

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A. No.152 of 1996

Date of order 14th 2002

Radha Thakur, son of Late Bibhishan Thakur, village Pahitiya, PO Dharhara, District Vaishali.

.. Applicant
-versus-

1. The Union of India through G.M., N.E.Railway, Gorakhpur.
2. The C.P.O., N.E.Railway, Gorakhpur.
3. The Chief Operating Superintendent, N.E.Railway, Gorakhpur.
4. The D.R.M., N.E.Railway, Sonepur.
5. The D.R.M. (Personnel), N.E.Railway, Sonepur.
6. The Divisional Operating Superintendent, N.E.Railway, Sonepur.

.. Respondents

Counsel for the applicant ... Mr. R.K.Jha

Counsel for the respondents ... Mr. Gautam Bose

PRESENT: The Hon'ble Mr. L.R.K.Prasad, Member (A)

The Hon'ble Mrs. Shyama Dogra, Member (J)

O R D E R

L.R.K.Prasad, Member (A):

This application has been filed seeking following reliefs :



- (a) The respondents be directed to grant promotion to the applicant on the post of Chief Trains Clerk with effect from the date on which the other candidate, who are junior than the applicant, have been granted promotion, i.e. on 22.4.1988.
- (b) The respondents be directed to maintain the seniority of the applicant as per the panel prepared by the Department as contained in Annexure-2 of the O.A.

(c) The respondents be directed to pay the applicant the balance in the pay scale that would be due to him had promotion at proper time ~~been~~ would be granted to the applicant and also pay the difference of pay scale of the period of ~~proforma~~ promotion granted to him of the post of Head Trains Clerk from 6.11.85 to 16.12.87.

2. Heard the learned counsel for the parties.

3. The applicant was appointed to a Railway Non-Technical post at Garhara Railway Station in 1965. He was promoted as Trains Clerk (T.N.C.) vide order No.173 dated 24.6.1980. In the selection panel, the name of the applicant is at serial no.7, whereas Shri Birendra Kumar Singh is at serial no.21 meaning thereby that the applicant in the post of T.N.C. is senior to said Shri Birendra Kumar Singh. On transfer and promotion, the applicant was posted at Sonepur. The applicant was promoted to the post of senior Trains Clerk vide order No.SE 2 dated 22.2.1984 (Annexure-2) and his name finds place at serial no.7, whereas the name of Shri Birendra Kumar Singh is at serial no.9. The applicant had given option for training course when he was not selected. Thereafter, the applicant withdrew his option for Guard's training by application dated 27.9.1985 with the prayer that he should be given promotion in the original cadre on the post of Head Trains Clerk. Thereafter, he was transferred from Sonepur to Narayanpur Railway Station in 1986. It is alleged by the applicant that even though Shri Birendra Kumar Singh and others were junior to him on the post of Head T.C. as on 6.11.1985,

they have been given promotion to higher rank, whereas the case of the applicant has been ignored. It is stated that case of Shri Birendra Kumar Singh was forwarded twice for training course but he withdrew his option in the same manner as the applicant. Therefore, the applicant should have been given promotion to higher rank before the same was granted to Shri Birendra Kumar Singh, who was junior to him and so far withdrawing of option from Guard training was concerned, his case was similar. It is further stated that vide order dated 22.4.1988 (Annexure-4) Shri Birendra Kumar Singh was promoted to the post of Chief Trains Clerk ignoring the case of the applicant, who was senior to him. Not only that, even the persons, who are mentioned at serial no.8 to 12 in the order dated 22.4.1988 are junior to the applicant. Aggrieved by the non-promotion to higher rank, the applicant sent representation to concerned authority pointing out discrimination which has been caused against him by the respondents in the matter of promotion to the rank of Chief Trains Clerk. The applicant, in the meantime, received a letter dated 15.10.1993 (Annexure-6) in connection with next selection test for promotion to the post of Chief Trains Clerk in the scale of Rs.1600-2660 in the light of points mentioned therein. The applicant vide letter dated 23.11.1993 (Annexure-7) was informed with reference to his representation dated 29.10.1993 that he is invited to participate in the next selection test for the post of Chief Trains Clerk. In the meantime, vide letter dated 1.9.1994 (Annexure-8) the applicant was granted proforma promotion in view of seniority on the post of Head Trains Clerk (Rs.1400-1300) from

