

(23)

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This the 24th Day of April 2012)

Hon'ble Mr. Sanjeev Kaushik-JM
Hon'ble Mr. Shashi Prakash- AM

Original Application No.422 of 2006
(U/S 19, Administrative Tribunal Act, 1985)

Om Prakash Dubey son of Late Mahadev Prasad R/o 215/A, Tilak nagar, Allahapur, Allahabad. Presently posted as Office Superintendent-II/in the office of General Manager/Vigilance/Northern Central Railway, Allahabad.

..... Applicant

By Advocate: Shri Sudama Ram

Versus

1. Union of India through the Secretary Railway Department New Delhi.
2. The General Manager (Personnel), North Central Railway, Allahabad.
3. The General Manager (Personnel), North Central Railway, Allahabad.
4. The Deputy Chief Personal Officer/Non-Gazetted North Central Railway, Allahabad.
5. The Divisional Personnel Officer, Divisional Railway Manager, North Central Railway, Allahabad.
6. Smt. Kiran Chaddha presently Posted as Office Superintendent II/General Branch, North Central Railway, Allahabad.

..... Respondents

By Advocates: Shri S. Mandhyan
Shri D. Awasthi

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ORDER

Heard Shri Sudama Ram, counsel for the applicant. Shri D. Awasthi, counsel for the Official Respondents. Shri Dharmendra Tiwari holding brief of Shri S. Mandhyan, counsel for the private respondents.

2. The present Original Application is directed against the order dated 23rd March, 2004 by which private respondent No.6 Smt. Kiran Chaddha, has been given ante dated notional promotion w.e.f. 21st March, 1995.
3. It is not disputed by counsel for the applicant that respondent No.6 was senior to the applicant in the seniority list of LDC but the applicant was given promotion prior to respondent No.6 as Head Clerk on 25.02.2004. In the seniority list of Head Clerk, the name of the applicant stood at Sl. No.4, whereas name of private respondent No.6 was at Sl. No.3. It is argued by counsel for the applicant that against the adverse entry, which was communicated to the respondent No.6 on 3rd August 1994, her representation was rejected on 25th October 1994. She filed appeal against the rejection order on 08.II.1994, which was rejected on 21.2.1995. On her representation, the Reviewing Authority, considering her representation and expunged the adverse remarks from the ACR by order dated 31st May 1995. Based upon the above, she was granted ante dated notional promotion w.e.f. 23.3.2004 i.e. prior to the date when the promotion was given to the applicant.
4. Counsel for the applicant argued that authority, who has considered representation of the respondent No.6 against adverse remarks, has acted contrary to procedure laid down in Brochure on Confidential Report particularly Para 4.I2. He argued that the ante dated notional promotion is bad, therefore, the impugned order is liable to be set aside.

5. Learned counsel for the official respondents argued that the authority acted in accordance with Rule and representation of the respondent No.6 against the ACR was considered and ultimately the adverse entry was expunged from the ACR. She was given due promotion as Head Clerk w.e.f. 21st March 1995 in preference to her junior Shri Samsher Ahmad. He further argued that the present O.A suffers from delay and laches, as the applicant by way of present O.A. is challenging the seniority list of 2002, which has already attained finality, after inviting objections. Therefore, he submitted that the O.A. is liable to be dismissed on the ground stated above.

6. Learned counsel for the private respondent No.6 summarized their case in Para 15 of the CA, which reads as under:-

"15. That the contents of paragraph no.4(k) of the O.a. are emphatically denied. Infact initially under wrong conception of factual aspect of the service particulars of the answering respondent, she was granted promotion to the post of Head clerk with effect from 21.5.1996 and never from 08.08.1996. However, she was entitled to the post of Head Clerk from 1995 itself. She made a representation and which having been considered in right perspective after looking into the record the order was passed on 23.3.2004 when she was granted promotion from the actual date i.e. 21.3.1995. Therefore, she is much senior to the applicant even in the equivalent grade and post though in different branches. Therefore, it is misnomer to allege that the answering respondent was promoted as Head Clerk on 8.8.1996 which date is not corroborated from any evidence."

7. We have considered the rival submissions and have gone through the record. Undisputedly, the respondent No.6 is senior to the applicant in the seniority list of LDC. Respondent No.6 was denied promotion on the ground that she was having adverse entry in the ACR. She was given delayed promotion of Head Clerk w.e.f. 1.1.1996 due to her adverse entries. Against the adverse entries of 1993-94, she made representation,

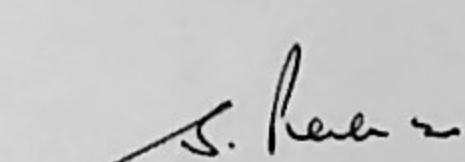
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which was rejected. Subsequently, by order dated 31st May 1995 her representation was accepted and the adverse entry in the ACR of the year 1993-94 was expunged, accordingly, she was given notional ante dated promotion on 21.03.1995. The order dated 31st May, 1995, which has been passed by the authority expunging the ACR is without jurisdiction as the same is contrary to Para 4.12 of Brochure on Confidential Report issued by Railway Boards on 30.01.1978, which reads as under:-

“4-12- अभ्यावेदन के अस्वीकृत होने के छ. माह के बाद कोई अर्जी देने अथवा अपील दायर करने की अनुमति नहीं होगी”

Thus, from the above, it is clear that the authority has extended its jurisdiction by accepting the representation of the application despite the fact that his appeal against the rejection order of adverse entry has already been rejected. The maximum period provided in the Brochure on Confidential Report is Six months, while the order has been passed after six months i.e. 09.05.1995.

8. In view of the above, we find that the impugned order granting notional ante dated promotion to the respondent No.6 is without jurisdiction and cannot ^{be} ~~sustain~~ in view of the provision 4.12 of Brochure on Confidential Report and thus the same is set aside. No costs.


Member-A


Member-J

Sushil