

(9)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH JAIPUR.

O.A.No.895/1992

Date of order- 31.8.1995

N.O.Sharma

: Applicant

Versus

1. Union of India through Secretary,  
Railway Board, Rail Bhawan, Rafi Marg,  
New Delhi.
2. The General Manager, Western Railway,  
H/Q's office Church Gate, Bombay.
3. Deputy C.E.E.(W.) All, Western Railway,  
Power House, Nagra, Ajmer.

: Respondents

Mr. S.K.Jain  
Mr. S. Hasan

: Counsel for the applicant  
: Counsel for the respondents

CORAM:

HON'BLE MR. O.P.SHARMA, MEMBER (ADMINISTRATIVE)  
HON'BLE MR. RATTAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

( PER HON'BLE MR. O.P.SHARMA, MEMBER (ADMINISTRATIVE) )

In this application under Section 19 of the Administrative Tribunal's Act, 1965 Shri N.O.Sharma has prayed that orders may be issued for stepping up of pay of the applicant from Rs.1,000/- to 1080/- per month in terms of Railway Board's letter dated 23.7.1976, orders may be issued for granting him annual increments by removing the Efficiency Bar which was wrongly enforced without following the procedure, orders may be issued for consideration of his case for promotion to Senior Scale Rs.1100-1600 which is a non-selection post from 10.6.1976 when his next junior Shri B.N.Joshi was promoted and that orders for necessary payments be issued and accordingly his pension may also be revised suitably.

( )

2. The case of the applicant is that while working as Assistant Electrical Engineer (W) Ajmer he was compulsorily (prematurely) retired from services on 23.2.1976 vide order dated 10.11.1975. The order was challenged by the applicant by a writ petition filed in the Rajasthan High Court which was accepted with cost on 2.7.1977. The respondents' appeal against the said judgment was rejected by the division bench of the High Court and the applicant was reinstated in service on 2.11.1980. The applicant finally retired on superannuation on 31.12.1980. Further according to the applicant, respondent No.2 the General Manager, Western Railway, Bombay did not pay to the applicant salary from 23.2.1976 to 31.12.1980. The applicant filed a contempt petition before the High Court in November 1981. Subsequently in February 1982 part payment thereof was made at the rate at which the applicant was drawing salary prior to his premature retirement, without however grant of annual increments and other consequential benefits. Therefore the applicant filed another contempt petition in the Rajasthan High Court which was discharged on 13.12.1982 with the directions that since the petitioner has already made written submissions regarding his grievance, the respondents should consider (his) submissions and pass necessary orders in accordance with law (Annexure A-1/1). According to the judgment of the High Court dated 2.7.1979 the applicant was entitled to re-fixation of pay and seniority on reinstatement in service on 2.11.1980 alongwith the following consequential benefits:-

i) Stepping-up of pay from Rs.1000/- per month to Rs.1080/- per month in terms of Railway Boards No.E (P&A) I-74/PFI dated 23.7.1976 circulated vide G.M.(E) No.E (P&A) 772/0 Vol.II dated 10.8.76 (Annexure A-2);

ii) Annual increments from 1976 to 1980; and

(1)

iii) Proforma fixation under next below rule and promotion to senior scale Rs.1100-1600 because 23 officers junior to the applicant were promoted during the intervening period on seniority-cum-suitability basis as per Annexure A-5.

3. The respondents in the reply have taken a preliminary objection to the effect that the application is barred by limitation in as much as most of the reliefs claimed pertain to the period which more than 10 years back. Further according to them the applicant was considered for promotion to Senior Scale by DPC immediately upon his reinstatement w.e.f. 3.11.1980 when his juniors in Group-B were reportedly considered for promotion but the applicant was not found fit for promotion. The recommendations of the DPC was approved by the General Manager on 16-12-1980 and thereafter the applicant retired from service on superannuation on 31.12.1980. Therefore, since he had not been found fit for promotion by the DPC, he is not entitled to proforma fixation etc. The relief regarding stepping up of pay is not admissible as already communicated to the applicant vide DM(E)COG's letter dated 31.1.1993 (Annexure A-1). Since the applicant had failed in the EB test, he was not granted increments which are admissible oncrossing of EB.

