

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 563/90

Date of Decision: 15.3.99

L.S.Chavan

.. Applicant

Shri D.V.Genigal

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri V.S.Masurkar

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

The Hon'ble Shri D.S.Baweja, Member (A)

(1) To be referred to the Reporter or not ? ✓

(2) Whether it needs to be circulated to +
other Benches of the Tribunal ?

D.S.B
(D.S.BAWEJA)

MEMBER (A)

R.G.V
(R.G.VAIDYANATHA)

VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 563/90

Pronounced this the 15th day of MARCH 1999.

CORAM : Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Bawej, Member (A)

Laxman Shamrao Chavan,
R/o. "SAJJAN" Co.Op.Housing Society,
Kargaon Road, Chalisgaon,(Jalgaon).

By Advocate Shri D.V.Gangal

... Applicant

V/S.

1. The Secretary,
Union of India,
Ministry of Transport,
Department of Railways,
New Delhi.
2. The General Manager,
Central Railway,
Bombay V.T.
3. The Divisional Railway Manager,
Central Railway, Bhusawal,
(Jalgaon).

By Advocate Shri V.S.Masurkar

... Respondents

ORDER

(Per: Shri D.S.Bawej, Member (A))

The applicant at the time of filing the present OA. was working as Senior Ticket Examiner (Checker) grade Rs.1200-2040 at Bhusawal Railway Station, Central Railway, Bhusawal. The applicant was promoted on adhoc basis as Head Ticket Collector in the grade of Rs.1400-2300 as per order dated 29.7.1985 and transferred to Itarasi. Before this promotion order, the applicant was transferred in the same grade from Bhusawal to Itarasi as per transfer order dated 3.7.1985. The applicant

challenged this order through a civil suit No. 150/85 alleging that he had been transferred to Itarasi on a complaint made by some interested person. In this civil suit, interim stay order was granted on 13.9.1985 directing the respondents not to transfer the applicant. The applicant submits that though he made representations for transferring him to Itarasi on promotion as per order dated 29.7.1985 but the respondents did not relieve him for transfer on promotion to Itarasi taking a wrong view of interim order dated 13.9.1985. Subsequently, the applicant passed the selection for the grade of Rs.1400-2300 and was placed on a panel notified on 29.9.1987. The applicant contends that even after his regular promotion, he was not promoted in the scale of Rs.1400-2300 inspite of making several representations. The applicant has further stated that he was issued a major penalty chargesheet dated 19.10.1989. It is the case of the applicant that this chargesheet cannot come in the way of the applicant as it has been issued to him subsequent to his ^{29.9.87} empanelment for regular promotion ~~on~~ and adhoc promotion on 29.9.1985. The applicant further adds that as a result of in-action on the part of the respondents, a number of juniors have been promoted. The applicant also submits that he was ~~due~~ for promotion under the Railway Cadre Restructuring Scheme from 1.1.1984 but the applicant was not given his due promotion. The applicant has further brought out that the respondents had no intention to promote the applicant as subsequently as per order dated 30.12.1987 the applicant was transferred to Jabalpur Division. This transfer order was challenged

by the applicant through OA.NO. 111/88. The applicant has stated that he sent number of representations and also a notice through an Advocate on 24.9.1989 and 28.12.1989. However, the respondents did not take any action to effect his promotion as due to him. Feeling aggrieved, the present OA. has been filed seeking the following reliefs :- (a) to direct the respondents to grant promotion to the applicant in the grade of Rs.1400-2300 as due to him as per orders dated 29.7.1985 and 29.9.1987 which have been barred due to issue of chargesheet dated 19.10.1989. (b) to direct the respondents to fix pay and seniority of the applicant on promotion with payment of arrears. (c) to direct the respondents to grant future due promotions to the applicant on completion of disciplinary enquiry.

2. The main contention of the applicant is that till the issue of major penalty chargesheet dated 19.10.1989, there was no chargesheet pending against the applicant and therefore he was entitled for adhoc promotion initially and followed by regular promotion as per order dated 29.9.1987.

