

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH,
ALLAHABAD.

ORIGINAL APPLICATION NO.440 OF 1999.

ALLAHABAD THIS THE 14th DAY OF December 2004.

Hon'ble Mr. Justice S.R. Singh, Vice Chairman
Hon'ble Mrs. Roli Srivastava, Member-A

Sitendra Kumar Sinha, son of late Sri Bindhyachal Prasad Srivastava, presently working as Chief Bridge Inspector, Diesel Locomotive Works, Varanasi.

.....Applicant.

(By Advocate: Sri S.K. Om)

Versus.

1. Union of India, through General Manager, Diesel Locomotive Works, Varanasi.
2. Chief Personnel Officer, Diesel Locomotive Works, Varanasi.
3. Deputy Chief Engineer, Diesel Locomotive Works, Varanasi.

(By Advocate: Sri A Sthalekar)

O R D E R

(By Hon'ble Mrs. Roli Srivastava, A.M)

By this O.A., the applicant has challenged the order No.291/62E/V.R.I./Part II dated 12th July 1997 conveyed by the Assistant Personnel Officer, Office of the GM (P), D.L.W., Varanasi, informing the applicant, Shri S.K. Sinha (S.No.933) that on being found suitable he has been promoted as Chief Bridge Inspector in the pay-scale of Rs.2375-3500 with immediate effect.

2. The brief facts giving rise to this O.A. are that the applicant was promoted as Bridge Inspector Grade - I in the scale of Rs.1400-2300 on 30th December 1992. He was

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confirmed on 23rd March 1993 under office order No.881. The Railway Administration issued a circular letter No.PC III/91/CRC/1 dated 27th January 1993, whereby certain technical posts were restructured with effect from 1st March 1993. In pursuance of the aforesaid restructuring, the Railway Board created a new post of Chief Bridge Inspector in the pay-scale of Rs.2375-3500, vide GM(P)'s office order No.1258 dated 7th November 1994. Although the restructuring was to be implemented with effect from 1st March 1993, suitability for appointments was to be adjudged after creation of the post. The experience required for eligibility was reduced from 2 years to one year of service as on 1st March 1993 or, as and when one year of service is completed. As per clause 5 of the restructuring scheme, this was a one-time exception. Promotion was to be made on the basis of seniority-cum-suitability. For ready reference, the relevant clauses of Railway Board's circular No.PC III/91/CRC/1 dated 27th January 1993 are reproduced below:

"4.1 Vacancies existing on 1.3.1993 except direct recruitment quota and those arising on that date from this cadre restructuring including chain / resultant vacancies should be filled in the following sequence:

- (i) from panels approved on or before 1.3.1993 and current on that date;
- (ii) and the balance in the manner indicated in para 4 above.

5 While implementing the restructuring orders, instructions regarding minimum period of service for promotion with Group 'C' issued under Board's letter No.E(NE)1/85/PM-I/12 (RRG) dated 19.2.1987 and Board's letter No.E(NG)I/75, PM-I/44 dated 26.5.1984 will stand modified to the extent that the minimum eligibility period for the first promotion for filling up vacancies covered in para 4.1 would reduced to one year as a one-time exception. Thereafter the normal minimum eligibility condition of 2 years will apply".

3. The manner of implementation of this Circular has further been clarified by Railway Board's circular / letter of even number dated 18.3.1993, as quoted below:

"Doubt has been raised whether as on 1.3.1993 an eligible employee, who has not completed one year service on that date will be promoted as and when he completes one year's service or will he miss his

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chance for promotion since has not completed 1 year as on 1.3.1993.

It is clarified that the reduction in eligibility in terms of time is related to posts covered by para 4.1 of the Board's orders and therefore staff should be promoted as and when they complete one year on the old post on 1.3.1993 or thereafter. Railways Production Units should draw up panels of employees who become eligible for promotion as per guidelines given in Board's cadre restructuring letter dated 27.1.1993 and promote the eligible staff as per panel as and when they complete one year service (refer item C also)."

