

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

O.A.NO. 691 OF 1995

Cuttack, this the 21<sup>st</sup> day of August 2002

Sri Pratap Singh Choudhury ...  
Vrs.


Applicant


Union of India and others .....  
.....

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? No
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No

  
(M.R. MOHANTY)  
MEMBER(JUDICIAL)

  
(V. SRIKANTAN)  
MEMBER(ADMN.)

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CUTTACK BENCH, CUTTACK.

O.A.NO. 691 OF 1995

Cuttack, this the 21<sup>st</sup> day of August, 2002

CORAM:

HON'BLE SHRI V.SRIKANTAN, MEMBER(ADMN.)  
AND  
HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDL.)

.....

Sri Pratap Singh Choudhury, aged about 52 years, son of Mohan Singh Choudhury, at present working as Senior Project Manager, South Eastern Railway, Bhubaneswar, District-Khurda.

..... Applicant.

Advocates for the applicant - M/s R.N.Naik, A.Deo, B.S.Tripathy,  
P.Panda, P.K.Mishra,  
K.N.Mishra.

Vrs.

1. Union of India, represented by its Secretary, Railway Board, Rail Bhawan, New Delhi.
2. General Manager, S.E.Railway, Garden Reach, Calcutta 700 043, West Bengal.
3. Chief Personnel Officer, S.E.Railway Headquarters Office, Garden Reach, Calcutta 700 043, West Bengal.
4. Deputy Chief Personnel Officer, S.E.Railway Headquarters office, Garden Reach, Calcutta 700 043, West Bengal.

..... Respondents

Advocate for respondents - M/s R.Ch.Rath & P.K.Rath.

.....  
ORDER

V.SRIKANTAN, MEMBER(ADMINISTRATIVE)

In this Original Application, the applicant has sought for quashing of the orders, dated 27.6.1995 and 11.8.1995/15.8.1995 (Annexures A/3 and A/4), under which the applicant has been informed that his case for placement in Selection Grade as also his empanelment to Senior

Administrative Grade (S.A. Grade) has been considered by a Review Departmental Promotion Committee; but after due consideration, the Review D.P.C. had not recommended inclusion of his name in the Select List for Selection Grade and S.A. Grade, and the recommendation of the Review D.P.C. had been approved by the competent authority. He has also prayed for direction to the respondents to confer on him the benefit of Selection Grade with effect from 1.1.1990, the same having been categorically directed by the Bombay Bench of this Tribunal, and to promote him to the S.A. Grade with effect from 1.1.1994 when his juniors were promoted.

2. The brief facts, as mentioned in the O.A., are that the applicant was promoted to J.A. Grade on looking after basis with effect from 24.9.1983. He came up for consideration for empanelment to J.A. Grade in 1984 and his name was included in the Select List of 1983-84. But the applicant could not be promoted, owing to his involvement in a vigilance case, in which a memorandum for initiation of major penalty proceedings was issued in November 1984. On conclusion of the enquiry, minor penalty of withholding of increment, without cumulative effect, was imposed on the applicant on 24.2.1988, effective from 1.1.1989, and the penalty of withholding of increment was over on 31.12.1989. Thereafter, the case of the applicant for empanelment to J.A. Grade was considered and his name was included in the panel prepared in December 1991, and he was promoted to J.A. Grade with effect from 28.12.1991. Aggrieved by this promotion order, the applicant filed O.A. No. 262 of 1988 before the Bombay Bench

of this Tribunal, stating that his name should be included in the 1984 panel of J.A. Grade at the appropriate place and he should be allowed all consequential benefits, seniority, etc. The Bombay Bench of this Tribunal, by its orders passed on 29.3.1994 (Annexure A/1), held that the applicant would be entitled to have his place in the seniority list in the panel of 1984 and that he would also be entitled to be promoted from the date his immediate junior was promoted. In pursuance of this judgment (Annexure A/1), the seniority of the applicant in the panel of 1984 was retained and his pay in the J.A. Grade was fixed notionally from 1.1.1990 and he was also paid the arrears. These orders were issued vide Annexure A/2, dated 31.3.1995.

3. The applicant's first contention is that he was allowed to function in the J.A. Grade on ad hoc basis from 24.9.1983, vide order dated 30.8.1984 (Annexure A/6) and subsequently, by order, dated 28.1.1992 (Annexure A/5) the competent authority approved the officiating appointment of the applicant in the J.A. Grade with effect from 28.12.1991, and this amounts to regularisation of the ad hoc promotion given to the applicant with effect from 24.9.1983. The applicant's claim is that his seniority is, therefore, required to be fixed with reference to the date of 24.9.1983, from which date he has been working in the J.A. Grade. The applicant's further contention is that he should have been given the benefits of Selection Grade from 1.1.1990 and thereafter, of the higher grade of S.A. Grade with effect from 1.1.1994, since the Bombay Bench of this Tribunal has clearly held that the applicant

