

Central Administrative Tribunal, Allahabad.

Registration T.A.No.469 of 1986 (O.Suit No.282 of 1982)

Bansidhar ... Applicant

Vs.

Union of India and another ... Respondents.

Hon.D.S.Misra, AM
Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma.JM)

This original suit has been received on transfer from the Court of VIII Addl.Munsif Moradabad u/s.29 of the Administrative Tribunals Act XIII of 1985.

2. The plaintiff Bansidhar had joined the Northern Railway as a Clerk in June 1948 and he retired from service on 31.12.1981 while posted as Senior Booking Clerk at Moradabad Railway Station on reaching the age of superannuation according to his official record, although the plaintiff has challenged the date of his retirement by filing a writ petition which is still stated to be pending. The plaintiff had a chequered career and he had to face a number of disciplinary proceedings. He was once removed from service on 7.5.1976 and was reinstated on his writ petition being allowed by the Delhi High Court. He was even suspended once and he had to file a number of suits against the railway administration for various reliefs. Some of his cases went in appeal from one side or the other and a second appeal filed by the railway administration against the plaintiff in respect of his order of suspension is still pending in the High Court at Allahabad. We will advert to the specific litigations between the parties in the

later part of this judgment only when it is found necessary for the purpose of this case.

3. The present suit was filed by the plaintiff on 5.7.1982 for a declaration that he should be deemed to have been promoted in the grade of Rs.425-640 w.e.f.22.1.1975; in the grade of Rs.455-700 w.e.f. 21.3.1976 and in the grade of Rs.550-750 w.e.f.27.7.79 with all benefits of promotion. The plaintiff had earlier filed suit no.332 of 1974 in Moradabad Court for a declaration that he was entitled to promotion in the grade of Rs.205-280 i.e. revised grade of Rs.425-640 w.e.f. 11.5.1970. The said suit was decreed in part and the Union of India was directed to consider the claim of the plaintiff for his promotion to the said grade in accordance with the terms and conditions of the circular letter dated 12.11.1973 of the Divisional Superintendent (for short DS) Northern Railway, Moradabad. Not satisfied with the result of the suit, the plaintiff went in appeal being civil appeal no.260 of 1977 which was allowed in part by the V Addl.District Judge, Moradabad on 20.9.1979 upholding the decision of the trial Court on the question promotion. The appellate Court had ~~butchered~~ ^{simply} held the suspension order dated 15.4.1975 of the plaintiff without jurisdiction, and void on that ground, with liberty to the railway administration that he could be placed under suspension again by ~~the~~ ^{any} competent authority. The Union of India has challenged the correctness of this appellate decree by filing the second appeal no.100 of 1980 which is still pending.

4. The case of the plaintiff is that by virtue of his seniority he is entitled to the promotion in the grade of Rs.425-640 w.e.f.23.10.1974 in terms of the letter dated 12.11.1973 of the DS and he should have been promoted to this grade w.e.f.22.1.1975 when the first vacancy occurred on the death of Masud Ahmad, Head Parcel Clerk and to the grade of Rs.455-700 w.e.f. 21.3.1976 when V.N.Mohila was promoted and to the grade of Rs.550-750 w.e.f. 27.7.1979 in the vacancy caused by the promotion of Bhim Sen. Despite his representations and notice u/s.80 CPC when the plaintiff was not promoted by the defendants, the suit was filed.

5. The suit has been contested on behalf of the defendants and in the written statement filed on their behalf by the Senior Commercial Superintendent, Moradabad it has been stated that the plaintiff was appointed as a temporary Commercial Clerk in the Northern Railway in the grade of Rs.60-150. He was promoted in the grade of Rs. 100-185 w.e.f.1.4.56 and was confirmed in the said grade on 16.2.57 while working as Coaching Clerk. This grade was revised into the grade of Rs.330-560 w.e.f.1.1.1973. The next higher grade is the grade of Rs.425-640 which is a selection grade and the promotions to this grade are made after passing the required course from the Zonal Training School. When the plaintiff was not promoted to this grade he had filed suit no.332 of 1984 but he could not get the relief from the trial court and the appellate Court. The plaintiff was, however, promoted to the grade of Rs.425-640 by the defendants which the plaintiff refused in writing on 24.10.1973. Under ^{the} ¹ rules, the plaintiff thereafter could not be promoted for another one year. After

the expiry of one year from the date of the refusal of the plaintiff, the plaintiff could not be promoted as he was served with a charge sheet dated 17.6.1974 for major penalty. The plaintiff was served with another charge sheet dated 12.9.1979 and he was punished on its basis on 17.12.1979. This punishment was continuing till the plaintiff retired on 31.12.1981 and as such, during the period of punishment, the plaintiff was not entitled to any promotion. Though the punishment order dated 17.12.1979 was set aside by the II Addl. Munsif in suit no.280 of 1980 on 3.5.1982, the plaintiff could not be promoted at that time as he had already retired in the meantime. In this way, due to the pendency of the disciplinary proceedings against the plaintiff, when he could not be promoted to the grade of Rs.425-640, the question of his getting promotion in the further higher grades could not arise and he is not entitled to any relief.

6. The plaintiff filed a brief replication in respect of the allegations made by the defendants by way of amendment in their written statement and pleaded that the interpretation of the various judgements and decrees of the Court and the circular orders made by the defendants is not correct and the plaintiff is entitled to the promotion claimed by him.

