

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH, PATNA

O.A. No. 171 of 2006

Date of order : 6<sup>th</sup> Aug. 2007

C O R A M

Hon'ble Ms. Sadhna Srivastava, Member ( J )

Hon'ble Shri Amit Kushari, Member ( A )

Arbind Kumar Singh, S/o Late Banbehari Prasad Singh, DMS III under Dy. Chief Material Manager, E. Railway Workshop, Jamalpur, R/o village - Khankitta, P.O. Sabaur, Bhagalpur

....Applicants

By Advocate : Shri M.P. Dixit

Vs.

1. The Union of India through the General Manager, Eastern Railway, 17, N.S. Road, Kolkata -1.
2. The Chief Personnel Officer, E. Railway, Fairlie Place, Kolkata.
3. The Chief Works Manager, E. Railway Workshop, Jamalpur, Munger.
4. The Chief Material Manager/Chief Controller of Stores, E. Railway, Kolkata.
5. The Dy. Chief Material Manager, E. Railway, Workshop, Jamalpur.

....Respondents

By Advocate : Shri Mukund Jee.

O R D E R

Sadhna Srivastava, M ( J ):-

The applicant is aggrieved with his non-promotion to the post of DMS I, Chief DMS and AMM Group ' B ' at par with his juniors, M.E. Haque and R.K. Basak.



2. The facts are that the applicant was appointed as junior clerk in Railway with effect from 22.12.1972. In due course he was promoted as Sr. Clerk. While working as Senior Clerk, he was served with major penalty charge sheet dated 18.9.1985, suspended on 20.9.1985 and reverted as Junior Clerk on 7.12.1985. Finally, he was awarded major penalty. However, in OA 340 of 90 decided on 30.11.1990, the punishment was quashed and this major penalty proceeding came to an end. The consequential promotion at par with his juniors was withheld on account of pendency of a criminal case. The applicant was acquitted in criminal case also vide judgment dated 9.4.2003. Thereafter, the order dated 30.9.2003 as contained in Annexure A/2 was passed whereby the period of suspension was regularized, and promotion of applicant on the post of Dy. Material Superintendent III [ DMS III ] was regularized with effect from 30.3.1986 on proforma basis at par with his junior M.E. Haque. The applicant's junior M.E. Haque, in the meanwhile, had earned promotion as DMS II and then DMS I. The post of DMS II being the selection post has to be earned by passing the departmental promotion. Therefore, it was ordered that the applicant be made to appear at the selection test for the post of DMS II to earn



next promotion as DMS I. The selection test was delayed and it was held only on 4.2.2005. The result was declared on 4.2.2006. The applicant's grievance is that his promotion as DMS II was delayed and that further promotions at par with his junior has not been granted. Another grievance raised by him is that he is entitled for payment of salary on the post of DMS II and higher post at par with his juniors irrespective of the fact whether he has actually worked or not on those post.

3. We have heard learned counsel for the parties and perused the record.

4. The first point for our consideration is about the back wages when he had not worked on the higher post on account of pendency of disciplinary case, suspension or pendency of criminal case. Firstly, the order dated 30.9.2003 as contained in Annexure A/2 clearly mentions that the promotion on the post of DMS III with effect from 30.3.1986 would be on proforma basis and actual payment from the date of actual promotion as DMS III. This order was not challenged till the applicant was granted further promotion. Secondly, the law as laid down by the Apex Court is otherwise. In the case of M.L. Binjolkar vs. State of U.P., 2005 SCC (L&S) 82, it was



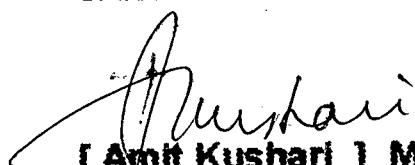
laid down that the full back wages are not longer a natural corollary of an order of reinstatement. In the case of Baldev Singh vs. U.O.I. 2006 SCC [ L&S ] 35, it was again held that principle of no work no pay is a valid proposition. Therefore, the case of Om Prakash Gupta vs. State of Haryana, decided on 17.1.03 by the Punjab & Haryana High Court, as relied upon by the learned counsel for the applicant is not applicable in the instant case.

5. The 2<sup>nd</sup> point is about the grant of promotion to the post of DMS I, Chief DMS and AMM Gr. 'B'. There is no manner of doubt that once the applicant has successfully completed the selection test for the post of DMS II, he is entitled to further promotion, according to the recruitment rules, at par with his junior. Since the applicant was promoted on the post of DMS II on 4.2.2006 and granted actual salary of DMS II [ treating the date of proforma promotion as 23.9.1989 ], as alleged in para 16 of the written statement, we have no hesitation to hold that he is entitled to further promotion at par with his junior. The date of promotion of his junior to the post of Chief DMS and AMM Gr. 'B' have not been disclosed. The promotion to the post of DMS I [ under restructuring scheme ] was granted to his junior with effect from 1.3.1993. Therefore, we hold that the applicant



has to be granted promotion with salary on the post of DMS I after having earned promotion to the post of DMS II i.e. On 4.2.2006. the applicant will be further entitled to promotion on the post of Chief DMS and AMM with payment of salary, if found suitable, according to the recruitment rules, at par with his junior M.E. Haque. The respondents have not raised any plea that the applicant is not entitled to promotion. They have only alleged that the matter is being examined. Let it be expedited and benefits due to him be made available to him.

6. Resultantly, the OA is partly allowed. The respondents are directed to pass order for promotion with salary and arrears of applicant in the light of observations made above in the body of judgment within three months from the date of receipt of copy of this order. No order as to the costs.



[ Amit Kushari ] M[A]  
/cbs/



[Sadhna Srivastava] M[J]