

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 13th day of November, 2000.

C O R A M :- Hon'ble Mr. Rafiqs Uddin, Member--J.
Hon'ble Mr. S. Biswas, Member--A.

Original Application No. 323 of 1992.

Sri Anand Prakash Verma, S/o Sri Arvind Chandra Verma
aged about 48 years, Power Controller Headquarter
in scale of Rs. 2000-3200, Northern Eastern Railway
Gorakhpur, R/o Mohalla- Humayunpur North,
Gorakhpur City, Distt. Gorakhpur.

..... Applicant.

Counsel for the applicant:- Sri A.S. Lal
Sri R.N. Sinha

V E R S U S

1. Union of India representing the administration
of Northern Eastern Railway, through the General
Manager, N.E. Rly. Gorakhpur

2. D.R.M, North Eastern Railway, Lucknow.

3. Chief Operating Superintendent (Running),
N.E. Rly, Gorakhpur.

4. Chief Personal Officer,
Northern Eastern Railway, Gorakhpur.

..... Respondents.

Counsel for the respondents:- Sri Amit Sthalekar

O R D E R (Oral)

(By Hon'ble Mr. Rafiq Uddin, J.M.)

The applicant Anand Prakash Verma was appointed as Fireman Gr. 'A' in the scale of Rs. 125-155/- through the Railway Service Commission in the year 1963. The applicant claims that he was promoted to the post of Driver Gr. 'C' in the scale of Rs. 150-240 (AS) w.e.f. 29.11.69 vide order No. E/11/2/RG/ Mechanical dt. 29.11.69 and joined the duties on the post of Driver Gr. 'C' w.e.f. 14.12.69 under the D.R.M, North Eastern Railway, Lucknow. The applicant claims that promotion to the post of Driver Gr. 'C', he was found suitable. The applicant was eligible for promotion to the post of Power Controller/ Loco Foreman (Running) in the scale of Rs. 550-750/- after completing 5 years service as Driver Gr. 'C'. The post of Power Controller was classified as selection post and the Driver Gr. 'C' who had completed 5 years service as Driver Gr. 'C'. He was entitled for promotion to the post of Power Controller. The applicant was accordingly promoted as Power Controller on adhoc basis w.e.f 30.08.75 vide order dt. 30.08.75, passed by Additional Chief Mechanical Engineer (R&L), N.E.R, Gorakhpur.

2. The Selection for the post of Assistant Loco Foreman/ Power Controller in the scale of Rs. 550-750/- (RS) was scheduled to be held by the General Manager in the year 1977. The applicant being an eligible candidate for the said post, he applied to appear for the selection on the aforesaid post. The applicant was called for to appear in the written test alongwith other candidates and the written test was held on 25.04.77, 21.06.77 and 20.07.77 and after qualifying the written test he was ^{also} ~~was~~ selected after his interview vide notification

dt. 12.10.77. On the basis of aforesaid selection of the applicant as Power Controller, he was promoted on regular basis w.e.f. 1.11.77. Thereafter another selection for the post of Power Controller was held in the year 1979 by the Railway Administration. The applicant claims that he was continued as Power Controller on regular basis against the permanent post.

3. The grievance of the applicant is that some time in the year 1984, the G.M, N.E.Rly. (respondent No.1) changed the date of promotion of the applicant as Driver Gr. 'C' from 14.12.69 to 08.11.72 and as a result the name of the applicant was deleted from the panel of Power Controller ^{dated} 12.10.77 and he was empanelled in the select list of Power Controller, prepared in the year 1979 in which the applicant never appeared. The applicant claims that he was informed about the aforesaid order of deleting his name from the panel dt. 12.10.77. However, when the applicant came to know about deletion of his name, he represented the matter to the D.R.M, N.E.R, Lucknow and also to the G.M. (P), N.E.R, Gorakhpur. The matter was referred to the G.M. (P), N.E.R, Gorakhpur. According to the applicant the case of the seniority of the applicant had been in correspondence between the D.R.M, N.E.R, Lucknow and G.M.(P), N.E.R, Gorakhpur and ultimately the G.M (P), N.E.R, Gorakhpur vide his order dt. 24.10.91 addressed to the Secretary, Chief Mechanical Engineer's Office intimated that the representation of the applicant has been considered and has been rejected.

