistant Mechanical Engineer,  
Northern Railway, Hazaratganj, Lucknow.
4. Senior Divisional Personnel Officer,  
Northern Railway, Lucknow.

(Sri A.K. Gaur, Advocate)

. . . . . Respondents

O R D E R

By Hon'ble Mrs. Meera Chhibber, J.M.

By this DA the applicant is challenging the order dated 4-1-2001 passed by respondents pursuant to the directions given by the Tribunal in DA No.796 of 1998 vide order dated 17-7-2000 to dispose of the representation of the applicant. The respondents have clarified in the impugned order that in 1990 the applicant had appeared before the screening committee but his name



could not be empanelled as he was involved in a vigilance case as he had been issued SF-5 (Major) penalty chargesheet in March, 1988 which ultimately ended in 1996 and wherein the applicant was awarded a <sup>major</sup> punishment but ultimately <sup>the same</sup> was *reduced to* ~~given~~ punishment for WIT for six months. After this he was screened in 1997 which found him suitable for the post of Callman and accordingly he was placed at Serial No. 22 in the panel declared on 31-12-1997 but no further action could be taken for his regularisation as he did not fill his service book. He was then informed that in view of the above, he could not be regularised as Cleaner.

2. The applicant's grievance is that since he was found fit as Cleaner in 1990 he should be regularised as Cleaner w.e.f. 1991 since the major penalty has been reduced to minor penalty ultimately. In support of his claim the applicant has relied on Railway Board's Circular No. E(D&A) 71 RG-6-23 of 1-6-1971 and Circular dated 9-8-1953 published as Railway <sup>R</sup>~~Railway~~ Servants (Discipline & Appeal) Rules, 1968 on Page 88, which for ready reference, reads as under:-

"Promotion when the penalty of withholding of increments is imposed. If a Railway servant becomes due for promotion after the penalty of withholding of increment or promotion is imposed, he should be promoted only after the expiry of the period of the penalty, provided that where the penalty of withholding of increment becomes operative from the future date, the person concerned should be promoted in his turn and the penalty should be imposed in the promotional grade for a period which would not result in greater monetary loss.

3. In our considered view the reliance by the applicant's counsel on these circulars is totally misplaced. The question of promotion and seniority would arise only after a person is duly appointed to the post whereas in the instant case the applicant's case is not as such. The applicant was admittedly only a casual labour and was only screened for regularisation but in the meantime it


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came to notice that the applicant alongwith some others had been engaged on fake and bogus cards and vigilance was looking into the matter and since there was charge sheet pending in 1990 against the applicant on this count naturally he was not empanelled.

4. The counsel for the applicant relied on PNM Meeting Agenda wherein he states that Shri PS Prashad was shown to be fit as Cleaner (Page 46) of the DA. In reply the counsel for the respondents has stated that this was only an agenda which is not binding and in any case the reply given in PNM Meeting was that their names will be placed on panel when their vigilance cases are finalised. Admittedly, the charge sheet ultimately culminated in the penalty, therefore, naturally he could not be regularised alongwith others and others gained promotion in the meantime while the applicant could not get it due to WIT. Ultimately, after the penalty, the applicant was again considered and since he was found suitable as Callman by the screening committee he was empanelled as Callman and placed at Serial No.22 in the panel dated 31-12-1997 but since he has not filed the service book no further action could be taken. They have further submitted that the steam function on Lucknow Division has been abolished as such no post of Loco Cleaner is in existence as all posts of Loco Cleaner have since been surrendered. He could have joined as Callman but he did not accept the same. Thus, the respondents have stated that no case is made out for interference by this Hon'ble Court.

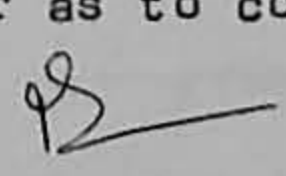
5. The applicant's counsel then stated that his name should have been kept in sealed cover and since he has been awarded only a minor penalty he should be regularised as Cleaner only w.e.f. 1991 and given further promotion also.




6. This contention has to be rejected as the circular referred to <sup>is by the applicant</sup> does not apply in the case of regularisation but in the case of promotion and secondly even in this circular also para 3.1 states that if any penalty is imposed on the government servant or if he is found guilty in the criminal prosecution against him the findings of sealed cover shall not be acted upon and his case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him.

7. Therefore the argument of the applicant's counsel is totally misconceived. In 1991 only those persons were regularised who were empanelled after screening and they gained further promotion thereafter while the applicant was not empanelled as there was a vigilance case pending against him which ultimately culminated in penalty. Therefore, he cannot be given regularisation w.e.f. 1991. In 1997 when he was considered the post of Cleaner was already abolished, so, naturally he ~~he~~ had to be considered in any other stream for whichever he is found suitable by the screening committee. If the applicant has not accepted the appointment as Callman it is his own doing and the respondents cannot be <sup>blamed for</sup> ~~found fault with~~ it. The applicant's counsel has not been able to show any rule or circular which states that he should be regularised inspite of ~~being~~ having vigilance case and having been penalised thereon.

8. In view of above discussion, the applicant has not made out any case for interference. The OA is dismissed without any order as to costs.

  
Member (J)

  
Member (A)

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