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Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

REGISTRATION NO. 107 of 1987

Sri M.H.Khan

... Applicant.

Versus

Union of India and others

... Respondents.

Hon'ble D.S.Misra-AM

Hon'ble G.S.Sharma-JM

(delivered by Hon'ble D.S.Misra)

This is an application under Section 19 of the Administrative Tribunals Act XIII of 1985 in which the applicant has challenged the order dated 19.9.1986, passed by General Manager(P) Northern Railway New Delhi(respondent no.2) stating that the decision given by the Divisional Railway Manager, Lucknow (respondent no.3) in allowing advancement to the applicant on the Yard Side, is not in order and directing him by his letter dated 11.11.1986 to implement the orders contained in the letter dated 19.9.1986 and the order dated 20.11.1986 of respondent no.3 implementing the above mentioned decision and repatriation of the applicant to his substantive post of Guard Gr.Rs.425-640.

2. The applicant's case is that he was appointed as Guard Grade.C in Jodhpur Division on 7.7.57, and was transferred to Lucknow division in Nov, 1959; that the applicant appeared in the selection for the post of AYM of the scale of Rs.455-700 held between 23.3.77 and 11.1.78 and his position in the list of successful candidates appears at sl.no.5 of Annexure-A-1; that the persons at sl.nos. 1 to 4 and 7 have been promoted and the orders of his promotion

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and posting as Assistant Yard Master at Lucknow was also issued, but the applicant was not relieved (copy of posting order Annexure A2); that the applicant attended P-16 Training Course for promotion as Assistant Yard Master and he completed his training on 15.6.78; that even-after completing the training he was not relieved nor posted as Assistant Yard Master inspite of several representations made by him to the higher authorities; that the matter of his non-promotion was discussed in PNM meetings held with the Divisional Railway Manager Lucknow on 1/2-12-82, 3/4-8-83, 11.12.83, 3/4-1-1984 and it came to the notice of the applicant that his name had been deleted from the panel of Assistant Yard Master; that the case of his promotion was taken up with the General Manager, N.R., through Uttar Pradesh Railway Mazdoor Union and it was decided that the D.R.M. Lucknow will be requested to go into the matter personally and to convey his decision to the Union within one month; that no decision was taken by the D.R.M. Lucknow and the matter was again discussed in the meeting of the PNM with the General Manager held on 26/27th March, 1985 in which the General Manager directed the D.R.M. to decide the matter within one month at his own level; that ultimately the matter came up for discussion in the PNM at D.R.M. Lucknow level on 22.8.1985 and 30.9.1985 and it was decided by the D.R.M. Lucknow that the applicant who was born on the panel of AYM of Grade 455-700 of 20.1.1978 be allowed promotion in the grade of Rs.550-750 on Yard Side/w.e.f. 15.11.1980, the date from which his junior on the panel, Sri H.S. Saran, had been promoted to the grade of Rs.550-750; that the matter came for discussion in the meeting of the PNM held with the General

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Manager, N.R. on 30/31st. October, 1985 and in this meeting the General Manager remarked that D.R.M. Lucknow will be asked to issue necessary orders; that by a letter dated 14.8.1985 (copy annexure A3) ^{the applicant} of D.R.M. / was asked to give his final option clearly indicating that he would seek his further advancement as Station Superintendent Grade Rs. 700-900 or a CYM Grade Rs. 700-900; and the applicant opted for Station Superintendent's scale Rs. 700-900 that the D.R.M. Lucknow vide letter dated 8.9.85 advised the General Manager, N.R., New Delhi in reply to his letter dated 18.10.1985 ^{stating} that the applicant has been elevated to Grade 550-750 as Yard Master and allowed proforma seniority and pay vis a vis his junior Sri H.S. Saran and by virtue of this position the process of interplation of his name in the panel formed for the post of Dy.C.Y.M./SS Grade Rs. 700-900 has also been initiated (copy annexure A-4); that on being found fit for promotion as Station Superintendent, the orders of the promotion of the applicant were passed on 24th December, 1985 (Copy Annexure A-5); that the above mentioned order was to the effect that the applicant was promoted as Station Superintendent in the scale of Rs. 700-900 w.e.f. 1.8.1982 (proforma) and 1.8.1983 (actual) and posted him at Pratapgarh as Station Superintendent; that the applicant joined as Station Superintendent Pratapgarh on 1.1.1986 and has been working as such since then; that respondent no. 2 also intimated this fact to the ~~Uttariya~~ Railway Mazdoor Union by letter dated NIL March, 1986 (copy annexure A-6); that for working as Station Superintendent, the applicant was sent to