4. According to the applicant since the applicant continued to work as Driver Gr. 'C' w.e.f 14.12.69 till he was promoted as Power Controller his seniority

should be counted as Driver Gr. 'C' in scale of Rs. 150-240/ 330-560 ^{from} ~~and from~~ 14.12.69 and not from 08.11.72.

5. The respondents have however, rejected the claim of the applicant by stating that the applicant had applied ^{showing} including his date of promotion as Driver Gr. 'C' ~~on~~ ^{as} 14.12.69 but he was promoted as Driver Gr. 'C' in the panel dt. 03.11.72. He had given ~~false~~ ^{false} date of promotion as Driver Gr. 'C' and when these facts come to the notice of the Railway Administration, the applicant was depanelised from the panel in the year 1977 and empanelled in the panel from 1979

6. We have heard the counsel for the parties and perused the records.

7. It has been ^{urged} asked by the learned counsel for the respondents that ~~since~~ ^{the} the applicant had applied indicating his date of promotion as Driver 'C' ~~on~~ ^{as} 14.12.1969 when the notification for the post of Assistant Loco Foreman was issued while he was ^{actively} promoted as Driver Gr. 'C' on 03.11.72. He was depanelised from the panel ^{on} ~~in~~ in the year 1977 and was impanelled in the panel from ~~1979~~ ^{30/10/79} 1979 as per the order of General Manager. However, we find that no document to ^{prove} ~~prove~~ that the applicant was regularly promoted as Driver 'C' on 03.11.72 has been filed. The respondents have also not specifically denied ^{the avowment} ~~that document~~ of the applicant containing in para 2 of the O.A. by virtue of his ^{that} ~~of his~~ suitability, the applicant was promoted on the post of Driver Gr. 'C' in the scale of Rs. 150- 240 (AS) w.e.f 29.11.69 vide order No. E/11/2/RG Machanical dt. 29.11.69 and he joined his duties on the post of Driver Gr. 'C' w.e.f 14.12.69 under D.R.M, N.E.R, Lucknow. Therefore ,

there is no reason to believe ^{dh's} on the plea^R that he was actually promoted on the post of Driver 'C' w.e.f 14.12.69. It appears that the applicant has been denied ~~the~~ the seniority of the grade of Driver 'C' w.e.f 29.11.69 because he was promoted on temporary basis. It is also evident from the letter dt. 25.02.86 (annexure-8) issued by D.R.M, Lucknow in which it is clarified that the promotion of all the staff including the applicant from Shuntr 'A' to Driver 'C' were made temporary and not on adhoc basis. Therefore the claim of the applicant for seniority even it is ^{assumed that} ~~assumed that~~ the applicant as Driver 'C' was regularised w.e.f 14.12.69, the applicant is entitled for his seniority from the post he was temporarily promoted as Driver 'C' on account of his ^{continuous} ~~continue~~ official^{confirmations} tion on the post of Driver 'C' w.e.f 29.11.69.

8. We therefore find ~~for~~ the claim of the applicant that his services and seniority should be counted from the date he was promoted as Driver 'C' on 14.12.69.

9. The learned counsel for the respondents has again urged that since the claim of the applicant was rejected in the year 1984 and the present O.A has been filed in the year 1992, the O.A is liable to be dismissed being time barred. However, we find from the record that the representation of the applicant was rejected by the G.M., N.E. railway dt. 24.10.91. Therefore the claim can not said to be time barred. It is also urged by the learned counsel for the respondents that the submission ^{continuous} ~~to continue~~ representation does not ~~prove~~ ^{does not show} that the O.A is within time because in the present case the applicant made representation in the year 1984. On this point learned counsel for the applicant has ^{pointed out} ~~urges~~ that the matter regarding fixing the seniority was in the correspondence under various letters sent in this

connection vide letter dt. 11.01.91 (copy of which annexed as annexure- 9) from the D.R.M (P), Lucknow to C.P.O, N.E.R, Gorakhpur. It is evident that the applicant was ^{agitating} ~~agitated~~ the matter before the higher authority from time to time. *and they were making correspondence for each other*

10. Considering the facts we ~~find~~ do not find a fit case to dismiss merely on the ground of limitation.

11. In view of the above we allow this O.A and directed the respondents to assign the seniority position of the applicant in the category of the Driver Gr.'C' from the date his promotion i.e. ^{Ry 14.12.69} ~~14.01.69~~ and grant him consequential reliefs accordingly.

12. There will be no order as to costs.

S. M.
Member- A.

Rafiqueuddin
Member- J.

/Anand/