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Central Administrative Tribunal, Allahabad.

Registration T.A.No.173 of 1987 (Original Suit No.382 of 1979)

Jai Ram Singh	...	Applicant
	Vs.	
Union of India	...	Respondent.

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

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

This transferred application is an original suit and has been received by transfer from the Court of Civil Judge II, Dehradun under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The case of the applicant (hereinafter referred to as the plaintiff) is that he was appointed as a Cleaner in the Northern Railway on 18.5.1942 and in due course was promoted as Driver Grade 'A' since 25.8.1975. On 16.9.78 38 Drivers of grade 'A' were promoted as Driver grade 'A' Special and 10 more such Drivers were promoted after that date. Drivers numbering 16 so promoted were juniors to the plaintiff. The plaintiff has, therefore, sought a declaration that the order dated 16.9.1978 passed by the Divisional Superintendent (for short DS) N.E.Railway Moradabad superseding the plaintiff in the promotion of Driver Grade 'A' Special is illegal and void and for a direction to the respondent (hereinafter referred to as the defendant) to promote the plaintiff as Driver Grade 'A' Special w.e.f. 16.9.1978. He has also prayed for quashing the adverse entry awarded to the plaintiff for the year 1974-75 and communicated to him on 29.1.1976 as well as for the recovery of Rs.625 as difference in pay in the grades of Drivers

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of two categories aforesaid from 16.9.1978 to 30.9.1979.

3. The plaintiff has alleged that he was discharging his duties as Driver grade 'A' from 25.8.1975 efficiently and his services were appreciated and commended by his superiors vide publication in Vol.no.I, Sept.-Oct. 1976 issue of railway magazine 'Northrail'. The Loco Foreman Dehradun however was bearing ill-will against the plaintiff and at his instance several false charges were levelled against the plaintiff for dereliction of duty and the plaintiff was punished for the same maliciously without affording adequate opportunity of hearing. The plaintiff preferred appeal against one such penalty but the appellate authority too did not afford him an opportunity of hearing and in view of such circumstances prevailing in the department, the plaintiff did not think it worthwhile to file appeals against every order passed against him. The plaintiff was awarded an adverse entry for the period ending 31.3.1975 and the said entry was communicated to him through letter dated 29.3.1976 after a considerable delay. The said entry was not based on facts and is liable to be quashed. The plaintiff had been driving the diesel locomotive as Driver Grade 'A' Special from Aug.1978 to 8.6.1979 and there were no complaints against him while working on this post and he was wrongly superseded on the ground of adverse entry. The suit was contested on behalf of the defendant and in the written statement filed on its behalf, it has been stated that on 16.9.1978, when 37 Drivers of Grade 'A' were promoted the plaintiff was not considered suitable for promotion as he was undergoing punishment of withholding of increments for 6 months and thereafter he was again not found suitable for promotion. The plaintiff's increments

for one year was stopped by way of punishment vide order dated 6.10.1975 for the wrongful detention of the train. He was censured by way of punishment on 20.12.1975 and again vide order dated 21.3.1978, his increments for 6 months were withheld for his negligence and each time, the proper procedure prescribed under the Railway Servants (Discipline and Appeal) Rules, 1968 for imposing penalty was followed and the allegations made by the plaintiff to the contrary are not correct and the plaintiff is not entitled to any relief.

4. It may be pointed out that there are 25 paragraphs in the plaint but in the written statement filed on behalf of the defendant, the parawise admission or denial is made only in respect of allegations made in paragraphs 1 to 9 of the plaint and in this way the defendant did not file a proper written statement.

5. In the rejoinder/replication filed by the plaintiff, it was stated that he was working as Driver Grade 'A' Special on adhoc basis from 7.4.1976 and as such, non-consideration of his name for regularization of his promotion is illegal and void. There was no question of considering the suitability of the plaintiff for regularization of the promotion. The plaintiff was not undergoing any punishment on 5.1.1978 when the DRM had issued the circular on the basis of which the promotion of Drivers were made on 16.9.1978. Imposition of subsequent punishment if any could not deprive the plaintiff of his promotion and the authorities of the defendant had committed grave illegality and breach of principles of natural justice and equity in denying the promotion to the plaintiff.

6. The plaintiff did not file any document except the copies of notice under section 80 Civil Procedure Code and the postal receipts. In the beginning, the defendant too had not filed any document and on hearing the arguments of the parties on one date ~~when~~ we ourselves felt the necessity that the documents to show the penalties imposed on the plaintiff should be placed on the record. Some documents were ^{thereafter} filed by the defendant. It appears from these documents that the plaintiff was subsequently promoted as Driver Special Grade vide order dated 16.10.1980 and on his seeking voluntary retirement, he retired from service on 30.12.1980. The letter dated 20.3.1979 of DRM Moradabad shows that with reference to plaintiff's application dated 15.3.1979 he was required to be informed that he was not considered fit for promotion as Driver 'A' Special grade. We have now to examine the contention of the defendant whether the plaintiff was undergoing punishment on the date persons junior to him were promoted as Drivers Special grade and whether he was not found suitable for promotion thereafter. Paper no.13 filed by the defendant is the notice dated 21.3.1978 served on the plaintiff awarding him the penalty of withholding his increment in the grade of Rs.550-700 normally due on 1.8.1978 for six months. Undisputedly, the plaintiff did not challenge the correctness of this order by filing a departmental appeal and has also not made out any case for interference by this Tribunal. This penalty was imposed on the plaintiff under rule 6 of the Railway Servants (Discipline and Appeal) Rules, 1968 and unless the plaintiff shows any illegality in this order, the same cannot be ignored. This order is, therefore, binding on him and as the punishment was awarded on 31.3.1978 and his next increment was due on 1.8.1978, naturally he could not be promoted on 16.9.1978 when persons junior to him were promoted. Now the question is whether after undergoing this penalty, the plaintiff could or could not be promoted w.e.f. 1.2.1979 ?