6.11.1985 to 16.12.1987 but the monetary benefit was granted with effect from 17.12.1987. The applicant has claimed that as his seniority was restored vis-a-vis his junior and was granted promotion as Head Trains Clerk in 1994 with effect from 6.11.1985, he is entitled for monetary benefits for the period from 6.11.1985 to 16.12.1987. He has also claimed that as his junior Shri Birendra Kumar Singh was promoted to the post of Chief Trains Clerk with effect from 22.4.1988, he is entitled for the said promotion from the said date or prior that date. In this regard, the applicant has been filing representations to concerned authority but without any positive result. In support of the relief claimed, the applicant has given reasons as explained in para 5 of the O.A.

4. The above application has been opposed by the respondents on the grounds as stated in the written statement and on the grounds as summarised below:-

(i) The application is barred under Section 21 of A.P. Act 1985, whereas the cause of action arose in 1985, the instant application has been filed in 1996, which is fit to be dismissed on the ground of limitation.

(ii) While the applicant has a right to be considered for promotion but he cannot claim the same as a matter of right.

(iii) The application is fit to be dismissed for non-joinder of necessary party. The alleged juniors to the applicant have not been impleaded as party.

(iv) As the applicant could not succeed in the training course of Guard, he withdrew his option for Guard.

(v) The applicant was given promotion as Head Trains Clerk (Rs.1400-2300) with effect from 6.11.1985 i.e. from the date his junior Shri Birendra Kumar Singh was promoted as Head Trains Clerk and his pay in the scale of Rs.1400-2300 was fixed on proforma basis which is evident from the order as at Annexure-8. As the applicant did not shoulder the duties and responsibility of higher post, he is not entitled for enhanced pay. As per rule, no arrear on this account is payable as he did not shoulder the duties and responsibilities of the higher post.

(vi) Shri Birendra Kumar Singh withdrew his option for Guard after being declared unsuccessful in 1985 and requested his promotion in the original cadre. He was promoted as Head Trains Clerk in accordance with rule. The applicant after being declared unsuccessful in Guard's training course from Zonal Training Centre, Muzaffarpur, requested for such training in another centre, which was rejected (Annexure-6). The applicant alleged in his appeal/representation as under:

"**गवतक** मुख्यरुप से मंत्री अस्ति श्वार श्री त्रिविव
रुपी त्रिवतक वै एकाणक मे शपल गल ही पाप्त

(vii) After considering the facts and circumstances of the case, the applicant was given promotion as Head Trains Clerk with effect from 6.11.1985, the date on which Shri Birendra Kumar Singh was promoted to the said post and the pay of the applicant was fixed on proforma as per rule.

(viii) The post of Chief Trains Clerk is a selection post and the same has to be filled up by positive act of selection as per prescribed rules. After being declared successful in the selection test, Shri Birendra Kumar Singh was promoted as Chief Trains Clerk with effect from 22.4.1988. The applicant was informed vide letter dated 23.11.1993 (Annexure-7) that he would be given opportunity to appear in the next selection test for the post of Chief Trains Clerk. He was asked to appear in the selection test vide letter dated 15.8.1995 but he refused in terms as under:-

“मेरी परीक्षा में शामिल नहीं होती, पहले या पक्षी
आपदा के तुक्का होता होता करता है औ मंसा
महोदय से मीलुग्गा।”

Photo copy of the said letter is at Annexure-B.

(ix) One Shri Nand Lal Singh who was senior to the applicant and he has been promoted as Chief Trains Clerk in the cadre restructuring scheme. This is with reference to para 4.21 of the O.A.

5. In view of what has been stated above, the respondents have denied the allegation of mala fide, discrimination and arbitrariness levelled by the applicant.

6. While challenging the stand taken by the respondents, the points raised by the applicant in the rejoinder are briefly mentioned below:-

(a) The W.S. is misconceived. The cause of action arose in 1995 and not in 1985. The applicant filed O.A. in 1996. Therefore, there has been no delay in filing the instant application.

attracting limitation clause. As the representation of the applicant was not disposed of, the instant application has been filed in 1996.

