

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
J_O_D_H_P_U_R.

Date of Order ; 31.8.2000.

O.A. No. 306/1996

Dinesh Kumar Saroj S/O Shri Panna Lal, aged 42 years,
Ticket Collector, Koharu, posted in Sr. Divisional
Commercial Manager's Squad, Northern Railway, Bikaner,
R/O Q. No.88T, Near Guard's Running Room, Bikaner.

... Applicant

Vs

1. Union of India through General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi.
2. Senior Divisional Personnel Officer, Northern Railway, Allahabad Division, Allahabad.
3. Senior Divisional Commercial Manager, Northern Railway, Allahabad Division, Northern Railway, Bikaner Division, Bikaner.
4. Divisional Railway Manager, Northern Railway, Bikaner Division, Bikaner.
5. Sr. Divisional Personnel Officer, Northern Railway, Bikaner Division, Bikaner.
6. Senior Divisional Commercial Manager Commercial Manager, Northern Railway, Bikaner Division, Bikaner-



... Respondents

Mr. Y.K. Sharma, Counsel for the Applicant.

Mr. R.K. Soni, Counsel for the Respondents.

CORAM :

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

O R D E R

(PER HON'BLE MR. GOPAL SINGH)

In this application under Section 19 of the
Administrative Tribunals Act, 1985, applicant Dinesh Kumar
Saroj has prayed for fixation of his seniority keeping in

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view of his first promotion in higher grade with effect from 26.10.1982 and, further promotion to higher grades at par with his juniors with all consequential benefits.

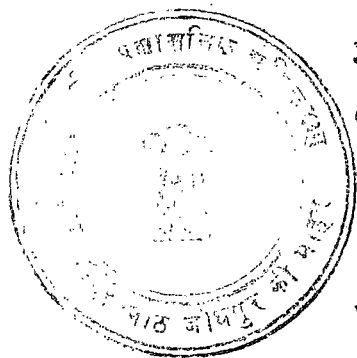
2. Applicant's case is that he was initially recruited and appointed as Ticket Collector on 03.5.'80 at Kanpur Railway Station on Allahabad Division. He was promoted as Senior Ticket Collector and posted to Mainpuri vide Order dated 26.10.1982 (Annexure A/8) in the scale of Rs.330-560. This promotion could not be availed of by the applicant because he had represented for his posting to Allahabad. He was subsequently posted to Allahabad Division in the scale of Rs.330-560 vide respondents' order dated 29.6.'83 (Annexure A/10). He was not allowed this promotion and the respondents suspended him vide order dated 22.6.83, suspension being effective from 17.6.83. He was served with a chargesheet for major penalty on 22.6.83 and vide respondents' letter dated 27.7.83, he was transferred to Bikaner division. The applicant was dismissed from service vide order dated 30.7.85. This order of dismissal was challenged by the applicant in Allahabad Bench of the Central Administrative Tribunal vide O.A. No.393/87. O.A. No.393/87 was disposed of vide order dated 15.4.93 setting aside the dismissal order. The applicant was thereafter re-instated in service and joined his duties on 21.11.94. Since the applicant has been denied his promotion in the scale of Rs.330-560 from the initial date of promotion i.e., 26.10.82, the applicant has filed this O.A.

3. In the counter, it has been stated by the respondents that the applicant could not be promoted as Senior Ticket Collector because he was facing a chargesheet for major penalty.

4. We have heard the learned Counsel for the parties, and perused the records of the case carefully.

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5. Learned Counsel for the applicant has also produced before us a letter dated 13.5.99 issued by the Senior Divisional Commercial Manager, Allahabad Division of Northern Railway, addressed to the applicant stating that he has been exonerated from the charges levelled against him in the subject chargesheet, letter dated 13.5.99 has been taken on record. In this connection, we consider it appropriate to extract relevant portion of order dated 15.4.'93 in O.A. No.393/97 as under :

"2. In the case of Chief Security Officer Vs Simhasan Ravidas (1991-SCC-L & S-450), the Enquiry was dispensed with on the ground that it was practically not possible to hold enquiry. In the said case, without holding enquiry the person was removed from service. However, in this case it was not proved that the enquiry was not at all possible and as such the enquiry was to be dispensed with. Accordingly, the removal order is quashed. However, it will be open for the respondents to go ahead with enquiry and the enquiry be concluded within a period of 3 months from the date of communication of this order. With the above observations the application stands disposed of. No order as to costs."



