

CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH AT RANCHI.

O.A.NO.: 91/96

Date of decision : ¹²12-MAY-2000.

P.D.Joshi, son of Late Omprakash Joshi, Ex-Goods Clerk, aged about 61 years, residence of Qr. No. C 16A [Type-II], P.O.: Chutia, District : Ranchi [Bihar].

....APPLICANT.

By Advocate : Mrs. M.M.Pal.

Vs.

1. Union of India through the General Manager, S.E.Railway, Garden Reach at Calcutta.
2. The Divisional Personnel Officer, S.E.Rly., Adra Division, District : Purulia.
3. The Divisional Railway Manager,, S.E.Rly., Adra Division, District : Purulia.
4. Divisional Commercial Manager, S.E.Rly., Adra Division, District : Purulia.RESPONDENTS.

By Advocate : Mr. Gautam Bose.

C O R A M
HON'BLE MR. JUSTICE S.NARAYAN, VICE-CHAIRMAN.
HON'BLE MR. L.R.K.PRASAD, MEMBER [ADMINISTRATIVE].

O R D E R

S.NARAYAN, V.C.:- This is an application under Section 19 of the A.T.Act, 1985, praying to quash an order dated, 22nd September, 1995 [Annexure-7], passed by the Divisional Personnel Officer, Adra [Respondent no.2], whereby and whereunder, the promotion orders dated, 11th February, 1994 and 9th August, 1994, issued in favour of the applicant have been cancelled with direction to recover the over-payment already made to him from his Death-cum-Retirement Gratuity after re-assessment.

2. At the very outset, we would like to give the relevant extract of the impugned order dated, 22nd September, 1995 [Annexure-7], which is self-explanatory in context of the relevant fact. The same is as follows:

"Vide the operative portion of judgment of 13.1.94, contained in para-II in O.A.No. 217/93 - P.D.Joshi Vs. UOI & Ors., the

Hon'ble CAT, Patna, directed as under :-

The only relief which the applicant is entitled to in my opinion is that a direction be issued to the respondents to pay to the applicant the arrears of salary and allowances with the increments on the basis of the provisional Fixation stated to have been made subject to a certification by the Accounts Department.

No other relief can be granted to the applicant.

In view of the Hon'ble CAT/Patna's judgment referred above the promotions given to the posts of Sr. GC in scale Rs.1200-2040/- [RP] from 1.1.84 Hd. GC in scale Rs.1400-2300/- [RP] from 1.1.84 and GS in scale Rs.1600-2660/- [RP] from 1.3.93 under this office D.O. No.P/Comml/G/12/94 dated, 11.02.94 and P/Comml/G/70/94 dated 9.8.94 respectively are held to be undue and irregular and as such the said promotion orders are hereby rescined rendering your status from the date of your reinstatement till retirement to GC in scale Rs.975-1540/- [RP]. Consequently, your basic pay in this grade as on 7.7.93 @ Rs.1180/- will remained fixed till your retirement due to implementation of punishment for stoppage of your next increment for 2 [Two] years with cummulative effect as imposed vide Sr. DCM/ADA's Punishment Notice No.C-190 dated, 04.9.92. All the retiral benefits payable to you are liable to the determined on the basis of your last Basic pay @ Rs.1180/- of GC in scale Rs.975-1540/- [RP] and the over-payment already made to you on account of undue and irregular promotions as mentioned above will be recovered from your DCRG after re-assessment." [Emphasis added].

[as above], that the orders of promotion were rescined pursuant to interpretation of our earlier order dated, 13th January, 1994, only to comply with the order of this Tribunal passed on 13th January, 1994, in the earlier OA 217/93.

4. Therefore, the only pertinent question which arises for consideration is whether, our earlier order dated, 13th January, 1994, passed in OA 217/93, has been correctly understood and interpreted by the respondents so as to go for rescinding the orders of promotion already given to the applicant ?

