

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Reserved on 19.05.2014.

Pronounced on 30.05.2014.

Original Application No.191/2009

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

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

Vinod Kumar Mishra, aged about 56 years, son of Late Sri J.P. Mishra, resident of 3/23, Vivek Khand, Gomti Nagar, Lucknow [presently working as Chief Parcel Clerk in Northern Railway, Charbagh, Lucknow].

-Applicant.

By Advocate: Sri P.K. Singh.

Versus.

1. Union of India, through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager (Personnel), Northern Railway, Lucknow Division, Lucknow.
3. Senior Divisional Commercial Manager, Northern Railway, Lucknow Division, Lucknow.
4. Divisional Commercial Manager, Northern Railway, Lucknow Division, Lucknow.

-Respondents.

By Advocate: Sri S. Verma.

O R D E R

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):-

(a) issuing/passing of an order of direction to the respondents to open the result of the applicant in the matter of selection for promotion to the post of Booking Supervisor/Parcel Supervisor/Coaching Supervisor in the scale of Rs.5,500-9,000 on the basis of written test held on 28.07.2007 and

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04.08.2007, ignoring the charge sheet dated 24.01.2002 (Annexure No.A-6 to the original application) and if successful to promote him to the said post with effect from the due date with all consequential benefits and to pass appropriate orders within a specified period of two months.

(b) issuing/passing of any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(c) allowing this Original Application with cost."

2. The brief facts of the case are that the applicant was appointed on the post of Coaching Clerk/Assistant Parcel Clerk in Northern Railway during the year 1980. In October, 1983, the applicant was deputed to work as Relief Coaching Clerk/ Enquiry-cum-Reservation Clerk at Charbagh, Lucknow. He was placed under suspension vide order dated 22.08.1986. After a long period of enquiry the matter was concluded by an order of disciplinary authority passed on 07.02.1995 awarding the penalty of "severe warning" to the applicant (Annexure-2). Based on the same charge, a charge sheet dated 18/27.10.1995 was issued against the applicant. The applicant filed O.A.No.665/1995 before this Tribunal, which was allowed by judgment and order 18.11.2003 (Annexure -4). The operative portion of the order reads as below:-

"The position herein is identical. Pertaining to the same assertion about blank paper tickets, earlier the applicant had been proceeded departmentally and given warning to the applicant. The said order has become final. On the same allegation, another Departmental proceedings therefore, would be totally uncalled for. In face of this particular fact, it becomes unnecessary to ponder with any other controversy and accordingly proceedings purported to initiate against the applicant are quashed. However, we make it clear that nothing said here is expression of opinion with

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the respect to the criminal litigation against the applicant."

3. Despite the fact that there was no order of recovery order against him, a monthly recovery of Rs.2500/- was commenced from the salary of the applicant from March, 1998. The applicant made a representation to the competent authority on 13.04.1998, seeking the copy of the order by which the said recovery had been ordered. However, not getting any reply, he filed O.A.No.220/1998. The O.A.No.220/1998 was dismissed vide order dated 17.02.2006. Thereafter, the applicant has filed Writ Petition No.347 (SB) of 2007 before the Hon'ble High Court, which is still pending. During the pendency of this OA, the applicant was served with third charge-sheet dated 24.01.2002, on the charges that the applicant did not deposited Rs.1,43,775/- collected by way of sale of tickets. This charge was not only illegal, but not correct as an amount of Rs.1,15,000/- had already been recovered from the applicant without there being any recovery order. Moreover, the charges prima-facie pertain to the same period of working for which charges were issued against him by first charge-sheet dated 06/21.08.1986. The applicant gave his reply to the competent authority mentioning the above fact by his letter dated 28.08.2002 and by a second reply dated 05.07.2004. However, nothing has been said by the respondents so far. During the pendency of O.A.No.220/1998 an FIR was also lodged by C.B.I. in respect of the same misconduct i.e. of defrauding the Railway Administration for allowing the fictitious refund of 53 Blank Paper Tickets causing loss to the tune of Rs.1,63,567/-. In pursuance of which the investigation

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was made and the prosecution was launched in the Court of Special Judge Anti Corruption, U.P. (Central), Lucknow against which the applicant filed Criminal Revision No.60/2000 and the Hon'ble High Court has stayed the Criminal proceedings by its interim order dated 08.03.2000 (Annexure-5).

