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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 48/2005.

DATE OF ORDER : 26^R MARCH, 2008.

CORAM :

**HON'BLE MR. M.L. CHAUHAN, MEMBER (J)
HON'BLE MR. R.R. BHANDARI, MEMBER (A)**

R.B. Saxena S/o Shri Kishori Lal Saxena aged 62 years Resident of 669, Bhagat Singh Colony, Opposite Pandit Dharam Kanta, Gajner Road, Lalgarh, Bikaner.

.....Applicant.

Applicant present, in person.

Versus

1. Union of India through General Manager, Headquarter Office, North Western Railway, Jaipur.
2. Divisional Railway Manager, North Western Railway, Bikaner.
3. Divisional Personnel Officer, North Western Railway, Bikaner.

.....Respondents.

By Mr. Manoj Bhandari, Advocate, counsel for respondents.

**ORDER
[PER M.L. CHAUHAN, MEMBER (J)]**

(oral) /

The applicant has filed this O.A. thereby praying for the following reliefs :-

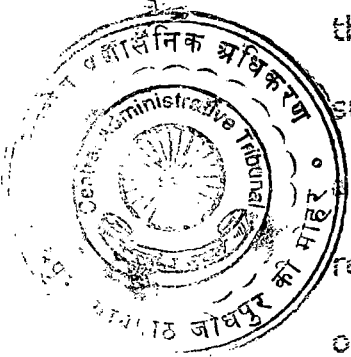


"(i) That the decision under item No. 17 of impugned order dated 2.12.2004 (Annex.A/12) be quashed and set aside.

(ii) That the respondents be directed to extend the benefit of promotion to the post of COS/Elect./Gr. 7450-11500 w.e.f. 10.05.1998 along with all consequential benefits.

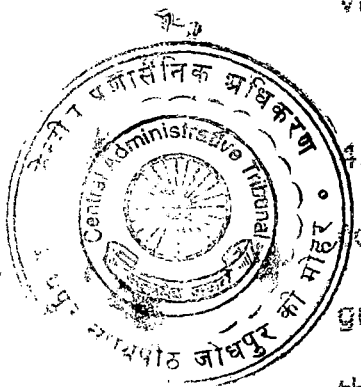
(iii) That an interest @ 24% PA over the arrear amount and cost Rs. 10,000/- be granted to the applicant.
That all other benefits, as the Hon'ble Tribunal deems just and proper, be granted."

2. Briefly stated facts of the case, so far as relevant for the decision of this case are that the applicant, at the relevant time, was working as Office Superintendent Grade I / Elect. Grade Rs. 6500-10500. The grievance of the applicant in this case is regarding denial of the grade of Rs. 7450-11500 w.e.f. 10th May 1998 on the post of Chief O.S./Elect. Pursuant to the Railway Board's letter dated 10th May, 1998 (Annex.A/1). As per the said letter, post of COS/Elect. was introduced w.e.f. 10th May, 1998 and the said post was a selection post. However, subsequently, the Railway Board has given one time exemption to fill-up the said post through modified selection by scrutinizing the service record / confidential record and the person found fit was to be granted the said higher scale on the up-graded post w.e.f. 10th May, 1998. The grievance of the applicant in this case is that since he, being the senior-most O.S. Grade - I, as such, he ought to have been promoted against the said post from the said date. Applicant has further averred that he was performing the duties of COS right from 10th May, 1998. According to the applicant, there was nothing against the applicant as on 10th May, 1998 and the Chargesheet issued by the respondents on the basis of which penalties were imposed, which penalties were subsequently set aside by the appellate authority, were also issued after 10th May, 1998. The applicant has further averred that respondents has deferred the said promotion on one pretext or the other with wilful malafide intention, vindictive action, discrimination and to cause injustice to the applicant which actions are violative of Article 14 and 16 of the Constitution of India. It is on the basis of these facts, the applicant has filed this O.A. praying for the aforesaid reliefs.