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Zonal Training School Chandausi on 11.3.1986 where he remained till May, 1986 and was declared qualified in the said P-16 A course (copy annexure-7); that the applicant is the Divisional Secretary of the Uttariya Railway Mazdoor Union Lucknow division branch and the rival Northern Railway Mazdoor Union took the matter of the promotion of the applicant with D.R.M. Lucknow at the back of the applicant; that the rival union, namely, N.R. Men's Union approached the General Manager with the request that Sri V.P. Trivedi, who was impanelled as AYMin 1978 (annexure A-1) was not promoted as AYMan and who had taken up the matter with the DRM vide his letter dated 23.6.78 (copy annexure A-8) wanted all the benefits to be given to Sri V.P. Trivedi, which had been legally derived by the applicant; that Sri V.P. Trivedi had also moved the D.R.M. vide his letter dated 18.12.1983 claiming promotion as AYM (annexure A-9); that Sri V.P. Trivedi, ~~General Lucknow~~ who was impanelled at sl.no.7 of Annexure-A-1 was the Divisional Secretary of Northern Railway Men's Union; that Sri V.P. Trivedi was also given the option by DRM Lucknow and he filed his option and opted for promotion as Yard Master and also gave his willingness to be posted as Safety Counselor (copy annexure-A10); that Sri V.P. Trivedi submitted another application on 21.1.1985 (copy annexure A11) alleging that he has been ignored as Section Controller after impanelment and his juniors had been promoted; that the above-mentioned request of Sri V.P. Trivedi was not accepted by D.R.M.

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Lucknow vide letter dated 14.4.86(annexure A12); that the modus operandi of the rival union was to cause harm to the applicant by misleading the General Manager and they raised matter of promotion of the applicant in the PNM meeting held with the General Manager on 24th August, 1986 (annexure A13); that the points raised by the Northern Railway Men's Unions were replied^{to} by D.R.M. Lucknow vide his letter dated 22.7.1986(copy annexure A-14); that the respondent no.2 at the *behest* of the Northern Railway Men's Union issued the impugned order dated 19.9.1986(annexure A-15) without calling upon the applicant to show cause why this order should not be passed; that this order has resulted in reducing the applicant in rank depriving the applicant of his valuable right of working as Station Superintendent. The applicant made a representation to the respondent no.2 vide letter dated 27.10.1986 to hold the action in abeyance(copy annexure-A16) but the General Manager issued an order dated 11.11.1986 (annexure A-18) directing the respondent no.3 to carry out the orders of reversion of the applicant^{that}; respondent no.3 vide his letter dated 20.11.1986 (copy annexure A 19)^{has}/ordered the repatriation of the applicant to his substantive cadre of Guard Grade 'A' ; that inspite of several representations made by the General Secretary of Uttar Pradesh Railway Mazdoor Men's Union, the orders of reversion of the applicant were not cancelled and respondent no.3 vide his order dated 15.1.1987(copy annexure-A22) insisted on the implementation of the illegal orders issued earlier. The applicant has prayed for

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quashing of the orders passed by the respondents on 19.9.1986, 11.11.1986, 20.11.1986, 13.1.1987 and 15.1.1987.