4. A written test for selection to the post of Booking Supervisor etc. in the pay scale of Rs.5500-9000 against 75% promotion quota was held on 28.07.2007 and 04.08.2007. The applicant had participated in the same. Vide letter dated No.E/6-5 BS/ PS/ CS/ PQ/07 dated 27.08.2007, it was informed to the applicant that he was qualified for further assessment. His name was placed at Serial No.49 of the successful candidates as annexed at (Annexure-9). The applicant attended the Training at Zonal Railway Training Institute, Northern Railway, Chandausi from 21.09.2007 to 05.11.2007. He has successfully completed training as per (Annexure-10) dated 05.11.2007. By letter dated 04.01.2008 (Annexure-11) a Provisional Panel for the post of Booking Supervisor etc. was notified. However, the applicant although, he had figured in the earlier list of those, who had successfully completed the training does not figure in the same. He made a reference to the department seeking to know the cause of his omission from the list and he was intimated by letter dated 01.02.2008 (Annexure-15) that his case has been kept under sealed cover as certain SF-5 (Vig) was pending against him. He submitted further representation dated 13.02.2008 for opening of sealed cover and grant of promotion to him. He learnt through the mechanism of Right to Information Act, 2005 about

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the charge-sheet dated 24.02.2002. But, as the same was pending for final decision his matter was kept hanging. The applicant has clarified before the competent authority that he was given charge sheet dated 24.01.2002 not 24.02.2002 and that he had given his reply. But, nothing has been heard about his reply till date. Basically, the applicant therefore submitted that he has been constantly harassed to file his reply to the charge-sheet arising out of same allegations during his tenure in 1985 at Charbagh, Lucknow and the disciplinary authority has exonerated him from all the charges while giving him a warning for future. Moreover, without justification and without following proper procedure, a huge sum of money has been recovered from his salary. The matter of recovery has been challenged by him in Writ Petition No.347 (SB) of 2007. Moreover, the CBI case against him has been stayed by the Hon'ble High Court vide its order dated 08.03.2000.

5. The respondents have filed their Counter Affidavit and Short Counter Affidavit in which firstly they have denied the claim of the applicant while admitting that the applicant was served with first charge sheet, which has resulted in warning being passed against him by competent authority. The second charge-sheet for causing a loss of Rs.1,63,657/- to the railway administration has been quashed by the order of the Tribunal passed in O.A.No.664/1995. The recovery has been affected against the applicant, which was challenged by him in O.A.No.220/1998, which was dismissed by judgment and order dated 17.2.2006 and against which the applicant had filed a Writ Petition

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No.347 (SB) of 2007. The mater is still pending. A FIR was lodged by CBI against the charges of defraud against which the applicant filed Criminal Revision No.60/2000 before the Hon'ble High Court and the same has been stayed by an order dated 08.03.2006. They have confirmed that applicant had appeared in the selection of Booking Supervisor under 75% promotion quota and he also attended the training at Zonal Railway Training Institute, Northern Railway, Chandausi. However, he was not included in the Provisional Panel drawn-up for promotion to the said post as there is no clearance certificate from the vigilance department. As such his case has been kept in sealed-cover. The respondents further informed that the charge-sheet No.VIG-C-Les-2001-303 dated 24.01.2002 has been cancelled. This was informed to him by Vig. Letter dated 20.05.2011. Moreover, due to dropping of the charge-sheet the sealed-cover kept in the matter of financial up-gradation under MACP Scheme had been opened and the applicant has been found fit for grant of IIIRD Financial Up-gradation in the pay Band Rs.9300-34,800 with Grade Pay of Rs.4600/- under MACP Scheme w.e.f. 01.09.2008. Therefore, they have prayed for dismissing the OA as nothing survives in the OA now.

6. The applicant has filed his Rejoinder Affidavit stating more or less same things as earlier stated by him in his OA.

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

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8. As the respondents have clearly stated that the charge sheet dated 24.01.2002 has been cancelled and that they have opened the sealed cover with regard to the case of the Financial Up-gradation under the MACP Scheme. This being the case there is no reason why they should not open the sealed cover kept in the matter of promotion to the post of Booking Supervisor under the 75% promotion quota. The respondents are therefore, directed to open the sealed cover and proceed in accordance with relevant rules and guidelines in case he is also selected for promotion under 75% promotion quota as he has been cleared for financial up-gradation under the IIIrd MACP Scheme. The above exercise shall be completed within a period of three months from the date of receipt of copy of this order. No order as to costs.

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

Navneet Kumar
(Navneet Kumar)
Member (J)

Amit/-