3. The respondents have opposed the application through the written statement. The respondents have submitted that the applicant did not carry out the adhoc promotion dated 29.7.1985 as he had obtained a stay order against his transfer order to Itarasi through a civil suit. As regards the regular promotion, the respondents have stated that a major penalty chargesheet was issued on 11.11.1986 which had ^{been} finalised with the issue of punishment order dated 21.10.1988

imposing a punishment of reduction of pay by two stages in the time scale of pay in grade of Rs.1200-2030 for a period of three years. Against the appeal, this punishment was reduced from the period of three years to two years as per appellate order dated 28.5.1988. The penal notified on 29.9.1987, in which the applicant was empanelled, expired on 28.9.1989 when the applicant was still undergoing effective punishment. In view of this situation, the respondents refute the contention of the applicant that no disciplinary enquiry was pending against the applicant. The respondents' stand is that on account of pending disciplinary proceedings, the applicant could not be promoted during the life of the panel. The respondents have also stated that the applicant has not come out with correct position and material facts have been hidden while filing the OA. As regards the claim of the applicant for promotion from 1.1.1984, the respondents have clarified that the applicant was not coming within the zone of consideration and therefore this claim of the applicant has no basis. The respondents have further added that the promotion of the applicant was not withheld on account of chargesheet dated 19.10.1989 as alleged by the applicant in the OA. but on account of fact that the applicant was undergoing punishment upto 20.10.1990 on account of chargesheet issued on 11.11.1986. With these submissions, the respondents plead that applicant has no case and the OA. deserves to be dismissed. The respondents have also opposed the application on being hit by limitation.

4. The applicant has not filed any rejoinder reply to the written statement.

5. We have heard the arguments of Shri D.V.Gangal, learned counsel for the applicant and Shri V.S.Masurkar, learned counsel for the respondents.

6. Before going into the merits on the reliefs prayed for, we will consider the submission of the respondents with regard to the application being barred by limitation. The respondents have stated that the applicant is challenging his promotion with reference to orders dated 29.7.1985 and 29.9.1987 by filing the present OA. on 31.7.1990 and therefore the present OA. is barred by limitation as per provisions of CAT ACT, 1985. The applicant, however, has contested the submission of the respondents and has stated that he has filed application for condonation of delay explaining the reasons as to why the matter could not be agitated. We have carefully gone through M.P.No. 769/92 through which application for condonation of delay has been made. We note that a considerable portion of the delay condoning application has been devoted with regard to promotion from 1.1.1984 under the Cadre Restructuring Scheme. As indicated earlier, the applicant has made some averments in the OA. with regard to promotion under Cadre Restructuring Scheme but we note that no relief is asked for promotion from 1.1.1984. We will revert to this aspect subsequently. However, the reasons advanced for condonation of delay for promotion from 1.1.1984 do not make out any case to delay for condonation of delay. As regards/claim of promotion with reference to promotion orders dated 29.7.1985 and

29.9.1987 is concerned, the applicant has simply stated that he has been making repeated representations. On careful consideration of the facts and circumstances of the case, we are of the view that so far as claim of promotion on adhoc basis as per order dated 29.7.1985 is concerned, it is barred by limitation. Mere sending repeated representations would not stretch the limitation period as the matter has to be agitated at appropriate time if legal remedy is sought. Even otherwise, on merits as we will be deliberating subsequently, the claim for promotion is not sustainable. As regards promotion with reference to order dated 29.9.1987, though the applicant has not made out any case, but the facts as detailed earlier reveal that his promotion was held up on account of issue of the chargesheet before his empanelment through regular selection and therefore the question of promotion would have arisen only after the disciplinary proceedings were finalised. The disciplinary proceedings were finalised with the imposition of penalty as per disciplinary authority's order dated 29.10.1988 and disposal of his appeal against this order through the appellate authority's order dated 25.12.1988. The entitlement of promotion could have therefore been only after imposition of penalty depending upon the nature of penalty and the provisions of extant rules. Keeping these observations in view, we are inclined to hold that so far as promotion with reference to order dated 29.9.1987 is concerned, the delay could be condoned in filing the present OA.

7. As stated above, the applicant in Para 4.5 of the OA. has raised the issue with regard to his entitlement for promotion from 1.1.1984 under the Cadre Restructuring Scheme. The applicant also subsequently through M.P.No.378/94 has made additional pleadings with regard to claim of promotion from 1.1.1984 and also brought on record a number of documents. The applicant has also raised this issue in the application made for condoning ~~of~~ the delay. The respondents have also filed additional reply with reference to his claim for promotion from 1.1.1984. However, we observe that no relief for promotion from 1.1.1984 under Cadre Restructuring has been Scheme~~s~~ asked for in Para 8 of the OA. In fact, during the arguments, the counsel for applicant did not make any pleading on this issue. In view of this, we are not going into this aspect.