3. In the reply filed on behalf of the respondents, it is stated that in the selection for the post of Asstt. Yard Master, the name of the applicant was placed at sl.no.5 in the panel of Assistant Yard Master declared on 20.1.1978; that the applicant was promoted as Asstt. Yard Master in the Grade of Rs.455-700 and was posted at Lucknow in February, 1978. In this order of promotion (copy Annexure A-2) it was made clear to the staff that the promotions were temporary arrangements and the staff were required to qualify in P-16 Course from Zonal Training School Chandausi at the first opportunity; that the applicant attended the said course from 16th March to 15th June, 1978 but failed to qualify in the course; that the applicant qualified in the supplementary examination in P-16 course held on 4th November, 78, the result of which was issued vide letter dated 19th June, 1979 from the Zonal Training School Chandausi; that the applicant was promoted as Guard Grade 'B' in the scale of Rs. 330-560 on 23rd January, 1980 in his regular line of promotion and he did not make any representation about his non-promotion as Asstt. Yard Master in the Grade of Rs.455-700. The applicant was further promoted as Guard Grade 'A' in the scale of Rs.425-600 on 1st June, 1981 and he did not protest that he had already been impanelled as A.Y.M. and would like to go on that post; that the applicant continued to work as Guard Grade A; that the Uttar Pradesh Railway Mazdoor Union took up the case of the applicant in

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December, 1982; that despite efforts made by the office, the applicant did not join as A.Y.M. at Lucknow and continued to work at Pratapgarh which is also his home town; that the notings of the Divisional Personnel Officer quoted in para 6-7 of the application^{tion} were not the final decision and the final decision is made when the issue^{be} is decided finally; that Uttar~~iy~~ Railway Mazdoor Union had taken up the issue in PNM meetings held at Head Quarter's level and they were informed that the matter was pending decision by the Divisional Railway Manager Lucknow; that the D.R.M. Lucknow had accepted the demand of the union and ordered to extend the benefit of the post of A.Y.M. to the applicant up to the level of his earst while junior in the panel of AYM; that the applicant was promoted as Station Superintendent by virtue of his ~~im~~panelment as AYM on 20th January, 1978; that Sri V.P. Trivedi was not offered promotion as Assistant Yard Master as alleged in para 6 of the application and therefore, the question of his refusal does not arise; that the applicant, although opted for the post of AYM as a side channel, preferred to continue in his own line viz-Guard and accepted further promotion as Guard Grade B and Guard Grade 'A'; that the above-mentioned conduct of the applicant proves that he had no inclination to work as AYM and as he chose to advance in his cadre of Guard, his option for the post of AYM being side channel automatically stands forfeited; that promotion to the side channel is not a matter of right and ~~im~~panelled staff can be disinterested for promotion on the side channel; that it is incorrect to say that the applicant was not

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relieved to join as AYM and this is proved by the fact that he was relieved to attend the Training Course meant for the post of AYM held at Chandausi; that the applicant should have reported to the D.R.M. Lucknow for posting as AYM instead of joining as Guard at Pratapgarh and this goes to show that he was not interested to work as AYM; that the decision of the Divisional Railway Manager, Lucknow was reversed by the next higher authority in Head Quarter Office ~~which~~ ^{by} was binding on the division; that the action of the applicant in accepting his promotion as Guard Grade B and Guard Grade A tentamounts to the final option for the cadre of Guard and the action of Lucknow division promoting the applicant as Assistant Yard Master in the grade of Rs.455-700 was not in order; that the orders of the division, posting the applicant as Station Superintendent Pratapgarh were cancelled by the Head Quarter and later on this cancellation was kept pending vide notice issued on 24.11.1986; that subsequently the order to keep pending was cancelled and a notice was issued on 15.1.1987 stating that the Traffic Inspector Pratapgarh would take charge of the Station Superintendent Pratapgarh; that the Traffic Inspector Pratapgarh informed the Senior Divisional Operating Superintendent on or around 20.1.1987 on phone that the applicant was not handing over charge and he should intervene; that Sri J.S. Lali, Station Superintendent Nihalgarh, was posted as Station Superintendent Pratapgarh Vice Sri M.H. Khan, but Sri Lali was reluctant about this posting; that thereafter one Sri V.B. Misra was posted as Station Superintendent Pratapgarh vide orders

