

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1017 OF 2002
ALLAHABAD THIS THE 16th DAY OF APRIL 2003

HON'BLE MR. JUSTICE R.R.K. TRIVEDI, VICE-CHAIRMAN
HON'BLE MAJ. GEN K.K. SRIVASTAVA, MEMBER-A

Ahmad Zaman Khan,
aged about 47 years,
S/o Sri H.U. Khan,
R/o 150/77-A, Minur Road,
Rajapur, Allahabad.Applicant

(By Advocate : Sri B.P. Shukla)

Versus

1. The Union of India,
represented by Northern Railway,
Notice to be served upon,
The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. The Financial Adviser and
Chief Accounts Officer,
Northern Railway,
Baroda House,
New Delhi.
4. The General Manager,
Central Organisation of Railway Electrification,
Allahabad.
5. The financial Adviser & Chief Accounts Officer,
Central Organisation of Railway Electrification,
Allahabad.

6. Sri B.P. Shukla,

6. Shri Babu Ram Gupta,
Chief Vigilence Officer/Senior Dy.
General Manager/Central Organisation of
Railway Electrification, Allahabad new
retired and to be served as Flat No.9,
Rail Vihar, Sector-30,
Noida (Uttar Pradesh). Respondents
(By Advocate Shri A.K. Gaur)

O R D E R

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER-A

In this O.A. filed under section 19 of Administrative Tribunals Act 1985, the applicant has sought for direction to the respondents to promote the applicant as Senior Accounts Officer (In Short S.A.O.) in grade of Rs10,000/- -15,200/- and fix the pay and seniority accordingly in the grade with effect from 28.02.2000 or at least from the date his junior has joined as Senior Accounts Officer on the post with all consequential benefits. The applicant has also sought for compensation to the tune of amount of Rs10,000/- from respondents for violating statutory rules etc.

2. The facts of the case, in short, are that the applicant who was working as Assistant Accounts Officer in the scale of Rs.7500/- - 12,000/- was on deputation to Railway Electrification i.e. (in short CORE). He was regularised on the post of Assistant Accounts Officer with effect from 01.08.1994 with lien existing on Northern Railway. The applicant was due for upgradation of his pay to the scale of Rs.8000-13,500/- on account of recommendation of Fifth Pay Commission as well



as Ministry of Railways. The applicant's upgradation was ordered vide order dated 25.02.2000 which was subsequently cancelled by order dated 27.03.2000. The respondent No.2 and 3 cancelled the order in relation to the promotion of the applicant as Senior Accounts Officer (T), New Delhi (SAO). The applicant represented on 05.03.2000 followed by representations dated 28.04.2000, 19.07.2001 and 24.08.2001. The respondent No.3 communicated the decision on the representation of the applicant on 03.09.2001. The applicant made further representations to the respondent No.2 to 5 on 12.10.2001 and 22.11.2002. The applicant filed O.A. No.168/02 which was decided by order dated 18.02.2002 to decide the representation of the applicant within three months. The applicant submitted another representation on 25.02.2002. The respondent No.4, the disciplinary authority, passed punishment order on 22.04.2002 relating to chargesheet dated 16.03.1999 awarding the punishment of 'Censure'. Aggrieved by the action of the respondents in cancelling the applicant's promotion as SAO, the applicant has filed this O.A. which has been contested by the respondents by filing CA.

3. Shri B.P. Shukla, learned counsel for the applicant submitted that the first chargesheet was issued on 16.03.99 which was kept pending for 12 months after giving personal hearing on 18.04.2001 though it was to be decided within 20 days by the disciplinary authority as per the statutory provisions. The second major penalty Chargesheet was delivered on 01.05.2001, Enquiry report was submitted by Inquiry Officer (I.O.) in November 2001. Till date no show cause to the applicant

on enquiry report has been given which establishes beyond doubt that charges have not been proved against applicant. The learned counsel for the applicant further submitted that the minor penalty chargesheet dated 25.01.2002 was served on the applicant on 07.06.2002 after correction and withdrawal of earlier one and the same has resulted into 'Censure' for lapses. Therefore, withholding of promotion of the applicant as SAO and upgradation of pay is not justified. The applicant is entitled for his promotion as SAO and grant of upgraded scale of Rs.8,000-13,500/-.

