

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, (JODHPUR)

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DATE OF ORDER : 21.7.1999.

O.A.NO. 397/1995

Radha Kishan Jain S/o Shri Shital Prasad Jain aged about 57 years R/o 262 B Railway Colony, Rewari, Northern Railway, at present employed on the post of Driver Mail Express, Loco Shed, Rewari, Northern Railway.

.....Applicant.

VS.

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Bikaner Division, Bikaner.
3. Shri Praduman Singh, employed on the post of Driver/Exp.in Locoshed, Hanumangarh, Northern Railway.

.....Respondents.

CORAM :

HON'BLE MR. A.K.MISRA, MEMBER (JUDICIAL)

HON'BLE MR. GOPAL SINGH, MEMBER (ADMINISTRATIVE)



Mr.J.K.Kaushik, Advocate, appears for applicant.

Mr.V.D.Vyas, Advocate, Standing Counsel, present on behalf of the respondents. No. 1 and 2.

None is present on behalf of private respondent.

PER HON'BLE MR. A.K.MISRA :

The applicant has filed this O.A. with the prayer that the respondents No. 1 and 2 be directed to consider the promotion of the applicant to the post of Driver 'A' Grade and Driver 'A' Special Grade (Mail/Express) from the date

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his junior was promoted and allow all consequential benefits including due fixation and arrears of difference at par with his next junior Shri Praduman Singh (Respondent No.3).

2. Notice of the O.A. was given to the respondents who have filed their reply. It is alleged by the respondents that Shri Praduman Singh (Respondent No.3) was promoted as Driver (Mail) during the period when the applicant was under removal, therefore, respondent No. 3 cannot be ~~treated~~ to be junior to him. It is also alleged by the respondents that no junior is drawing more pay than the applicant. The O.A. is without force and deserves to be dismissed.



3. We have heard the learned counsels for the parties and gone through the record.

4. In order to appreciate the claim of the applicant, facts in brief are required to be enumerated as follows :-

5. The applicant was initially appointed as Apprentice Fireman 'A' on 12.9.1962. Thereafter, he secured his promotion and was promoted to the post of Goods Driver w.e.f.31.7.1977. In the year 1981, the applicant was inflicted with a penalty of removal from service w.e.f. 5.2.1981 on account of having participated in country wide strike of loco staff. The applicant challenged the removal order by filing a Writ Petition before the Hon'ble High Court which was transferred to the Central Administrative Tribunal and was registered at T.A.No. 233/1986. This petition was decided by the Tribunal on 4.9.1992. The respondents were directed to reinstate the applicant and consequently he was reinstated and was taken on duty as

Goods Driver 'B' in the scale Rs. 1350-2200 at the minimum stage of Rs.1350/-, vide order dated 29.1.93. After subjecting the applicant to medical test and training course, the applicant was ordered to be utilised on the post of Driver (Passenger) in the scale 425-640/1600-2600 (RPS). The applicant was promoted as Mail Driver in the grade of Rs. 1640-2900 (RPS) w.e.f. 30.9.1993 vide letter dated 26.8.1993. While the applicant was under removal order Shri Praduman Singh was promoted as Driver 'A' grade (Scale 550-750/1600-2660) and was further promoted as Driver Mail/Express ('A' Special) in the grade Rs. 1640-2900 w.e.f. 13.2.1987.



6. It is alleged by the applicant that Shri Praduman Singh was his junior and, therefore, when Shri Praduman Singh was promoted to the post of Driver grade 'A' and Driver 'A' Special grade, the applicant should have also been promoted accordingly on reinstatement and the pay of the applicant should have been fixed accordingly.

7. It was argued by the learned counsel for the applicant that as per the judgment delivered by the Tribunal on 4.9.1992 the service benefits should have been awarded to the applicant including pay fixation and promotion. On the other hand, the learned counsel for the respondents argued that the applicant was ordered to be reinstated with no back wages. The matter of wages was left to be decided as per Section 33-C (ii) of the Industrial Disputes Act. Further, it was ordered that past services would be counted for pensionary and other benefits. In this order, no benefit of notional promotion was given to the applicant. Therefore, the applicant cannot get notional promotion by comparing his

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case with that of Praduman Singh. He has also argued that the seniority list circulated in the year 1984 relates to only Driver 'C' grade. On removal from service, the applicant has lost his seniority and Shri Praduman Singh was promoted to the next higher grade. Therefore, the applicant cannot claim himself to be senior to Shri Praduman Singh on his reinstatement. It was not ordered by the Tribunal that on reinstatement, the applicant shall be restored his original seniority, therefore, the applicant is not entitled to promotion as per his claim and in comparison of Shri Praduman Singh.