6. It is seen from the above order that the respondents had dismissed the applicant without holding proper enquiry as per rules and dismissal was revoked on this ground only. However, respondents were given liberty to go ahead with the enquiry. As has been mentioned above, the applicant has been exonerated from all the charges in the departmental proceedings as seen from letter dated 13.5.'99. It is a fact that the applicant was offered promotion earlier to the issue of the chargesheet dated 22.6.'83. However, he did not join the promotional post because he wanted posting at Allahabad on promotion. Thereafter, chargesheet was issued on 22.6.'83, the result of which has been conveyed to the applicant vide letter dated 13.5.'99. promotion and posting offered to the applicant

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vide order dated 29.6.83 could not be implemented as a chargesheet for major penalty was pending against the applicant. This promotion order dated 29.6.83 has, however, not been withdrawn and, therefore, in our opinion, the applicant should have been treated as Senior Ticket Collector (under suspension). Though, the applicant was reinstated in service on 21.11.'94 after the dismissal order was quashed by the Allahabad Bench of the Central Administrative Tribunal, he was reinstated only on the post of Ticket Collector in the grade of Rs.260-400 as the chargesheet for major penalty was pending against him. In terms of respondents letter dated 13.5.'99, the applicant was exonerated from all the charges levelled against him in the chargesheet dated 22.6.'83. In the circumstances, we are of the opinion that the applicant is entitled to all the benefits treating the chargesheet as non est. In this connection, we consider it appropriate to reproduce below Government of India instructions as printed in Chapter 53-Promotions, in Swamy's Complete Manual on Establishment and Administration, 1999 Edition :

"Sealed cover procedure applicable to officers coming under cloud after DPC meeting.

17.9 A Government servant, who is recommended for promotion by the Departmental promotion Committee but in whose case any of the circumstances mentioned in Para 11.1 above arises after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this part will be applicable in his case also.

11.1 At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee :-

(i) Government servants under suspension ;

(ii) Government servants in respect of whom a chargesheet has been issued and the disciplinary proceedings are pending; and

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- (iii) Government servants in respect of whom prosecution for a criminal charge is pending.

17.6.1 On the conclusion of the disciplinary case/criminal prosecution which results in dropping of allegations against the Government servant, the sealed covers shall be opened. In case the Govt. servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the juniormost officiating person. He may be promoted notionally with reference to the date of promotion of his junior. However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denials of arrears of salary or part of it may become necessary. However, there may be cases where the proceedings, whether disciplinary or Cr., are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee, etc. These are only some of the circumstances where such denial can be justified."

7. Since the applicant was rightly not promoted in terms of the order of promotion dated 26.10.82 against which the applicant made a representation for his retention at Allahabad, but when he was again to be promoted in terms of order dated 29.6.'83, he was not promoted only because of a chargesheet pending against him. Hence, the applicant's case can be safely treated as a case where sealed cover procedure has been adopted and, therefore, in the light of above, Govt. of India instructions, the applicant would be entitled to promotion as Senior Ticket Collector with effect from the date his junior has been appointed/promoted as such. He would also be entitled to promotion to higher grades at par

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with his junior, if he is otherwise found suitable. Accordingly, we pass the following order :

The Original Application is allowed. The applicant would be treated as Senior Ticket Collector with effect from 29.6.83 and his seniority will be fixed accordingly. The applicant would also be entitled to the benefit of promotion to higher grades at par with his juniors, if he is otherwise found fit. In regard to arrears of pay and allowances on promotion to the post of Senior Ticket Collector and further higher grades, we leave it to the Department to pass appropriate orders as per the rules. No costs.



Gopal Singh
(GOPAL SINGH)
Adm. Member

B.S. Raikote
(B.S. RAIKOTE)
Vice Chairman

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