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issued on 27.1.1987; that when Sri J.S.Lali and thereafter Sri V.B.Misra went to take charge from the applicant, they were threatened of dire consequences at the hands of the railway union of which the applicant is the divisional secretary; that this action of the applicant was highly objectionable and he was guilty of insubordination and violation of the discipline of the service; that the applicant did not comply with the order of his repatriation to the parent cadre as Guard received by him or about 25.1.1987 and instead of handing violence to our charge, he threatened the aforesaid persons, who went to take charge; that the applicant had obtained the order of status-quo from this tribunal by supressing the material facts of the service of order of repatriation ^{on him} on or about 25.1.1987; that in his parent department, the applicant would get better emoluments than what he would be entitled to get in the ^{Cadre of Sr} ~~Grade of Sr~~ Yard Master, and he wouldnot suffer any financial loss; that the ^{Dur.} ~~General~~ ^{Railway} Manager was competent to review his earlier orders when correct position was brought to his notice and the orders passed by him is perfectly valid and does not suffer from any illegality; that it was not necessary to hold any inquiry and issue any show cause notice to the applicant before passing the impugned order; and that the applicant is not entitled to any relief and the application is liable to be dismissed.

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4. A supplementary affidavit was filed by the applicant in reply to the counter-affidavit of the respondent. It was stated therein that on his promotion as A.Y.M. at Lucknow he was not relieved from Pratapgarh for joining duties at Lucknow inspite of his applications dated 30.11.1978, 25.6.1979, 30.6.79, 10.1.1980 and 15.1.1980 (copies annexure R.A.-1) that he had to accept the promotion made available to him on the post of Guard Grade B as according to the Circular letter of the Railway Board printed at sl.no.6211 issued by the General Manager N.Rly. (copy annexure R.A.-2), a member of the running staff promoted to a higher post on the same station is not permitted to refuse to work in such higher post; that this point is also contained in the letter dated 17.7.1981 issued by the Railway Board (copy Annexure R.A.-3); that there are many cases where employees have been granted promotion in their individual channel of promotion by 2 or 3 higher grade and thereafter have been promoted / adjusted as per option in the inside channel of promotion available to them (copy annexure R-A.4) and (R.A.5); that it ^{is} incorrect to say that the applicant accepted promotion at Pratapgarh without any protest or that he was not interested in promotion to the post of Assistant Yard Master; that the petitioner is being penalised in an arbitrary manner only on account of the rivalry of the Railwaymen's Union with the Uttariya Mazdoor Union of which the petitioner is Divisional Secretary. The remaining part of the rejoinder affidavit is a reiteration of the points made in the application.

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5. We have heard the arguments of the learned counsel for the parties and have also gone through the records of the case. Learned counsel for the applicant invited our attention to the provisions of para 217 of the Indian Railway Establishment Manual regarding currency of panels, and contended that in terms of para (b)(c), the applicant was entitled to promotion under the Next Below Rule. Para 217 reads as follows:

217; Panels drawn by a Selection Board and approved by the competent authority shall be current for two years from the date of approval by the competent authority or till these are exhausted whichever is earlier.

(b) An employee who once officiates against a non-fortuitous vacancy in his turn on the panel shall not be required to appear again for fresh selection.

(c) In case an employee lower in the Panel has officiated whereas once higher in the panel has not officiated for reasons beyond the latter's control, the latter employee will not be required to appear for fresh selection."

