

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 23rd DAY OF July 2010)

Hon'ble Mr. G. Shanthappa, Member (J)
Hon'ble Mrs. Manjulika Gautam Member (A)

Original Application No.1099 of 2003
(U/S 19, Administrative Tribunal Act, 1985)

Naresh Chandra Srivastava aged about 58 years, son of Late L. K. Srivastava, Resident of 1085, Baba Ji Ka Bagh, Baluvaghat, Allahabad.

..... **Applicant**

Present for Applicant : **Shri A. Tripathi**
Shri V. Budhwar

Versus

1. Union of India, through General Manager, North Central Railway, New Delhi.
2. Divisional Railway Manager, North Central Railway, Allahabad.
3. Senior Divisional Electrical Engineer, North Central Railway, Allahabad.

..... **Respondents**

Present for Respondents : Shri S.K. Ram

ORDER

(Delivered by Hon'ble Mr. G. Shanthappa, J.M.)

The above application is filed under Section 19 of Administrative Tribunals Act, 1985 seeking the relief for a direction to the respondents to consider the case of the applicant for promotion to the post of Switch Pump Attendant w.e.f. 23.12.1980 and to pay all consequential benefits along with 24% interest per annum further relief of a direction to the respondents to consider the claim of the



applicant for promotion on the post of Switch Pump Attendant Grade-II, in the pay scale of Rs.4000-6000 and further promotion to the post of Switch Pump Attendant Grade-I in the pay scale of Rs.4500-7000 with all consequential benefits from the date his juniors have been given.

2. As directed by Hon'ble High Court in Civil Misc. Writ Petition No.39666 of 2004 decided on 08.08.2008, the Hon'ble High Court was pleased to condone the delay and direct this Tribunal to decide the case on merit. The said order reads as under;-

"We are, prima-facie, of the opinion that the petitioner was not guilty of delay, and the delay was required to be condoned by the Tribunal. However, since the petitioner has superannuated in the year 2005, no useful purpose would be served if any direction is given to the Tribunal for considering the delay condonation application afresh and it will further delay the proceedings. Therefore, we in exercise of our powers under Article 226 of the Constitution of India, condone the delay in filing the original application before the Tribunal and direct the Central Administrative Tribunal, Allahabad to restore the Original Application of the petitioner and decide the same on merits expeditiously.

With the aforesaid directions, the writ petition is allowed. Parties shall bear their own costs."

3. The said order of the Hon'ble High Court is produced by the applicant along with M.A. No.1862 of 2008. Accordingly, we have considered the case of the applicant as directed by Hon'ble High Court.

4. We have heard learned counsel for the parties.



5. The admitted facts, from either side, are that the applicant was initially appointed as Khalasi in the pay scale of Rs.196-232. Subsequently, he was allowed to appear for the Trade Test for the post of Pump Driver in the pay scale of Rs.210-290. Consequently, he was promoted to the post of Switch Pump Attendant w.e.f. 23.12.1980. The said Pump Driver has been re-designated as 'Switch Pump Attendant'. Applicant discharged the duties as Switch Pump Attendant w.e.f. 23.12.1980 till 10.06.1983. The applicant was transferred; he requested the authorities that he may not be transferred due to his family problems.

6. On 10.06.1983, the applicant was reverted from the post of Switch Pump Attendant to the post of Khalasi on temporary basis for a period of four months. Since the said reversion was on temporary basis, after the expiry of four months the applicant was entitled to be restored back to his substantive post of Switch Pump Attendant. During that period, the applicant was suspended on 09.09.1982.

7. The applicant was served with a charge sheet, subsequent to said order of suspension. It is alleged that, while working as Switch Pump Attendant, the full fledged inquiry was conducted and Disciplinary Authority was imposed the penalty withholding the increment for a period of 5 years. The applicant preferred an appeal before the Appellate Authority. The Appellate Authority reduced the punishment from 5 years to 3 years. The said order of the Appellate Authority was challenged before this tribunal in O.A. No.512 of 1987.



This Tribunal was pleased to allow the said O.A. on 26.11.1991 and quashed all the orders and liberty was given to the respondents to initiate fresh inquiry in accordance with law. Subsequently, no inquiry was held, the said order attained finality.