4. The learned counsel for the applicant stated during the arguments that the applicant would now confine his reliefs to promotion to senior scale Rs. 1100-1300 and proforma fixation on that basis for pensionary purposes. As regards increments, the applicant however would press his claim for grant thereof on actual basis. He stated during the arguments that in support of the

avermant of the respondents that the applicant was not found fit for promotion by the DPC on his reinstatement on 3.11.1980 and before his superannuation, document R-2 has been annexed which is a letter dated 20.12.1980 from the General Manager to the D.R.M. Bombay which reads as under:-

"Sub: Promotions, Reservions and Transfers  
of Gassetted Officers-Electrical Department.

\*\*\*

The verbatim remarks of CEE are reproduced below for information and necessary action:-

"Shri W.O.Sharma had acted in a high handed manner in the DEE(W)'s Office, particularly when he had not been taken on duty yet. He had issued his own office order and reported for duty at AII, inspite of the Dy.CEE(W), Shri D.B. Gupta advising him that it was necessary for him to report to CPO and obtain orders. Dy.CPO(G) has to initiate action calling for his explanation, at least now."

According to him this document makes absolutely no reference to the findings of the DPC with regard to un-suitability of the applicant for promotion, but actually is a communication of certain remarks regarding the conduct of the applicant. Therefore promotion cannot be denied to the applicant on the ground that the DPC had not selected him for promotion because the respondents have produced no other document to support their averment in this regard. Regarding annual increments he stated that these are admissible in the normal course without being any order/required to be passed and since he was deemed to be in service during the period in which he was not actually in service due to his having been retired prematurely, he was entitled to increments.

5. The learned counsel for the respondents urged during the arguments that Annexure R-2 did show the

(J)

(13)

conduct of the applicant and this did not make him suitable for promotion. He however expressed his inability to produce the records of the DPC or other records relating to the consideration of the case of applicant for promotion on the ground that these were now not available as these pertained to 1980.

6. We have heard the learned counsel for the parties and have perused the material on record. The objection regarding limitation is not maintainable because the applicant has been assiduously ~~in pursuing~~ pursuing his remedies in the appropriate forums and moreover he received a reply from the respondents on 31.1.1992 rejecting some of the claims made by the applicant. As regards Applicant's promotion, as admitted by the respondents his case was considered in December 1980 after his reinstatement and before his normal super-annuation. The document Annexure P-2 annexed by the respondents to their reply does not at all suggest that the applicant was found unfit for promotion. No other records have been produced by the respondents found to suggest that the applicant was ~~unfit~~ unfit for promotion. We therefore cannot assume that the DPC had found the applicant as unfit for promotion. In these circumstances the only logical consequence is that the applicant's case should be deemed to have been cleared by the DPC <sup>presumed</sup> for promotion. He should therefore be ~~entitled~~ to have been promoted by the DPC held in December 1980. His pay in the senior scale should be fixed on proforma basis on the assumption that he was granted promotion and such proforma fixation shall be the basis for

(M)

revision of his pensionary benefits. Moreover such proforma fixation should be from the date the applicant's next junior was granted promotion to Senior Scale.

7. The applicant would ~~not~~ however be entitled to increments falling due after the period commencing from 10.8.1976 because he was deemed to have continued in service till his normal superannuation and increments are granted in a routine manner without any formal orders being required to be passed. The actual monetary benefits of those increments shall be granted to the applicant and these shall also be taken into account for the purpose of working out his pensionary benefits to the extent applicable.

8. The respondents shall take action in accordance with the above directions within a period of four months from the date of receipt of a copy of this order. O.A. stands disposed of accordingly with no order as to the costs.

*Re: 28/8/76*

( RATTAN PRAKASH )  
MEMBER (J)

*Q.J.*  
( O.P.SHARMA )  
MEMBER (A)