

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD ,

(This the 12th Day of ~~November~~^{December}, 2013)

Hon'ble Mr. Justice S. S. Tiwari Member (J)
Hon'ble Ms. B. Bhamathi, Member (A)

Original Application No.1192 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

Raj Narain Singh, Son of Late Sri Mangroo Singh, resident of
226-1-4/48 A Lalbagh Colony Rajruppur, Post Dhumanganj,
District Allahabad (U.P.)

..... Applicant

By Advocate: Shri S. Rai

Versus

1. Union of India, through G.M. Railway, Northern Railway,
Baroda House, New Delhi.
2. C.A.O. Kashmiri Gate New Delhi.
3. Deputy Chief Engineer C.S.P. Allahabad.
4. Deputy Chief Engineer, Construction North Central,
Railway Allahabad.

..... Respondents

By Advocate: Shri Anil Dwivedi

ORDER

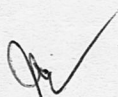
Delivered by Hon'ble Ms. B. Bhamathi, Member (A)

The present Original Application has been filed under
Section 19 of Central Administrative Tribunal Act, 1985 for the
following relief/s:-



- (i) *Issue a direction to the opposite parties to pay the differences between 1981 to 1986 grade Rs.700-900 with interest up to date of payment and grade Rs.2375 to 3500/- since 1991 to 1995 with all consequential benefits as such D.A., H.R.A. on his arrears of salaries.*
- (ii) *Issue direction to the opposite party to pay the differences of pension from 96 to upto date of payment with interest.*
- (iii) *Issue a direction to the opposite parties to pay the commutation with interest up to date of payment, and interest on Rs.318000 upto date of payment.*
- (iv) *Award cost of the petitioner to the applicant.*

2. The case of the applicants is that he was appointed as S.O.M in 1962. In 1977 joined C.S.P. and passed selection examination and got grade of Rs.425-700 IOW Grade-II. After down grading the post of ASS Grade Rs.700-900 as Foreman Grade Rs.550-750, applicant was given the scale vide order dated 28-10-1983. The pay and allowances of the applicant, I.O.W. Grade Rs.550-750/- was to be charged against the above post and his designation was changed as Foreman Grade without granting any right to claim this change of designation in open line. Vide order of December, 1983, three persons junior to the applicant were given promotion temporarily in the A.S. S. Grade of Rs.700-900 against ex cadre posts, with the observation that this will not confer any right upon them to claim any seniority over the



seniors in the open line. In 1990, the applicant's name was in the panel for promotion, however, he was not promoted and juniors were promoted. In 1991, the applicant passed the selection examination but was not promoted. The applicant's claim is that he is entitled to Grade of Rs.2375-3500/- since 1991. However, in 1995, the applicant was given promotion vide order dated 16.2.1995 with a foot note stating that the promotions were provisional subject to the decision of pending writs before the Hon'ble High Court/Tribunal. The applicant retired in the year 1996 and has claimed that he is entitled to be promoted and paid all the consequential benefits from 1981 to 1986 and from 1991-1995. The applicant has admitted that a CBI case was started against him in 1981 under Section 120(3), 420 and 468 I.P.C. However, the applicant was acquitted on 25.2.2004 by the court. The applicant moved an application for payment of all differences and consequential benefits which were not denied but not paid due to pendency of the CBI case. To support his prayer, the applicant has placed reliance in the case of **Dr. Ram Khelawan Singh v. State of U.P. & another; 2008(8) ADJ 324** and **Coal India Ltd & Ors vs. Saroj Kumar Mishra; AIR 2007 SC 1708.**

3. No counter affidavit of respondents is on record. However, in their Supplementary Counter Reply, respondents have stated that three employees junior to the applicant were promoted purely



on ad hoc/ temporary basis against the vacant post of C.S.P. Kalispur, whereas the applicant was working as CSP Allahabad and hence he was not considered against the said vacancy. It has also been stated that there was a vigilance case continuing against the applicant at that time. The applicant cannot be paid anything since he retired in 1996 and has been given all the due benefits as per Railway Board's rules and circulars. Further, it has been stated that no representation of the applicant is available in the respondent's office as the matter is very old.

