

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH**LIBRARY**O.A. 350/00896/2013
MA 348/2013

Date of Order: 15.07.2021

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr. Tarun Shridhar, Administrative Member

Ram Mohan Mandal,
Son of Babu Ram Mandal,
Aged about 46 years,
Now working for gain as Sr. Ticket
Examiner (Sr. T.E.), Ramrajatala,
District II, Kharagpur Division,
South Eastern Railway,
Residing at 40(20/28), N.S. Road,
Ganguly, Bagan,
Post Office - Sheoraphuli,
District - Hooghly, Pin - 712 223.

.....Applicant

Vrs.

1. The Union of India,
Service through the General Manager,
South Eastern Railway,
Garden Reach,
Calcutta – 700 043.
2. The Chief Personnel Officer,
South Eastern Railway,
Garden Reach,
Calcutta – 700 043.
3. The Divisional Railway Manager,
South Eastern Railway,
Kharagpur Division, Kharagpur,
District – Paschim Midnapore,
Pin – 721 304.
4. The Senior Divisional Personnel Officer,
South Eastern Railway,
Kharagpur Division, Kharagpur,
District – Paschim Midnapore,
Pin – 721 304.



5. The Chief Commercial Manager,
South Eastern Railway,
14, Strand Road,
Calcutta - 700 001.

6. The Senior Divisional Commercial Manager,
South Eastern Railway,
Kharagpur Division, Kharagpur,
District – Paschim Midnapore,
Pin – 721 304.

.....Respondents

For the Applicant(s): Mr. S.Samanta, Counsel

For the Respondent(s): Mr. P.Prasad, Counsel

ORDER

Tarun Shridhar, Administrative Member:

The Applicant, Ram Mohan Mandal, is a Sr. Ticket Examiner (Sr. T.E.) in the Kharagpur Division of S.E.Railways, and is aggrieved by an order passed by Sr. Divisional Personnel Officer (Sr. D.P.O.) on 15.06.2010 whereby his claim for promotion to the post of Sr. TTE w.e.f. 01.11.2003 has been rejected. By virtue of this present O.A., he seeks quashing of this order and a direction to the respondent authorities to grant him promotion to the post of Sr. TTE at par with his juniors. The date 01.11.2003 is mentioned for the purpose of notional promotion and actual promotion from 01.11.2004, i.e. the date on which he would be relieved of the penalty which was imposed upon him subsequent to disciplinary proceeding.

2. For the purpose of clarity, the relief portion of the O.A is reproduced verbatim below:

"8.a) DIRECTION do issue quashing and setting aside the impugned communication dated 15.06.2010 under the signature of the Sr.

D.P.O, SER, Kharagpur Division, being Annexure "A-3" hereto and thereupon to direct the respondent authorities to grant the applicant restructuring promotion to the post of Sr. TTE w.e.f. 01.11.2003 at par with juniors (on proforma fixation basis) and the benefit of pay and allowances on such promotion with effect from 01.11.2004 after closing of the DAR case i.e. sharing the higher responsibility after reduction of punishment by revising authority and to promotion at par with his juniors as Head TTE w.e.f. 03.12.2007 along with all attendant service benefits and to release and disburse salaries and allowances based thereupon from the dates when the applicant became eligible to the same along with arrears with interest at the rate of 12% per annum on all such arrear accumulations;

b) INJUNCTION do issue upon the respondent authorities restraining them from acting in any manner or any further manner, on the basis of the impugned communication dated 15.06.2010, under the signature of the Sr. D.P.O, SER, Kharagpur Division, being Annexure "A-3" hereto;

c) DIRECTION do issue upon the respondent authorities directing them to produce and / or cause to be produced the entire records relating to the case and on such production being made to render consonable justice by passing necessary orders thereon;

d) Interim order in terms of prayer (b) above;

e) Ad-interim order in terms of prayer (b) above;

f) Costs of and incidental to this application;

g) And / or to pass such other or further order or orders as, to, your Lordships may seem fit and proper;"

3. Brief facts of the case are that the applicant was subjected to disciplinary proceedings while he was working as Ticket Collector (T.C.) and a punishment of reduction of his salary with cumulative effect for five years was imposed upon him. This penalty got reaffirmed in appeal but, at the stage of revision, the penalty got reduced to reduction of his pay in time scale with cumulative effect for a period of one year. On account of restructuring of the cadre in the Railways, several employees/officials got promoted and the case of the applicant is that he was entitled for promotion in actual terms w.e.f. the date when the penalty

imposed upon him ceased to operate since the penalty was to be imposed only for a period of one year as ordered in the decision of his revision petition.

4. We have heard the Ld. Counsels for the applicant as well as respondents, at length, and carefully gone through the entire gamut of documents on record.

