

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
CALCUTTA

No. M.A. 316 of 1999
O.A. 1423 of 1997

PRESENT : HON'BLE MR. M.K. MISHRA, ADMINISTRATIVE MEMBER
HON'BLE MR.K.B.S. RAJAN, JUDICIAL MEMBER

BHAKTU MAJHI

S/o. Sri Rengtu Majhi, residing at Quarter No. L/G/11 Unit-II,
South Eastern Railway, Mathurakati, Kharagpur,
Dist.- Midnapur.

-Vs-

1. Union of India (Servicethrough the General Manager),
S.E. Rly., Ministry of Railways, Garden Reach,
Kolkatta-43;
2. The Divisionals Railway Manager (P), S.E. Rly.,
Kharagpur, Dist. - Midnapur;
3. Sr. Divisional Personnel Officer, S.E. Rly.,
Kharagpur, Dist. - Midnapur;
4. Sr. Divisional Mechanical Engineer, S.E. Rly.,
Kharagpur, Dist. - Midnapur;
5. Chief Personnel Officer, S.E. Rly.,
Garden Reach, Kolkatta-43.

For the Applicant : None.

For the Respondents : Mr. S. Choudhury, Counsel

Heard On: 28.06.2005

Date of order: 01/7/05

ORDER

MR.K.B.S. RAJAN, J.M.:-

This original application has been filed praying for a direction to the respondents to give promotion to the applicant to the post of O.S. Grade-II. Subsequently the applicant filed the MA praying for certain amendments. Both the OA and the MA are taken up together.

2. The brief facts :

- a) The applicant entered service under the S.E. Railway in 1984 as Jr. Clerk and was promoted as Sr. Clerk in 1989. During May, 1989, applicant was served with a

charge-sheet and the applicant had faced the enquiry. During the pendency of the enquiry, suitability test for promotion to the posts of Head Clerk was conducted in which the applicant participated in 1991. Though the result was declared, no further action was taken by the respondents in giving promotion to the applicant on the ground of pendency of the disciplinary proceedings.

b) The proceedings were completed in May, 1993 and against the order of disciplinary authority imposing punishment, the applicant preferred an appeal in October, 1993. By order dated 1.6.95, the authorities informed the applicant that-

"Charge which was framed against you vide charge memorandum of even no. dated 28.4.89 / 9.5.89 is hereby dropped by the competent authority."

The applicant on receipt of the said order preferred a representation on 5.6.95 followed by another one on 16.7.95 for his promotion to the post of Head Clerk in respect of which he had already qualified in the suitability test long back. As a matter of fact the entitlement of the applicant to the said post became ripe as early as on 1.12.91. However, the applicant was not promoted. Meanwhile, a junior to the applicant by name Sri A.K. Minz was considered and he was promoted first to the post of Head Clerk and later to the post of O.S. Grade-II. It was by order dated 27.11.1995 that the applicant was promoted to the post of Head Clerk (Scale of Pay Rs. 1400-2300) w.e.f. 28.11.1995 and posted at D.L.S./KGP against the existing vacancy.

c) As the petitioner was deprived of his legitimate consideration for promotion to the higher grades and as his juniors have been promoted, the petitioner has filed this O.A.

3. The respondents have filed a reply stating their version. It has been admitted that the test for promotion to the post of Head Clerk was conducted in September, 1991. The applicant did qualify but he could not be considered for promotion as disciplinary proceedings were pending against him. Consequently, his junior Sri A.K. Minz was promoted. As in 1993-94 his junior Mr. A.K. Minz was considered

for promotion, when the applicant could not be considered in view of the pendency of the disciplinary case, the applicant was not offered any promotion. However, by order dated 16/1/97, the applicant was called for selection as O.S. Grade-II but was not found suitable and therefore was not enlisted in the panel for promotion to the post of O.S. Grade-II. Under these circumstances, the applicant has moved this O.A.

4) None was present on behalf of the applicant while Mr. S. Choudhury, Id. counsel was present on behalf of the respondents. As such the case has been considered invoking the Rule 15(1) of the CAT Procedure Rules, 1987. The case has been considered on the basis of the pleadings with the assistance of Id. counsel for the respondents.

5) The contention of the applicant is that there has been inordinate delay in completing the proceedings which has telescopically affected his promotional prospects. There is some substance in the contention. For the alleged incident stated to have occurred in 1989, the proceedings went on for six years and in 1995 the proceedings were ultimately dropped. While the department has the right to conduct the proceedings and the ultimate result in such proceedings is imposition of the penalty against the delinquent employee whereas in this case ultimately the applicant was exonerated fully by dropping the proceedings. The applicant has therefore lost valuable chances of appearing at the departmental test for promotion to the post of O.S. Grade-II from the date his junior was promoted. The applicant belongs to reserved category and generally certain relaxations are permissible in respect of marks obtained in the suitability test. If such procedure was in vogue, the same should have been applied in the case of the applicant also and if by relaxed standard, he is found fit and suitable, the respondents should consider his case for promotion to O.S. Grade-II from the day his junior had been promoted.

6) In the end the O.A. as well as the MA is disposed of with a direction to the respondents to examine whether the applicant in the suitability test for the post of O.S. Grade-II could have been declared qualified as per any relaxed standards available for the applicant and if so available, the applicant should be declared fit and

suitable accordingly, and his date of promotion to the O.S. Grade-II be given effect notionally from the date his junior (Mr. A.K. Minz) was promoted and actually from the date the applicant takes over the post of O.S. Grade-II. This exercise shall be completed within a period of three months from the date of communication of this order. Under these circumstances no order as to costs is passed.



(K.B.S. Rajan)
Judicial Member



(M.K. Mishra)
Administrative Member