

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

O.A. No. 59/2002  
T.A. No.

199

*Hon'ble V.C.  
May kindly see  
Report  
20/11/02*

*Our  
20/11*

DATE OF DECISION \_\_\_\_\_

Netra Singh

Petitioner

Hemant Gupta

Advocate for the Petitioner (s)

Versus

Union of India & Others

Respondent

T. P. Sharma

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.

The Hon'ble Mr. A. P. Nagrath, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

*(A. P. NAGRATH)*  
(A. P. NAGRATH)  
MEMBER (A)

(G. L. GUPTA)  
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH , JAIPUR.

Date of Decision 25/11/2002

O.A. No. 59/2002.

Netra Singh, S/o Shri Piroj Singh, aged about 40 years, Head Train Examiner, Western Railway, Kota Division, Resident of 454 B, Railway Colony, Kota Junction.

... APPLICANT.

v e r s u s

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. The Divisional Railway Manager (Establishment), Western Railway, Kota.
3. Senior Divisional Mechanical Engineer (Establishment), Western Railway, O/o Divisional Railway Manager, Kota.

... RESPONDENTS.

Mr. Hemant Gupta, counsel for the applicant.

Mr. T. P. Sharma counsel for the respondents.

COPAM

Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.

Hon'ble Mr. A. P. Nagrath, Administrative Member.

: O R D E R :  
(per Hon'ble Mr. A. P. Nagrath)

A Cadre Restructuring Scheme was introduced by the respondents vide Railway Board's latter dated 27.01.1993. This was to become effective from 01.03.1993. As a result of this restructuring, 8 vacancies had arisen in the cadre of Chief Train Examiners (C.T.X.R., for short) in the pay scale of Rs. 2000-3200. This is a selection post to be filled by promotion from the cadre of Head Trained Examiners (H.T.X.R., for short) in the pay scale of Rs. 1600-2660.

2. At the relevant point of time, the applicant was holding the post of HTXR and was in the zone of eligibility for promotion to the post of CTXR. It had been decided by the respondents to modify

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the selection procedure to fill up the vacancies arising out of this restructuring scheme and the basis of selection was only the record of service. Against these 8 vacancies 8 persons were selected by the order dated 12.11.1993 (Annexure A-3). Applicant's name does not appear in this list. He claims that he submitted a detailed representation against this order on 31.07.1999 and further on 02.02.2001. His representation came to be decided by order dated 05.11.2001 (Annexure A-1). He has brought this order under challenge in this OA by making a prayer that this order dated 05.11.2001 (Annexure A-1) and order dated 12.11.1993 (Annexure A-3) be quashed and set aside and that respondents be directed to promote him w.e.f. 01.03.1993.

3. Heard, the learned counsel for the parties and perused the averments made in the OA, reply filed by the respondents and rejoinder filed thereto by the applicant.

4. At the outset, we would like to observe that the cause of action arose to the applicant only on 12.11.1993 when the result of the selection was declared and the applicant did not find his name amongst the successful candidates. By his own admission, he submitted his first representation on 31.07.1999 followed by further reminders. It is a well established law that the representations made so belatedly do not keep the cause of action alive. Clearly, this OA is hopelessly barred by limitation. The applicant has not even chosen to file any application for condonation of delay as he presumably reckons the date of limitation from 05.11.2001 (Annexure A-1) when he has received the reply from Senior DME, Kota, rejecting his representation. This assumption on his part is without basis and unacceptable. On this

ground alone, this OA deserves to be rejected.

5. On merits, the admitted facts are that the adverse Confidential Report had been communicated to the applicant for the year 1991-1992. The applicant has alleged that the same was communicated rather belatedly vide letter dated 05.08.1993 i.e. after a period of 17 months. Be that as it may, the fact remains that the applicant had earned an adverse CR and the same was required to be considered while adjudging the suitability of the HTX for their promotions. The mode of selection was primarily the service records. If the service records was adverse, no fault can be found with the action of the respondents in not considering the applicant as suitable for promotion.

6. It is also admitted that the applicant was undergoing a punishment for withholding of increment for a period of three years from 01.02.1992 to 31.01.1995. Learned counsel for the applicant Shri Hemant Gupta raised a plea that as soon as the period of penalty was over, the applicant was required to be given his promotion as CTXR w.e.f. 01.03.1993. In support of his contention, he placed reliance on the judgement of this Bench of the Tribunal in OA No. 212/1994 decided on 10.08.2001, Govind Narain Gupta vs. UOI & Ors. In that case following the principles laid down by the Principal Bench in OA No. 1699/1987 decided on 28.01.1992 1993 (2) SIR 108 CAT, PB, it was held that the applicant was entitled to promotion and increments on the expiry of punishment, from the dates they had become due. Shri Hemant Gupta emphasized that since the facts of this case are similar to those two cases decided by the CAT, PB and followed by the Bench at Jaipur, the present applicant is also entitled to similar relief. Consequently, he

urged that the applicant deserves to be promoted to the post of CTXR w.e.f. 01.03.1993. Learned counsel fairly conceded that the applicant had participated in a selection held in the year 1994 and later but did not qualify. However, in the latest selection held in the year 2002, he has been declared successful. He strongly pleaded that the promotion was required to be given effect from 01.03.1993. Interestingly, the learned counsel did not touch upon the aspect of adverse CR from the year 1991-92 and solely confined his arguments to the aspect of not granting promotion to the applicant w.e.f. the original date after the currency of the penalty was over.