Learned counsel for the respondent contended that the fact of his having accepted promotion first as Guard Gr.B and again as Guard Gr.A proved his acquiescence to continue in the cadre of Guard and he can not now plead that he belonged to the Yard Cadre. He cited case law Bipul Mandal Vs. Chief Electrical Engineer Eastern Railway (SLJ-1986-P.130) decided by the Calcutta Bench of the Tribunal in which the applicant, who had drawn 10 per cent special pay for working in the shop, claimed that he belonged to the Production Control Organization and it was held that his claim that he belonged to the Production Control Organization was not acceptable as he had drawn the special pay with full knowledge of his employment in Workshop.

6. It would be relevant to enumerate the sequence of events as stated by the applicant himself. The applicant has alleged that after his empanelment as AYM, he sent several representations for being relieved to join his new assignment as AYM at Lucknow. First such representation filed by the applicant is dated 30.11.1978 (annexure RA-1/1) in which it is alleged that although his junior Sri H.H.Saran had been promoted as A.Y.M., but he has not been spared to join as AYM at Lucknow. His second representation (RA 1/2) is dated 25.6.1979 making the same request. These representations are addressed to the Divisional Superintendent N.Rly. Lucknow and not to his immediate superior officer. His last representation dated 15.1.1980 (R.A.1/5) is addressed to Senior D.P.O. Lucknow, in his capacity as Divisional President Uttariya Railway Mazdoor Union. The applicant was thereafter promoted as Guard Grade B in the scale of Rs.330-560 on 23.1.1980 and again as Guard Grade-A in the scale of Rs.425-600 on 1st June, 1981. The applicant made no representation thereafter regarding his promotion in the cadre of AYM. He preferred to agitate this matter several years later in the PNM meetings held with DRM Lucknow and General Manager N. Railway on various dates in the year 1985. As a result of these meetings, an order dated 14th August, 1985 (annexure A-3) was passed giving proforma fixation of pay and seniority over his erstwhile junior Sri H.H.Saran born on the panel of AYM Grade Rs.455-700 in the scale of Rs.550-750 w.e.f. 15.11.80. By this order the applicant was also asked to give his final option to seek further advancement in the cadre of Yard Master. Similar action was taken in respect of

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Sri V.P.Trivedi, who had also been agitating for his promotion as AYM and who had given his option for promotion on the Yard side vide his letter dated 29.10.1985(annexure A-10). As early as 18.12.83, Sri Trivedi had complained that the order of promotion of Sri M.H.Khan had been issued in 1978 but the same had been ignored in his case although his junior Sri H.H.Saran had also been promoted. It appears that the office of D.R.M. Lucknow did not take any action on the representations made by Sri Trivedi and order for his proforma promotion as Yard Master was issued simultaneously with that of the applicant in October 1985. It is also seen that in the panel for the post of AYM prepared on 20.1.1978(annexure A-1) Sri V.P.Trivedi is at sl.no.6 but when the orders of promotion were issued on 15.2.1978 Annexure A-2, the name of Sri Trivedi did not find place in this order and Sri S.C.Goel, who was initially at sl.no.8 had also been promoted. It also appears that Sri M.H.Saran was already working as Asstt.Yard Master. The date from which Sri H.H.Saran was working as AYM before his empanelment has not been given. However, in the order of promotion dated 14.8.85 of the applicant, it is stated that the competent authority had given proforma fixation of pay and seniority to the applicant over his erstwhile junior Sri H.H.Saran, born on the panel of AYM in the grade of Rs.455-700. It appears that the date of regular promotion to the grade of ^{Yard master Rs.550-750} ~~AYM~~ of Sri H.H.Saran was ^{15.1.1980} ~~15.1.1980~~, the date from which the applicant was given proforma fixation of pay and on the basis of his position in the panel of Assistant Yard Master.

