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OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 29th day of August, 2000

Original Application No. 820 of 1990

District : Kanpur

CORAM :-

Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiquddin, J.M.

Fauzdar Ram S/o Sri Bandhan Ram.
Resident of Bungalow No.31-A, Govind Nagar,
Kanpur, working as Yard Master, Northern Railway,
Juhi, Kanpur.
(Sri G.C. Gehrana, Advocate)

. . . . . Applicant

Versus

1. Union of India through General Manager,
Northern Railway, Baroda House, New Delhi.
2. Chief Operating Superintendant,
Northern Railway, Baroda House, New Delhi.
3. ChiefPersonnel Officer, Northern Railway,
Baroda House, New Delhi.
4. Divisional Railway Manager,
Northern Railway, Allahabad.
5. Sri Nathoo Ram, CYM under Senior DOS,
Northern Railway, Allahabad.
6. Sri A.C. Sharma, CYN under SrDOS, Northern Rly,
Allahabad.
7. Sri R.S. Chauhan, CYN, Sr DOS, Northern Rly,
Allahabad.
8. Sri D.C. Mishra, CYN under Sr DOS, Northern
Railway, Allahabad.
9. Sri S.K. Mishra, CYN Sr. DOS, Northern Railway,
Allahabad.

(Sri Prashant Mathur, Advocate)

. . . . . Respondents

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O R D E R (O_r_a_l)

By Hon'ble Mr. S. Dayal, A.M.

This application has been filed for a direction to the respondents to treat the applicant as Deputy Chief Yard Master w.e.f. 1-1-1979 and arrange the payment of difference of pay and allowances over and above his juniors on the basis of Zonal Seniority in the year, 1980. A prayer has also been made to extend the benefit of grade of Rs.700-900 to the applicant w.e.f. July, 1981 when his juniors were given promotion and he should be given all consequential benefits. The applicant claims further upgradation in the scale of Rs.840-1040 to the post of Chief Yard Master.

2. The applicant claims that he was selected for the post of Assistant Yard Master in 1977 and joined on the post inApril, 1978. He was promoted to the post of Deputy Yard Master on 02-02-1980 and joined on the post on 1-5-1980. It is contended that the post of Deputy Chief Yard Master in the scale of Rs.550-750 was treated having been operated w.e.f. 1-1-1979 and accordingly that was to be given benefit of promotion from 1-1-1979. The applicant claims that he was free from punishment when promotion to the scale of Rs.700-900 were considered and his juniors were promoted. The applicant filed a representation addressed to the Divisional Railway Manager, Northern Railway, Allahabad. The applicant claims that the post of Dy. Yard Master was upgraded to the grade of Rs.550-750 but he was ignored and the ex cadre persons from the post ofAssistant Yard Masters in the grade of Rs.455-700 were promoted. The applicant made a representation agains this also. The applicant was informed on 2-2-1989 by the General Secretary, U.R.M.U, that the Headquartrs informed the Union that the applicant

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is junior than the persons promoted and he was awarded punishment of withholding increment. Hence, he was not entitled for promotion. This gave rise totthis application.

3. Arguments of Sri G.C. Gehrana, counsel for the applicant and Sri Prashant Mathur, counsel for the respondents have been heard.

4. The contention of the learned counsel for the applicant for the relief claimed by the applicant appears to be based on the order dated 29-11-1980 in which the officials who were ordered to be promoted in the scale of Rs.550-750 have been named. It was also stipulated in the same order that these officials were to be paid arrears as Dy. Chief Yard Master w.e.f.1-1-1979 provided they fulfil certain conditions. One of the conditions is that they should have joined as Dy. Chief Yard Master in in the scale of Rs.550-750 in compliance with the orders issued by this office. The applicant has mentioned in his application that he joined on 1-5-1980 and, therefore, his claim w.e.f. 1-1-1979 cannot be allowed as he does not fulfil the essential conditions laid down in letter dated 29-11-1980 (Annexure-A-3). The applicant has claimed that the respondent nos.5 to 9 were junior to him and he should have been given the benefit of promotion, seniority and arrears from the date the respondents were given such benefit. However, we find from Annexure-3, to the Mis.Application No.109/1991 that the respondents are shown as having been promoted w.e.f. 1-1-1979 in Annexure-3 filed by the applicant himself, while the applicant has been shown promoted w.e.f.1-5-1980 in the seniority list of Yard Masters dated 31-8-1984. The applicant was called for selection