5. In order to answer the above question, it has to be first pointed out that prior to the order passed in OA 217/93, there was yet another OA filed by the present applicant before this Tribunal which was numbered as OA 39/89, and the same was decided by a Division Bench of this Tribunal by an order dated, 16th January, 1990, passed therein. Both the earlier OAs i.e., OAs No. 39/89 & 217/93, as also the present one, centres around the effect of disciplinary proceeding initiated against him resulting into penalty of removal from service which ultimately, also affected his claim of salary as also the promotion which had fallen due during the relevant period. We, therefore, find it useful to give the gist of both the earlier orders as also the over-riding effect of the first one which would enable to appreciate the real impute of the order passed in OA 217/93.

6. By the order dated, 16th January, 1990, of the Division Bench of this Tribunal, passed in OA 39/89, the penalty of removal from service inflicted upon the applicant in the disciplinary proceeding, was

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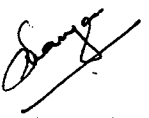
quashed and the respondents were directed to reinstate the applicant in service forthwith and also to allow consequential benefits, excepting the pay during the period while he was out of service. The expression used in the order allowing consequential benefits to the applicant, in our opinion, did include the claim of his promotion to which he might be entitled considering his seniority in the cadre. We would appreciate, that on such an interpretation the order dated, 16th January, 1990 in OA 39/89, the respondents did pass an order dated, 9th August, 1994 [Annexure-5], giving promotion to the applicant keeping regard his seniority over the junior one, Shri Chakraborty, already promoted w.e.f. 1st January, 1984.

7. Now, coming to the subsequent order of this Tribunal passed on 13th January, 1994, in OA 217/93 [Annexure-3], we would say, that this was an order passed by a Single Bench and that being as such, it would not have the over-riding effect on the earlier order dated, 16th January, 1990 [Annexure-1], which had been passed by a Division Bench of this Tribunal. Apart from this, on perusal of the order dated, 13th January, 1994 of OA 217/93 [Annexure-3] on the whole, we find nowhere mentioned or even indicated that the applicant would not be entitled to the promotion which had fallen due to him because of some juniors to him having been promoted. The issue of promotion was not under consideration before this Tribunal while dealing with OA 217/93 and in that view of the matter also, there was absolutely no reason to exclude the applicant's claim of promotion consequent upon the removal of the punishment order and his reinstatement in service. It

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was only in context of fixation of pay-scale with due increment as also the payment arising out of revision of scale from time to time, that there was a necessity for the applicant to come-up for the second time through OA 217/93 so as to enforce the earlier directions given in the order of the Division Bench of this Tribunal in OA 39/89 [Annexure-1]. Therefore, in perspective of this aspect of the matter involved, the Single Bench of this Tribunal gave a direction to the effect that "the only relief which the applicant was entitled to [in my opinion], is that a direction be issued to the respondents to pay the applicant the arrears of salary and allowances with the increments on the basis of the provisional fixation said to have been made subject to certification by the Accounts Department." With this observation the OA 217/93 was dismissed. Therefore, the above order, passed in OA 217/93 does not say, nor does it mean by any implication, that the applicant would not be entitled to the promotion which had been given through the respondents order dated, 9th August, 1994 [Annexure-5]. We would say, that this order has been mis-understood by the respondents authorities and that has resulted into passing the impugned order dated, 22nd September, 1995 [Annexure-7], which, in our considered opinion, was not sustainable in law.

8. For the reasons, aforesaid, this OA must succeed and, accordingly, it is allowed. The impugned order dated, 22nd September, 1995 [as contained in Annexure-7], is hereby quashed. The respondents are, therefore, directed to issue an appropriate order in regard thereto forthwith, with all consequential



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benefits arising out of it. There shall be, however, no order as to costs.

12.5.2000
[L.R.K.PRASAD]
MEMBER [A]

SKJ

12.5.2000
[S.NARAYAN]
VICE-CHAIRMAN