

(22)

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

25.09.2007

OA No. 350/2003

Mr. C.B. Sharma, Counsel for applicant.
Mr. R.G. Gupta, Counsel for respondents.

Learned counsel for the respondents prays some more time to comply the order dated 03.01.2007. It is a 2003 matter. Let the matter be listed on 12.10.2007.

P. Sharma
(J.P. SHUKLA)
MEMBER (A)

M.L. Chauhan
(M.L. CHAUHAN)
MEMBER (J)

AHQ

12.10.07

Mr. C.B. Sharma, Counsel for applicant
Mr. R.G. Gupta, Counsel for respondents.

Heard the learned counsel
for the parties.

Judgment reserved.

P. Sharma
(J.P. Shukla)
M(A)

M.L. Chauhan
(M.L. Chauhan)
M(J)

28/10/2007

order pronounced today in
the open Court by the aforesaid

learned Bench

Original copy of
ACR/2/2007-Babu
459/2007
26/10/07

23/10/2007.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 23rd day of October, 2007

ORIGINAL APPLICATION NO.350/2003

CORAM :

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.J.P.SHUKLA, ADMINISTRATIVE MEMBER

Babu Ram Verma,
Senior Section Engineer,
Planning Office (PCO),
Wagon Repair Shop,
West Central Railway,
Kota Jn., Kota.

... Applicant
(By Advocate : Shri C.B.Sharma)

Versus

1. Union of India through
General Manager,
West Central Railway,
Jabalpur (MP).
2. Chief Mechanical Engineer,
West Central Railway,
Jabalpur (MP).
3. Chief Works Manager,
West Central Railway,
Kota Junction,
Kota.
4. Shri Kishan Singh,
Senior Section Engineer,
Body Repair Shop,
West Central Railway,
Kota Junction,
Kota.

... Respondents
(By Advocate : Shri R.G.Gupta)

ORDER

PER HON'BLE MR.M.L.CHAUHAN

The applicant has filed this OA thereby praying for the following relief :

- "i) That entire record relating to the case be called for from the respondents and after perusing the same respondents may be directed to allow promotion to the applicant to the post of Senior Section Engineer in the scale Rs.7450-11500 w.e.f. 1.3.1993, from the date junior so allowed, with all consequential benefits by modifying order dated 2.3.2001 (Ann.A/11) and by quashing letter dated 23.10.2002 (Ann.A/1).
- ii) That the respondents be further directed that name of the applicant be shown above the respondent No.6 in the seniority list to the post of Senior Section Engineer.
- iii) That the respondents be further directed not to take in account the adverse entries, if any, which have not been communicated to the applicant while considering the case of the applicant w.e.f. 1.3.1993."

2. Briefly stated, the facts of the case are that the applicant was not granted promotion to the post of Junior shop Superintendent despite the fact that he was assigned seniority in the grade of Chargeman-A w.e.f. 28.9.1981 pursuant to the decision rendered by this Tribunal in the earlier TA. Thereafter, the applicant filed another OA (No.13/1997), which was allowed by this Tribunal vide judgment dated 12.7.2000 (Ann.A/2). The operative portion of the said judgement is reproduced below :

"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 preceding 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."

3. Pursuant to the decision rendered by this Tribunal, operative portion of which has been reproduced above, the applicant was granted promotion to the post of Junior Shop Superintendent (subsequently redesignated as Section Engineer) w.e.f. 1.1.84, the date from which junior to the applicant was so promoted, but he was not granted promotion to the post of Shop Superintendent (Senior Section Engineer) w.e.f. 1.3.93. The applicant represented to the authorities vide his representation dated 13.1.2001 (Ann.A/10). However, the applicant was allowed promotion to the post of Senior Section Engineer w.e.f. 25.1.99 by allowing proforma promotion from the date his junior, Shri Ram Lal Bairwa, was allowed the benefit and actual benefits were however granted to the applicant w.e.f the date of joining i.e. 10.3.2001. Thus, the grievance of the applicant in this OA is limited to the extent that he should have been given promotion w.e.f. 1.3.93.