4. The applicant has challenged the impugned order promoting him as Chief Bridge Inspector with effect from 12.7.1997 on the ground that he became eligible on 31.12.1993, the date on which he completed one year of service in the earlier grade, as per the condition laid down in the aforesaid clause of the Railway Administration's circular No.PC III/91/CRC/1 dated 27.1.1993 and 18.3.1993 and therefore, he should have been promoted w.e.f. 30.12.1993 and his name should have been in the panel prepared on 1.3.1993, the date on which the panel was to be drawn in pursuance to the decision taken for restructuring. The applicant filed representation dated 23.12.1994 in which he submitted that he had become eligible for the post of Chief Bridge Inspector w.e.f. 30.12.1993 and prayed that his case should be considered for promotion to the said post with effect from 30.12.1993 with benefit of pay fixation and arrears for salary as he was the senior-most. This was followed by representations on 14.9.1996, 21.11.1996 and 17.6.1997. Although no order was passed on the representations, he was orally informed that he was awarded adverse entry in the year 1993-94, therefore, he was not considered for promotion for the said post.

5. The applicant has further contended that the rationale on which he was denied the promotion w.e.f. 30.12.1993, viz., adverse entry on 30.12.1993 was not correct, as there was no adverse entry on 30.12.1993, the date on which the applicant became eligible or on 1.3.1993, the date on which the panel was to be drawn. The adverse entry came into existence for the period ending 31.3.1994. The adverse entry was communicated to him, as late as on 10.1.1995,

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which showed that the whole exercise was malafide with a view to debar him from the post of Chief Bridge Inspector in the pay-scale of Rs.2375-3500, at the behest of one Shri M.K. Chakravorty, Deputy Chief Engineer, who had personal animus against the applicant and therefore gave adverse entries to the applicant in the year 1993 as well as in the year 1994-95. He further contended that the nature of adverse entry was vague as it was to the effect that his work was assessed as not so satisfactory and therefore was in the nature of an average entry & could not come in the way of his promotion. In support of his contention, the applicant has relied on Railway Board's circular No.R.B.E.151/93, dated 8th October 1993 whereby Railway Board has specifically directed that the average entry in the Annual Confidential Report will not make any difference in granting any promotion in pursuance to restructuring. This has been stated by the applicant in para 4.17A of the O.A., which has mentioned that a copy of this Circular is not available with him. He further submitted that appeal against the adverse entry was rejected. His representations cited earlier have not been replied to.

6. At the outset, the respondent's counsel submitted before us that the O.A. is barred by time. On facts, the respondents in their counter affidavit have stated that the appeals dated 8.2.1995 and 19.7.1995, against the adverse remarks for the year of 1993-94 were considered by the Competent Authority and after due consideration, the Competent Authority has retained the remarks. This was communicated to the applicant vide letter Nos. AEA/SKS/'9392 dated 2.6.1995 and 19.9.1995 respectively. The Confidential Report for 1994-95 was also adverse and the appeal submitted against the same was also rejected by the Competent Authority. The respondent's counsel informed that the entries were clearly in the nature of adverse entries and not average for the year 1993-94 as his performance was recorded in the following words:

"In my opinion his technical knowledge is not up to the mark and capability of handling the work is not satisfactory."

This was communicated to the applicant vide letter no.AEA/SKS/9392 dated 27.9.1995. It was further submitted

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that the applicant was involved in disciplinary case and penalty of withholding of increment for 6 months was imposed upon him vide notice No.Gm/DA/1646(M) dated 28.6.1997.

7. The respondent's counsel further submitted that though the applicant had completed one year of service on 29.12.1993 as Bridge Inspector Grade I in the scale of Rs.1400-2300, the post of Chief Bridge Inspector in the pay-scale of Rs.2375-3500 was created vide order dated 7.11.1994 with effect from 1.3.1993. But, as per the instructions issued by the Railway Board vide letter dated 27.1.1993 and 8.3.1993, the applicant was to be considered for promotion against newly created post of Chief Bridge Inspector in the pay-scale of Rs.2375-3500 only after 7.11.1994 on completion of one year of service. His suitability was to be adjudged after creation of the post vide GM(P)'s office order no. 1258 dated 7.11.1994. Accordingly, suitability of the applicant was adjudged in January 1995 but he was found unsuitable for promotion against the newly created post of Chief Bridge Inspector in the pay-scale of Rs.2375-3500. The cause of action, therefore, arose on 7.11.1994, when the post of Chief Bridge Inspector in the pay-scale of Rs.2375-3500 was created and thereafter in January 1995, when he was not found suitable for promotion as chief Bridge Inspector in the pay-scale of Rs.2375-3500. As such, the respondents have contended that the present application is barred by limitation prescribed under section 21 of the Administrative Tribunal Act. Hence the present application is not maintainable and is liable to be dismissed/ rejected on this ground alone.

