

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of Decision: 10.8.2001

OA 212/94

Govind Narain Gupta, Head Train Examiner, Agra East Bank, Western Railway, Kota Division.

... Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Sr.Divisional Mechanical Engineer, Western Railway, Kota Division, Kota.

... Respondents

CORAM:

HON'BLE MR.JUSTICE B.S.RAIKOTE, VICE CHAIRMAN

HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

For the Applicant ... Mr.S.C.Sethi

For the Respondents ... Mr.Hemant Gupta, proxy counsel
for Mr.M.Rafiq

O R D E R

PER HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

In this application filed u/s 19 of the Administrative Tribunals Act, 1985, applicant Govind Narain Gupta has prayed for declaring the impugned orders dated 12.11.93 (Ann.A/1) and dated 22.3.94 (Ann.A/2) as illegal, arbitrary and mala fide in violation of Articles 14, 16 and 311(2) of the Constitution, and further for a direction to the respondents to promote him against the vacancies created under the Restructuring and Upgradation Scheme effective from 1.3.93 and that his promotion to the post of Chief Train Examiner (CTXR, for short) scale Rs.2000-3200 be treated as regular and not as ad hoc. Applicant has also prayed for a direction to the respondents to post him at Agra East Bank, as per the orders of the Minisitry of Railways.

Gopal Singh

2. Applicant's case is that he initially joined the respondent department as Trade Apprentice Fitter on 8.4.65. The applicant was last promoted as Head Train Examiner (HTXR, for short) w.e.f. 1.1.84. The Ministry of Railways had introduced Restructuring of Cadres Scheme vide their letter dated 27.1.93 (Ann.A/4). In terms of that scheme, eight posts of CTXR were to be filled up w.e.f. 1.3.93 by promotion from the cadre of HTXR scale Rs.1600-2660, by modified selection procedure. Accordingly, the respondent department prepared a panel vide letter dated 12.11.93 (Ann.A/1) and promoted all the empanelled candidates as CTXR w.e.f. 1.3.93. Contention of the applicant is that he is senior to the empanelled candidates at S.No.2 to 8 in the panel dated 12.11.93 and, therefore, contends that his case should also have been considered for promotion to the post of CTXR. Hence this application.

3. In the counter it has been stated by the respondents that the case of the applicant could not be considered for promotion to the post of CTXR as he was not found fit for promotion to the said post on the basis of service record. It has, therefore, been averred by the respondents that the applicant has no case and this OA is liable to be dismissed.

4. We have heard the learned counsel for the parties and perused the records of the case, carefully.

5. During the arguments, learned counsel for the respondents also stated that the applicant was imposed a punishment of withholding of increments for a period of two years and, therefore, he was not considered for upgradation under the scheme of cadre restructuring. Learned counsel for the applicant, however, stressed that though the applicant was suffering a penalty at the time the scheme was implemented, his case could have been considered and a

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sealed cover procedure could have been adopted. It was further stressed by the learned counsel for the applicant that penalty of stoppage of increments comes within the category of minor penalties and this penalty should not have stood in the way of promotion of the applicant. As per rules, the applicant could have been promoted on expiry of the penalty. It is also seen from records that the penalty suffered by the applicant expired on 31.10.93 and the impugned panel was issued on 12.11.93. Thus, in all fairness, applicant's name should have figured in this panel as per his seniority and assessment of his service record. Learned counsel for the respondents also stated that only eight posts of CTXR were to be filled up under the cadre restructuring scheme and all the posts have since been filled up, the applicant cannot be extended the benefit of promotion at the stage. Further, in case the applicant is to be promoted, the last person promoted will have to be reverted and the last person, who would be affected on promotion of the applicant, has not been made a party in this case.

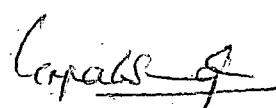
6. We have considered the rival arguments. We are firmly of the view that the respondent department erred in ignoring the claim of the applicant for promotion to the post of CTXR under the cadre restructuring scheme w.e.f. 1.3.93, though he was subsequently promoted to the post of CTXR vide respondents' order dated 22.3.94 (Ann.A/2). Learned counsel for the applicant has also cited the case of Prem Singh Verma v. Union of India, 1993 (2) SLR 108, decided by the Principal Bench of the Central Administrative Tribunal on 28.1.92, in support of his contention that the applicant should have been given promotion on the expiry of the penalty. In that case, the applicant was working as Senior Signaller and he was awarded punishment of withholding of

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increments for two years without cumulative effect w.e.f. 1.10.93.

During the currency of the penalty the applicant became entitled to promotion from the post of Senior Signaller to the post of Head Signaller w.e.f. 1.9.84 in accordance with the Railway Board's order on cadre restructuring. It was held by the Principal Bench in that case that withholding of promotion itself is a minor penalty and if alongwith withholding of increments, promotion also is to be withheld, it would tantamount to imposition of double penalty and would result in double jeopardy. It was, therefore, held that the applicant was not only entitled for restoration of his original position after the penalty had expired but would also be entitled to promotion w.e.f. 1.1.84 although he would draw the pay in the higher scale w.e.f. 1.10.85. We are of the view that the case in hand is squarely covered by the order and judgement dated 28.1.92 of the Principal Bench of Central Administrative Tribunal in the above mentioned case. Accordingly, we pass the order as under :-

The OA is allowed. The applicant would be entitled for promotion to the post of CTXR w.e.f. 1.3.93 on notional basis. He would be entitled to draw pay in the scale of Rs.2000-3200 w.e.f. 1.11.93, the date on which the penalty came to an end, with all consequential benefits. No costs.


(GOPAL SINGH)

MEMBER (A)


(B.S. RAIKOTE)

VICE CHAIRMAN