5. This matter was earlier agitated in O.A. 1087/2009 wherein the applicant had assailed the order when the applicant's claim for promotion to the post of Sr. TTE (a claim he contests in the present O.A.) was rejected and this Tribunal had held that the appellate order, rejecting the claim of the applicant, was not in accordance with law and the said order does not confirm to the definition of a reasoned order. This Tribunal had categorically held as under:

"In our opinion, an order of affirmation need not contain elaborate reasons, but that does not mean that the order of affirmation need not contain any reasons whatsoever. The order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming or reversing, or modifying the order of the Disciplinary Authority. The purpose & disclosure of reasons is that the people must have confidence in the judicial or quasi-judicial authorities, unless the reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence it is an essential requirement of the rule of law that some reasons at least in brief must be disclosed in a judicial or quasi judicial order, even if it is an order of affirmation. "Reason is the heart beat of every conclusion, without the same, it becomes lifeless" as held by Hon'ble Supreme Court in the case of Raj Kishore Jha vs. State of Bihar reported in (2003) 11 SCC - 519 = 2004 SCC (L&S) - 212."

With the above observations, the order was quashed and the matter was remitted to the Appellate Authority for fresh consideration with the direction to pass a reasoned and speaking order in accordance with the law. In compliance, the respondents have passed an order under Annexure-A/3 dated 15.06.2010 whereby the claim of the applicant has again been rejected and it is this order,



which is impugned in this present O.A. While on the face of it, this impugned order is a detailed order, it still does not disclose the reasons as to why the applicant has been found unsuitable for promotion. This order merely goes to reiterate that the merits of the applicant along with others were also considered by the committee constituted for this purpose and he was found unsuitable. The evaluation chart annexed by the respondents and relied upon by the respondents to buttress their decision and arguments also merely makes a mention "suitable" or "unsuitable" against different names without throwing any light as to why some candidates are suitable and some others are unsuitable. The only fact which comes to light is that there is something called suitability test, which has resulted in such a cryptic evaluation of the various candidates. In fact, one document said to be the outcome of an unsuitability test conducted on 22.11.2004 mentions in the remarks column against the applicant "unsuitable since undergoing punishment for reduction of pay for five years". Now, it is an admitted fact that this punishment had got reduced from five years to one year. Therefore, this remark loses its relevance. Surprisingly, this precisely is the information which is resubmitted when a direction was given by this Tribunal in the present O.A. on 25.02.2020 to the respondents to furnish the minutes of the concerned Departmental Promotion Committee. In the forwarding letter to the Ld. Counsel, Respondents have stated the followings:

"the post of Sr. TTE/Sr. TC, in question, is "a non-selection post and suitability of the staff for promotion to that post is adjudged by a nominated Jr. Scale/Group 'B' Officer and basing on the result sheet of the adjudging officer, the result of the suitability test and necessary promotion/posting orders are usually issued."

Since, the above-mentioned post is a non-selection post, there is no minutes of the Department Promotion Committee.

Accordingly, ACM/KGP who was nominated vide this office Note sheet dated 02-11-2004 had conducted the suitability test on 22-11-2004 and sent the result sheet. An attested copy of the Note Sheet dated 02-11-2004 and the result sheet dated 02-03-2005 (six pages) are sent herewith for perusal and placement before the Hon'ble Tribunal.

The copies of the Estt. Srl. No's 152/2003, 04/2003, 80/2004, 149/2004 and 180/2004 as directed for production are also enclosed for the kind perusal of the Hon'ble Court."



6. The history of continuous litigation and the previous history of the applicant time and again approaching respondents to seek justice make it quite obvious that the respondents do not appear to be inclined to budge from their position. In its order in O.A. 1087/2009, the Tribunal had unambiguously held that the order must contain some reasons even though they may be brief. It was reiterated that the disclosure of reason is essential for restoring confidence in the judicial and quasi judicial action of the authorities. Justifying non-disclosure of reasons on the ground that a non-selection post does not require minutes to be drawn, which would throw light on the background behind the decision, is an unacceptable argument and stares in the face of justice and fairness. We cannot accept this kind of situation wherein any authority is empowered with such an arbitrariness that by a single stroke of pen a candidate can be declared to be suitable or unsuitable without even the slightest of hints as to what are the factors which have constituted such a suitability or unsuitability.

7. We, therefore, have no hesitation in holding that the impugned order No. ECA/CC/OA 1087-09/Comml/RMM dated 15.06.2010 issued by the Sr. Divisional Personnel Officer, S.E.Railways, is not sustainable in the eyes of the law and is, therefore, quashed.



8. The respondent authorities are hereby given a clear direction that the applicant should be accorded promotion on notional basis w.e.f. the date on which his juniors were promoted and actual promotion along with the consequential financial benefits w.e.f. the date the operation of the order of penalty was over. Nothing shall stand in the way of his promotion unless there is some fresh ground which renders the applicant unsuitable and that ground is sufficient to withstand the scrutiny of law and rules.

9. With the above observation and direction, the O.A. stands disposed of without any order as to costs. MA 348/2013 also stands disposed of.

(Tarun Shridhar)
Member (A)

(Bidisha Banerjee)
Member (J)

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