

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH.

Lucknow this the 15th day of November, 94.

O.A. No. 335/91.

HON. MR. V.K. SETH, MEMBER(A)

HON. MR. D.C. VERMA, MEMBER(J)

M.K.Chakravorty, son of late J.C. Chakraverty, aged about 51 years, Loco Foreman, Northern Railway, Lucknow and resident of ID-110/B, Marriat Road, Alambag, Lucknow.

Applicant.

By Advocate Shri V.D. Shukla.

versus

Union of India through General Manager, Northern Railway Headquarters office, Baroda House, New Delhi

2. The General Manager, Northern Railway, Head quarter Office, Baroda House, New Delhi.

3. The Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.

4. Sri K.C. Banerjee, Asstt. Mech. Engineer, N. Railway, Diesel Loco Shed, Lucknow through D.R.M.N. Railway, Lucknow.

5. Sri Gur Charan Singh, Asstt. mech. Engineer, D.R.M. Ofice, N. Railway, Ambala through G.M. N.R., Baroda House, New Delhi.

6. Sri D.S. Bhati, Asstt. Mech. Engineer(DSL), N. Rly. Headquarters Office, Baroda House, New Delhi through G.M., N.R. Baroda Hosue, New Delhi.

7. Shri N.N. Singh, Asst. Mecha. Engineer, N.Railway, Jodhpur Divison, through G.M. , N.R. Baroda House, New Delhi.

8. Sri Sat Pal, Asstt. Mech.Engineer (Fuel), N. Rly. Headquarter Office, Baroda House, New Delhi.
9. Sri D.V. Arora, Asstt. Mech.Engineer, N.Rly. D.R.M. Office, Lucknow.
10. Sri Rammchet Singh, Asstt. Mech.Engineer, N. Rly., Varanasi through D.R.M. N. Rly, Luckow Division, Hazratganj, Lucknow.
11. Sri H.K. Mathur, Asstt. Mech.Engineer, N. Rly. Diesel Shed, Moghal Sarai, C/o Senior Divisional Mechanical Engieneer (DSL) Moghal Sarai, through D.R.M. N. Rly, Luckow.
12. Sri B.L. Srivastava, Asstt. Mech. Engineer, Diesel Shed, Ludhiyana, through G.M. N.Rly. Headquarter office Baroda House, New Delhi.
13. Sri V.K. Asthana Asstt. Works Manater, Loco Workshp,s Charbagh, Lucknow c/o Chief Works Manager, Lucknow through General manager, Northern Railway, Headquarter Office, New Delhi.
14. Shri S.K. Wadhawan, Asstt. mech.Enginer (Diesel) N. Rly. Tuglakabad c/o Senior Divisional Mechanical Engineer, Diesel Loco Shed tuglakabad, through General Manager, N. Railway Headquarters office, Baroda House, New Delhi.
15. Sri V.M. Mahajan, asstt. Mech. Engineer, D.R.M. office, N. Rlu. Jodhpur through G.M. Northern Rly, Hd.Qs. office, baroda House, New Delhi.
16. Sri K.K. Trivedi, Senior F.O.(D) Moghal Sarai, at present working as Asstt. Works Manager(D) Loco Workshop, Northern Railway Charbagh Lucknow through the Chief Works Manager, Northern Railway, Charbagh, Lucknow.

Respondents.

By Advocate Shri Anil Srivastava.

O R D E R

(HON. MR. V.K. SETH, MEMBER (A))

In this O.A. the applicant has prayed for quashing of the order of promotion dated 4.1.91 of Shri K.K. Trivedi to class II services and deem the applicant to be promoted to class II with effect from 4.1.91 with payment of back wages including interest. He further prays that the respondents be directed to place him at serial No. 1 i.e. at the top of panel of class II formed on 3.8.90.

3. The applicant is working as Loco Foreman, Loco Running Shed, Northern Railway. A written test was held on 7.1.89 for promotion from Group 'C' to Group 'B' posts of Assistant Mechanical Engineers but the applicant was not called for the same. The applicant's name was omitted for the Supplementary test as well held on 4.2.1989. Interview for the post of Assistant Mechanical Engineer was held on 13.3.89, 14.3.89 and 17.4.89 and panel was declared on 26.4.89. Another written test was held on 3.3.90, in which the applicant appeared and passed. In the panel dated 3.8.90, prepared on the basis of this test, the applicant's name appeared at serial No. 12. However, on 4.1.91 one K.K. Trivedi whose name appeared at serial No. 13 of the panel was promoted ignoring the applicant. Being aggrieved by the action of the respondents, the applicant submitted number of representations, but to no effect, and has therefore approached this Tribunal.

4. Affidavits have been exchanged between the parties and we have also heard the learned counsel and / the rival contentions.

5. The applicant contends that he was denied chance to appear for the promotion test for no

fault of his but because of the mistake in noting the date of birth which was wrongly noted as 1.1.31 instead of 1941. Another ground advanced by him is that while his junior K.K.Trivedi has been promoted, he has been illegally denied the promotion even though he was neither under suspension nor any disciplinary proceedings has been initiated against him. The applicant also cites rulings in support of his case:

1. (1990) 14, A.T.C., 523.
2. (1993) 23, A.T.C., 322.
3. A.I.R. 1989, S.C. 1133.
4. (1991) 15, A.T.C., 668.