(b) while his junior Shri Birendra Kumar Singh was given promotion to the rank of Head Trains Clerk and Chief Trains Clerk much earlier, the same was not provided to the applicant due to one reason or another for which the applicant cannot be blamed. It is not his fault that the selection test was not held in time for the post of Chief Trains Clerk. Moreover, he was granted promotion vide order dated 1.9.1994 with effect from 6.11.1985 in the post of Head Trains Clerk (Annexure-8) only in 1994, whereas his junior Shri Birendra Kumar Singh was given the said promotion much earlier whereafter Shri Birendra Kumar Singh was also given promotion to the post of Chief Trains Clerk.

(c) The respondents were allegedly responsible for delay in granting the promotion to the applicant to the post of Head Trains Clerk and as such, the applicant cannot be denied subsequent promotion which has already been given to his junior Shri Birendra Kumar Singh.

(d) while Shri Birendra Kumar Singh was given monetary benefits from 6.11.1985, there is no reason why the same benefit cannot be granted to the applicant as respondents were responsible for the delay caused in granting the applicant

promotion to the post of Head Trains Clerk.

(e) when the selection for the post of Chief Trains Clerk in the scale of Rs.1400-2660 was conducted in February 1987, the eligibility of the applicant along with Shri Birendra Kumar Singh was not considered. It is alleged that this has happened because the respondents wanted to give benefit to Shri Birendra Kumar Singh for promotion to higher grade before the same could be granted to the applicant.

(f) If the respondents were taking impartial line, they could have granted promotion to the applicant to the post of Head Trains Clerk in time so as to enable him to become eligible for selection to the post of Chief Trains Clerk which, however, was not done, as a result of which the applicant was superseded by his junior in the promotion to the post of Chief Trains Clerk.

(g) while challenging the letter of the respondents dated 13.5.1995 (Annexure-10) and letter at Annexure-R, the applicant has pointed out that this kind of selection cannot be said to be a special or supplementary one. The applicant cannot appear along with his junior in such test. The respondents should have arranged special selection test for the applicant so that in the event of his being successful, he could have been given retrospective seniority. As he was asked to appear along with the persons who were very much junior to him, he did not appear in the selection test. The respondents have also not

clarified that if the applicant would have succeeded in the selection test, he would be given retrospective seniority in the post of Chief Trains Clerk.

7. The sum and substance of the argument advanced on behalf of the applicant is that he should be given promotion to the grade of Chief Trains Clerk from the date his junior Shri Birendra Kumar Singh was promoted to the said scale. In other words, either the said promotion should be given to him without any selection test, or a special selection should be organised for the applicant.

8. Before we proceed further, it may be stated that the channel of promotion is Trains Clerk-Senior Trains Clerk-Head Trains Clerk-Chief Trains Clerk. It may be pointed out that the promotion to the post of Chief Trains Clerk is based on selection basis, meaning thereby that this post is selection post and one is required to qualify in the selection test before promotion is granted. In other words, the promotion to the post of Chief Trains Clerk is not based on seniority-cum-merit. On the other hand, it is based on positive act of selection.

9. The respondents have stated that this application is barred by limitation as the instant application was filed in 1996, whereas the cause of action arose in 1985. This line of approach has been opposed by the applicant, according to which, limitation clause shall not apply as the cause of action arose in 1995 and the application was filed in 1996. In view of the stand taken by the applicant in rejoinder to W.S. and the argument advanced on behalf of the counsel for the

applicant, we are inclined to agree that limitation is not attracted in the instant case and the matter has been considered accordingly.

