

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 10.05.02

OA No.569/96

Om Prakash s/o Shri Chait Ram r/o 812/31, Indira Colony, Nagra, Ajmer, presently posted as Driller Grade-II in the office of Chief Works Manager, Western Railway, Ajmer.

.. Applicant

Versus

1. The Union-of-India through the General Manager, Western Railway, Churchgate, Bombay.
2. The Chief Works Manager, Western Railway, Ajmer
3. The Deputy Chief Mechanical Engineer (Loco), Western Railway, Ajmer (Raj).
4. Shop Superintendent, M/C & Brass Shop, Loco, Western Railway, Ajmer (Raj).
5. Ram Singh Ticket No.20710/Machine & Brass Shop, Western Railway, Ajmer (Raj).

.. Respondents

Mr. Ajay Pal Singh - Counsel for the applicant.

Mr. S.S.Hasan - Counsel for respondent No. 1 to 4.

Mr. P.P.Mathur - Counsel for respondent No.5.

OA No.515/96

Anandi Lal s/o Shri Ram Kishan r/o 849/02, Khetawat Colony, Ajmer (Raj), presently posted as Driller Grade-I in the office of Chief Works Manager, Western Railway, Ajmer.

.. Applicant

Versus

1. The Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. The Chief Works Manager, Western Railway, Ajmer

3. The Deputy Chief Mechanical Engineer (Loco),
Western Railway, Ajmer.
4. Shop Superintendent, M/C & Brass Shop, Loco,
Western Railway, Ajmer.
5. Ram Singh Ticket No.20710/Machine & Brass Shop,
Western Railway, Ajmer.

.. Respondents

Mr. Ajay Pal Singh - Counsel for the applicant

Mr. S.S.Hasan - Counsel for respondent No. 1 to 4

Mr. P.P.Mathur - Counsel for respondent No.5

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. H.O.Gupta, Administrative Member

O R D E R

PER HON'BLE MR. H.O.GUPTA, ADMINISTRATIVE MEMBER

The applicant in OA No.569/96 is aggrieved of the orders dated 3.4.96, 10.4.96, 27.6.96, 1.8.96 and 19.9.96 (Ann.A1, A1(a), A1(b), A1(c), A1(d) respectively) whereby the private respondent No.5 has been granted promotion in the post of Driller Grade-III w.e.f. 14.2.83 and thereafter based on the trade test held, he was promoted to the post of Driller Grade-II and Driller Grade-I and the applicant has been reverted from the post of Driller Grade-II to Grade-III. In relief, he has prayed for quashing the said orders and to restrain the official respondents for granting promotion to the private respondent No.5 on various posts of skilled grade of Driller without holding trade test and without the review DPC and also to restrain the official respondents from placing the private respondent No.5 over the applicant in

the seniority list of all grades of Driller. It is further prayed for issuance of appropriate directions to allow the applicant to work as Driller Grade-II and to grant him all consequential benefits.

2. The case of the applicant in OA No.569/90 as made out, in brief, is that :-

2.1 He was appointed as Khalasi on 15.7.78 and later on promoted as D.F.S. The applicant appeared in the trade test of Driller Grade-III and was declared successful. He was promoted to the post of Driller-Grade-III in 1987. He further appeared in the trade test for the post of Driller Grade-II and on being successful, he was promoted as Driller Grade-II vide order dated 15.1.91 (Ann.A3).

2.2 The respondent No.5, who was Khalasi and senior to him, was promoted as D.F.S. w.e.f. 12.9.80. He could not have been promoted, since there was a criminal case of theft against the respondent No.5 at the relevant time and accordingly an order correcting the fault was passed on 17.4.84 (Ann.A4) whereby the respondent No.5 was reverted to the post of Khalasi. A penalty of withholding one increment with future effect was imposed upon the respondent No.5 as is evident from Ann.A5. Apart from that, a penalty of removal was imposed upon respondent No.5 vide order dated 31.3.88 (Ann.A6). However, the Appellate Authority modified the penalty of removal and a penalty of withholding of two annual grade increments with future effect was awarded on the respondent No.5. The respondent No.5 was acquitted of the charges of theft vide judgment dated 17.7.95 and accordingly, the period of his

suspension was treated as on duty vide order dated 21.11.95 (Ann.A7). The respondent No.2 illegally promoted the respondent No.5 on the post of Driller Grade-III, w.e.f. 14.2.83 by way of granting consequential benefits on acquittal of respondent No.5 vide order dated 3.4.96 (Ann.A1).