7. A number of unnecessary facts have been mentioned by both the parties in their pleadings knowingly or inadvertently which have not only increased the volume of the pleadings but have also confused the matter to some extent. After excluding the irrelevant facts stated in the pleadings, the undisputed facts of the case of the plaintiff are that for getting promotion from the grade of Rs.330-560 to the grade of Rs.425-640 one has to undergo a selection.

The plaintiff was selected for this grade and it was granted to him in or about 1973 and was ordered to be transferred in this grade to Luxar. The plaintiff, however, did not avail this opportunity and refused in writing on 24.10.1973 for proceeding to Luxar. He, thus, himself gave up the chance of his promotion and in accordance with the circular letter no. E (N.G)64-P.M.I-66 dated 21.1.1965 issued by the Railway Board, he could not be eligible for promotion to any post in the grade of Rs.425-640 for a period of one year. The stand of the plaintiff was that as he had not refused the promotion and had only refused his transfer to Luxar, he had filed suit no.332 of 1974 claiming his promotion from 11.5.1970. In their defence, the defendants had set up one other circular letter dated 2.3.1978/12.11.1973 which lays down that if after finalization of the disciplinary proceedings against an employee under suspension etc., for whom a vacancy has been reserved, is fully exonerated or his suspension is held to be wholly unjustified, he may be enlisted and promoted in his turn and in the meantime, if any junior has been promoted, the said employee should be promoted by reverting the junior person. It appears that in the said suit the plaintiff had also challenged the validity of the order dated 15.4.1975 of the A.C.S. Morada bad placing him under suspension in connection with some disciplinary proceedings. The learned Munsif had held that as after the suspension of the plaintiff he was removed from service on 7.5.1976, the suspension order merged with the order of removal and afterwards the order of removal was set aside in writ petition by the Delhi High Court in Dec. 1976 and as such, the validity of the suspension order was not considered and the plaintiff was granted the relief in part to the effect that the Union of India shall consider the claim of the plaintiff for promotion subject to the terms and conditions of the circular letter dated 12.11.1973.

In appeal no.260 of 1977 preferred by the plaintiff, the finding of the learned trial Court on the question of promotion was upheld but his suspension was held to be without jurisdiction and the defendants were given the liberty to place the plaintiff under suspension again according to law. In this way, the contention of the plaintiff that he was entitled to promotion to the grade of Rs.425-640 w.e.f.11.5.70 was turned down and in view of this decision, the plaintiff claims his promotion to the said grade from a subsequent date i.e. 22.1.1975 when a vacancy is said to have been caused on the death of one Masud Ahmad Head Parcel Clerk.

8. The contention of the defendants made before us was that as after the expiry of one year from the date of refusal the plaintiff was never cleared from the disciplinary proceedings till his retirement, he could not be promoted under the law. It was also contended that the promotion post in the grade of Rs.425-640 is a selection post and the plaintiff could not be promoted in that grade without undergoing further selection. No authority has been placed before us in support of the latter contention. On the other hand, the circular letter dated 21.1.1965 of the Railway Board cited before us on behalf of the defendants simply provides that in case the employee refuses his transfer on promotion for the second time, his name has to be removed from the panel in the case of selection post and he is to be required to appear for selection again to that post. There is nothing on record to show that the plaintiff had made a second refusal regarding his promotion or transfer and as such, to our mind, he was not required to undergo further select-

ion for his promotion to this grade.

9. Regarding the first contention, it does not appear to be in dispute now that some of the appeals arising out of the suits filed by the plaintiff challenging the disciplinary action or the punishments awarded therein, ^{against him} which were pending at the time of his retirement or even at the time of institution of this suit, have since been decided, as appears from the copies of judgments placed on record before us. Only the second appeal preferred by the Union of India before the High Court involving the validity of the suspension order is now pending between the parties. That suspension order does not affect the right of the plaintiff to promotion. It is, thus, evident that all the impediments to the promotion of the plaintiff after the expiry of one year from 23.10.1973, the date of his refusal, have now been removed, whereupon the plaintiff became entitled to the notional promotion despite his superannuation according to law and the contentions made to the contrary on behalf of the defendants are not correct.

10. Regarding the reliefs claimed by the plaintiff, we are of the view that so far as his promotion to the next higher grade of Rs.425-640 is concerned, the notional promotion in this grade has to be granted to him by the respondents in accordance with the decision in suit no.332 of 1974 between the parties, which has the force of res judicata between them, and no further

direction of this Tribunal is needed in that connection. The plaintiff has claimed two more promotions. In the absence of any contention by any party to the contrary, we assume that the said promotions are not based on any selection and the plaintiff could get the same on his turn on the basis of the seniority-cum-fitness in view of the exoneration of the plaintiff in the disciplinary cases and in view of the further fact that no disciplinary proceeding was sought to be continued after the retirement of the plaintiff and he has already been granted the retirement benefits. The plaintiff should, therefore, be entitled to such other notional promotions to which he could be entitled on his turn upto the date of his superannuation. We accordingly order that the plaintiff shall be further entitled to such notional promotions in the grades of Rs.455-700 and 550-750 from the dates the persons junior to him were promoted in the said grades with all other consequential benefits. The case is decided accordingly without any order as to costs.

S. M. Arora
MEMBER (J)

Sharma

MEMBER (A)

Dated: 13.1.1989
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