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7. The applicant has filed true copies of the correspondence between the office of the D.R.M. Lucknow and the General Manager, N.R.. He has even filed copies of the representations made by Sri V.P. Trivedi to the Divisional Superintendent N.R. Lucknow Divisional Railway Manager, N.R. Lucknow and the letter of Divisional Railway Manager to V.P. Trivedi on the subject of the letter's promotion as Asstt. Yard Master, Yard Master and Chief Yard Master. The applicant has also filed ^{the copies of} the notings of the office of the D.R.M. Lucknow concerning the promotion of these two officers and the minutes of PNM meeting with the DRM Lucknow and the General Manager, N.R. on various dates. The promotion of Sri M.H. Khan as Station Superintendent appears to be a result of these meetings with the representatives of the union of which the applicant was the Divisional Secretary, Sri Trivedi was the Divisional Secretary of the N.R. Men's Union. The applicant was promoted as Station Superintendent in the scale of Rs. 700-00 by an order dated 24th December, 1985 (copy annexure A-5) and this promotion is again made as proforma promotion w.e.f. 1.8.1982 and (actual) w.e.f. 1.1.1983. A similar order appears to have been passed in respect of Sri V.P. Trivedi as Chief Yard Master in the scale of Rs. 700-900. However, it appears that the Divisional Secretary of the Northern Railway Men's Union considered the promotion of S/s M.H. Khan and Sri V.P. Trivedi as unlawful and the matter was discussed in the 67th PNM meeting of Northern Railway Men's Union held on 24th March, 1986 (annexure A 30). A separate report was submitted by D.R.M. Lucknow to the General Manager, N.R. regarding these matters and the General Manager passed an order dated 19th Sept.

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1986(copy annexure A 15) in which it was held that the order or promotion of the applicant as Yard Master and his further promotion as Station Master was held to be not in order and DRM Lucknow was asked to cancel those orders. It appears that similar instructions were issued by the General Manager N.R. regarding the orders of promotion issued by DRM Lucknow in respect of Sri Trivedi. It would be interesting to quote from the internal noting in the office of the D.R.M.(annexure A.17);

"In these two letters, H.Q's have outrightly condemned the action of the office although the full facts were communicated to HQ's through confidential No.E.332/T-D/LCS/77 dated 14.4.86 enclosing the relevant PPS and administrative orders, given in this case, from time to time. The factual position of case indicating the repercussions are enumerated below in chronological sequence:-

1. Both S/Sri M.H.Khan and V.P.Trivedi presently functioning as Divisional Secretaries of URMU and NRMU respectively, while functioning as Guard and WMI respectively had opted for the post of AYM Grade Rs.455-700(RS). The panel in question was announced on 20.1.1978 through S.No.236.

2. The name of S/Sri M.H.Khan and V.P.Trivedi was at item no.5 and 6 in the panel of AYM which was announced on 20.1.1978 through S.No. 236.

3. The panel was notified through SN240 which reveals that Sri M.H.Khan was promoted as AYM in Gr.Rs. 455-700(RS) and was accordingly posted at Lucknow.

4. This Notification (S.no.240) does not contain the name of Sri V.P.Trivedi.

5. Sri M.H.khan did not join as AYM Grade Rs. 455-700(RS) in compliance to the Notification placed at sl.no.240.

6. The records available on this file, however, reveal that (S.no.259) notings (at PP 72 to PP 74) a slight attempt was made by the administration to get the Sri Khan spared from PBH to join as AYM in Gr. Rs.455-700(RS) at LKO with no avail. It also appears from the file that Sri Khan could not be relieved due to some administrative reasons, or in other words, administration miserably failed to spare Sri Khan.(emphasis supplied)

7. The records, available on this file also

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reveals that Sri Khan also did not submit his refusal for the post of AYM.

12. At Divisional level, notings and counter notings from PP-86 to PP-101 i.e., during the period 6.10.1983 to 3.6.1985 may kindly be perused wherein similar views as intimated to us by the H.Q's through S.No.347, 348 were taken by this administration on PP-101.