3. Briefly stated, the grounds taken by the applicant are that :-

3.1 Since the respondent No.5 was never promoted again as D.F.S. after his reversion and acquittal, therefore, his promotion as Driller Grade-III and then to Grade-II is without jurisdiction and ab-initio void. The respondents did not even hold the review DPC or trade test for the respondent No.5. Based on the disciplinary action, major penalty was imposed in the year 1983 itself and, therefore, the respondent No.5 could not have been promoted if his suitability would have been considered by the review DPC.

3.2 The promotion to Driller Grade-I without promotion as Driller Grade-II is illegal. The promotion to various posts of skilled Driller has to be based on service record, which cannot be ignored merely because he has not been convicted by the Criminal Court. The respondents are acting partially in favour of the respondent No.5 whereby causing adverse effect on the services of the applicant and which is violative of Articles 14, 16 and 21 of the Constitution of India.

4. The respondents have contested this application. Stating briefly, the official respondents

have submitted that the private respondent No.5 was promoted on the post of DFS w.e.f. 19.9.80 being senior to the applicant. Since the private respondent No.5 was found involved in a criminal case of theft, the order of dismissal was passed in 1984, but the same was recalled on the acquittal of the respondent No.5 in the criminal case. It is incorrect to say that the respondent No.5 had not passed the necessary trade test before his promotion. The respondent No.5 was required to be given consequential benefits on acquittal. However, such benefits could be given only after passing the requisite trade test, which the respondent No.5 passed and as such promotion was absolutely legal and justified. Once an employee is acquitted from the criminal charge, necessary benefits have to be given, which cannot be denied for the reason that certain other junior employees has already been promoted. So far imposition of penalty ^{at} Ann.A10 is concerned, the same was passed in the year 1983, much after the promotion of respondent No.5 as DFS in the year 1980 itself. Other averments of the applicant are also denied by the respondents.

5. In rejoinder, the applicant submitted that the respondents have granted undue benefits in the garb of compliance of the Hon'ble Tribunals order. Granting of consequential benefits to the respondent No.5 on acquittal does not confer upon him any right of by-passing the requirement of consideration by the review DPC or granting promotion without going through the channel of promotion. While on acquittal in the criminal case, the respondent No.5 was required to be given consequential benefits, but the same have to be given as per procedure prescribed by

the law. The respondent No.5 was never promoted as DFS after acquittal, but was directly promoted as Driller Grade-III without any trade test.

6. Heard the learned counsel for the parties and perused the record.

6.1 As seen from the record, the respondent No.5 was promoted to the post of DFS in the year 1980 after passing the requisite trade test. He was dismissed from the post based on the criminal proceedings in 1984. The learned counsel for the respondents during the course of arguments, submitted that after his acquittal, the respondent No.5 has been granted consequential benefits and also his case was considered for promotion to other posts, as per directions of this Tribunal in the order passed in the OA filed by respondent No.5. He further submitted that promotions to skilled grade were given only after he qualified the trade tests and other benefits were allowed based on the date of promotion of his next junior as per the laid down law and as per order of the Tribunal. He also submitted that it is an admitted fact that the respondent No.5 was senior to the applicant. He further submitted that promotions in the skilled grade category are given only after passing the requisite trade test. Therefore, the action of the official respondents is in accordance with the law.

6.2 Keeping in view the facts and circumstances of the case and the submissions of the learned counsel for the respondents, the action of the official respondents in according promotions to the private respondent to the various skilled grades from the date his juniors were so

promoted and after having passed the requisite trade test, as a consequential benefit on his reinstatement after his acquittal from the criminal case, is in order. Accordingly, we do not feel that any judicial interference is required in this case and, therefore, this OA is dismissed without any order as to costs.

6.3 Since the grievance of the applicant in OA No.515/96 is also against the same private respondent on similar grounds, the OA No.515/96 is also dismissed without any order as to costs.

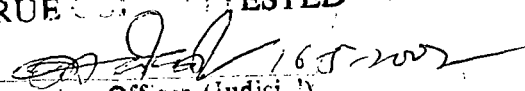
(H.O.GUPTA)

Member (Administrative)

(S.K.AGARWAL)

Member (Judicial)

TRUE & TESTED


Section Officer (Judicial)
Central Administrative Tribunal
Jaipur Bench. P.O. UR

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