8. The applicant was promoted on adhoc basis as Head Ticket Collector in the scale of Rs.1400-2300 as per order dated 29.7.1985 and he was transferred to Itarasi. However, before this promotion order the applicant was transferred to Itarasi in the same scale as per order dated 3.7.1985. This was challenged by him through a civil suit No. 150/85. Against the civil suit, an interim order was passed on 13.9.1989 directing respondents not to transfer the applicant to Itarasi. From these facts, we notice that the interim stay order had been granted on 13.9.1985 when the promotion order on adhoc basis of the applicant had been issued on 29.7.1985. The applicant has pleaded that he made

representations for relieving him for carrying out the transfer on promotion but the respondents did not take any action. He has further averred that the interim stay order was not a bar to go on transfer to Itarasi as he had obtained the interim order alleging that he has been transferred in the same scale on the basis of some complaint by way of punishment. These pleadings of the applicant do not carry weight. The applicant had been already promoted and posted to Itarasi when the order dated 13.9.1985 was passed staying the earlier transfer order. He should have brought this fact before the Court in case he was interested in carrying out the transfer to Itarasi on promotion. We have gone through the interim stay order in the civil suit and on the face of it, the respondents could not take any action to transfer the applicant to Itarasi. If the applicant was interested in going on promotion to Itarasi, he would have made an application for modification of the interim stay order. The OA. does not bring out that any such effort was made by the applicant. The applicant as it appears was not interested in going to Itarasi on transfer and representations said to have been made were only to cover up. Keeping these facts in view, we do not find any merit in the claim of the applicant for according promotion on ad hoc basis as per order dated 29.7.1985.

with reference to
9. Now coming to issue of promotion/order dated 29.9.1987, we note that this letter is not a promotion order but is only a notification of the panel after holding the selection. Therefore, the applicant's contention that he had been promoted is not borne by the facts.

The applicant has brought out that he was issued a chargesheet for major penalty on 19.10.1989. The entire case of the applicant in OA. has been built up on the ground that the major penalty chargesheet was issued subsequent to order dated 29.9.1987 and the same cannot come in the way of the applicant from the applicant being promoted. The applicant has taken a stand that from the period of issue of i.e. the promotion order on adhoc basis on 29.7.1985 till 19.10.1989, no chargesheet was pending and therefore with-holding of promotion of the applicant is illegal. As brought out by respondents, the applicant has not come out with correct position and has hidden the vital facts. As brought out by the respondents, the applicant was issued a major penalty chargesheet on 11.11.1986 and based on the same, he has been imposed punishment. None of these facts have been brought on record by the applicant. In fact, the applicant has not filed any rejoinder reply to controvert the submissions of the respondents in the written statement. However, during the arguments, the counsel for the applicant argued on the matter with reference to the chargesheet for major penalty being issued on 11.11.1986 and the punishment imposed thereon. With this background, we are going into the merits of the issue based on the facts disclosed by the respondents in the written statement with regard to issue of chargesheet and imposition of penalty thereof before the empanelment of the applicant as per letter dated 29.9.1987.

10. The applicant was issued a major penalty chargesheet on 11.11.1986, i.e. before his empanelment to regular selection on 29.9.1987 in the grade of Rs.1400-2300. This chargesheet after enquiry resulted in punishment order dated 21.10.1988 through which penalty of reduction in pay by two stages in time scale of pay in the grade of Rs.1200-2040 for a period of three years was imposed. On appeal made by the applicant, this penalty was modified to two years instead of three years as per order dated 25.10.1988. The stand of the respondents is that the panel dated 29.9.1987 had a life of two years and therefore the same expired on 29.8.1989. The applicant was undergoing effective punishment upto 20.10.1990, i.e. beyond the life of the panel and therefore the applicant could not be given promotion based on the empanelment order dated 29.9.1987. As indicated earlier, the applicant has not made any averments in the OA. with regard to the issue of chargesheet dated 11.11.1986 and the punishment imposed thereon based on this chargesheet. However, during the oral submissions, the counsel for the applicant argued the case of the applicant with reference to chargesheet dated 11.11.1986 and submitted that since the applicant was imposed a minor penalty only, he was entitled for being promoted based on his empanelment in the panel notified on 29.9.1987. The learned counsel for the applicant drew our attention to Para 3.6 at page 60 of the book of Shri M.L.Jand (1991) "The Railway Servants (Discipline & Appeal) Rules, 1968". The counsel for the applicant argued that in terms of Para 3.6 the applicant was entitled to be promoted on being imposed only a minor penalty as a result of chargesheet issued on 11.11.1986. At this stage, the