10. Now, we proceed to examine the case on merit in the light of submissions made by the parties and materials on record. While the applicant has filed rejoinder to W.S., he has not rebutted some of the important points which have been made in W.S., in specific terms. If the O.A. is allowed, it is likely to adversely affect one Shri Birendra Kumar Singh and some others, who have already been promoted to the post of Chief Trains Clerk on the basis of selection test, but they have not been made respondents in this case. The applicant has not given satisfactory explanation for not making such persons as respondent in the instant O.A. Moreover, it is admitted fact that the applicant was given opportunity to appear in selection test sometime in 1995 which is clear from letter dated 15.8.1995 (Annexure-R) but he refused to participate in the selection test with the observation that if he is harassed, he will meet the Minister. His statement in this regard is quoted in Annexure-R and referred to in para 4. (viii). ^{above}
If the applicant would have appeared in the said selection test and came out successful, he could have claimed seniority from retrospective date *vis-à-vis* his junior. However, this did not happen because he refused to participate in the selection test. With reference to para 4.21 of the O.A. the respondents have clarified that one Shri Nand Lal Singh, who was senior to the applicant, was promoted as Chief Trains Clerk (para 12 of W.S.). The applicant has not given

any answer to this para in the rejoinder. It is admitted fact that the post of Chief Trains Clerk is a selection post and the same has to be filled up by positive act of selection. Therefore, the applicant cannot claim that he should be given automatic promotion without going through the selection process. When opportunity was given, he refused to participate in the selection test. On the other hand, we find that even though one Shri Birendra Kumar Singh was junior to him as Head Trains Clerk, he was promoted to the post of Chief Trains Clerk on the basis of selection test. Unfortunately, at that time the case of the applicant had not been decided with regard to his promotion to the post of Head Trains Clerk. vide order dated 1.9.1994 the applicant was promoted as Head Trains Clerk with effect from 6.11.1985 (Annexure-9).

11. From the pleadings advanced on behalf of the applicant, we find that the main prayer of the applicant is that he should be given monetary benefits from 5.11.1985 to 16.11.1987 as he was promoted as Head Trains Clerk with effect from 6.11.1985. It is observed that as the applicant did not shoulder the duties and responsibilities of the post during the said period, only proforma promotion was given. Regarding the monetary benefits for the period in question, as stated above, the learned counsel for the applicant has relied on the order of Hon'ble Patna High Court passed in C.W.J.C. NO.4141/97 on 27.11.1998 in the matter of Ranjit Sahay Jamuar & another vs. State of Bihar & others (reported in 1999(1) PLJR page 272). In the aforesaid case

the Hon'ble High court held that where the promotion was denied initially and given subsequently with retrospective effect, the denial of monetary benefits accruing from the promotion is not valid, the concerned employee cannot suffer where it was not due to his fault but due to laches and mistakes committed by the Department. The prayer of the applicant that he should be given monetary benefits of the post of Head Trains Clerk from 6.11.1985 to 16.12.1987 deserves to be examined in the light of observations made by the Hon'ble High Court in the case of Ranjit Sahay ^{Case} Jamuars (Supra). Accordingly, the concerned respondents are directed to consider the prayer of the applicant in the light of observation of Hon'ble High Court and thereafter pass reasoned order in accordance with law in this regard within three months from the date of communication of this order.

12. The other important prayer of the applicant is that he should be given promotion as Chief Trains Clerk when his junior one Shri Birendra Kumar Singh was promoted in 1988. In this regard, it may be pointed out that the post of Chief Trains Clerk is a selection post and one is required to undergo selection test before he is granted said promotion. In the instant case, the applicant was given an opportunity to appear in the selection test but he refused to participate, which is clear from the document at Annexure-R. In our view, the applicant should have appeared in the selection test and thereafter claimed retrospective seniority vis-a-vis his junior in the event of his coming out successful in the selection test. It appears that he was not willing to appear in the selection test along with

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his junior and, as such, he has taken the risk. As the post of Chief Trains Clerk is a selection post, there is no alternative for the applicant but to undergo the selection test in this regard. Accordingly, we feel that a opportunity should be given to the applicant to appear in the next selection test for promotion to the post of Chief Trains Clerk. If he succeeds in the selection test, he can raise the issue of his seniority in the cadre of Chief Trains Clerk thereafter for appropriate decision.

13. This O.A. stands disposed of in terms of directions contained in paras 11 and 12 above.

14. No order as to the costs.

Shyama Dogra
(Shyama Dogra)
Member (J)

L.R.K.Prasad
(L.R.K.Prasad) 1.4.2002
Member (A)