

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

O.A. No: 746 of 1987.

~~P.A. No:~~

DATE OF DECISION: 16/1/95

Janki Prasad

PETITIONER.

Shri. O.P. Gupta

ADVOCATE FOR THE  
PETITIONER

V E R S U S

Union of Incha & ors.

RESPONDENTS.

Shri. A.V. Srivastava

ADVOCATE FOR THE  
RESPONDENTS.

C O R A M

The Hon'ble Mr. Justice B.C. Saxena, V.C.

The Hon'ble Mr. K. Mulhukumar, Member (A)

1. Whether Reporters of local papers may be allowed to see the judgement? X
2. To be referred to the Reporter or not? X
3. Whether their Lordships wish to see the fair copy of the judgement? X
4. Whether to be circulated to all other Bench? X

B.C. Saxena

SIGNATURE  
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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH

(7)

Original Application No. 746 of 1989

HON. MR. JUSTICE B.C. SAKSENA, V.C

HON. MR. K. MUTHUKUMAR, MEMBER(A)

Janki Prasad, son of Shri Randhir  
aged about 40 years, r/o 32/41 Naina  
Garh, Nagra District, Jhansi

BY ADVOCATE SHRI O.P. GUPTA ..... Applicant

Versus

1. The Senior D.P.O., Central Railway  
Jhansi
2. D.R.M. Central Railway, Jhansi
3. Union of India through G.M.  
Central Railway, Bombay

BY ADVOCATE SHRI A.V. SRIVASTAVA

ORDER

JUSTICE B.C. SAKSENA, V.C.

The applicant by means of letter dated 31.5.89 passed by the Senior D.P.O. Central Railway, Jhansi was informed that his candidature was considered for being given the benefit of up-gradation from 1.9.84 but he was not found suitable for promotion to the post of Head Train Examiner due to major penalty pending against him. It was informed that at the time of Up-gradation from 1.1.84 he was again not found fit and hence could not be promoted. The applicant has impugned the said order and has, besides seeking quashing of the same, prayed that he may be declared to have been promoted in Grade 550-750 w.e.f. 5.11.1982 and the seniority list of the said grade issued on 4.8.88 be amended

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accordingly and the name of the applicant be shown at sl. no.8 in the said seniority list. Consequential benefits in terms of seniority and arrears have also been prayed for. A Counter and rejoinder have been filed by the parties.

2. We have heard the learned counsel for the parties.

3. In the counter affidavit, a preliminary objection about the application being barred by limitation as prescribed Under Section 21 of the A.T. Act ~~has~~<sup>has</sup> been raised. From the facts, it appears that the applicant was promoted as Head Train Examiner on 8.7.1985 and in the seniority list he has been assigned seniority at sl. no. 39. The applicant's case is that a few persons junior to the applicant have been promoted on 5.11.82, 6.1.83 and 1.1.84. The applicant states that he has preferred representations feeling aggrieved by ~~the~~<sup>the</sup> the promotion of his juniors and his non promotion but no copy of any such representation has been annexed. Copy of a representation dated 10.5.88 made by the applicant after issuance of the seniority list have been annexed ~~with~~<sup>as</sup> Annexure No.3. The applicant had been charge-sheeted and a major penalty was imposed upon him by order dated 19.3.83, but on ~~the~~<sup>appeal</sup> ~~the~~<sup>the</sup> the said punishment was reduced to one of 'censure' by an order dated 21.9.83 passed by the Appellate Authority.

4. The respondents in their counter affidavit have stated that the criteria for promotion against the up-graded posts was ~~by~~<sup>as</sup> modified selection on the basis of the C.Rs for the preceding 3 years and seniority. At the time of the first up-gradation benefit w.e.f. 1.9.81, it had been indicated, that there were adverse entries in the applicant's C.R and hence he was held unsuitable for promotion. The applicant in his rejoinder affidavit has indicated that he was communicated with an adverse entry on 9.8.82 whereby

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it was stated that the applicant was not yet fit for promotion. He made a representation on 23.8.82. A similar adverse entry was again issued on the 31st of May 1983. The applicant made a representation on 29.5.83. The applicant states that the said representations have not yet been decided. Copies of the adverse remarks have been annexed ~~at~~ with the affidavit.

5. From the record it also appears that the punishment of with-holding of increments for three years with cumulative effect was passed on the 19th of March 1983 which was subsequently reduced to one of 'censure' by the Appellate Authority by order dated 21.9.93.

6. In view of the pleadings of the parties it is evidenced that the candidature of the applicant was considered on both the occasions when he became eligible for being promoted <sup>in</sup> ~~consequence~~ of up-gradation i.e. 1.9.81 and 1.1.84. There were adverse entries against the applicant and he had not been found fit on both the occasions.

7. Learned counsel for the applicant strenuously urged that the order of punishment having been reduced to one of 'censure' and censure not being a punishment warranting non promotion, the applicant was wrongly held to be unfit for promotion w.e.f. 1.9.81. This plea is legally untenable as noted hereinabove, as was promotion w.e.f. 1.9.81 is concerned, that was even earlier to the imposition of the penalty. There is no material on record to show ~~that~~ <sup>when</sup> the charge-sheet had been issued to the applicant but from Annexure RA-5 which is a copy of the representation, we gather that a charge-sheet dated 16.9.81 had been issued. The same was subsequently cancelled and a punishment with-holding of one set of passes was issued on 27.11.81. The said representation also gives out various details



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of the adverse remarks made in the applicant's C.R before the relevant period when the first chance for promotion arose. The applicant was placed under suspension by an order dated 27.4.82 and a charge-sheet was issued on 12.7.82 and the order of punishment was imposed and adverse entries were also recorded on the 21st of May 1983. Thus there is no reason to doubt the averments made by the respondents that on both the occasions the applicant's C.R contain adverse remarks on the basis of which on both the occasions he was found to be unfit for promotion.

8. We have <sup>gone</sup> though dealt with the merit of the claim of the applicant for promotion w,e,f, 5.11.82, we now proceed to consider the plea raised on behalf of the respondents that the petition deserves to be dismissed on the ground of being barred by limitation. From the material contained in the representation Annexure R-5 to the rejoinder which we have noted hereinabove, it would be evident that the applicant had all along been apprised well in time about the adverse entries and order of punishment ~~they~~ <sup>bel</sup> pertains to the period 1981 to 1984. The learned counsel for the respondent is, therefore, right in urging that the communication dated 9.6.89 contained in Annexure A-6 to the O.A merely informs the applicant of the fact that because of the adverse C.R on both the occasions viz 1.9.81 and 1.1.84 the applicant was found unfit for promotion and thus since the applicant had not instituted any judicial proceedings at the relevant time when the adverse remarks were communicated, the order dated 31.5.89 cannot be construed as affording a fresh cause of action. The non-promotion of the applicant had taken place when the juniors were promoted and he evidently had not made any representation against the non-promotion. The only representation filed alongwith the O.A is the one which the

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applicant made after issuance of the seniority list in 1988 and that too 3 years after the applicant had been promoted as Head Train Examiner in 1985.

9. In view of the discussion made hereinabove, the O.A lacks merit and is also barred by limitation. It is accordingly dismissed. No order as to the costs.

Member (A)

Vice Chairman

Dated: 16<sup>th</sup> January, 1995

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