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Reserved

Central Administrative Tribunal  
Allahabad Bench, Allahabad.

Dated: Allahabad, This The 22 day of Sept 2000.

Coram: Hon'ble Mr. Justice R.R.K. Trivedi, V.C.  
Hon'ble Mr. S. Biswas, A.M.

Original Application No. 460 of 1993.

Baboo Ram  
son of Sri Jeet Prasad,  
resident of Railway Quarter No. 414-B,  
Indian Opting Colony,  
Dhakanpurwa.

... Applicant.

Counsel for the applicant: Sri R.K. Saxena, Adv.  
Sri Sajnoo Ram, Adv.  
Sri P.K. Kashyap, Adv.

Versus

1. Union of India through Divisional Railway Manager, Northern Railway, Allahabad.
2. Senior Divisional Personnel Officer, Northern Railway, Allahabad.

... Respondents.

Counsel for the Respondents: Sri D.C. Saxena, Adv.

Order (Reserved)

(By Hon'ble Mr. S. Biswas, Member (A.))

By this application under section 19 of Central Administrative Tribunals Act 1985, the applicant has sought the following relief, :-

- i) A direction to the respondents to upgrade the applicant from 1.1.84 when his juniors were upgraded as Chief Goods Supervisor (C.G.S.) in the scale of Rs.700-900 as per instructions

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of upgradation contained in Railway Board's letter dated 20.12.83 and payment of consequential financial reliefs.

2. The applicant was appointed as a Goods Clerk on probation on 17.2.85% (in O.A. it is mentioned as 12.2.57) in the scale of Rs. 60-150 (R.S.) under the respondents. He had been placed under Moradabad Division with effect from 27.5.58. He was posted to Allahabad Division on mutual exchange on 20.5.60. He was promoted as Good Clerk on 1.8.79 in the grade of Rs. 425-640 (R.S.). He was further promoted as Assistant Goods Inspector in the scale of Rs. 455-700 (R.S.) with effect from 27.10.80. He was again promoted to officiate temporarily as Goods Supervisor in the scale of Rs. 550-750 (R.S.) with effect from 1.4.83 (vide order dated 9.3.83 annexure II to the O.A.). He was finally promoted and posted as Chief Goods Supervisor in the scale of Rs. 2000-3200 with effect from 8.8.91.

3. In the background of the aforesaid facts, the applicant's case is that he was actually promoted as Chief Goods Supervisor (C.G.S.) in the scale of Rs. 2000-3200 in the revised scale with effect from 8.8.91 whereas he had become eligible for promotion to that post (C.G.S.) in the scale of Rs. 700-900 (prerevised) with effect from 1.1.84 when his juniors in the seniority list were upgraded to that scale by virtue of Railway Board's instructions dated 20.12.83 (Annexure-1)

4. By this instruction dated 20.12.83, the Railway Board had interalia <sup>s/3</sup> interalia re-structured certain posts with effect from 1.1.84 and had decided that

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if an individual railway servant becomes due for promotion to only one grade above the grade of the post held by him, at present, on a regular basis and such higher post is classified as selection post, the existing selection procedure will stand modified in such a case to the extent that the selection will be based only on scrutiny of service records without holding any written and viva voce test. In other words, this facility was available only for the promotion to immediately next higher grade post provided scrutiny of service records finds the candidate fit. Only waiver permissible was with regard to the liabilities of taking and passing the pre-promotion examination and viva voce.

5. The applicant has contended that he was due for upgradation in terms of the said instructions of the Railway Board dated 20.12.83. In the first upgradation order dated 7.7.84 (actually found to be 19.5.84, Annexure-3) which was issued covering the cases of Goods Supervisor immediately following the order dated 20.12.83, serial nos. 12 and 13, who are his juniors were upgraded overlooking him. He was again over-looked in the orders dated 28.8.84 and 5.11.84 where his juniors were upgraded. In the seniority list for grade 550-750 and Chief Goods Clerk grade Rs.455-700 published on 1.1.85, the seniority position assigned to the applicant is 18 and his juniors already upgraded were assigned seniority from 17 to 44.

S. B.

6. The applicant ~~has~~ <sup>has</sup> ordered to made representations to the respondents for his due upgradation on 24.05.84, 04.08.84 and 10.10.91 without any ~~wait~~ <sup>wait</sup> avail.

7. We have heard the rival parties both on facts and law.

8. The respondents have repudiated the maintainability of the O.A broadly on three grounds:- First, the applicant along with 3 others|similarly placed candidates, made a joint representation dt. 09.10.85 which is available on ~~the~~ record in this very old case. A reply was given to them by the respondents vide letter dt. 04.11.85 that he was not found fit for upgradation (??) on record.

9. The learned counsel for the respondents has contended that the representation was disposed of in 1985 and the present O.A has been filed clearly after 8 years. The applicant did not make any prayer for <sup>condonation</sup> ~~condonation~~ of delay in the O.A. In terms of Ramesh Chandra Vs. U.O.I. (1999)SCC 304 the case <sup>is</sup> liable to be rejected. Similar observation have been made by the Hon'ble Suprem Court in Ratan Chand Sawant & Ors. Vs. U.O.I. case (1994)26 ATC 228.

10. On the question of maintainability of delayed cases which are <sup>attempted to be covered</sup> ~~covered~~ by vague interim representations, we have carefully considered the submissions of the learned respondent's counsel and find that indeed this is a very old issue. The cause of action arose in <sup>the</sup> year 1984-85 when the impugned upgradation order, in terms of Railway Board's order dt. 22.12.83 were issued.

11. The applicants in this case, we find, had gone on WR before Hon'ble High Court, Allahabad. The applicant has neither disclosed the same in the O.A nor has annexed a copy of the said order of Hon'ble High Court disposing of the WR.

12. The applicant's case for upgradation came for consideration during the period of 1984 to 1985 when his juniors were allegedly promoted. The applicant has cited orders of upgradation of others dated 07.07.84, 19.05.84, 28.08.84 and 05.11.84. These upgradation orders were issued during the ~~current~~<sup>^</sup> of several punishment orders passed against the applicants <sup>names</sup> on 01.10.81 invoking stoppage of increment for one year and again on 30.12.83 two increments were withheld. ~~This~~<sup>^</sup> which punishment was cognisable till the end of Jan. 1986. In their own plea in WR before Hon'ble High Court they ~~have~~ acknowledged the existence of C.B.I. enquiry pending against them.

13. Considering the fact that this is a very old case and the respondents had no scope to give the details of the case particulars leading to these punishments, except from the entries in the Service Book, We cannot overlook the bearing of these cases at the time of consideration of upgradations. Though examination and viva-voce were waived in the scheme of one time upgradation, but the requirements of verification of records and vigilance requirement was not done away with. ~~that~~ he was overlooked due to adverse service records has not been contested by the applicant in the O.A. We are of the view <sup>that</sup> even for upgradation, adverse service records ~~were~~ <sup>93</sup> be binding to be taken appropriate note of, as review of records were not waived.

14. The applicant did not even apply for condonation of delay. No satisfactory explanation is forthcoming. Even no mention was made in the application for condoning the delay.

15. In view of above, the O.A fails on merit as well as limitation. We, however, observe that from the records it is not clear whether the respondents had considered the question of upgradation of the applicant from Jan. 86 to August 91 as per rules. The respondents may do that now within a reasonable period. The Orginal Application is dismissed.

16. There will be no order as to costs.

S. B. w.s  
Member (A)

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Vice-Chairman.

/Anand/