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3. Notice of this O.A. was given to the respondents. Respondents have filed reply. In the reply, the facts as stated above, has not been disputed by the respondents except that there was no deliberate attempt on behalf of the respondents to consider the case of the applicant for promotion / grant of aforesaid selection grade on the post of COS/Elect. According to the respondents, the matter was under consideration before the authorities and some clarification was sought which was received on 7.8.2002. The respondents has categorically denied that applicant was discharging the duties of the post of Chief O.S. w.e.f. 10.5.1998 till his compulsory retirement in the year 2003. According to the respondents, the selection to the post of Chief Office Superintendent was to be held on modified selection procedure as stated above. According to the respondents, the services of the applicant was not satisfactory as the applicant was under-going following three punishments (i) WIP for two years vide NIP dated 28.10.1998 and 2.11.1998 ; (ii) Reduction of lower stage in same time scale from 7900 to 6900 in grade Rs. 6500 - 10500 (RP) vide NIP dated 11.2.1999 and (iii) Compulsory Retirement w.e.f. 22.1.2003 vide NIP dated 22.1.2003.

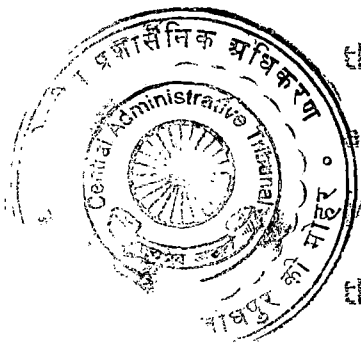


4. According to respondents, the case of the applicant was considered and the decision was taken on 2nd December, 2004 not to grant promotion to the applicant. Further, according to respondents, the present O.A. is time barred as the applicant has assailed the validity of the order after a delay of one and a half years. Thus, according to the respondents, the applicant is not entitled to any relief.

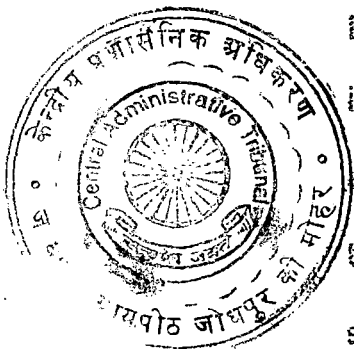


5. The applicant has filed rejoinder. In the rejoinder, the applicant has categorically stated that the penalty of WIP with cumulative effect for two years as imposed on 28.10.1998 and 2.11.1998 has been set aside by the appellate authority on 31st December, 1998 vide order at Annex.A/14 and also penalty of reduction to a lower stage in the time scale with five stages down as imposed on 11.2.1999 has also been quashed and set aside by the appellate authority on 10th December, 1999 vide Annex. Annex.A/15 to the O.A. The applicant has further stated that adverse remarks in the ACR March 1998 were conveyed on 6.11.1998 beyond the period prescribed which should have been communicated up to June 1998. The appeal submitted on 20.11.1998, was kept in abeyance for 18 months i.e. up to July 2000. It is further stated that the respondents have issued numerous chargesheets - SF-11 and SF- 5 during one year 1999-2000 which were disposed of on 21.1.2003 (Annex.A17 & A/18). The applicant has also detailed number of circumstances in order to show that the action of the respondents was un-justified, arbitrary and uncalled for.

6. The applicant has also filed written arguments in which the main thrust of the applicant is that there was no D&AR case or other adverse remarks against the applicant up-to the cut-of date i.e. 10th May, 1998. The applicant being the Senior-most person and was under the zone of consideration, was entitled to said promotion from the said date and further that he has been working through-out right from 1998 to January 2003 i.e. till his retirement, against the upgraded post of COS, as such, the applicant is entitled to the aforesaid relief.