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to the post of Chief Yard Master by letter dated 19-12-1990 and was empanelled as Chief Yard Master in 1991. He was not given promotion as respondents considered him as undergoing punishment. It has been mentioned by the respondents that the selection for the Dy. Chief Yard Master/Chief Yard Master in the scale of Rs.700-900 was notified as a result of restructuring of the cadre w.e.f. 1-8-1982. Since the applicant was under punishment, he was not entitled to be considred on the basis of modified selection.

5. At this stage learned counsel for the applicant mentioned that he was even punished an withheld of the increment w.e.f. 1-5-1982 for three months vide or order dated 14-4-1984. He was again given punishment of withholding of increment by one year by the order dated 1-5-1982. The 3rd punishment of withholding of increment for one year was given to him on 17-8-1982. This was also w.e.f. 1-5-1982. The 4th punishment of withholding of two increments for one year was given on 29-10-1982 and this again was from 1-5-1982. The 5th punishment was given to him of withholding his increment for one year vide order dated 22-9-1983 and the period was again to be computed from 1-5-1982. Vide order dated November, 1985, the applicant was given punishment of withholding of increment w.e.f. 1-5-1985 for two years. It is mentioned in the same order that his increment in the grade of Rs.450-700 had already been withheld for five years 3 months temporarily and three years permanently and was further withheld for two years permanently. The respondents have thus computed the period of withholding increments to 10 years and 3 months. The applicant was decategorised on 22-1-1997. The contention of learned counsel for the applicant is that the punishment

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was to be given from 1-5-1982 and, therefore, the total period of punishment would not have gone beyond 30-4-1987.

6. The learned counsel for the respondents has drawn our attention to the Railway Board's letter No.EC(D&A) AR-5 RG-6/57 dated 3-11-1986. This letter is on the subject of implementation of different years of punishment of withholding increments imposed one after another. In the example given in this letter it appears that even when two successive punishments are imposed each for one year the effect will not extend to subsequent years. Against the punishment shown by the learned counsel for the applicant, learned counsel for the respondents has brought service book in original of the applicant in which several orders of withholding increments are given. The first one is on 14-1-1982 for a period of 4 years 3 months. The second one is on 23-2-1982 for a period of 3 years. The 3rd one is on 2-6-1982 for a period of one year. The 4th one is for a period of one year 9 months and is dated 17-8-1982. The 5th one is for a period of one year and is dated 29-10-1082. The 6th one is dated 6-5-1985 for a period of three years and the pay of the applicant was raised from Rs.570 to Rs.590/- only w.e.f. 1-8-1987. The next one is for a period of one year w.e.f. 6-12-85 by which the applicant was reduced to the lower grade of Rs.455-700 for a period of 5 years without effecting future increments. Another one is dated 29-11-1986 in which the increment withheld for two years. We, therefore, find that the record of the applicant was absolutely tainted. His claim that he should have been considered in August, 1982 for the post of Chief Yard Master is without any merit because of currency of punishment against him.

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7. Learned counsel for the applicant has contended that the applicant should have been allowed promotion to the post of Chief Yard Master w.e.f. 27-6-1991 when he was provisionally empanelled after selection. The respondents have claimed that the applicant was under punishment right upto the period 30-4-1997. It is not very clear as to how this period has been computed. It appears that the number of orders of withholding increments were for the period w.e.f. 1-5-1982 but they have been taken as operating not concurrently but a successive effect has been given to these orders, thereby bringing the period from 1-5-1982 to 30-4-1997. We find that the letter of the Railway Board dated 11-3-1986 relied upon by the respondents does not authorise them to treat the punishment as operating successively specially when the date from which they have to operate has been given. The respondents are directed to consider this aspect and pass a detailed order showing these years of punishments and computing their effects. In case the effect does not extend beyond, 1991, the applicant should be allowed promotion with consequential benefits from 1991. This shall be carried out within a period of three months from the date of communication of a copy of this order. There shall be no order as to costs.

Member (J) Member (A)

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