

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH

O.A.NO.14/2006

Date: 5th October, 2007.

CORAM:

HON'BLE MR.JUSTICE P.K.SINHA, VICE CHAIRMAN
HON'BLE MR.AMIT KUSHARI, MEMBER(A)

D.D.Jha, son of late K.L.Jha, C/o Janki Niwas,
Mithapur, B Area, Patna-1. Applicant

By Advocate: Sri M.M.P.Sinha

vs.

1. The Union of India through the General Manager
E.C.Railway, Hazipur.
2. The Divisional Railway Manager, E.C.Railway,
Danapur, P.O. Khagaul, District-Patna.
3. The Senior Divisional Personnel Manager,
E.C.Railway, Danapur, P.O.- Khagaul, District-Patna. Respondents

By Advocate: Sri S.K.Singh

ORDER

JUSTICE P.K.SINHA, V.C.:-

The applicant has prayed in this application for issuance of a direction to give him promotion with effect from 2001 when he had become ripe for promotion but was not granted such promotion as a proceeding was pending against him, but his juniors were promoted. Further prayer is to fix his salary on such promotion and, giving him due annual increment, to fix his pension accordingly, the applicant having been retired

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from service with effect from 30.6.2004.

2. Certain facts are not in dispute. The applicant in the year 1996 while working as T.T.I was invited to appear in the written test for promotion to the post of Chief Inspector, Tickets in the higher scale of Rs.6500-10500. He was declared successful in the written test vide Annexure A1. He was then called for viva voce test by letter dated 4.6.1997.

3. In the meantime, in July 1997 a vigilance enquiry was initiated against him and, as claimed, he was not promoted because of that enquiry. Admittedly at that time he did not come before this Tribunal. Further case is that in February, 2000 he again was called to appear in the selection test for the post of C.I.T. in the scale as above. He again was successful in the written examination and was called for viva voce test.

4. In the year 2001 a charge-sheet was issued to him based on the enquiry report and because of disciplinary proceeding he was again not promoted though he was successful.

5. The applicant claims that based on the result of the departmental proceeding, in March 2004 he was punished with downgrading of his pay by one stage in the time scale of pay for three months. After expiry of that period of three months he was promoted as C.I.T. by office order dated 10.6.2004 and 20 days thereafter he superannuated.

6. The argument on behalf of the applicant is that since he was awarded a minor penalty, he should have been promoted not from the date of his undergoing the punishment, but from the date he was due for promotion.

7. The respondents have claimed, in their written statement that the first time the applicant had appeared in the selection test, ^{but} he had failed in viva voce (in the year

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1997), hence he was not selected. It has been claimed that the first time he was not selected not on account of any enquiry pending against him.

8. The respondents have admitted that in February,2000 the applicant was found successful in the selection test for the post of C.I.T. But due to pendency of vigilance and DA case against the applicant, he was not granted promotion. It has been admitted that the applicant was awarded punishment as claimed in the application, that is, a minor punishment. It has also been pointed out that the applicant did not choose to make an appeal against the punishment.

9. The learned counsel for the respondents has relied upon a Division Bench decision of this Tribunal, dated 20.4.2005, recorded in O.A. 540 of 2003(Bishnu Kumar Neogi vs. Union of India & Others).

10. In that case the applicant was a Junior Engineer in the Railway and had undergone a departmental proceeding with a major penalty Memorandum of Charges in which the Enquiry Officer had held that the charges 1 and 2 were not proved. While the proceeding was pending, the applicant had applied for the post of Section Engineer (Tele) in the higher scale of Rs. 6500-10500. Since the proceeding was pending, the respondents while notifying the promotion of suitable candidates had kept the findings of the DPC in sealed cover.

11. However the Disciplinary Authority disagreed with the findings of the Enquiry Officer and issued show-cause to the applicant against punishment, which he filed. Ultimately, the Disciplinary Authority imposed a minor penalty and the appeal against that was also dismissed.

12. A question arose in that case as to from which date the promotion of the applicant should have been given, from the date when he became ripe for promotion, or after he had undergone the punishment.