would be entitled to have his place in the seniority list retained and his pay fixed notionally from 1.1.1990 when the punishment was over and that he would be entitled to the same benefits thereafter; but the respondents have misconstrued the intent of the orders passed by the Bombay Bench of this Tribunal. Further, the Review D.P.C. , which met in 1995, considered the case of the applicant for promotion to the Selection Grade from 1.1.1990 and thereafter to S.A.Grade but found the applicant unsuitable. It is the applicant's contention that his case should have been considered by the Review D.P.C. not only as on 1.1.1990, but also for the subsequent years 1990-91, 1991-92, 1992-93, 1993-94 and 1994-95. The applicant also apprehends that the Review D.P.C. has taken into consideration the punishment imposed on the applicant, though the same is not permissible as the punishment by that time had spent its force.

4. The respondents, in their Reply, while not disputing the factual statements, have stated that in pursuance of the judgment of the Bombay Bench of the Tribunal, the seniority of the applicant in the panel of 1984 was retained and he was promoted to J.A.Grade and his pay in the J.A.Grade was fixed notionally from 1.1.1990 and the applicant was also paid the arrears. The respondents contend that the applicant was posted and detailed to look after the J.A.Grade post with effect from 24.9.1983 on ad hoc basis with special pay of Rs.60/- and the applicant was not promoted to officiate in J.A.Grade from 24.9.1983. He was regularly appointed to officiate in

J.A.Grade only on 28.12.1991, which was subsequently ante-dated to 1.1.1990. As regards promotion of the applicant to the Selection Grade and thereafter, to the S.A.Grade, the respondents have stated that the applicant's case for placement in Selection Grade was considered by the Review D.P.C., which considered the applicant's case for placement in the Selection Grade in the panels approved on 18.7.1989, 16.5.1991 and 15.2.1992, but he was not found fit for placement in these panels, but was found fit for placement in the Selection Grade in the panel approved on 8.1.1993, and accordingly, the applicant has been placed in the Selection Grade with effect from 1.7.1992, vide Annexure R/II. The case of the applicant for empanelment in S.A.Grade with reference to his juniors was also considered by the Review D.P.C. in the panels which were approved on 3.11.1993, 25.3.1995 and 12.8.1995, but he was not found fit for promotion to S.A.Grade on the basis of his performance.

5. Heard both the counsel and perused the documents on record.

6. It is seen that in terms of the orders passed by the Bombay Bench of the Tribunal in O.A.No. 262 of 1988, the applicant's seniority in the panel of 1984 was retained and he was promoted to J.A.Grade and his pay in J.A.Grade was fixed notionally from 1.1.1990. The claim of the applicant

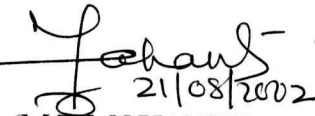
that he was officiating on ad hoc basis in J.A. Grade with effect from 24.9.1983 and hence that should be the effective date of his promotion to J.A. Grade is not tenable, in view of the fact that he was not paid the pay scale of J.A. Grade but was allowed only a special pay of Rs.60/- . As regards the contention of the applicant that he was entitled to be promoted to Selection Grade with effect from 1.1.1990 and to the S.A. Grade with effect from 1.1.1994, it is seen that the Review D.P.C. had considered the claim of the applicant for placement in the Selection Grade panels approved on 18.7.1989, 16.5.1991 and 15.2.1992, but he was not found fit for placement in the above panels but was found fit for placement in the panel approved on 8.1.1993 and accordingly he was placed in the Selection Grade with effect from 1.7.1992. Subsequently, the Review D.P.C. also considered the case of the applicant for empanelment in S.A. Grade, with reference to his juniors, in the panels which were approved on 3.11.1993, 25.3.1995 and 12.8.1995, but he was not found fit for promotion to S.A. Grade on the basis of his performance. The above posts are selection posts and this being so, the applicant cannot claim to be promoted to the Selection Grade or S.A. Grade as a matter of right. The applicant has, however, contended that in terms of the judgment passed by the Bombay Bench of this Tribunal, he is entitled to these promotions. The applicant's contention is not borne out by the judgment passed by the Bombay Bench of this Tribunal, the operative part of which reads as under:

"We therefore direct the respondents to fix the emoluments of the applicant on the above lines and pay him the difference that would


become payable to him by virtue of this direction on the footing that the applicant's seniority in the select list at Sl.No.41 remained undisturbed in spite of withholding of his increment for the period of one year. The direction be implemented within three months from the date of receipt of copy of this order by the Respondents."

The above order of the Bombay Bench is silent as to the claim of the applicant for further promotion to the Selection Grade and S.A.Grade as that was not the relief sought for by the applicant in that O.A.

7. For the above reasons, we do not find any merit in this Application. The Application is accordingly dismissed. No costs.

  
(M.R. MOHANTY)

MEMBER(JUDICIAL)

  
(V. SRIKANTAN)

MEMBER(ADMN.)

AN/P.S.