

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 27th day of Nov. 2001.

QUORUM : HON. MR. S. DAYAL, A.M.
HON. MR. RAFI QUDDIN, J.M.

O.A. NO.933 of 1993.

1. Uma Nath Kapoor s/o Late Jagannath Kapoor, Bunglow No. 69, Kawabagh, Rly. Colony, working as Deputy Chief Operating Manager Construction, N.E. Rly., Gorakhpur. Applicant.

Counsel for applicant : Sri B. Tewari.

Versus

1. Union of India through the Secretary, Ministry of Railway, New Delhi.
2. General Manager, N.E. Railway, Gorakhpur.
3. F.A. & C.A. O/E. & B., N.E. Rly., Gorakhpur, presently posted as Executive Director, Finance (Budget), Railway Board, New Delhi..... Respondents.

Counsel for respondents : Sri V.K. Goel.

ORDER (ORAL)

BY HON. MR. S. DAYAL, A.M.

This application has been filed for setting aside the disciplinary proceedings initiated by the General Manager, N.E. Railway, Gorakhpur by his charge-sheet dated 11.11.91 under Rule 9 of the Railway Servants Discipline & Appeal Rules 1968 and with all the consequential benefits. The applicant has also sought a direction to the respondents to give promotional benefits in a scale of Rs.4500-5700 w.e.f. 1.1.86 and in scale of Rs.5900-6700 w.e.f. 1.9.88 with all consequential benefits.

2. The case of the applicant is that he entered into service as Assistant Operating Superintendent in Rajkot Division on 13.2.70. He was promoted to senior scale as Divisional Safety Officer in Tinsukia Division on 7.1.72. He was

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Further promoted to Junior Administrative Grade as Senior Divisional Commercial Superintendent, Jhansi on 24.11.79 and thereafter he was transferred to North Eastern Railway. He, thereafter was transferred to the post of Dy. Chief Operating Manager/Construction, N.E. Railway, Gorakhpur. He was served with a charge-sheet dated 11.11.91. He sought certain documents relied upon but no documents were furnished. The applicant, therefore, had to submit his explanation without getting proper documents. The C.P.O. modified memorandum dated 11.11.91 by a letter dated 27.3.92. The departmental enquiry was initiated by appointing of Enquiry Officer on 8.4.92. The applicant challenged it by letter dated 15.6.92 the amended charge-sheet to him. Inspite of several representations by the applicant to expedite the matter, proceeded at a snails pace. He claims that Sri P.S. Vimal and Sri R.N. Aga were junior to him and they were given selection grade in the scale of 4500-5700 w.e.f. 1.1.86 by letter dated 8.2.88. His juniors P.S. Vimal and R.N. Aga were appointed to officiate against upgraded post of ADRM by letter dated 31.8.88. The applicant states that due to pendency of enquiry proceeding, the promotional benefits consisting of pay scale of Rs.4500-5700 and 5900-6700 were denied to the applicant. He is working in the scale of Rs.3700-5000. Due to slow proceedings, he filed O.A. No.56/93 and by order dated 14.1.93, the respondents were directed to finalise the disciplinary proceedings within four months from the communication of the order. The applicant submitted his certified copy of judgement dated 14.1.93 and 5.4.93. The applicant was informed on 20.12.93 that his case for placement on selection grade was considered by the Railway Board but he was not selected ^{because of} ~~by~~ his performance. He claims that no opportunity was given to him to improve any shortcomings in his performance, which was necessary before adverse remarks could be given to him.

He states that in the Confidential Report of 82-83 and 83-84, certain adverse entries have been made in his Confidential Report which could not be sustained for the above reasons. It is also not known whether adverse remarks were finally accepted by the General Manager.

3. We have heard the arguments of Shri B. Tewari for applicant and Sri V.K. Goel for respondents.

4. Counsel for the applicant has drawn attention to Annexure A-I which shows the date of charge-sheet in SF-V as 11.11.91. He has also drawn attention to paragraph 19 of the C.A. in which it has been mentioned that the claim of the applicant in selection grade were considered in the panels which were approved on 13.11.89, 13.5.91, 6.2.92 and 3.3.93.

