

(3)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of Order : 2.7.2000

OA 13/97

Shri Babu Ram Verma S/o Shri Gajdheer aged about 47 years  
resident of Behind Shri Ram Bhawan, Dadwara, Kota Junction  
at present employed on the post of Junior Engineer - I  
(Chargeman (A) in Kota Work Shop, Western Railway.

.... Applicant

Versus

1. Union of India through General Manager,  
Western Railway, Church Gate, Bombay.
2. Chief Works Engineer, Western Railway,  
Churchgate, Bombay.
3. Chief Works Manager, Wagon Repair Shop,  
Kota, Western Railway.
4. Shri Kishan Singh, Sr. Section Engineer,  
Wagon Repair Shop, Western Railway, Kota.

.... Respondents

Mr. J.K. Kaushik, Counsel for the applicant.  
Mr. Hemant Gupta, Proxy counsel for  
Mr. M. Rafiq, Counsel for the respondents.

CORAM

The Hon'ble Mr. S.K. Agarwal, Member (Judicial)  
The Hon'ble Mr. S. Bapu, Member (Administrative)

ORDER

(PER HON'BLE MR. S. BAPU, MEMBER (ADMINISTRATIVE))

There was delay in filing this application and we take  
it that delay was condoned and the application <sup>was</sup> ~~is~~ admitted  
on 19.1.98.

...2/-

2. The relief sought in this application is as follows:-

"That the impugned order dated 6.10.95 (Annexure A-1) rejecting the claim of applicant for promotion to the post of J.S.S./SS at par with his junior, may be declared illegal and the same may be quashed. The respondents No. 1 to 3 may be directed to consider promotion of applicant to the post of J.S.S./S.S. from the date his next junior was promoted under restructuring schemes by modified selection procedure on the basis of his regular promotion as Ch/Man 'A' from 1981 ignoring his actual/physical working and allow all consequential benefits including arrears of difference."

3. The applicant was initially appointed as Apprentice Mechanic on 6.12.71. After successful completion of five years training, he was appointed as Chargeman 'B' on 6.12.76. He was promoted as Chargeman 'A' on 14.9.81. He was reverted from the post of Chargeman 'A' to Chargeman 'B' by order dated 2.3.82. He was again promoted to the post of Chargeman 'A' on 23.10.84 on the basis of seniority cum fitness but was reverted as Chargeman 'B' w.e.f. 10.4.85. Finally, he was promoted as Chargeman 'A' w.e.f. 30.5.89 and he continued to hold the post which is re-designated as Junior Engineer. The applicant filed <sup>a</sup>the suit in the Court of Munsiff, Kota against the order of his reversion from Chargeman 'A' to Chargeman 'B' by order dated 2.3.82. That suit was transferred to this Tribunal and numbered as TA 2248/86. The said transferred application was disposed by this Bench by order dated 20.4.93. In para 5 of this order, it was held that

"In view of the above and taking into account all the facts and circumstances of the case, we allow this T.A. partly. The order of reversion dated 2.3.82 is set aside. The applicant shall be allowed the benefit of seniority as Chargeman Grade 'A' from the date he was promoted on adhoc basis viz 28.9.81 and his pay would also notionally has fixed as if he had worked continuously from 28.9.81 on the post of Chargeman Grade 'A' but he will not be allowed any arrear of pay and allowances till his regular promotion in 1989. The arrear on account of difference between pay and allowances already paid and to those to which he would be entitled on the basis of re-fixation of his pay will be allowed from the date he was promoted on regular basis in 1989. The arrears on this account shall be paid to him within a period of 4 months. The parties to bear their own costs."

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4. This order was implemented by the official respondents and the applicant was assigned seniority in the Grade of Chargeman 'A' w.e.f. 28.9.81. However, he was not considered for further promotion on the basis of revised seniority assigned to him. His representation to the authorities were not successful. He was informed by a letter dated 6.10.95 as under:-

"The representation dated 24.6.95 of Shri Baboo Ram Verma has been examined in detail and it is revealed that the CRS actually written assessed his performance as Chargeman and suitability for promotion as Chargeman 'A' and not for the post of JSS scale Rs. 2000-3200 (RP). He get regularisation and seniority as Chargeman 'A' 1991 as per CAT's orders of 20.4.93. This does not mean that he had physically discharged the responsibility of Ch/man 'A', that is why, CAT did not award his arrears upto 1989. Therefore, on the basis of his CRS assessing his actual work as Ch/man 'B' he cannot be considered suitable for promotion as JSS both for 1.1.84 and 1.3.93."

5. The respondents have filed a reply. It is stated in the reply that the applicant's case for promotion for the post of Junior Shop Superintendent w.e.f. 1.1.84 was considered but he was not found suitable. His case was again considered w.e.f. 1.1.93 and he was again found to be not suitable.

6. We have heard the learned counsel for the parties and also perused the whole record.

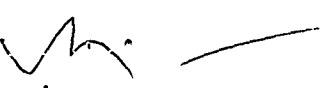
7. We find the reasons given by the official respondents in the reply statement filed in the present OA for denying promotion to the applicant are at variance with the reasons given in the impugned order dated 6.10.95. In the impugned letter, it is stated that even through he got regular seniority as Chargeman 'A' from 1991 as per order of this Tribunal dated 20.4.93, applicant has not worked in that post, he cannot be


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considered suitable for promotion as Junior Shop Superintendent. On the contrary in the reply statement it is stated that there were adverse entries in his Annual Confidential Reports. The applicant in his rejoinder has stated that no adverse entries were communicated for the years 1980-81, 1981-82 and 1982-83. If really there <sup>were</sup> adverse entries as per the averments of the official respondents they ought to have been communicated to the applicant but according to the applicant there was only one adverse entry for the year 1990-91 and for the other years no adverse entry was communicated to him. Further, we find that according to the respondents the post of Junior Shop Superintendent was a non selection post as per restructuring order.

8. For the foregoing reasons, we find no merit in the reply of the official respondents. The applicant was entitled to be considered for promotion as Junior Shop Superintendent both for 1.1.84 and 1.3.93 on the basis of his confidential reports in Chargeman Grade 'B'. We direct the respondents to consider the case of the applicant to the post of Junior Shop Superintendent from the date the applicant's junior was promoted as per modified selection procedure. We, however, direct that on promotion, the applicant shall be entitled to only notional fixation of pay and actual monetary benefits shall be allowed only from a period of one year preceeding the date of filing of the application. This exercise shall be done by the respondents within a period of eight weeks from the date of receipt of a copy of this order.

9. OA is ordered accordingly. No order as to costs.

  
(S. BAPU)  
MEMBER (A)

  
(S.K. AGARWAL)  
MEMBER (J)