

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No. O.A. 9 of 1996

Date of order : 28.11.2001

Present : Hon'ble Mr. S. Biswas, Administrative Member  
Hon'ble Mr. Shankar Raju, Judicial Member

SADHAN CHANDRA DAS

VS.

UNION OF INDIA & ORS.

For the applicant : Mr. Samir Ghosh, counsel

For the respondents : Mr. R.M. Roychoudhury, counsel

O R D E R

Shankar Raju, J.M.

Heard the parties.

2. In this O.A. claim of the applicant who is working as Deputy Controller in the Eastern Railway, is to antedate his promotion with effect from the date his juniors have been promoted as such in pursuance of the selection held in the year 1987.

3. Ld. counsel for the applicant states that it is none of his client's fault that he could not joined as Section Controller as he was not spared and as soon as he was spared he joined the post of Section Controller under D.R.M., Sealdah and to this effect the Chief Train Controller issued a certificate in his favour certifying that the applicant has joined as Section

Controller with effect from 9.2.87. According to the 1d. counsel for the applicant, this averment and document has not been rebutted by the respondents in the reply. So, the applicant is to be put back in view of his qualifying the selection and his promotion which has been accorded by the respondents on 12.9.90 needs to be antidated from the date his juniors have been accorded with such promotion with all consequential benefits.

4. On the other hand, the 1d. counsel for the respondents vehemently rebutting the contentions of the applicant stated that as per the service records maintained by the department, the applicant has been spared on 9.2.87 and he joined on 16.3.87 i.e. after the selection was held. As per their letter dated 10.8.89, it was observed that the next selection was to be held and in pursuance of that selection having been qualified in the test, he was accordingly promoted to the post on 12.9.90.

5. We have carefully considered the rival contentions of the parties. Having regard to the document annexed by the applicant at Annexure 'G', it is obvious that the Chief Train Controller has certified that the applicant has joined as Section Controller with effect from 9.2.87 and in absence of any rebuttal to the same, it is deemed <sup>to have been admitted.</sup> accorded and taken on record as authentic proof of his joining as Section Controller. The applicant has joined as soon as he was spared by the respondents vide their letter dated 9.2.87. It is not the fault of the applicant that he could not be spared and

the compliance of the order dated 10.9.86 was subject to the sparing of the applicant by the Controller authority. As the test was held on 9.2.87, the applicant could not have an opportunity to participate in the same and pass the same and his juniors have been declared fit in that test and were consequently given promotion. The applicant despite joining the post of Section Controller has been prevented from being spared and also to participate in the selection. Had he been spared earlier, he would have an opportunity to appear in the selection held on 9.2.87. In this view of the matter we found that the applicant has been deprived of his promotion as Deputy Controller with effect from the date his juniors have been accorded the same and his promotion to the post on 12.9.90 is to be anticated with all consequential benefits.

6. In the result, the O.A. is allowed. The respondents are directed to anticate the promotion of the applicant as Deputy Controller with effect from the date his juniors have been accorded the same and deeming him to have qualified in the selection test held earlier and to accord him all the consequential benefits thereof within a period of 3 months from the date of receipt of this copy of the order. No cost.

S. Ram  
MEMBER(J)

S.M.

S. Basu  
MEMBER(A)