6. While contesting the claim of the applicant the respondents admit that the applicant could not be called to appear in the selection for promotion to the post of Assistant Mechanical Engineer held on 7.1.89, as his date of birth was presumed to be 1.1.31 instead of 1.1.41, on the basis of the entries in the seniority list available. They also state that subsequent Supplementary written test on 4.2.89 was confined to only those candidates who were called, but could not attend the earlier written test held on 7.1.89. Another ground taken is that the applicant did not make any representation regarding his wrong date of birth recorded in the seniority list. They also assert that at the time of applicant's junior was promoted, ~~the~~ disciplinary proceedings for major penalty were contemplated against the applicant. In support of this contention the learned counsel for the respondents cited the Railway Board Instructions of 1971-72 and

V.S.

1974, copy of which was also furnished.

7. It is not disputed by the respondents that the applicant was denied the opportunity of appearing afor the promotion test to class II on account of his date of birth being wrongly noted as 1.1.1931, as according to this date of brith the applicant would have already superannuated when the test was scheduled to be held. The contention of the respondents regarding the failure of the applicant to represent soon after the publication of the seniority list loses force in view of the fact that the respondents corrected the dateof birth of the applicant in their service record vide their letter of 2.6.1989 in response to the representationsof the applicant. soon after the promotion test was held in 1989.

8. In (1990) 14, A.T.C.,523, in the case of N. Balasubramanian vs. Union of India where the matter related to group D employee, not being admitted to test for promotion to group 'C' on the ground that group 'C' ~~was~~ the normal avenue of promotion, without test but this assurance was ignored and test held andpersons junior to him promoted. Ernakulam Bench of this Tribunal held that the applicant be permitted to participate in the next test and in case of satisfying minimum standard ~~was~~ be deemed to have been passed in^{the} missed examination to be placed above his juniors who had passed that examination. However, back wages were disallowsed.Similarly in A.I.R. 1989, S.C. 1133, State of Maharashtra vs. J.A. Karandikar,the Supreme Court held that it was unreasonable and arbitrary to penalise the persons for default of government to hold the examination every year.

The above rulings have been cited by the applicant to support his second prayer for placing his name at serial No. 1 i.e. at the top of the panel for promotion to class II formed on 3.8.90 in which he figures at serial No. 12.

9. The other rulings cited by the applicant are relevant for the first relief prayed for by him i.e. his being deemed to be promoted to class II with effect from 4.1.91, when his junior K.K. Trivedi was promoted. In (1993) 23, A.T.C. in the case of Union of India and others vs. K. V. Jankiraman and others their Lordships of the Hon'ble Supreme Court held that sealed cover procedure can be adopted only after issuance of the charge memo/charge sheet or where the employee is placed under suspension. In (1991) 15, A.T.C., 686, Alok Mittal and others vs. Union of India and others, the principal Bench of this Tribunal has held that if on the date of consideration by the D.P.C, no charge sheet/ is yet issued though preliminary investigations revealed serious allegations and the case referred to C.B.I., D.P.C. placing its recommendations in a sealed cover, the action is invalid. It was further held that the fact that the charge sheets were issued on subsequent dates, was not relevant.

10. As against the above rulings, the respondents seek to draw support for their actions from departmental instructions of the Railway Board of 1971-74 mentioned above.

11. During the course of hearing the learned counsel for the respondents pointed out that in this case sealed cover procedure was not adopted as is

clear from the fact that the name of the applicant in the select panel of 1990 without any remarks against his name, but that the applicant was denied promotion as a decision to initiate disciplinary proceedings against him for major penalty had been taken. He therefore, contended that the rulings cited by the applicant dealing with sealed cover procedure were not relevant to the case of the applicant.

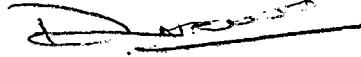
12. While it is true that the rulings cited by the applicant deals with a slightly different aspect, the fact remains that the subject matter of these rulings is basically the same viz. the effect on promotion of disciplinary proceedings initiated or suspension ordered subsequent to the date when an employee is being assessed for promotion. We have therefore, no hesitation in holding that the same principle will apply in the present case, as the charge sheet was served on the applicant on 4.12.91 i.e. long after the due date 4.1.91. There was, as a consequence, no justification for denying the applicant promotion on 4.1.91.

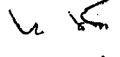
13. In view of the foregoing discussions we order that:

- i) that the applicant will be deemed to have been promoted to class II with effect from 4.1.91 when his immediate junior Shri K.K. Trivedi was promoted, with consequential benefits including the arrears of pay and allowances as also interest at admissible rate on the said arrears.
- ii) the respondents are directed to place the applicant at serial No. 1 i.e. at the top of

the panel for promotion dated 3.8.1990.

14. The O.A. is disposed of as above. No order as to costs.


MEMBER (J)


MEMBER (A)

Lucknow: Dated: 15-11-94

Shakeel/