

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Reserved on 21.04.2014.

Pronounced on 29th May 2014.

Original Application No.120/2009

Hon'ble Mr. Navneet Kumar, Member (J)

Hon'ble Ms. Jayati Chandra, Member (A)

Baba Din Choudhary, aged about 61 years, Son of Shri Bhawani Prasad Choudhary, Resident of 5/1118, Viram Khand-5, Gomti Nagar, Lucknow.

-Applicant.

By Advocate: Sri Raj Singh.

Versus.

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. The Director/Estt. (Sports), Ministry of Railways, Railway Board, New Delhi.
3. The Divisional Railway Manger, Northern Railway, Lucknow Division, Lucknow.
4. The Officer on Special Duty, North Central Railway. Allahabad.

-Respondents

By Advocate: Sri S. Verma for Sri Anil Srivastava.

Sri B.B. Tripathi for Resp.No.1,3 and 4.

ORDER

By Ms. Jayati Chandra, Member (A)

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, seeking the following relief(s):-

- (i) This Hon'ble Tribunal may kindly be pleased to quash the impugned order dated 07.03.2000 passed by the respondent no.2 so far as it relates to the date of posting only contained as Annexure No.A-1 to this O.A.

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- (ii). To direct the respondents to treat the applicant promoted on the post of Assistant Sports Officer w.e.f. 18.09.1997 instead of 07.03.2000.
- (iii). To direct the respondents to make payment of difference of salary to the post of Assistant Sports Officer from Divisional Chief Inspector (Ticket) w.e.f. 16.6.1998 till 05.04.2000 and also to fix pay etc. at par with his juniors, who have been promoted earlier by the same order dated 27.08.1997.
- (iv). To direct the respondents to revise retrial dues of the applicant including pension treating the applicant promoted on the post of Assistant Sports Officer w.e.f. 18.09.1997, the date when juniors to the applicant have been promoted.
- (v). To pass such other order which are found just fit and proper under the circumstances of the case.
- (vi). To allow the Original Application with cost."

2. The facts of the case, as averred by the applicant, are that the applicant since his joining service in 1973 had worked on various posts after getting promotion. While working as Divisional Chief Inspector of Ticket (DCIT) in the Northern Railway (N.R.) he appeared for the selection to the post of Assistant Sports Officer, which is a Group-'B' post. He was declared successful through an order dated 27.08.1997 (Annexure-2) having topped in the list. The operative portion of the said order reads as follows:-

"The following promotions are ordered with effect from the date the incumbents take charge of the ex-cadre, tenure posts of Assistant Sports Officers."

3. The applicant was posted to N.C.R., Allahabad against a post to be provided by Officer on Special Duty, Allahabad. The applicant gave his joining report in NCR, Allahabad on 18.09.1997 (Annexure-4) but, he was not allowed to join and correspondence went on between N.C.R. and Railway Board regarding availability of a post

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to accommodate the applicant in the pay-scale to which he has been promoted.

4. The status of interim cones-dependence is as follows:-

A letter was issued on 23.03.1998 (Anneuxre-7) by Respondent No.4 to Respondent No.2 with a request to transfer one post to NCR to accommodate the applicant on the post of Assistant Sports Officer.

5. Respondent No.2, by his letter dated 22.05.1998 with the concurrence of Finance Directorate of the Ministry of Railways sanctioned the creation of a work charged post in scale of Rs.7500-11500/- to enable posting of the applicant as Assistant Sports Officer. The copy of clarification dated 22.05.1998 is annexed at (Annexure-8). Despite the sanction so given Respondent No.4 vide letter dated 16.6.1998 (Annexure-9) informed the Respondent No.3 that there is no possibility of creating work charged post to enable the posting of the applicant as Assistant Sports Officer in N.C.R., Allahabad. Thereafter, in compliance of the order dated 16.6.1998, the applicant reported for duty on 17.6.1998 to Northern Railway and he was posted on the earlier held post of Divisional Chief Inspector of Ticket. During the period of 18.09.1997 to 17.6.1998 he did not received any salary from North Center Railway (NCR) where he had giving his joining in compliance of his promotion order or form Northern Railway (NR) from where he stood relieved. Respondent No.3 (Northern Railway) sought some information from Respondent No.4 (NCR) by letter dated 9.9.1998 (Annexure-10) under what

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authority the applicant was kept for waiting for orders w.e.f. 18.09.1997 to 17.6.1998 so that salary matter could be shorted out. The applicant preferred several representations for payment of back salary and posting as Assistant Sports Officer.

6. Feeling aggrieved by the continued non-payment of salary the applicant filed an O.A.No.244/2001 before this Tribunal, which was decided by this Tribunal vide order dated 3.09.2008. The relevant portion of the order reads as follows:-

“In our considered view, once the applicant has been transferred on promotion and has reported on duty, whether a post to accommodate him was available or not, it was incumbent upon the respondents i.e. Railway Authorities to have immediately called him by an order issued in black and white. Having failed to do so, the applicant could not have joined the place from where he has been transferred. Accordingly, non-working period of the applicant is not his fault rather a mistake on the part of the Government not to issue any order. Resultantly, OA is allowed. Impugned order is set aside. Respondent are directed to pay to the applicant the salary for the period 18.09.1997 to 16.6.1998 with all admissible allowances within the period of three months from the date of receipt of a copy of this order. No costs.”

7. Ultimately, the Respondent No.2 issued a letter dated 07.03.2000 to the Respondent No.1 for promotion of the applicant as Assistant Sports Officer from the date of joining against a post to be made available by Northern Railway.

8. The present OA has been filed seeking direction to treat his promotion as Assistant Sports Officer as being effected from the date of having given his joining report (i.e. on 18.09.1997) in Northern Railway in compliance of promotion order dated 27.08.1997 and for payment of

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difference in salary and re-fixation of his pension accordingly.