4. Resisting the claim of the applicant Shri A.K. Gaur, learned counsel for the respondents has submitted that the case of the applicant for promotion to senior scale as well as upgradation of pay as Assistant Accounts Officer is to be considered by Northern Railway. The order dated 27.03.2000 cancelling the upgradation and grant of higher scale were issued by Northern Railway i.e., respondent No,2 and 3. The respondent No.4 and 5 have no role to play in this regard.

5. The learned counsel for the respondents further submitted that the cancellation of upgradation orders in senior scale in the grade of Rs.10,000/- to 15,000/- as well as placement in upgraded scale of Rs.8,000/- to 13,500/- have been broadly dealt with by CORE, in their letter dated 17.05.2002 in compliance of direction of this Tribunal dated 18.02.2002 passed in O.A. No.168/02. The order dated 22.04.02 awarding the punishment of 'Censure' was issued by the G.M. CORE and same was communicated to the applicant on 23.04.2002, The applicant has not filed any appeal against the imposition

of punishment and, therefore, the applicant is not entitled for promotion or upgradation of scale due to award of punishment.

6. We have heard counsel for the parties, carefully considered their submissions and perused records. We have also perused the written replies submitted by the learned counsel for the parties.

7. Admittedly, the applicant was issued with three chargesheets one on 10.03.1999, the other on 01.05.2001 and the third on 25.01.2002. It is also admitted that the applicant was on deputation to CORE Allahabad. The legal position is well settled that no one is entitled for promotion if any disciplinary case is pending against him/her. The sole grievance of the applicant is that his disciplinary cases have been delayed by the respondents deliberately to deny him the due promotion as well as upgradation of scale. In this connection the applicant has filed model time schedule for progress of major penalty D.A.R. cases alongwith Annexure A-11. We have perused the same. Para-3 of the order No.E(D&A) 1995 RG 6-15 dated 24.04.1995 is reproduced below:-

"Though this suggested schedule is only a model one, it is desired that every attempt should be made to adhere to this target rigidly especially in cases involving losses due to frauds, misappropriation theft etc. This is because speedy action on the part of Railway Administration acts as a deterrent and can prevent repetition of a similar fraud and misappropriation of Government Money. Where the Railway Administration does not find it practicable to adhere to this target rigidly, steps should be taken to minimise the additional time likely to be taken over and above the target period."

8. Accordingly, in view of the above, we are not inclined

to accept the submission of the applicant that the respondents were deliberately delaying in finalising the disciplinary cases of the applicant and ~~had~~ his case ~~has~~ been finalised within 20 days ~~as~~ specified in the model time schedule he would have got his timely promotion as well as scale. We would like to observe that the applicant has alleged malafide on the part of respondents, only on the ground of delay but he is not able to substantiate the same. In absence of any other material on record we reject the allegation of malafide advanced by the applicant. The applicant was awarded the punishment of 'Censure' vide order dated 22.04.2002. He has not preferred any appeal against the punishment order. Therefore the punishment awarded attains finality. As already observed by us since disciplinary proceedings were pending against the applicant, which are not denied by the applicant, he is not entitled for promotion as well as upgradation of scale as claimed by him.

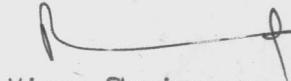
9. In view of our aforesaid observations and discussions we do not find any illegality in the action of the respondents in cancelling the promotion order dated 28.02.2000 (Annexure 2) by order dated 27.03.2000 (Annexure-3) specially when the chargesheet dated 16.03.1999 was pending and the disciplinary proceedings against the applicant were not finalised.

10. In the facts and circumstances, the O.A. lacks merit and is liable to be dismissed. The O.A. is accordingly dismissed with no order as to costs.

Neelam/-



Member-A.



Vice-Chairman.