5. Counsel for the applicant contends that the applicant was entitled to be promoted in the DPC held leading to making of selection grade panels approved on 18.12.87 and 13.12.89. The respondents have mentioned that he was not selected in these selection grade panels on the basis of his performance. The performance was judged on the basis of Confidential Reports and the respondents have to give an opportunity to the applicant to improve his performance before recording any adverse remarks in the Confidential report which was required under para 1611 of the Railway Establishment Code. He has in this connection, relied upon the judgement of the Apex Court in Sukhdev Vs. Commissioner Amravati Division Amravati and Another (1996) 5 SCC 103. The relevant part of the judgement runs as follows :-

"When an officer makes the remarks he must eschew making vague remarks causing jeopardy to the service of the subordinate officer. He must bestow careful attention to collect all correct and truthful information and give necessary particulars when he seeks to make adverse remarks against the subordinate officer whose career prospect and service were in jeopardy. In this case, the controlling officer has not used due diligence in making remarks. It would be salutary that the controlling officer before

writing adverse remarks would give prior sufficient opportunity in writing by informing him of the deficiency he noticed for improvement."

6. The contention of Counsel for the applicant is valid but it cannot be accepted by us now since the applicant kept quiet after formation of selection grade panels approved on 18.12.87 and 18.12.89 till he filed O.A. in 1993. By his silence, he has shown his ~~acquiescence in~~ ^{acquiescence in} the assessment of performance by the Departmental Promotion Committee, and belated challenge has been made in this O.A. which would be of no avail to him. There is no challenge to the Confidential Reports which have been admitted by the applicant as far as the years 82-83 and 83-84 were concerned.

7. The applicant has shown that the charge-sheet was issued to him on 11.11.91 in the DPC held for formation of selection grade panels approved on 13.5.91. The findings of the departmental promotion committee is said to have been placed in a sealed cover by the respondents. Counsel for applicant has relied upon the judgement of Apex Court in UOI vs. K.V. Jankiraman (1991) 4 SCC 109. The Apex Court has laid down in this judgement as follows :-

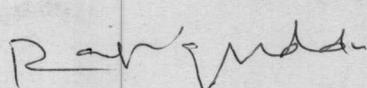
"On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be restored to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point."

8. The Counsel for respondents states that the applicant has already been allowed promotion w.e.f. 1.2.96 by order dated 29.9.97 Annexure A-25. The applicant has not challenged this order and without challenging this order, the relief sought by the applicant of promotion from an earlier date cannot be allowed. The Counsel for respondent

also states that the applicant had moved an amendment application in which he has referred to the said order of promotion of the applicant which was rejected with the permission to Counsel for the applicant to file a fresh amendment application. Counsel for the applicant, however, did not file the same.

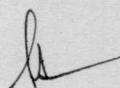
9. We are not persuaded that relief cannot be allowed to the applicant as the prayer is also for issuance of any suitable order or directions besides the said order of promotion has been ~~issued &~~ during the pendency of the O.A. ~~pending before &~~ ~~acceptably~~ us. The respondents, therefore, have to be directed to open the sealed cover and see recommendations with regard to the applicant in the DPC which was held leading to formation of selection grade pannels approved on 13.5.91. If the applicant has been declared fit for promotion, he shall be granted promotion along with ^{and &} from the date of promotion of his juniors who are included in this panel. In that case his order for subsequent promotion will stand modified. The order shall be complied within three months time. There shall be no order as to cost.

10. The Counsel for applicant has prayed for direction for setting aside disciplinary proceedings. It is now admitted that disciplinary proceedings have resulted in punishment to the applicant by way of withholding of two sets a privilege passes. The applicant has filed an appeal against the said punishment before the President of India which is pending for consideration. Under the circumstances, the prayer for setting aside disciplinary proceedings becomes infructuous.



J.M.

Asthana/



A.M.