8. It was also contended on behalf of the respondents that the nature of entries for the years 1993 and 1994 are clearly adverse and not average and that appeals against them were also rejected by the competent authority. The plea of successive representations made by the applicant was not material in the facts of the instant case. The respondents have therefore contended that since the promotion was to be made after considering both seniority

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as well as suitability, the petitioner could not be promoted with effect from 30.12.1993.

9. We have carefully perused the pleadings of the parties and have heard arguments of the learned counsels for the parties. The instant O.A. was instituted in 19.4.1999. Apart from the contentions raised by the respondents that the appeal is not maintainable being time-bound as the cause of action arose on 7.11.1994 and later on in January 1995, it is further seen that the applicant has challenged the order of promotion dated 12.7.1997., but as stated above, instituted the O.A. in April 1999. It is thus expressly barred by time and is liable to be dismissed on the ground of limitation under the provisions contained in section 21 of the Administrative Tribunals Act, 1985 particularly in view of the fact that there is no explanation, whatsoever, for the delay.

10. Coming to the merit of the case, the applicant has drawn support from clause 4 of the Railway Board's circular dated 27.1.1993 cited above that he should have been promoted w.e.f. 30.12.1993, the date on which he completed one year of service and he should have been in the panel prepared w.e.f. 1.3.1993. This argument is not tenable as it was only the process of restructuring which was initiated w.e.f. 1.3.1993. Since the post of Chief Bridge Inspector was created on 7.11.1994, consideration for filling up of this post by promotion could be taken up only after this date. The selection procedure laid in clause 4 of the said Circular clearly stipulated that "the selection will be based only on scrutiny of service records and Confidential Reports without holding any written and or viva voce test." A perusal of the actual entries contained in the Confidential Reports on the performance of the applicant shows that these cannot be termed as vague and are clearly in the nature of adverse entries. The contention of the applicant that as on 30.12.1993, there was no adverse entry is not tenable, as the assessment is to be made on the basis of the performance of the entire year and not part of the year or on a particular date. His performance had successively been found to be unsuitable for promotion thereafter also, as the applicant was awarded

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minor penalty which pointed towards his unsatisfactory conduct. Suitability could be judged only after the post was created on 7.11.1994. Accordingly he was assessed in January 1995 on the basis of his functioning both in terms of performance as well as conduct in the preceding years. He was specifically found unfit for promotion. His appeals in the matter of adverse entries were also rejected. Hence there were no violations of the Railway Board's circulars cited above. The decision of the Hon'ble Supreme Court cited by the applicant in the case of UOI & Ors Vs. N.R. Banerjee & Others (1997 AIR SCW 1838) in support of his contention that he should have been promoted w.e.f. 20.12.1993 as he had no adverse entry on that date is distinguishable on facts and in over-view does not support the case of the applicant.

11. The applicant has been promoted by the Railway Administration as Chief Bridge Inspector in the pay-scale of Rs.2375-3500 as soon as he was found fit for promotion. His fitness was judged in July 1997 on the basis of his performance and conduct assessed in the Confidential / Working Reports for the preceding three years and he was found suitable for promotion. The applicant therefore has been rightly promoted as Chief Bridge Inspector in the pay-scale of Rs.2375-3500 vide officer order no.599 dated 12.7.1997. He is not entitled to be promoted w.e.f. 30.12.1993.

12. In view of the above, the O.A. has no merit and is accordingly dismissed. No order as to costs.

Rajendra

Member A

Rajendra

Vice Chairman

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