

I/S

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH : JODHPUR

Date of Decision : 01/05/2003

O.A. No. 89/2003.

Chandan Singh S/o Late Shri Bhagwant Singh Ji aged about 56 years, R/o C/o Bhati Building, Near Krishan Mandir, Ratanada, Jodhpur (Rajasthan).

APPLICANT.

V E R S U S

1. Union of India through General Manager, North Western Railway (N.W.R.), Jaipur (Rajasthan).
2. Divisional Railway Manager, North Western Railway, Jodhpur (Rajasthan).
3. Divisional Personnel Officer, North Western Railway, Jodhpur (Rajasthan).

...RESPONDENTS.

Mr. S. K. Malik counsel for the applicant.

CORAM

Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.  
Hon'ble Mr. A. P. Nagrath, Administrative Member.

: O R D E R :

(per Hon'ble Mr. A. P. Nagrath)

The applicant was working on the post of Diesel Assistant. A minor penalty of reduction of pay for two years without cumulative effect was imposed on him vide order dated 13.08.2001. While the Appellate Authority upheld the order of the Disciplinary Authority in appeal, the penalty was



reduced to reduction of pay only for a period of 9 months without cumulative effect by the Revisionary Authority. As a consequence, this punishment remained effective up to 13.05.2002. The applicant sought voluntary retirement and was permitted to retire w.e.f. 19.06.2002.

2. Promotion orders to the post of Senior Diesel Assistant were issued on 05.03.2003 by which some persons junior to the applicant were promoted. The post of Senior Diesel Assistant is a non selection post. By yet another order dated 14.03.2002 further promotions were ordered to the post of Senior Diesel Assistant. The persons promoted under this order were all junior to the applicant. Since the applicant was not promoted, he submitted a representation on 24.01.2003 seeking promotion w.e.f. the date his next juniors was so promoted. His representation was rejected vide order dated 24.02.2003 (Annexure A-1). By filing this OA, the applicant has brought this order under challenge.

3. Heard the learned counsel for the applicant. In support of applicant's claim, the learned counsel referred to Railway Boards' Circular dated 21.01.1993 which was issued in supercession of the earlier instructions of the subject issued vide Railway Boards Letter dated 21.09.1988. According to the learned counsel, the case of the applicant is covered under Para 3.1 of the said circular which provides for the procedure to be followed in the case of Railway servant on whom a penalty has been imposed and his juniors have been promoted to the next higher grade during currency of the penalty. We have carefully scanned the said circular and we find that reliance on this Para of the said circular by the applicant, is mis-placed. The procedure to



followed as laid down in Para 3.1 is in respect of Railway servants is as under :-

- (i) Under suspension.
- (ii) In respect of whom a charge sheet for major penalty has been issued and disciplinary proceedings are pending :
- (iii) In respect of whom the prosecution for criminal charge is pending.

as stated in Para 2 of the said circular. It is clear from the procedure laid down that this is in respect of Railway servants where the disciplinary proceedings are pending and name of the railway servant is already borne on a selection penal/suitability list. In the case of the applicant, on the dates of promotion of his juniors he was undergoing a minor penalty which was still current. This situation has been expressly covered in Note 1 under Para 3.9

This reads as follows:-

Notes 1. If a person becomes due for promotion after the finalisation of the disciplinary proceedings and the penalty imposed is one of the following, he should be promoted only after the expiry of the penalty. (emphasis provided).

- (iv) withholding of promotion :
- (v) withholding of increment :
- (vi) reduction to lower stage in time scale; and
- (vii) reduction to a lower time scale, grade or post

Provided that where the penalty imposed is withholding of increment and it becomes operative from a future date, the person concerned should be promoted in his turn and the penalty imposed in the promotion grade for a period which would not result in greater monetary loss. If the penalty imposed is censure, recovery from pay or stoppage of passes/PTOs., he may be promoted when due.

2. The provisional selection panel framed in accordance with the above instructions shall be current as provisional till a final panel is issued after completion of the disciplinary cases, the next panel being formed, if found necessary, is declared as final."

4. The rules clearly stipulate that the promotion can be granted only after expiry of the penalty. The penalties include reduction to lower stages in time



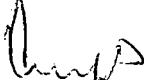
scale which is the punishment imposed on the applicant. Obviously there can be no ground for the applicant to claim promotion from a retrospective date when the penalty against him was still current. Learned counsel for the applicant, Shri S. K. Malik, very strenuously argued that once the period of penalty was over the applicant became entitled to promotion from a retrospective date. This is a contradiction in terms. If the applicant get promoted from a retrospective date after the period of penalty is over, this would defeat the very purpose of the rule which provides that a railway servant can only be promoted after the expiry of the penalty. In this regard, we consider it appropriate to reproduce the observations of Hon'ble the Supreme Court in the case of U.O.I. & Ors. Vs. K. V. Jankiraman, reported in 1993 SC (L&S) 387 [ (1991) 4 SCC 109 ].

"..... The Tribunal's view that if the proceedings result in a penalty, the person concerned should be considered for promotion in a Review DPC as on the original date in the light of the results of the sealed cover as also the imposition of penalty, and his claim for promotion cannot be deferred for the subsequent DPCs as provided in the instructions cannot be accepted. The Tribunal has erred in taking this view on the ground that such deferment of the claim for promotion to the subsequent DPCs amounts to a double penalty. It is not correct to hold that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that does not reward an employee with promotion retrospective from a date when for his conduct before that date he was penalised in praesenti. When an employee is held guilty and is therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account.

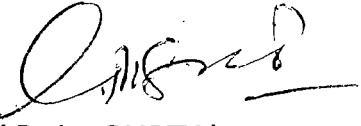
denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct (emphasis supplied)."

5. In view of the above stated legal position, we do not see any merit in this application. It is not the case of the applicant that after the currency of the punishment imposed, was over and before his proceeding on voluntary retirement there was any order issued promoting his juniors. If that be so, there is no case for the applicant for being promoted to the next higher grade, least of all from any retrospective date.

6. This application is totally meritless and the same is dismissed in limine.

  
(A. P. NAGRATH)

MEMBER (A)

  
(G. L. GUPTA)  
VICE CHAIRMAN

Dated 8/5/03  
Copy of Judgement R/C  
(Paras)

Copy of Judgement dated 1-5-2003  
alongwith copy of O.A with Annex. 1 to 24  
Send to R-1 to R-3 By Regd. Post  
vide NO 55 to 57

Dated — 8-5-2003  
09-5-03

Copy of  
Judgement  
8-5-2003