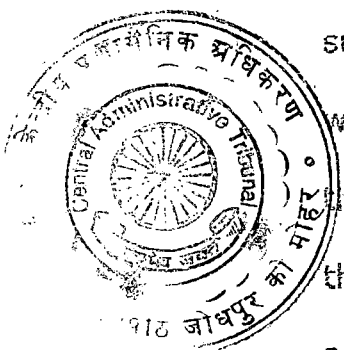


7. We have given due consideration to the submission made by the learned counsel for the applicant. We are of the view that the applicant is not entitled to any relief. No doubt, it is true that applicant was issued a Chargesheet RBS/9/98 and vide NIP No. Vid/Anu/RBS/9/98 dated 28.10.1998 read with Corrigendum dated 11.2.1998, penalty of WIP for two years was imposed. However, the said order was set aside by the appellate authority vide order dated 31.12.1998 and the disciplinary authority was directed to proceed in the matter from the stage of issuance of Memorandum of charge (Annex.A/14). It appears that the applicant was issued a Chargesheet subsequently pursuant to the aforesaid order and fresh order of punishment was imposed by the disciplinary authority, thereby imposing penalty of reduction in grade with five stage down - which penalty was also set aside by the appellate authority vide order dated 10.12.1999 (Annex.A/15). Thus, the respondents cannot take any assistance from the fact that applicant was imposed penalty of WIT with cumulative effect for two years vide order dated 28.10.1998 read with order dated 2.11.1998 and also penalty order for reduction to a lower grade in time scale for five stages on 11.2.1999 for the purpose of denying the benefit of promotion to the applicant. However, on the material placed on record, it is evident that there was a adverse remark in the ACR of the applicant ending March 1998 i.e. before the cut off date for promotion to the post of COS viz. 10.5.1998. There is nothing on record to suggest that the said adverse remarks has been expunged by the higher authorities. The applicant has himself placed copy of the adverse remarks as conveyed to him vide letter dated 6.11.1998 on



record as Annex.A/16. Perusal of adverse remarks shows that besides other remarks, the integrity of the applicant has been shown to be a doubtful. The applicant has not challenged the validity of the order dated 6.11.1998 whereby, adverse remarks as recorded in the confidential report for the period ending 31st March, 1998, was communicated to him. As such, the validity of this order cannot be gone into. Thus, the fact remains that as on 10.5.1998, there was a adverse remark against the applicant and the contention of the applicant that his record was satisfactory and no adverse ACR was there up to the cut of date i.e. 10.5.1998, cannot be accepted. As already stated above, the higher pay scale on the upgraded post of COS, was to be granted on the basis of the service record including the ACRs and promotion was not to be made solely on the ground of seniority. Thus, the applicant cannot claim such promotion / grant of higher scale solely on the ground that he was senior most person in the feeder category on the face of adverse entries in the ACRs. Thus, according to us, the applicant is not entitled to any relief.

8. Further contention of the applicant that since he was shouldering the responsibilities and duties of the higher post w.e.f. 10.5.1998 as such, he is entitled for the higher scale of the post of COS is also without basis more particularly, when the respondents has denied that the applicant was not sharing the responsibility of the higher post. Be that as it may, even if for argument sake, it is assumed that the applicant was discharging the duties of the post of COS w.e.f. 10.5.1998 even then, the applicant is not entitled to the scale of



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higher post in view of the law laid down by the Apex Court in case of **Ramakant Shripad Sinai Advalpalkar Vs. UOI & Others** reported in 1992 SCC (L&S) 115 whereby, it is held that merely discharging the duties of higher post cannot be treated as promotion so as to make entitlement to the salary of higher post. Further, the Apex Court in the case reported in 1998 (1) SLJ 1, **Mohd. Swaleh Vs. UOI & Ors.**, has held that the pay of the higher post can be given only if a person is granted promotion to the higher grade by the competent authority and not otherwise. Admittedly, in this case, no such promotion was granted to the applicant. As such, the applicant is not entitled to grant of higher pay scale of the higher post of COS. Facts remains that applicant during the aforesaid period, was working as O.S. Grade I and he was also compulsorily retired in the year 2003 from the said post.



Viewing the matter from any angle, we are of the firm view that applicant is not entitled to any relief. Accordingly, the present O.A. being bereft of merit, is accordingly dismissed with no orders as to costs.



(R.R. BHANDARI)
MEMBER (A)



(M.L. CHAUHAN)
MEMBER (J)

NO 29-
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