4. We have gone through the records, the O.A., the rejoinder affidavit, supplementary rejoinder affidavit of the applicant as well as the annexures A-1 to A-8 of the O.A and annexure RA -1 filed with the rejoinder affidavit and SA -1 to 2, alongwith the supplementary rejoinder.

5. We have also gone through the Supplementary Counter Affidavit filed by the respondents and the second supplementary filed in response to the supplementary rejoinder filed by applicant.

6. Heard the learned counsel for the parties, perused the records and considered all the facts and circumstances of the case.




7. It is noted that applicant, who has claimed acquittal, has failed to produce the acquittal order in the C.B.I. case. In the OA, it is mentioned that he was acquitted on '25.2.2004'. In the supplementary rejoinder affidavit he has stated that he was acquitted in '2002'. The respondent has stated in passing about a vigilance case against the petitioner, with no mention of even the word 'CBI' or when the vigilance case started, the facts and circumstances of the case and whether and when the case got concluded, if at all. If applicants claim is that he was acquitted, was any appeal filed? The respondents has simply stated in a casual and cryptic manner that applicant was not given promotion, when the juniors were promoted, on account of the vigilance case. Further, it would be normally presumed that in the case of a delinquent employee facing criminal action, the respondents would have in parallel initiated departmental action under relevant rules and issued suspension orders, charge sheets, instituted inquiry by an inquiry officer under orders of competent authority etc. The applicant has mentioned nothing about the departmental action taken. The two Supplementaries filed by the respondents are also completely silent on this issue also.

8. If respondent's claim is that the promotion was denied to the applicant, on the ground that there was a vigilance case, even if we for a moment go by the OA, which states that the CBI case

started in 1981, how were some promotions order given in 1983 and in 1995 during the pendency of the CBI case. Both the aforesaid orders stand annexed to the OA.

9. The applicant has annexed SA-I with the supplementary rejoinder affidavit, which is a typed copy, unattested/not verified of what appears to be the service history details of the applicant. The entries bear some similarity with entries in the Service Book maintained for any employee. It mentions the sequential track record of applicants service since 1976, including promotions, evolving pay scales, increments etc. without any interruptions even though both parties admit to the pendency of a vigilance case. There is no entry pertaining to the departmental action, if any, taken. We are not concluding anything regarding the veracity of the document and the details contained therein, since the document is not attested, suffice it to say that a reference to the original service book, to be mandatorily maintained by the respondent, would have thrown light on the facts and circumstances of the case. The respondent, especially at higher supervisory levels have taken this O.A. lightly and no care to assist the Tribunal by filing a speaking counter affidavit to this O.A.. It is noted, that the second supplementary affidavit was filed by the respondent on 1.3.2009 after the applicant filed the rejoinder supplementary affidavit on 27.1. 2009 with the above mentioned



annexure. Yet nothing was mentioned by the respondent, thereby defeating the whole purpose of filing supplementary, in as much as no counter affidavit was filed by the respondent to the main OA.

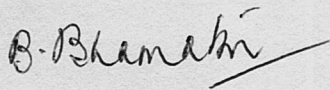
10. Clearly, neither the applicant's counsel nor the respondent's counsel have been able to enlighten the Tribunal with the benefit of their due diligence or to assist the court with the full facts and circumstances, with supporting documents to enable the Tribunal to adjudicate the instant case, conclusively, to meet the ends of justice. The responsibility on the office of the respondent is far higher, by all standards, as the cause of action arose on account of denial of promotion by the respondent.


11. In view of the above, the applicant is directed to file a fresh representation as well as copy of the acquittal order whereby, according to him, the vigilance case against him has been closed, within a period of two weeks from the date of receipt of certified copy of this order. If no representation is received within the stipulated time, the representation filed before the Tribunal and the supporting documents made available will be treated as representation by the respondent, pursuant to the order. The respondents shall consider the same and pass a reasoned and speaking order on the relief/s prayed for before this Tribunal, inter alia, keeping the foregoing observations of this Tribunal as



contained in para 8, 9 and 10 of this order, within a period of three months thereafter.

12. Accordingly, with the above observation the OA is disposed of without costs.


(Ms. B. Bhamathi)
Member-A


(Justice S.S. Tiwari)
Member-J

Sushil