7. Normally, we would not have questioned the decision of the defendant for not finding the plaintiff suitable for promotion w.e.f. 1.2.1979 but there are some glaring facts which go to show that the authorities of the defendant either did not exercise their mind at all or if they did so, they did not do so fairly for considering his promotion. The most remarkable fact in this case is that as alleged in para 14 of the plaint, the plaintiff worked as Driver grade 'A' Special from 7.4.1976 to 31.3.1977 on steam engine and thereafter on undergoing training of driver diesel locomotive, he again worked as Driver 'A' Special from Aug. 1978 to 3.6.1979. The facts stated in this para by the plaintiff have not been denied by the defendant in the written statement and as such under the law they ^{should} ~~may~~ be deemed to have been admitted by the defendant. In para 5 of its written statement, 3 penalties imposed on the plaintiff have been quoted by the defendant. The first penalty was under order dated 6.10.1975 for withholding his increment for one year without cumulative effect and the other penalty was the penalty of censure under order dated 20.12.1975. After imposing these penalties the plaintiff was promoted as officiating Driver grade 'A' Special from 7.4.76 to 31.7.78 and as such, these penalties could not deprive the plaintiff from promotion in future. The third penalty was under order dated 21.3.1978 withholding his increment for 6 months temporarily about which, we have already made a mention above. It is interesting to point out that the penalty became current w.e.f. 1.8.1978 but from that very date, the plaintiff was again promoted as Driver Grade 'A' Special for driving diesel locomotive and he worked on this post till 3.6.1979. The plaintiff was already working on the higher post when the third penalty ceased to operate on 1.2.1979. In case, the plaintiff was not found suitable for promotion on regular

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basis at that time, he could not be allowed to discharge the duties of Driver Grade 'A' Special temporarily and should have been reverted. As this was not done, we are unable to accept the contention of the defendant that the plaintiff was not found suitable for promotion when he was considered for promotion after his undergoing the penalty of withholding of his increment for 6 months. The defendant has not pleaded any facts or circumstances which rendered the plaintiff unfit for promotion after 1.2.1979 on his undergoing the penalty or after 8.6.79, the date upto which he had worked as Driver Grade 'A' Special on temporary basis. It can also not be lost sight of that the plaintiff was again promoted by the defendant as Driver Special Grade under order dated 16.10.1980. We are, therefore, unable to uphold the contention of the defendant that the plaintiff was not found fit for promotion when he was considered for promotion after undergoing the penalty of withholding of increments for 6 months. There is, however, ~~again~~ some inconsistency in the case of the plaintiff. On the one hand, he has pleaded in para 14 of the plaint that he officiated as Driver Grade 'A' Special from Aug. 1978 to 8.6.1979 but on the other hand, in the relief clause, he has claimed a decree for arrears of pay from 16.9.1978 to 30.9.19 79. This shows that the plaintiff was simply discharging the duties of Driver Special Grade but was not being paid the salary of that post and in view of the inconsistent stand taken by the plaintiff himself, we are inclined to take this view that the plaintiff was not being paid the salary of Driver Special Grade but was merely working in that capacity.

8. The copy of the adverse entry for year ~~year~~ ending 31.3.1975 communicated to the plaintiff through letter dated 29.3.1976 and sought to be set aside in this case has not been produced on record. No such adverse entry has been recorded in the list of punishments filed by the defendant. The written statement is silent on this point as the allegation regarding the adverse entry finds a mention in para 11 of the plaint. In our opinion, this adverse entry communicated to the plaintiff is irrelevant for the purposes of considering his promotion as on his own showing he was booked to officiate as Driver Special Grade in April 1976 and as the plaintiff has already retired, this entry is not going to affect him adversely and on this ground as well, it need not be set aside. According to the list of punishments filed by the defendant, after the punishment of withholding of increment for 6 months awarded under order dated 21.3.1978 as discussed above, the plaintiff was awarded only one punishment of censure under order dated 24.6.1980 and after that punishment, he was promoted by the defendant on 16.10.1980. In any case, that punishment could not be considered to be an adverse circumstance for judging the suitability of the plaintiff for promotion on or after 1.2.1979. He is, therefore, entitled to promotion w.e.f. 1.2.1979 on the ground that the persons junior to him were promoted on 16.9.1978 when he was undergoing punishment. There is no other point for consideration in this case.

9. The defendant is accordingly directed to promote the plaintiff as Driver Special Grade w.e.f. 1.2.1979 with all consequential benefits. There will be no orders as to costs.

MEMBER (A)

Dated Oct. 14, 1987
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MEMBER (J)

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