13. We find it convenient to reproduce the findings of this Tribunal in that case from para-3, onwards, which are as follows:-

“3. The moot question as has been argued before this Tribunal was whether the promotion, in the circumstances, of the applicant could have been withheld when the penalty imposed was to be effective from a date subsequent to the date of consideration of his promotion. This application was filed for issuance of a direction to the respondents to open the sealed cover and declare the result in case the applicant has been found successful for his promotion, as aforesaid.

4. Reliance by the learned counsels for both the sides has been placed on the Railway Servants (Discipline & Appeal) Rules, 1968. Both the sides admitted that as per Rules and different memorandums issued in this regard, the provision stood as follows (vide Rly. Board’s E(D&A)71 RG 6-23 dated 01.06.1971).

“If a person becomes due for promotion after the finalisation of the disciplinary proceedings and the penalty imposed is one of the following, he would be promoted only after the expiry of the penalty:-

- (i) withholding of promotion;
- (ii) withholding of increment;
- (iii) reduction to lower stage in time scale; and
- (iv) reduction to a lower time scale, grade or post:

Provided that where the penalty imposed is withholding of increment and it becomes operative from a future date, the person concerned should be promoted in his turn and the penalty imposed in the promotion grade for a period which would not result in greater monetary loss. If the penalty imposed is censure, recovery from pay or stoppage of Passes/PTOs, he may be promoted when due.”

5. Learned counsel for the respondents submitted that if an employee became due for promotion and the penalty imposed was withholding of increments he could be promoted only after the expiry of the period of penalty.



Learned counsel has further replied upon a chart containing impact of penalties on promotion in Bahri's Compilation of Railway Servants (D&A) Rules, 1968, 5th Edition at page 103, (as well as the notes at page 88 which, in substance already reproduced above). The compilation at page 103, in obvious reference to General letters relating to Rules 6 & 8, states that if the penalty was withholding of increment, promotion was not to be granted during the period of penalty.

6. We do not find any contradiction in between these two commentaries which obviously relate to same General letter dated 01.06.1971. If a person becomes due for promotion after finalisation of the disciplinary proceeding and if the penalty imposed was withholding of the increment, he could be promoted only after the expiry of the penalty, but it was subject to the condition that where the penalty imposed was withholding of increment and it became operative from a future date, i.e., after promotion had become due, the person concerned should be promoted in his turn and the penalty then be imposed in the promotional grade in a manner that it will not result in a greater monetary loss.

7. Apparently, therefore, if after imposition of such a penalty the employee became ripe for promotion he could not be granted such promotion even if he was found fit for that till the period of expiry of the penalty, but if he became due for promotion before the date from which the penalty was imposed, then such an employee should be promoted in his turn and the penalty imposed in the promotion grade should be so adjusted for a period which would not result in greater monetary loss to the applicant. This also is the averment in para 9 of the written statement wherein it has been averred -"According to the above direction if the promotion of a Railway Servant becomes due after the penalty of withholding of increment or punishment is imposed he should be promoted only after the expiry of the period of penalty." (Emphasis supplied).

8. As in this case, the applicant had become due for promotion much

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prior to the date the order of minor penalty took effect, therefore, he should have been considered for promotion and if found fit, should have been promoted and the penalty should have been adjusted in higher grade."

14. This case is also exactly on the same footing. Simply because for some acts of omissions and commissions in the year 1997, a minor punishment was awarded after seven years, i.e., in the year 2004, ^{that} _{is} no ground to grant promotion to the applicant after the expiry of the period of punishment instead of the date on which he was found fit for promotion in the year 2001, as admitted in the written statement also. This the respondents were obliged to do in view of the circular of the Railway Board, as above, dated 01.06.1971.

15. In that view of the matter this application is allowed and the respondents are directed to consider grant of promotion to the applicant from the date he was found fit for promotion, that is, from the date his juniors were so promoted to the post of C.L.T.

16. Since the promotion was withheld on the ground of departmental proceeding in which he was inflicted punishment, though minor, the promotion from the retrospective date, when ordered, would be notional but his pension and pensionary benefits ^{would} be considered taking into account the pay which the applicant would have received, with interim increments, at the time of his superannuation. With the aforesaid directions, this application is disposed of. No costs.


(AMIT KUSHARD)
MEMBER (A)

/njj/


(P.K. SINHA)
VICE CHAIRMAN