8. The learned counsel for the respondents further argued that the O.A. is time barred and liable to be dismissed. The M.A. relating to condonation of delay deserves to be dismissed. On the other hand, the learned counsel for the applicant argued supporting applicant's claim to be within limitation.

9. We have considered the rival arguments on the point of limitation and would like to dispose of this issue first.

10. By a separate order, we have dismissed the M.A.No. 201/1995 praying for condonation of delay for the reasons stated in the order. However, in brief, we may mention here that applicant was reinstated in service vide respondents' order dated 29.1.1993 and has filed this O.A. for consideration of promotion vis-a-vis Shri Praduman Singh, said to be his junior, in August, 1995. Shri Praduman Singh was promoted as per the averment of the applicant in the OA to the post of Driver grade 'A' on 1.6.1981 and on the post

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of Driver 'A' Special grade on 13.2.1987. After reinstatement, the applicant was promoted on the post of Mail Driver w.e.f. 30.9.1993. For seeking his promotion from a previous date in comparison to Shri Praduman Singh, the applicant did not make any representation at all and the two representations referred to in the O.A. as Annexs. A/6 dated 27.9.1993 and A/7 dated 15.10.1993, are relating to fixation of pay and stepping up of pay vis-a-vis his junior respectively. If applicant wanted to be considered for the next higher promotional post, he should have made proper representation and thereafter, should have sought the relief before the Tribunal within the period of limitation. But the applicant has failed to do it. In subsequent paragraph, we will be discussing the merits of the case which will reveal that the applicant has otherwise no merits in his case, therefore, liberal attitude in condoning the delay cannot be adopted. In our opinion, the O.A. is hopelessly time barred and deserves to be dismissed. This disposes of the arguments of the learned advocates for the parties relating to limitation.

11. We have further considered the rival arguments on merits. In our opinion, by order dated 4.9.1992 disposing of the applicant's O.A. against the removal order, was given the benefit of reinstatement and inclusion of past service for pensionary benefits. By that order, the applicant has not been given the benefit of consequent promotion on his reinstatement as per his juniors in the seniority list of Driver grade 'C'. The applicant has not been able to establish that by any circulars or order, the original seniority position has been directed to be restored to the

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applicant. If there is no such order, then period of removal would not count for seniority for purposes of claiming promotion, as compared to other original juniors who had discharged active duty and rendered sincere service during applicant's period of removal.

12. It was further argued by the learned counsel for the applicant that the post on which the applicant is claiming promotion, as compared to Shri Praduman Singh, is not a selection post and applicant deserves to be promoted as a matter of course but we do not agree to this proposition for the simple reason that from 1981 up to 1992, applicant was not in service. Therefore, neither he has gained any seniority nor has added anything to his experience for 12 continuous years. Therefore, he cannot be allowed to compete with others and compare his case with those persons who rendered active service. In our view, the applicant is not entitled to promotion to the post of Driver grade 'A' and Driver 'A' Special grade, vis-a-vis Shri Praduman Singh, who was his junior before the applicant was removed from service.

13. From the foregoing discussions we come to the conclusion that there is no force in the application filed by the applicant, it is, therefore, dismissed with no orders as to cost.

Gopal S
(GOPAL SINGH)

Member (A)

AM
21/7/99
(A.K.MISRA)

Member (J)

Copy
16-2-98
S.D.

Copy of the order dated 21/7/98
to R/o Respondents sent to
Shri V.D. Vyas Advocate By Post
Vehicle no 235 dt 30-7-98

Copy of order received by Shri V.D. Vyas
Concerned for Respondents Ad. A.D.O
Placed in P.T.O. filed in O.A. No 272/96

Part II and III destroyed
in my presence on 11.7.98
under the supervision of
Section Officer () as per
order dated 16/5/98

Section Officer (Record)