

Open Court. W

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD.**

ORIGINAL APPLICATION NO. 1011 OF 1999

THIS THE 21ST DAY OF NOVEMBER, 2005.

HON'BLE MR. K.B.S. RAJAN, MEMBER-J
HON'BLE MR. A.K. SINGH, MEMBER-A

Jag Narain, Aged about 60 years, S/o Sri Ram Narain,
R/o Village & Post Nausar, formerly employed as
Machinist Gr. I, Ticket No. 1215, Railway Workshop,
N.E.R., Gorakhpur

..... Applicant.

By Advocate : Sri M.K. Upadhyay

Versus.

1. Union of India through the General Manager,
N.E.R., Gorakhpur Colony, Gorakhpur.
2. Dy. G.M. (P) cum CPO, N.E.R., Gorakhpur Railway
Colony, Gorakhpur.
3. Chief Workshop Manager, Railway Workshop,
Gorakhpur Railway Colony, Gorakhpur.

..... Respondents

By Advocate : Sri P. Mathur.

ORDER

BY K.B.S. RAJAN, MEMBER-J

The applicant was en-listed for promotion from
the post of Machinist Gr. I to the post of Mistri in
the grade of 1400-2300 vide order dated 12.10.1996.
Alongwith him, three more persons were promoted,
Vide order dated. 1.11.96, while the junior in the
promotion list was also promoted, the applicant was
denied his promotion. On filing of his O.A., the
respondents submitted that the denial of promotion
to the applicant was on account of a pending

enquiry. This enquiry resulted in Enquiry Officer. rendering his finding as "charges not proved." The representation on this enquiry report was sought from the applicant and the applicant vide his letter dated 12.3.97 submitted that enquiry authority had held him 'not guilty', and as such the Disciplinary Authority might agree with him. The applicant superannuated on 31.1.1997. The Disciplinary Authority vide the impugned order dated 14.5.1997 passed an order of 'government displeasure' and communicated the same to the applicant. Against the said order, the applicant had preferred an appeal on 27.10.98. The appellate authority dismissed the appeal.

2. The applicant has in the grounds challenged the aforesaid order and in the relief column sought the following relief (s):-

- (i) That Hon'ble Tribunal may graciously be pleased to direct the respondents to give due promotion to the applicant from Machinist Gr. I to Mistri Grade i.e. from the grade Rs. 1220-2040 to 1400-2300 since 1.11.1996 or 1.12.1996 i.e. the date of joining the higher cadre by Sri C.P. Srivastava and to pay the consequential arrears of pay allowances and retrial benefits.
- (ii) That the respondents should also be directed to pay interest on such arrears @ 18% p.a. since 25.9.97, the date of decision of Annexure A-7.
- (iii) That as a consequential relief, the Hon'ble Tribunal may graciously be pleased to award exemplary damages and cost of the suit in favour of the applicant against the respondents.
- (iv) That the Hon'ble Tribunal may graciously be pleased further to grant such other

relief(s) to which the applicant may be found entitled to.

3. The respondents have contested the O.A. According to the respondents, they have decided to continue the disciplinary proceedings even after retirement as permissible, and in this regard Rule 9 of the Railway (Pension) Rules would apply. The applicant has filed R.A. reiterating his contentions as contained in the O.A.

4. Arguments were heard and documents perused.

5. Admittedly, the Enquiry Authority has rendered his findings to the effect that the charges are not proved. As such, if at all any penalty was to be imposed, then the Disciplinary Authority. should first disagree with the enquiry report and communicate to the delinquent official reasons for disagreement. Apparently and admittedly, this drill has not been performed. Thus, penalty imposed by the D.A. is thoroughly vitiated by this serious legal lacuna. Once the order of the Disciplinary Authority is vitiated, the appellate authority's order also crumbles to the grounds. The applicant is, therefore, deemed to have been completely exonerated in which event the provisions of order dated March, 1999 issued by the Railway Board squarely apply to the case and the said order reads as under:-

bn "Attention of the Railways is drawn to the instructions contained in Board's letter dated

1.10.97. In terms of these instructions, an employee whose promotion was dings and who retires from service while the case is still pending, is eventually exonerated, he will become entitle to notional promotion from the date he was due for such promotion. For the period of notional promotion, his case for grant of arrears has also been considered.

It is clarified that term 'exoneration' referred to in the above letter means complete exoneration. In cases where, disciplinary proceedings initiated against the railway employees while they were in service are finalized after their retirement from service with the communication of 'Government displeasure' to them, it will not be held that the proceedings have resulted in dropping of allegation or that the railway employees have been completely exonerated. Since the communication of Government displeasure, in such cases implies that some blame is attached toe the charged official, cases of such retired railway employees would be equated to those of serving railway employees on whom minor penalties have been imposed and the case of such retired railway employees for promotion would be dealt with in terms of the extant instructions on the subject contained in Railway Board's letter no. E(DA)/92 RG 6-149(A) and no. E(DA)/92 RG 6-149(B), both dated 21.1.1993.

It is reiterated that if the disciplinary proceedings are finalized before retirement, it is not permissible to issue 'warning' or 'Government displeasure' to the railway employees as a result as such proceedings in terms of extant instructions contained in the Board's letter dated 21.1.1993 referred to above."

6. As a matter of fact, if the applicant has to suffer only that much of penalty and its consequence after retirement which he would have suffered had the penalty been imposed during his career, since no provision exists for issuing Government displeasure as a matter of penalty during the career of the applicant, the applicant is deemed to have exonerated from that angle also.

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7. The O.A., therefore, succeeds. The penalty orders are held to be vitiated and, therefore, they are considered as non-est. The respondents are directed to consider the case of the applicant for promotion to the post of Mistry in the Grade of Rs. 1400-2300 w.e.f. the date his junior was promoted (1.11.1996) and the applicant is entitled notional promotion w.e.f. 1.11.96 in accordance with the Railway Board circular extracted above. The respondents shall fix the last pay drawn on notional basis and accordingly work out the terminal benefits including pension and pay the arrears thereof. The pension at the enhanced rate shall continue to be paid in future. The calendar to comply with this order is scheduled as six months from the date of communication of this order. No costs.


MEMBER-A
MEMBER-J

GIRISH/-