13. On receipt of minutes of GM, PNM the case was thread bare analysed at PP 102 to 106 indicating the factual position of entire happenings. There upon the DRM, through his orders at PP106 and PP 107. had decided, keeping different factors within the frame work of rule in view, that both S/Sri M.H.Khan and V.P.Trivedi may be afforded the consequential benefit vis a vis their erstwhile junior on the panel of AYM announced on 20.1.1978 as a "One time exception -n not to be quoted as a precedent." (emphasis supplied).

18. Consequent on these developments, both S/Sri M.H.Khan and V.P.Trivedi were earmarked for the post of Station Supdt. and Dy.CYM Grade Rs.700-900(RS) respectively and were interpolated at the appropriate place in the panel announced earlier under modified procedure through S.No. 385. (emphasis supplied)

19. Both these gentleman were accordingly promoted in the categories for which they were earmarked by the selection board through S.No. 308 and accordingly the letter was endorsed to HW Office, Baroda House New Delhi.

20. The Divisional President NRMU in his opening speech on 27th PNM meeting held on 20.3.86 had agitated (S.No.311) that the promotion orders of both the Divisional Secretaries, Vis. Sh.M.H.-Khan and V.P. Trivedi were wrong in view of the fact that they have accepted several promotions in their normal line of advancement and demand that they should not be afforded Advancement on the basis of their empanelment as A.Y.M.

23. Before the work of implementation of HQs decision, conveyed to us through S.No.347 and 348 are undertaking following two aspects should also be revised afresh.

(a) Whether it was correct to affirm them consequential benefits by virtue of their penal position on the panel of AYM announced on 22.1.78 even when the life of panel was expired (emphasis supplied).

(b) Whether both should be afforded consequential benefit of yard side by virtue of their panel position on the panel of AYM even when they had accepted promotion in their line of promotion (emphasis supplied).

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24. Regarding 23(a) above, it is pointed out that provisions of PS No. 2348 and 2615 cannot be overlooked. The circumstances, enunciated in these two PS are self explanatory and fully applicable on Sri M.H. Khan and V.P. Trivedi in view of the fact that they were at item no.5 and 6 of the Panel (S No. 236) and their junior Sri H.H. Saran(item no.7) was promoted as AYM. on 15.2.1978. It is reiterated that Sri V.P. Trivedi was never promoted as Yard-Master by this office, whereas Sri M.H. Khan although promoted on 15.2.1978 through S.No.240, but did not join due to administrative failure. This factor of administrative failure was explicitly been analysed under(b) of PP 104 and 105 and was acceptable to the competent authority i.e. DRM which is evident from his order at PP-105 and 107.

25. Regarding 23(B) it is pointed out that Sri M.H.Khan was promoted as Guard Gr.B in grade Rs. 330-560) and on 23.1.1980 and thereafter as Guard Gr. A. in Grade Rs. 425-600(RS) on 6.1.1981. The URMU is continuously agitating this issue since 1/2.12.1982(Item No. 390 of 72nd PNM).

It indicates that despite the acceptance of promotion in higher grade as Guard Gr.B in the regular line of promotion, there was constant pursuation from the URMU regarding giving protection to Sri M.H. Khan towards the side channel for the post of AYM.

26. Almost similar position prevailing in the case of Sri V.P. Tripathi, rather the position of Sri V.P. Trivedi is on stronger footing than that of Sh. M.H. Khan's case. The promotion order of Sri Trivedi as AYM was not at all issued by this office.

This is a most controversial case of inter union rivalry as such in order to eradicate the possibility of loss of the file the case file is being put up under red folder, although it is an open case"(emphasis supplied)

8. It appears that the DRM made a reference to the General Manager N.R. vide his letter dated 27th October, 86(Annexure A-16) seeking further clarification. The General Manager vide his letter dated 11th November, 86 (Annexure A-18) asked the D.R.M. Lucknow that the decision conveyed to him under his office letter dated 19th September, 1986(copy Annexure- A-15) should be implemented without any delay and compliance report sent to his office.