8. Subsequently, another charge sheet dated 12.04.19~~99~~⁹² was issued. The Disciplinary Authority conducted the inquiry and imposed the penalty of removal from service vide order 13.09.1993. The applicant challenged the said order before the Appellate Authority. The Appellate Authority vide its order dated 23.12.1993 modified the punishment order dated 13.09.1993 and the applicant was restored back to the service as a fresh Khalasi. The applicant challenged the said order before this Tribunal in O.A. No.150 of 1994. This Tribunal was pleased to dispose of the O.A., as per Para-11 of the said order, which reads as under:-

“In view of those observations, the impugned order of punishment is quashed, we direct the disciplinary authority to reconsider his order within a period of three months from the date of service of this order, with reference to the nature of charge and either relevant factors and pass a suitable and reasoned order, taking into account the fact that the applicant has rendered long years of service in the department and afford the applicant further opportunity of appeal against such a fresh order in accordance with disciplinary Rules. Consequently, the Appellate order also stands quashed. The applicant is reinstated in his post with the initial seniority subject to such further order of punishment as may be imposed by the Disciplinary Authority as a result of our direction including the specific order on the treatment of the period from the original date of removal from service till the date of his reinstatement and the consequential benefits, if any, as may be deemed appreciate by the Competent Authority and in accordance with Rules.

With the above directions, the application is disposed of. No order as to costs.”



9. When the respondents did not comply with the direction of this Tribunal in O.A. No.150 of 1994, the applicant filed Contempt Petition No.6267 of 1999, however, respondents complied the order of this Tribunal. Accordingly, the Contempt Petition was closed.


10. When the respondents did not restore the services of the applicant and the salary from 25.03.1995 to 30.06.1996 was not paid to him for the post of Switch Pump Attendant, the applicant submitted his representation in February, 2001 and on 20.11.2002 and further requested for promotion to the applicant as Switch Pump Attendant at par with his juniors were promoted, which is as under:-

(A)	Shri Jai Saran	1982
(B)	Shri Pyare Lal	1982
(C)	Shri Dashrath Lal	1984
(D)	Shri Shyam Bihari	1985
(E)	Shri R.P. Tripathi	1987

11. It is the grievance of the applicant that respondents have not granted the promotional benefit to the applicant w.e.f. 23.12.1980 of the post of Switch Pump Attendant and, consequently, financial benefit w.e.f. 25.03.1995 to 01.07.1996, which is wholly illegal, contrary to Law, besides being violative of Articles 14 and 16 of the Constitution of India and when no charge and inquiry was pending, no penalty so imposed, though the charge memo and penalty was imposed to the applicant, were quashed by this Tribunal in different O.A., the applicant is eligible for promotion to the post of Switch Pump Attendant under Para 185 of IREM Vol.I (Revised Edition 1989).



12. The respondents have filed a detailed reply statement. They have refuted the statement made in the O.A. except which are admitted ^{by} based on records. The respondents have admitted that the applicant was reverted to the post of Khalasi. The applicant preferred his reversion to the post of Khalsi rather than to carry his transfer and join at the new place of working at his own request on making an application and personal interview with the then Divisional Railway Manager, Allahabad for four months. The applicant was served with a charge memo for the lapses so caused by the applicant. The said charge sheet was enquired in to the applicant participated in the inquiry and after considering the documents available on record, the Disciplinary Authority imposed the penalty. The said order of penalty was challenged by the applicant in an Appeal. The Appellate Authority reduced the punishment from 5 years to 3 years with cumulative effect and all consequential benefits. The applicant filed an application in O.A. No.512 of 1987. The said O.A. was disposed of on 26.11.1991 and the fresh enquiry was initiated. The applicant did not participate in the enquiry and submitted his representation dated 02.01.1984. Finally the *ex parte* inquiry report was submitted. The applicant submitted his representation to the inquiry report. The Disciplinary authority imposed the penalty for removal from service vide order dated 13.09.1993. The applicant challenged the said order before the Appellate Authority and the Appellate Authority modified the punishment.



13. The applicant challenged the said orders of Disciplinary Authority and the Appellate Authority in O.A. No.150 of 1994 and this Tribunal quashed the said penalty imposed by the Disciplinary Authority and the orders of the Appellate Authority and liberty was given to the respondents to pass fresh order. The applicant was restored to his original position. The claim of the applicant for grant of consequential promotional benefits of previous post of Switch Pump Attendant in respect of his junior incumbent as quoted above from 'A to E' is not tenable after the implementation of order of this Tribunal to produce the seniority list and nothing is illegal and in violation of Articles 14 and 16 of the Constitution of India. The respondents have finally requested for dismissal of the O.A..

