

Date of Decision: 17/12/98

OA 467/94

H.P.Ray, Retired Shunter, Western Railway, r/o Railway Quarter
No.505-LB, Gangapur City, Distt.Sawai Madhopur.

... Applicant

Versus

1. Union of India through General Manager, Western Railway,
Churchgate, Mumbai.
2. The Divisional Railway Manager, Western Railway, Kota.

... Respondents

CORAM:

HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

HON'BLE MR.N.P.NAWANI, ADM.MEMBER

For the Applicant

... Mr.P.P.Mathur, proxy counsel for
Mr.R.N.Mathur,

For the Respondents

... Mr.Tirupati Kandoi, proxy counsel
for Mr.M.Rafiq

O R D E R

(PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER)

In this OA filed u/s 19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to direct the respondents to give him promotion on the post of Shunter w.e.f. 21.1.87 and on the post of Driver Gr.C w.e.f. 3.2.89 and to calculate the pension of the applicant on the basis of aforesaid promotions.

2. In brief, the facts of the case, as stated by the applicant, are that the applicant was initially appointed on the post of Cleaner. He was promoted on the post of II-Fireman and thereafter on the post of Diesel Assistant. It is stated that a charge-sheet was issued to the applicant on 9.9.80 alongwith Driver Ram Prakash and after conducting inquiry the show-cause notice was given to the applicant for reversion. The applicant filed a Civil Suit challenging that show-cause notice in the court of Munsif Gangapurcity, which was transferred to this Tribunal and this Tribunal dismissed that Civil Suit as premature vide order dated 1.2.93. It is stated that ~~none~~ no punishment was awarded to the applicant by the disciplinary authority and the applicant retired from service. He has been granted

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full pension. It is further stated that the applicant filed a representation on 4.11.93 and thereafter on 11.3.94 for promotion on the post of Shunter. The applicant was given promotion vide order dated 1.1.91 on the post of Shunter, ^{It is} stated that denial of promotion to the applicant on the post of Shunter w.e.f. 21.1.87 is ex-facie illegal, arbitrary and unreasonable as no penalty was imposed upon the applicant and court case was decided on 1.2.93 and Shri ~~Raj~~ Ram Prakash and Giriraj Prasad have been considered for promotion. Therefore, the applicant filed this OA for the relief as mentioned above.

3. Reply was filed. It is stated in the reply that Shri Ram Prakash was reverted in pursuance of inquiry. Against reversion order Shri Ram Prakash has filed an appeal and penalty was reduced to two sets of conveyance but the applicant did not like to file any appeal. It is stated that his Civil Suit against the show-cause notice was dismissed as premature vide order dated 1.2.93. It is further stated that case of Shri Giriraj Prasad was quite different from the case of the applicant. Representations filed by the applicant were ~~replied~~ replied vide letter dated 6.6.94. It is also stated that applicant was reverted to the post of Fireman-B by the notice imposing penalty dated 16.1.82 and the applicant was correctly de-barred from promotion. Therefore, the applicant is not entitled to any relief sought for.

4. No rejoinder has been filed by the applicant in this case.

5. Heard the learned counsel for the parties and also perused the whole record.

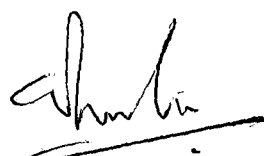
6. The learned counsel for the applicant has argued that the court case pending was decided on 1.2.93 and no punishment was imposed upon the applicant in pursuance of the inquiry. Therefore the applicant is entitled to promotion on the post of Shunter w.e.f. 21.1.87 and thereafter on the post of Driver Gr.C w.e.f. 3.2.89. On the other hand, the learned counsel for the respondent has submitted that because the punishment was imposed on the applicant in the departmental inquiry, the applicant was rightly de-barred from promotion on the post of Shunter. We have given thoughtful consideration to the rival contentions of both the parties and also perused the whole record.

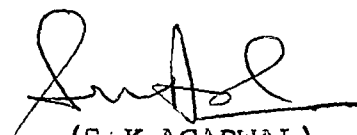
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7. It is clear that the departmental inquiry was initiated against the applicant and one Shri Ram Prakash, Driver. Shri Ram Prakash, Driver, was reverted and he filed an appeal against the said reversion. The appellate authority reduced the penalty of reversion to two sets of conveyance but it appears that the applicant did not like to file an appeal. It is also evident that the applicant filed the Civil Suit against the show-cause notice, which was dismissed as premature. As the respondents have made it ~~xx~~ very clear in the reply filed before this Tribunal that the applicant was punished in the departmental inquiry, against which he did not like to file any appeal and he has already been promoted on the post of Shunter vide letter dated 1.1.91. Therefore, the applicant is not entitled to be considered for promotion on the post of Shunter w.e.f. 21.1.87 and on the post of Driver w.e.f. 3.2.89. Therefore, in our considered view, the applicant is not entitled to any relief sought for.

8. We, therefore, dismiss this OA with no order as to costs.


(N.P. NAWANI)
MEMBER (A)


(S.K. AGARWAL)
MEMBER (J)