learned counsel for the applicant was asked to indicate whether the punishment of reduction in pay by two stages was a minor penalty or a major penalty in 1988? The learned counsel for the applicant could not make a categorical submission and therefore reference was made to the Railway Servants (Discipline & Appeal) Rules, 1968. Referring to Rule 6, we note that penalty of reduction to lower stage in a scale for a period not exceeding three years without cumulative effect had been introduced as minor penalty only as per Railway Board's notification dated 16.11.1990. This will mean that at the time when the penalty of reduction of pay by two stages was imposed on the this applicant as per order dated 21.10.1988, was a major penalty and not a minor penalty as put forward by the applicant. With this fact situation, it is to be examined whether the applicant was entitled to be considered for promotion with imposition of this punishment. On going through this book, it is noted that Para 3.6 is covered by the instructions of the Railway Board as per the order regarding promotion of Railway Servants dated 21.9.1988 in supersession of earlier orders against whom disciplinary/court proceedings are pending or whose conduct is under investigation. Para 3.6 at page 60 refers to the dealing of cases of promotion of Group 'D' and Group 'C' Railway servants. This Para covers the procedure to be followed in case major penalty of stage in reduction to lower/time scale upgrade is imposed within a period of two years of the approval of the panel. The relevant extract from this para is reproduced below :-

" If such a person as aforesaid is held guilty and awarded one of the major penalties of reduction to lower time scale of pay/grade etc. or reduction to lower stage in the time scale of pay, his case should be referred to the authority which approved the original selection panel/suitability list for consideration whether he is suitable for promotion inspite of the penalty imposed on him. If he is considered suitable for promotion, his case for promotion and fixation of pay etc. should be dealt with in the same manner as that of a person who is awarded a minor penalty as indicated above.

If on the other hand, the person concerned is considered unsuitable for promotion, his case should be referred to the authority next above that which approved the original selection panel/suitability list and that authority should take a final decision regarding the suitability or otherwise for promotion of such a person. If he is considered suitable for promotion by that authority, his case should then be dealt with in the same manner as that of a person who is awarded a minor penalty. If on the other hand, he is considered unsuitable for promotion by that authority, he should not be promoted on the basis of his earlier selection/earlier decision regarding suitability and the vacancy reserved for him should be carried forward for inclusion in the number of vacancies for formation of next selection panel/suitability list."

In the present case, the panel was notified on 29.9.1987 and the punishment was imposed on 21.10.1988. Therefore, the major penalty of reduction in pay by two stages in time scale had been imposed within a period of two years. In view of this, we find that the case of applicant was required to be considered as per the provisions of para 3.6 as extracted above. The stand of the respondents is that the case of the applicant could not be considered since the punishment was effective beyond the currency of panel beyond 29.8.1988 is not in accordance with the laid down rules.

The respondents have not made any averment as to whether the case of the applicant was considered for promotion in terms of the Railway Board's Circular dated 21.9.1988. Keeping these observations in view, we are of the considered opinion that applicant's case should have been considered by the competent authority for promotion in view of his empanelment on and 29.9.1987/since the penalty had been imposed within the currency of the panel.

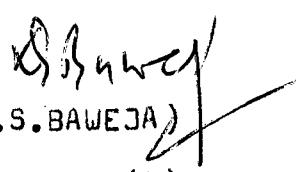
11. In the result of the above, the OA. is partly allowed with the following directions :-

(a) The competent authority who approved the original panel shall consider the case of the applicant for promotion keeping in view the provisions in Para 3.6 as brought out earlier. In case this authority does not consider the applicant suitable for promotion, it will refer the case to the next higher authority and this authority shall take a final decision regarding suitability or otherwise for promotion of the applicant. If this authority considers the applicant suitable for promotion, then the applicant shall be entitled for promotion as per the extant rules. In case the authority does not find the applicant suitable for promotion, the applicant shall be suitably advised through a speaking order.

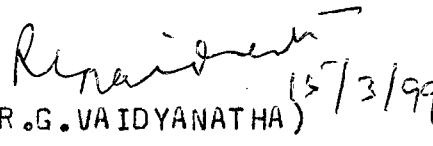
(b) The compliance of the direction above (a) shall be done within a period of four months from the date of receipt of a copy of this order.

(c) No order as to costs.

(d) M.P. No.769/92 is partly allowed.


(D.S. BAWEJA)

MEMBER (A)


(R.G. VAIDYANATHA) 15/3/99

VICE CHAIRMAN

mrj.