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The D.R.M. issued a notice dated 20th November, 1986 (copy Annexure A-19) in which it was stated that Sri M.H. Khan would be repatriated to his substantive cadre of Guard and would work as Guard Gr.A. at Pratapgarh and that Sri V.P. Trivedi would retain his locus standi in the cadre of WMI. It appears that the implementation of this order was stayed by the issue of a notice dated 24.11.86 (Annexure A-20) but the same was cancelled vide another notice dated 15.1.1987 of Divisional Railway Manager (copy Annexure A-22).

9. From the above narration of events, it becomes clear that the orders of promotion of S/Shri M.H.Khan and Sri V.P. Trivedi were made by the Divisional Railway Manager on the pursuation of their respective unions of which they happened to be the Divisional Secretary. We are not aware of the matter, which should be discussed in PNM^{PL} meetings with the DRM or the General Manager, but the proceedings of these meetings brought on record by the applicant clearly discloses that establishment matters of individual are discussed and decisions taken, are implemented by concerned officers. In the instant case the orders of promotion of Sri M.H. Khan as Yard Master and as Station Superintendent and similarly that of Sri V.P. Trivedi as Yard Master and Chief Yard Master with retrospective effect appears to have been made to satisfy the demands of the respective unions. This does not do any credit to an agency of the government, which is required to decide matters in accordance with the rules and instructions of the Government relevant to the matter under consideration. ^{PL}

10. We have examined the contention of Sri M.H. Khan that he was not spared to take up his positing as A.Y.M. at Lucknow in February, 1978. On his own admission, Sri Khan was spared to attend the P-16 Training Course at Chandausi during the period 16.3.78 to 15.6.78 (para 6.4 of the application) If Sri Khan was really keen to join as A.Y.M., on the completion of his training he should have reported to the concerned officer at Lucknow. He chose to go back to Pratapgarh which also happens to be his home town. There seems to be considerable force in the contention of the respondents that Sri Khan managed to stay at Pratapgarh and did not join at Lucknow as Asstt. Yard Master for reasons best known to him. We have considered the case law cited by the learned counsel for the respondents mentioned earlier, and we are of the opinion that, that case is fully applicable to the present case. The applicant accepted his promotion in the cadre of Guard in 1980 and 1981 and did not press his claim for promotion on the Yard side. It is only in 1985 that he started agitating to gain further promotion. The papers filed by the applicant clearly disclose the unhealthy pressure and influence exerted on the senior officers of the railway administration ^{by the unions of railway employees.} ~~in the office of the DM Lucknow.~~ From the facts and circumstances of the case, we are of the opinion that Sri Khan was not interested in joining as AYM at Lucknow. Since he did not join as AYM at Lucknow the order of his promotion as AYM should be deemed to have lapsed. Under Para 217 of the Railway

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Establishment Manual, the applicant could have been promoted only within the validity of the currency of the panel which expired on 19.1.1980. The order of promotion dated 14.8.85 passed by DRM Lucknow giving retrospective promotion to the applicant on the post of Y.M., w.e.f. 15.1.1980 can not be considered as a valid order and is therefore, not sustainable. Similarly the subsequent order dated 24.12.1985 promoting the applicant as Station Superintendent Pratapgarh in the scale of Rs.700-900 is also an irregular order. We are of the opinion that the order dated 19.9.1986 of General Manager, N.R. cancelling the orders of promotions of Sri M.H.Khan as Yard Master and Station Superintendent passed by the Divisional Railway Manager is a correct order and appears to have been passed in accordance with the relevant rules. We are also of the opinion that as the superior authority, the General Manager has the power to cancel modify or amend a wrong order passed by the Divisional Railway Manager, Lucknow. The impugned order dated 19.9.1986 passed by D.R.M. Lucknow repatriating Sri M.H.Khan to his substantive cadre of Guard does not suffer from any illegality.

For the reasons mentioned above, we are of the opinion that there is no justification for interfering with this order. The application is dismissed without any order as to costs.

A.M.
A.M. 30.7.87

J.M.
J.M. 30/7/87

JS/30.7.87