

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No.290/2008

Reserved on 06.01.2015.

Pronounced on 15th January, 2015

**HON'BLE MR. NAVNEET KUMAR, MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

Tapan Kumar Chakravarty aged about 50 years S/o A.T. Chakravarti R/o C-42, Sarvoday Nagar, Lucknow.

...Applicant.

By Advocate: Sri M.A. Siddiqui.

Versus.

1. Union of India through The General Manager, N.E. Railway, Gorakhpur.
2. The D.R.M., N.E. Railway, Ashok Marg, Lucknow.
3. The D.R.M. (P), N.E. Railway, Ashok Marg, Lucknow.
4. The Senior D.O.M., N.E. Railway, Ashok Marg, Lucknow.

...Respondents.

By Advocate: Sri Narendra Nath.

O R D E R

By Ms. Jayati Chandra, Member (A).

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 with the following relief(s):-

"(A). The Hon'ble Tribunal be graciously pleased to quash the impugned order vide Annexure A-4.

(B). The applicant be treated in continuous service on the post of guard from the date of his joining as Guard Goods on 01.08.2008.

J. Chandra

(C). Any other relief as considered proper by Hon'ble Tribunal be awarded to applicant.

(D). Cost of application be awarded to applicant."

2. The facts of the case as averred by the applicant are that the applicant had initially joined as Commercial Clerk. He was considered for promotion to the post of Guard Goods. The applicant cleared the selection examination and placed on the list of qualified persons suitable for Guard Goods. He was sent for training and after successful completed the training was posted as Guard Goods in the pay scale of Rs.4500-7000 vide officer order dated 29.07.2008 and was posted at Gonda. In compliance of the aforesaid order, he joined at Gonda on 01.08.2008. However, without giving him any prior notice, the promotion has been cancelled by impugned order dated 01.08.2008. The applicant has fairly stated that at the time of the promotion examination and training his pay was reduced from Rs.4135 to Rs.3965/- with stoppage of increment for three years with immediate effect. As there was no bar for consideration for promotion, and the adverse order against him was in the full knowledge of the respondents, now without giving any notice, he cannot be denied his promotion.

3. The respondents' case is simply that the applicant had been awarded a punishment of reduction of pay from Rs.4135 to Rs.3965/- with immediate effect with stoppage of increment for three years by an order dated 08.10.2007. Therefore, his case should not have been considered for promotion at all. However, due to some clerical mistake, he was considered for promotion and granted the same. When the clerical mistake came into the knowledge of the

T. Chander

competent authority they passed the impugned order withdrawing the benefit of the promotion as per the provision of RBE letter dated 21.01.1993.

4. The applicant has filed Rejoinder reply rebutting the Counter Affidavit more or less reiterating the same points as taken in O.A.

5. We have heard the learned counsel for the parties and have perused the records.

6. The facts of the case are agreed upon by the parties. However, we find it inexcusable that a person undergoing disciplinary action was considered for promotion merely due to a "clerical mistake". The respondents in first allowing the applicant to participate in the promotion formalities, sending him for training and then summarily cancelling his promotion have displayed the kind of casual attitude that is not expected from a model employer. Coming to the basis of their action, the respondents have taken recourse to the provision of RBE letter dated 21.01.1993. It is seen that this letter relates to the promotion of railway servants who are under suspension or against whom departmental proceedings/prosecutions have been initiated not against who are undergoing a penalty. Para 3.1 reads as follows:-

"3.1.

Such a Railway servant shall not be promoted even if already borne on a selection panel /suitability list till after the results of the proceedings against him are known. There is, however, no objection of promote him if he is not under suspension and the proceedings already imitated are for the imposition only a minor penalty."

J.Chandha

7. This letter does not relates to an employee who is undergoing a penalty imposed after a disciplinary action. Be that as it may, in view of the fact that the respondents have considered the applicant for promotion and he has undergone the training, we deem it just and proper to deal with this case as incorporate in para 3.6 of the said guidelines which reads as follows:-

“3.6

If such a person as aforesaid is held guilty and awarded one of the major penalties of reduction of lower time scale of pay/grade etc. or reduction to lower stage in the time scale of pay, his case should be referred to the authority which approved the original selection panel/suitability list for consideration whether he is suitable for promotion inspite of the penalty imposed on him. If he is considered suitable for promotion, his case for promotion and fixation of pay etc. should be dealt with in the same manner as that of a person who is awarded a minor penalty as indicated above.”

8. In view of the above, the OA is partly allowed. The impugned order no. सं. ई/11/254/गार्ड ग्र०/चयन/०७ dated 01.08.2008 is hereby quashed. The matter is remanded back to the respondents for taking a final decision in terms of para 3.6 of the guidelines dated 21.01.1993 within 3 months of receipt of a copy of this order. No order as to costs.

J.Chandra
(Ms. Jayati Chandra)
Member (A)

Navneet Kumar
(Navneet Kumar)
Member (J)

Amit/-