14. The respondents have complied the direction of this Tribunal and paid all the dues, as admissible to the applicant w.e.f. 25.03.1995 to 21.01.2006, along with consequential benefits. The relief of the applicant has become infructuous in respect of the financial benefit as sought in the O.A..

15. We have carefully considered the submissions made from either side and perused the pleadings on records. As directed by the Hon'ble High Court, we are not taking the legal issue of delay; the Hon'ble High Court has already decided the issue, which has already been extracted above. The relief of the applicant for promotion to the post of Switch Pump Attendant w.e.f. 23.12.1988, with all



consequential benefits from the date of his juniors were given as Switch Pump Attendant w.e.f. 23.12.1988. The applicant urge that his juniors were promoted, which is extracted above but the applicant has not given the date of promotion given to his juniors i.e.:-

(A)	Shri Jai Saran	1982
(B)	Shri Pyare Lal	1982
(C)	Shri Dashrath Lal	1984
(D)	Shrii Shyam Bihari	1985
(E)	Shri R.P. Tripathi	1987"

The applicant has not produced the seniority list to show that said persons are juniors to the applicant. The relief is not so specific. The respondents have orally submitted that the applicant was reverted from the post of Switch Pump Attendant to the post of Khalsi for a period of 4 months, he preferred his reversion to the post of Khalasi rather than to carry his transfer and join at a new place of working at his own request on application and personal interview with the then Divisional Railway Manager, Allahabad for four months. The said reversion was on temporary basis for a period of 4 months. The respondents submitted that during the said period the promotion did not take place. In the reply statement, the respondents have not stated on what date the juniors to the applicant were promoted, orally they have submitted that there was a promotion to the post of Switch Pump Attendant in the years 1982, 1984, 1985 and 1987 and when there is an admitted fact that there was a promotion in the year 1983 or any other earlier date when the juniors to the applicant have been promoted to the next higher post, the denial of promotion to the applicant is illegal. Orally the




respondents have submitted that the applicant was served with a charge memo, he suffered the penalty that was the reason, he was not given promotion at the relevant point of time.

16. We have carefully examined the penalty imposed upon the applicant; subsequently those penalties/punishments were quashed by this Tribunal. All the orders, which are referred in the earlier paras, confirmed that no penalty was imposed. All the charge sheet and penalty were quashed by this Tribunal and applicant was exonerated from all the charges. The applicant was eligible for promotion with effect from the date on which his juniors were given promotion to the next higher post. The refusal of promotion on the ground that he was reverted to the post of Khalasi for a period of four months in the year 1983, and subsequent penalty/punishment will not come in the way for giving promotion to the applicant. Since, the applicant has been superannuated; he is eligible for notional promotion. Accordingly, the applicant has made out the case for grant of promotion to the post of Switch Pump Attendant from the date on which his juniors were promoted. The respondents have to pass separate orders seeing the seniority of the applicant and his juniors, because neither the applicant nor the respondents have given the particulars on which the juniors to the applicant were promoted to the post of Switch Pump Attendant. The applicant is not eligible for financial benefits when he is getting notional promotion, that notional promotion will help the applicant to get higher pension. After giving the promotion to the applicant to the post of Switch



Pump Attendant with effect from the date of his juniors are promoted, there was a promotion to the post of Switch Pump Attendant Grade-II in the pay scale of Rs.4000-6000 and to the post of Switch Pump Attendant Grade-I in the pay scale of Rs.4000-7000. The applicant will also get the consequential promotion, subsequent to the promotion given in the post of Switch Pump Attendant. The respondents have not justified for not giving the promotion to the applicant to the post of Switch Pump Attendant, Switch Pump Attendant Grade-II and Switch Pump Attendant Grade-I relying on the reversion take place for a period of four months and the applicant was facing departmental inquiry.

17. The applicant has not proved for grant of relief, we mould the relief and direct the respondents to give promotion to the applicant from the date on which his juniors were promoted. This exercise will be completed within a period of six months form the date of receipt of certified copy of this order. No costs.


Member-A


Member-J

Sushil