

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION No.1007/1994

FRIDAY, THIS THE 19TH DAY OF APRIL, 2002

HON'BLE MR. JUSTICE R.R.K. TRIVEDI .. VICE CHAIRMAN

HON'BLE MAJ. GEN. K.K. SRIVASTAVA .. MEMBER (A)

Dinesh Vidyarthi,
S/o Late Sri R.S. Vidyarthi,
Presently Posted as Assistant Engineer,
Concrete Slepper Plant,
Allahabad. ... Applicant

(By Advocate Shri Arvind Kumar)

Versus

1. Union of India, through
The General Manager,
Northern Railway (Head Quarters)Office,
Baroda House, New Delhi.
2. Chief Personal Manager,
Northern Railway (Head Quarters)Office,
Baroda House, New Delhi.
3. Chief Engineer,
Northern Railway (Head Quarters Office),
Baroda House,
New Delhi. ... Respondents

(By Advocate Shri B.B. Paul)

O R D E R

Hon'ble Mr. Justice R.R.K. Trivedi, Vice Chairman:

By this application, the applicant has prayed for a direction to the respondents to promote him in senior scale from the date his juniors were promoted with all consequential benefits including arrears of salary. It has also been prayed that the respondents may be directed

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to refix the salary of the applicant in the ~~grade~~^{scale} of Rs.2000-3500/- with reference to the date of promotion of Shri S.C. Saxena with all consequential benefits.

2. The facts giving rise to this application are that the applicant was appointed as apprentice Asst. Permanent Way Inspector on 5.1.1959. After completing training, he was appointed as Asst. Permanent Way Inspector on 2.1.1962 and thereafter was promoted as Chief Permanent Way Inspector on 21.8.1989 which promotion was effective from 1.1.1984. The next promotional post in the department is that of Asst. Engineer Group 'B' and as per Recruitment Rules 75% of the vacancies are to be filled up on the basis of selection comprising written and viva-voce tests from amongst the seniormost Class-III Inspectors. At the time of promotion as Asst. Engineer, the applicant was served with a memorandum of charge and the disciplinary proceedings were initiated. He filed O.A. No.1006/1991 in this Tribunal and prayed for quashing of the disciplinary proceedings in pursuance of the memorandum of charges dated 1.7.1988 and 15.12.1988, issued by the Divisional Superintendent, (Engineering), Northern Railway, Allahabad. The applicant further prayed that because of non finalisation of proceedings, his promotion to the post of Asst. Engineer is not being considered and persons junior to him had been promoted. It was also pointed out that the applicant is due to retire in a year. The O.A. was decided finally on 25.3.1992 and the applicant

was granted relief. This Tribunal passed the following orders.

"In this case, not only the charge sheet, but the inquiry proceedings because of unexplained long delay of past event, which too is not in conformity with the basis of the charge, deserves to be quashed and the same is accordingly quashed. The result is that the second charge-sheet dated 15.12.98 is quashed. As no charge-sheet is pending against the applicant, the respondents are directed to declare the result of the interview of the applicant which was kept in a sealed cover for the post of Asst. Engineer, within a period of two weeks from the date of communication of this order, and in case the applicant has been selected, for the same, the appointment for the post will be given to him w.e.f. due date and all the consequential benefits including monetary benefits like arrears of pay etc. and consideration for the higher post may be given to him w.e.f. some past or future date for next higher promotion post, the same also be considered. However, there is no order as to costs."

3. In pursuance of the aforesaid direction, the applicant was promoted and he joined as Asst. Engineer on 6.5.1992.

By order dated 19.3.1993, Annexure-A5, The applicant was placed in the panel of 1987-88 at Sl. No. between 11 and 13. Thus, the applicant was given all the arrears and he was allotted the same seniority as was due to him. However, the applicant was denied promotion to senior scale by order dated 7.6.1994. The order reads as under:

"On receipt of the representation of Shri D. Vidhyarthi, the matter has been examined and it is advised that 3 years non-fortuitous service in Group- 'B' is necessary to consider an officer (Group- 'B') for ad-hoc promotion to senior scale. Since Shri Vidhyarthi AEN CSP has not rendered the required years of service in Group-B, his request for promotion to senior scale cannot be considered."

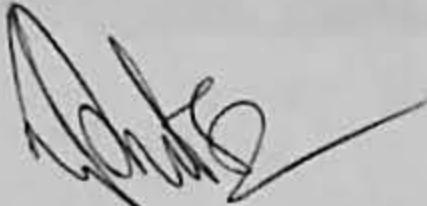
3. The submission of the counsel for the applicant is that it is true that the applicant joined in 1992, but, it was on account of the delay on the part of the respondents, who could not complete the disciplinary proceedings and ultimately as the applicant was being denied the chance of promotion, he had to knock the doors of this Tribunal for help. The order of the Tribunal was complete as it directed to give all kinds of benefits which were given to the juniors of the applicant. It is true that the applicant joined in 1992, but, for the purpose of giving senior scale, the applicant shall be deemed to have joined in 1987. The respondents cannot take advantage of their own wrong.

4. Shri C.P. Gupta, holding brief of Shri B.B. Paul for the respondents, has submitted that the applicant has retired on 31.5.1994, this O.A. has been rendered infructuous and he is not entitled for any relief.

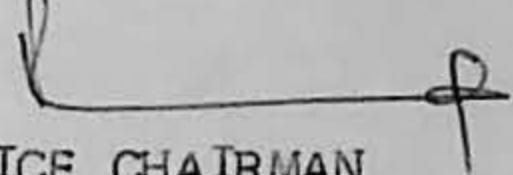
5. We have carefully considered the submissions. The direction of this Tribunal was sufficient and it covered even the future promotions. The purpose behind giving the notional seniority to the applicant from 1987 is that he shall be deemed to have worked in Group-B post from the date his juniors were allowed to work. It is not open to the respondents to say that the applicant has not rendered 3 years service in Group B which was necessary to consider an officer for adhoc promotion to senior scale. In our opinion, the applicant has been

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illegally denied the benefit for which he was legitimately eligible. The juniors of the applicant were granted the promotion by order dated 25.1.1994, Annexure-A8, the applicant is also entitled for the benefit from that date. The O.A. is accordingly allowed with a direction to the respondents to treat the applicant as officer in the senior scale from 25.1.1994 and pay him arrears. The Pension of the applicant shall also be re-calculated accordingly. The amount for which the applicant is entitled shall be paid within six months. No order as to costs.



MEMBER (A)



VICE CHAIRMAN

psp.