

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION No.1535/1999

FRIDAY, THIS THE 22ND DAY OF NOVEMBER, 2002

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

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

Prakash Chandra Sharma,  
S/o Shri Shiv Dutt Sharma,  
R/o Mohalla Sumer Sagarm  
Gorakhpur City,  
Gorakhpur.

...

Applicant

(By Advocate Shri T.S. Pandey)

Versus

1. Union of India, through  
its General Manager,  
North East Railway,  
Gorakhpur.
2. General Manager (Personnel),  
North East Railway,  
Gorakhpur.
3. Senior Personnel Officer (Traffic),  
North East Railway,  
Gorakhpur.
4. Assistant Personnel Officer (Traffic),  
North East Railway,  
Gorakhpur.
5. Divisional Railway Manager (Personnel),  
North East Railway,  
Samastipur. ...

Respondents

(By Advocate Shri Avnish Tripathi)

O R D E R

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

We have heard Shri T.S. Pandey for the applicant  
and Shri Avnish Tripathi, learned counsel appearing for  
respondents.

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2. By this O.A. under Section 19 of A.T.Act, 1985, the applicant has prayed for a direction to respondents not to deduct any amount from the applicant's salary and <sup>from the scale</sup> to pay him salary which was being paid to him till Aug., 1999, on the post of T.T.E. - 'A' (revised pay scale Rs.5000-8000/-). with other allowances.

3. The facts of the case are that the applicant joined Railways as Junior Clerk in the pay scale of Rs.260-400/- on 3.11.1980 at Gorakhpur. He was promoted as Senior Clerk on 29.12.1984. While he was serving as Senior Clerk in the pay scale of Rs.1200-2040/-, he was declared surplus from the Office of Chief Commercial Superintendent, North East Railways, Gorakhpur. On 6.12.1989, the applicant and others similarly situated who were declared surplus were given option to join any of the alternative posts offered to them. The applicant gave option to work as T.T.E. in the pay scale of Rs.1200-2040/- which he was drawing as Senior Clerk. After completing training, the applicant was absorbed as T.T.E. The applicant was further promoted as T.T.E.-'A' by order dated 4.4.1991, in the pay scale of Rs.1400-2300/-. A copy of the order has been filed as ANNEXURE-6. From a perusal of the order Annexure-6, it is clear that the applicant and other employees were apprised that this promotion is provisional as the post is selection post and in future they will have to pass the selection test for being absorbed permanently.

4. The case of the applicant is that a notification was issued on 16.2.1996, Annexure-10, for selection. The examination was to be held on 9.3.1996, in which the applicant along with others appeared. The result of the written test was declared on 5.7.1996 - Annexure-11. The viva-voce was held and the result was declared on 31.8.2001 as some stay was operating, passed by Patna Bench of this Tribunal. The

  
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net position is that the applicant has passed the test for being posted as T.T.E.-II.

5. The respondents however deducted the salary with effect from August, 1999, aggrieved by which, the applicant has approached this Tribunal.

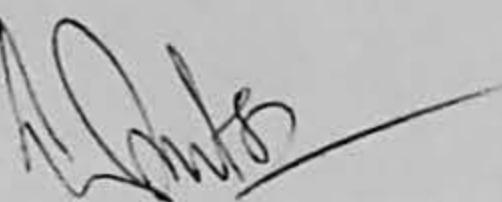
6. The respondents filed counter reply on 27.11.2000, wherein it was disclosed that the order of promotion passed in favour of the applicant on 4.4.1991, was cancelled by order dated 15.11.1994. The claim of the applicant is that he was never communicated of this order. He was not given any opportunity of hearing before passing the above order. He had filed an amendment application for challenging the order which was allowed and the amendment was incorporated on 20.11.2001. Thus, the order dated 15.11.1994 is also under challenge before us. A copy of the order dated 15.11.1994 has been filed along with M.A. No. 4042/2001, by which amendment was sought in the O.A. From a perusal of the order dated 15.11.1994, it does not appear that any opportunity of hearing was given to the applicant. It cannot be denied that the order dated 15.11.1994 entailed serious <sup>civil</sup> consequences as it directed deduction of salary and also recovery of the amount. Such an order could not be passed without giving opportunity of hearing. Even assuming for the sake of argument that the promotion of the applicant was granted by mistake, as the applicant had worked on the promoted post for several years, he could not be reverted without satisfying the principles of natural justice. The learned counsel for the applicant has placed reliance on the judgment of the Hon'ble Supreme Court in the case of Smt. B. KAMESHWARI VS. UNION OF INDIA & ORS. 1993 (2) UPLBEC 898.

7. Shri Avnish Tripathi, learned counsel appearing for the respondents on the other hand submitted that the order dated 15.11.1994 was communicated to the applicant and he was aware about its existence, but, the order was never challenged and the relief claimed against the order dated 15.11.1994 is time barred. In supplementary counter filed by the respondents, in paragraph 3, it has been stated that a copy of the order dated 15.11.1994 which is Annexure-2 to the supplementary reply was sent to the Chief Commercial Manager, under whose control, the applicant was working. It is claimed that the applicant must have the knowledge of the order. We are not satisfied that on the basis of this averment, inference may be drawn against the applicant, for having the knowledge of the order. There is no material on record on which basis it may be said that the order was actually served on the applicant either by the Respondents or by the Chief Commercial Manager at any time. If the applicant had no knowledge of the order, he could not challenge the same either before the departmental authorities or before the Tribunal.

8. In our opinion, as the order dated 15.11.1994, has been passed without offering opportunity of hearing to the applicant, the order is liable to be quashed being violative of the principles of natural justice. The applicant is entitled for reliefs.

9. For the reasons stated above, this O.A. is allowed. The order dated 15.11.1994 is quashed. The respondents are directed not to recover any amount from the applicant on the basis of the aforesaid order and if any amount has been

recovered, it may be returned to the applicant within a period of four months from the date of a copy of this order is filed. It shall be open to the respondents to pass a fresh order in accordance with law if they <sup>are advised</sup> ~~so desire~~.  
No order as to costs.



MEMBER (A)



VICE CHAIRMAN

psp.