7. Learned counsel for the respondents, Shri T. P. Sharma, defended the action of the respondents by stating that when the applicant alongwith other eligible candidates was considered for promotion at the time of restructuring, his service record was found to be unsatisfactory. Thus he was rightfully ignored at that time. The applicant as stated had also been undergoing a minor punishment of withholding of increments for a period of three years. Mr. T. P. Sharma contended that all this dis-entitled the applicant from promotion w.e.f. 01.03.1993. He became eligible to be considered only after the period of penalty was over. There can be no ground for giving any retrospective effect to his promotion. According to him the rules also do not permit ante-dating the promotion in respect of such employees who were not promoted at the relevant time as they were undergoing some penalty.

8. We have given our anxious consideration to the facts of the case and arguments of the learned counsel for the parties. It is not the case of the applicant that when Restructuring Scheme was to

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be implemented, his record of service was without blemish. He himself as admitted that adverse remarks were communicated to him in the Confidential Report for the year 1991-92. The fact that these were communicated belatedly is not a ground relevant to be considered at this distant point of time. He could have challenged this aspect within a reasonable time after the remarks were communicated to him. The very mode of selection was the record of service and once the record of service is considered unsatisfactory, there is no ground made out for being considered suitable for promotion. The action of the respondents deserves to be upheld. Once a person has not been considered fit at the time his promotion was due, he can expect to be considered only after some vacancies become available in the next selection. Admittedly, the applicant has availed some opportunities but failed to qualify except in the selection held in the year 2002.

9. The ground pressed by the learned counsel for the applicant was that after the period of penalty was over, the applicant deserved to be promoted retrospectively. Apart from the legal provision being against the applicant, as we shall discuss presently, the fact that he was not considered fit for promotion w.e.f. 01.03.1993 because of adverse record of service, his claim for that promotion w.e.f. 01.03.1993 extinguished. He cannot claim the same right after the period of penalty was over. This, if at all, can only give greater reason to deny him the promotion.

10. We have carefully peruse the judgements relied upon by the learned counsel for the applicant. We find that in OA no. 212/94, Jaipur Bench of this Tribunal, has basically followed the principle laid down by the Principal Bench in Prem Singh Verma's case

(Supra). While going through this judgement in the case of Prem Singh, we find that the Tribunal has held the view that alongwith withholding of increments if the promotion is also withheld it would tantamount to imposition of double penalty and would result into double jeopardy. It was held that there would be untenable to deprive the applicant promotion after currency of penalty expired and that the applicant would also be entitled to notional fixation of pay in the higher grade w.e.f. the date of such promotions. It appears apparent that the law laid down by Hon'ble the Supreme Court in the case of UOI vs. K. V. Janaki Raman JT 1991

(3) SC 527 was not brought to the notice of learned members of the PB and even before the Jaipur Bench of this Tribunal. In that case, the Hon'ble Apex Court while disposing of a batch of applications had, alongwith much other issues, ~~had~~ also considered whether an employee undergoing any penalty has a right to be promoted retrospectively from the original date. The Tribunal had struck down the provisions in the rules where it is stated that if any penalty is imposed on the officer as a result of disciplinary proceedings the findings in the sealed cover shall not be acted upon. The Tribunal had directed that the person concerned should be considered for promotion in a review DPC as from the original date, in the light of the results of the sealed cover and his claim for promotion cannot be deferred for the subsequent DPC's. The Tribunal had given these directions on the ground that such deferment of the claim of promotion for subsequent DPC's amount to a double penalty. According to the Tribunal :-

" it not only violates Articles 14 and 16 of the Constitution compared with other employees who are not at the verge of promotion when the disciplinary proceedings are initiated against them but also offends the rule against double jeopardy contained in Article 20(2) of the Constitution".

While considering this aspect, the Apex Court has held as under :-

"29. According to us, the Tribunal has erred in holding that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original date even when the penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in presentii. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the

proceedings, although it is for conduct prior to the date the authority considers the promotion. For these reasons, we are of the view that the Tribunal is not right in striking down the said portion of the second sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum. We, therefore, set aside the said findings of the Tribunal. (emphasis supplied)."

11. The law laid down by Hon'ble the Supreme Court is thus clear that the denial of promotion to an employee during the currency of punishment does not amount to double jeopardy and that there is no right in favour of the employee to be promoted from the original date. The law laid down by the Apex Court is obviously a binding judicial precedent and we are bound to follow the legal principles so established notwithstanding the view taken by the Principal Bench and the Jaipur Bench of this Tribunal in the two cases referred to Supra. We also consider it pertinent to mention here that even the rules relating to promotion of Railway Servants dated 21.09.1995, 21.01.1993 and 27.07.1995 specifically provide that if a person becomes due for promotion, he should be promoted only after the expiry of the penalty. The penalties listed for this purpose include the penalty of withholding of increment. These rules have not been challenged by the applicant.

12. In the light of the discussions aforesaid, this OA is dismissed as hopelessly barred by limitation as also being totally devoid of merits. There shall be no order as to costs.

*Ans*  
( A. P. NAGRATH )  
MEMBER (A)

*G. I. Gupta*  
( G. I. GUPTA )  
VICE CHAIRMAN