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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 164/2003

Date of order: 22.08.2005

CORAM:

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER

HON'BLE MR. G.R. PATWARDHAN, ADMINISTRATIVE MEMBER

Zahoor Mohammad son of Shri Gulam Quadir, Mason Grade I Carriage and Wagon Depot Uttar Paschhim Railway Bikaner Resident Near Pandit Dharam Kanta, Behind Shiksha Bharati School, Gajner Road, Bikaner (Rajasthan).

....Applicant.

Mr. D.D. Chitlangi, counsel for the applicant.

V E R S U S



1. Union of India Through General Manager, Uttar Paschhim Railway Headquarter (Old Loco Colony Area) Jaipur (Rajasthan).
2. Divisional Railway Manager, Uttar Paschchhim Railway Divisional Office, Bikaner (Rajasthan).
3. Divisional Personnel Officer, Uttar Pashchim Railway Divisional Office, Bikaner (Rajasthan).
4. Assistant Personnel Officer, Uttar Paschim Railway Divisional Office, Bikaner (Rajasthan).
5. Shri Mangtu son of Shri Noor Mohammad, Mason Grade-I Uttar Pashchim Railway Carriage and Wagon Depot Lallgarh Jn., resident of Sarvodaya Basti, Near Tajion-Ki-Chowki, Bikaner (Rajasthan).


...RESPONDENTS &

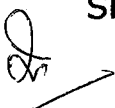
Mr. Vinay Jain, counsel for the respondent Nos. 1 to 4.

None present for the respondent No. 5.

O R D E R (Oral)

PER MR.J.K. KAUSHIK, JUDICIAL MEMBER

Shri Zahoor Mohammad has filed this Original Application assailing the order dated 02.01.2003 (Annexure A/1) and has, inter alia, prayed for modifying the same to the extent that the name of the applicant should be placed above Shri Mangtoo at Sl. No. 1 instead  at Sl No. 2 in the seniority list for



the post of Mason Grade III.

2. With the consent of learned counsel for both the parties the case was taken up for final disposal today since a very short controversy is involved in the case.

3. At the very outset, the learned counsel for the applicant has submitted that the applicant enjoyed his promotion to the post of Mason grade-I w.e.f. 01.01.1984 under restructuring scheme and for this purpose he has invited our attention to the various paras of the reply where this position has been admitted. He has submitted that the private respondent No. 5 i.e. Mangtu was promoted to the post of Mason grade-I only on 15.12.1986. But the respondents have indicated the date of promotion of the applicant to the post Mason grade-I as 29.08.1988 instead of 01.01.1984 and that is precisely the reason that the applicant has not been placed at the appropriate place i.e. above the private respondent.



4. Per contra, the learned counsel for the respondents has submitted that the private respondent was faced with a penalty inasmuch as there was currency of the penalty of withholding of increment for a period of three years with effect from 01.12.1983 upto 13.11.1986 without cumulative effect and without affecting his seniority. Due to the currency of the penalty, the private respondent could not be granted the benefits of promotion and it was only after the currency of the penalty was over i.e. on 15.12.1986, that further promotion could be granted to him. The learned

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counsel for the respondents has invited our attention to Annexure R/1 at page 41 of the paper book and has submitted that in pursuance with the Railway Board circular dated 09.08.1954, the private respondent has been assigned the seniority above the applicant as per instructions envisaged therein.

5. In the rejoinder, the learned counsel for the applicant has submitted that the applicant is being given an arbitrary treatment inasmuch as applicant's date of promotion to the post of Mason Gr. I is of an early date than that of the private respondent and still the private respondent is being considered senior to him.



6. We have considered the rival submissions put forth on behalf of both the parties. As far as the factual aspect of the matter is concerned, there is hardly any dispute. To appreciate the legal position, the contents of the Railway Board Circular dated 09.08.1954 (Annexure R/1) at page 41 to the paper book are extracted as under:

"A question has been raised whether an employee undergoing the penalty of stoppage of increment in a particular grade should be considered for promotion to a higher grade if he becomes due for such promotion during the period his increment is stopped. The Board consider that a man, who is undergoing a penalty is not suitable for promotion to a higher grade so long as the punishment continues. They have, therefore, decided that an employee undergoing a penalty of stoppage of increment in a particular grade should not be promoted to a higher grade until he has completed the term of punishment. There should, however, be no objection to grant him the seniority as if he had been promoted in his turn, if the penalty does not provide for loss of seniority. The effect of the stoppage of increment of an employee on his should invariably be embodied in the orders of punishments."

7. We may point out that the submissions of the learned counsel for the applicant looked attractive and impressive but we find that the aforesaid is the specific provision which provides that there would not be any loss of seniority in such cases where the penalty of only withholding the increment has been imposed. Incidentally, the said circular is not under challenge and the circular issued by the Railway Board are having statutory force since they are issued under the delegated power as per para 123 of the Indian Railway Establishment Manual vol. I. In this view of the matter, we do not find that there has been any fault with the action of the respondents and therefore no judicial review is warranted in the instant case.



8. In the result, the Original Application sans merits and the same fails and stands dismissed with no order as to costs.


(G.R. Patwardhan)
Administrative Member


(J.K. Kaushik)
Judicial Member

kumawat

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on behalf of Vinay Jain Adv.

(A)
Gupta
Asst.

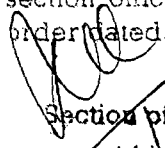
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(AKHIL GUPTA)

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Part II and III destroyed,
in my presence on 17/01/14
under the supervision of
section officer () as per
order dated 18/12/2013

Section officer (Record)


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