4. When this matter was listed on 3.1.2007, this Tribunal passed the following order :

"Heard the learned counsel for the parties. The grievance of the applicant in this case is very limited. The applicant is claiming promotion on the post of Senior Section Engineer w.e.f. 1993 pursuant to the panel prepared in the year 1994. In sum and substance, case of the applicant is that since the post being a non-selection post, it was incumbent upon the respondents to consider the ACRs of three years in terms of the order dated 10.10.90 (Ann.A/15). According to the learned counsel for the applicant, the applicant has not been assessed in accordance with the order Ann.A/15 inasmuch as the respondents have not taken into consideration his ACRs for the years 1991-92 and 1992-93, whereas he has been assessed on the basis of the ACRs pertaining to the year 1989-90 and 1991-91. In order to cut-short the controversy, the respondents are directed to produce the ACRs of the applicant pertaining to the year 1991-92 and 1992-93 on the next date of hearing."

5. Pursuant to the aforesaid order, the respondents have produced the ACRs of the applicant for the year 1991-92 and 1992-93 in sealed cover.

6. The stand taken by the respondents in the reply is that the applicant was given notional promotion to the post of Section Engineer from the date of promotion of his junior Shri Kishan Singh as per clear directions of this Tribunal in the judgement dated 12.7.2000, passed in OA 13/97. But the Hon'ble Tribunal did not give clear directions to the respondents to give promotion to the applicant on the higher post than Section Engineer. Even though the applicant was considered for promotion to the post of Senior Section Engineer, but he was not found fit to be promoted on the said post prior to vacancies of 19.12.98 on the basis of adverse confidential report. Therefore, as mentioned above, the applicant was promoted on the post of Section Engineer only as per direction of the Hon'ble Tribunal and not on the basis of confidential report. If the confidential report was to be considered, the promotion against the vacancies prior to 19.12.1998 could not have been given to the applicant as the confidential report was containing adverse entries. It is further stated that the confidential reports for the last three years i.e. 1990, 1991 and 1992 from the date 1.3.93 were considered to give promotion to the applicant on the post of Senior Section Engineer, but for the two years i.e. 1990 & 1991 the confidential reports were found adverse and hence the applicant was not promoted the said post.

7. We have heard the learned counsel for the parties and also perused the confidential reports for the year 1991-92 and 1992-93, as summoned vide order dated 3.1.2007. We are of the firm view that the applicant is not entitled to any relief, ^{As} already observed in the order dated 3.1.2007, ^{His} case for promotion ought to have been considered in terms of the order dated 10.10.90 (Ann.A/15), which stipulates that in case of promotion to the non-selection post, if out of three last two reports are good, person can be granted promotion. It was for that purpose, the confidential reports of the applicant pertaining to the year 1991-

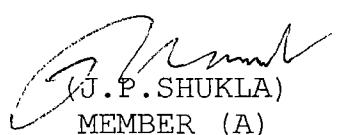
92 and 1992-93 were summoned as according to the learned counsel for the applicant his ACRs for the aforesaid period are not adverse. At this stage, we may notice that no doubt the panel was prepared in the year 1994 but the case of the person for promotion to the post of Senior Section Engineer was to be considered w.e.f. 1.3.93. In such a situation, three ACRs prior to 1.3.93 could have been considered. Thus, according to us, the respondents have not committed any infirmity in case they have considered the confidential reports of the applicant for the year 1989, 1990 & 1991. According to the respondents, confidential report of the year for the year 1989-90 and 1990-91 were adverse and the same were also communicated to the applicant and for that purpose the respondents have placed reliance on Anns.R/1 to R/8.

8. We have perused the confidential report of the applicant pertaining to the year 1991-92, which is 'Average'. Thus, admittedly, the applicant could not have been promoted to the post of Senior Section Engineer in terms of the order dated 10.10.90 (Ann.A/15). Further, we see no infirmity in the action of the respondents in not considering the confidential report of the applicant for the year 1993 for promotion of the applicant w.e.f. 1.3.93 because the confidential report ending on 31.3.93 could have been filled in by the competent authority after 31.3.93. Even then, in order to satisfy our conscious, we have called the confidential report of the applicant for the year 1992-93, perusal of which reveals that the applicant has been assessed as 'below average'. Thus, looking to the matter from any angle, we are of the view that the applicant has not earned two good reports, which were necessary for granting him promotion to the post of Senior Section Engineer in terms of Ann.A/15.

9. Thus, according to us, the applicant is not entitled for grant of promotion to the post of Senior Section Engineer w.e.f. 1.3.93. The applicant has been given promotion to the said post w.e.f. 25.1.99

as according to the respondents the applicant was not found fit for promotion to the said post prior to 19.12.98.

10. For the forgoing reasons, the present OA is bereft of merit and the same is accordingly dismissed with no order as to costs.



J.P. SHUKLA)
MEMBER (A)



(M.L. CHAUHAN)
MEMBER (J)

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