9. The respondents have contested the claim of the applicant through their Counter Reply, stating therein that the applicant did not approach the Secretary to Officer on Special Duty (OSD), North Central Railway, Allahabad (Respondent No.4) on being relieved but have conceded that he could not be allowed to join as no post of Assistant Sports Officer was available to accommodate him (para-5 of CR) and he was verbally directed to report back at Northern Railway. Thereafter Respondent No.4 vide letter dated 16.6.1998 wrote a letter to the Respondent No.3 due to non-availability of the post and no post of Junior Scale/Group 'B' was available for him, as such, it was not possible to accommodate the applicant on the post of Assistant Sports Officer, North Central Railway, Allahabad. As he was not getting any salary, the applicant reported back for duty in his parent cadre in Northern Railway, Lucknow on 17.6.1998 and resumed his duty on the post of Divisional Chief Inspector of Tickets.

10. Ultimately, the Railway Board vide order dated 30.09.1999, approved the promotion of the applicant on the post of Assistant Sports Officer in Northern Railway, Lucknow against the post to be made available by the Northern Railway. The respondents have also submitted that the O.A. is not maintainable before this Tribunal and also suffers from non-joinder of necessary parties inasmuch as though he claimed promotion on the post of Assistant Sports Officer w.e.f. 18.09.1997 over his

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juniors but no alleged juniors have been impleaded as party to the OA. They have further stated that as the applicant did not join or was not allowed to join his duties as Assistant Sports Officer in North Central Railway, Allahabad due to want of vacancy and has reported back for his duty in his parent cadre in Northern Railway, Lucknow on the post of Divisional Chief Inspector of Ticket and worked on that post till he was promoted by the Railway Board to the post of Assistant Sports Officer by its order dated 07.03.2000, as such, he is not entitled for any relief as claimed in this OA and he would be entitled for his promotion on the post of Assistant Sports Officer only w.e.f. 07.03.2000.

11. Further, all persons posted as Assistant Sports Officer have been posted to different Zonal Railways, as such, no one is considered junior or senior to other as there is no combined All India Seniority List. It is also stated on behalf of the respondents that while forming the panel of Assistant Sports Officer in the year 1996 and 1997, there were no clear cut vacancies available for the post of Assistant Sports Officers and it was left open to the individual Railway/Unit where the selected Assistant Sports Officers were posted to provide them a Group 'B' post by adjustment or through creating work-charged posts.

12. The applicants have filed their Rejoinder Affidavit stating more or less same things as earlier stated by them in the OA.

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13. We have heard the learned counsel for both the parties and perused the entire material available on record.

14. The issue of conduct of the applicant and the salary etc payment already decided by order dated 30.09.2008 passed in O.A.No.244/2001. The sum and subsistence of the order is that the salary of the period 18.9.1997 to 16.6.1998 be paid to him. The salary so paid has been equal to the post earlier held by him that is of DCTI. This order has ^{not} been challenged and has therefore gained finality.

15. The issue to be looked at in the present OA is that is the applicant entitled to the full benefit of the promotion order dated 27.08.1997 in compliance of which, he was duly relieved and reported for joining to the designated place of posting. The order of promotion dated 17.6.1997 reveals that out of 11 posts, at least 8 posts were to be identified by the department concerned. None of them reported any difficulty in complying with the same. It was not the responsibility of the applicant to ascertain whether a post was available or not. He was merely required to comply with an order. If there was any difficulty, the NCR could have requested their counterpart to delay relieving the officer or have requested to Ministry of Railways through the issuing officer for cancellation /deferment of the same. The facts of the careless attitude of the respondents have been commented upon in O.A. No.244/2001. So we refrain from any further comment. But, we are constrained to note that sanction for creation of a post of Assistant

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Sports Officer was granted to Respondent No.4 by Respondent No.3 by letter dated 22.5.1998, which reads as follows:-

"In view of the fact that the Estimate for New Zone (N.C.R.) has since been sanctioned, North central Railway as a special case, may create one workcharged post in scale Rs.7500-11500 to enable posting of Shri Babadin Choudhary as Assistant Sports Officer, under powers vested with Officer on Special Duty, North Central Railway, against the said estimate."

This issue with the concurrence of Finance Directorate of the Ministry of Railways."

It is not understood why this was not acted upon.

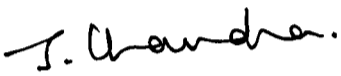
16. Had the same been acted upon, a post of Assistant Sports Officer could have been available from May/June, 1998.

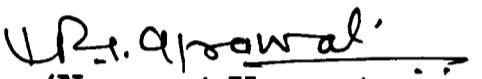
17. It is not denied that there is no question of supersession by junior persons as the Assistant Sports Officer is a Zonal post and not an All India post. However, the perception of being equal stems from a common order which has also been passed after holding of special screening /selection process. The applicant was subjected to the same process as many other who may have applied. Only 11 persons were selected, 8 out of them were posted under the same condition as the applicant that is "against a post to be made available" by redeployment/adjustment/creation. Only this person was not given the benefit similar to other through no fault of his own. Therefore, it becomes a case of adverse discrimination amongst equally placed persons.

18. Hence, the matter is remanded to the respondents to issue revised order granting the applicant notional

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promotion to the post of Assistant Sports Officer with effect from his dated of his initial joining at NCR i.e. on 18.09.1997. As the applicant has already been superannuated his pension be fixed accordingly. The arrears of salary so fixed for the period he has actually worked as Assistant Sports Officer is also to be paid to him. The aforesaid exercise shall be completed within a period of four months from the date of receipt of the copy of this order. No order as to costs.


(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

Amit/-