

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT CAMP : INDORE

Original Application No. 196 of 2005

Indore, this the 20th day of October, 2005

Hon'ble Shri M.P.Singh - Vice Chairman
Hon'ble Shri Madan Mohan - Judicial Member

Bhagwansingh Meena, S/o Shri Bapulal Meena,
aged 47 years, Commercial Inspector,
Western Railway, Ratlam, r/o 59, Bafna
Park, Ujjain

- APPLICANT

(By Advocate - Shri D.M.Kulkarni)

Versus

1. Union of India through General Manager,
Western Railway, Churchgate, Mumbai.
2. Divisional Rail Manager, Western Railway,
Do Batti Chourah, Ratlam.
3. Senior Divisional Commercial Manager,
Western Railway, Do Batti, Chourah, Ratlam.
4. Senior Divisional Personnel Officer,
Western Railway, Do Batti Chourah,
Ratlam.

- RESPONDENTS

(By Advocate - Shri Y.I.Mehta, Sr.Adv.along with
Smt.S.H.Mehta)

ORDER (Oral)

By M.P.Singh, Vice Chairman,-

By filing this Original Application, the
applicant has claimed the following main reliefs:-

"8.1 It be declared that the applicant is
entitled to proforma promotion on the post of
commercial inspector grade 5000-8000 w.e.f.
17.2.1993 and to increments thereafter and
arrears and allowances with interest at 9%
per annum till the balance of arrears are
paid to him.

8.2 The respondents be directed to give the
applicant further promotions from the date his
senior Shri Bharat Bhushan was promoted and also
because vacancy in higher post were available
and the applicant was put in the respective panel

8.1A It be declared that the applicant stands
promoted on the post of commercial inspector
grade-II scale 5500-9000(RSRP) on 20.11.1997 by
giving him proforma promotion as vacancy existed.
Arrears of salary and allowances with interest
be given to him".

2. The brief facts of the case are that the applicant
was working with the respondents-railways as Senior Goods
Clerk. He had participated in the selection for the post



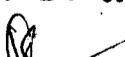
of Commercial Clerk. As departmental proceedings were going on against him, his result was kept in the sealed cover by the DPC. On exoneration in the departmental enquiry, the sealed cover was opened wherein it was found that the applicant has been selected. The applicant was placed at serial no.7 in the panel. The applicant had earlier filed OA No.40/1998 and the Tribunal vide its order dated 31.1.2002 had set aside the order of punishment of reversion from the post of Senior Goods Clerk to Assistant Goods Clerk. Therefore, the applicant was entitled for his promotion from the date his other colleagues were promoted on the basis of that selection. Accordingly, the applicant has been appointed from the date his colleagues were appointed. His pay has also been fixed notionally from that date and he has also been assigned due seniority. Thus, all the benefits which accrued to him as a result of his appointment from 27.4.1993 have been granted to him.

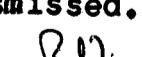
3. The learned counsel for the applicant has submitted that the applicant has been granted his promotion from the due date, however, the arrears of pay have not been granted to him. He has submitted that there was no fault of the applicant in getting his promotion after such a ^{long &} delay. In the departmental enquiry proceedings which was initiated against the applicant the applicant has been exonerated and, therefore, the applicant could have been appointed from the due date with all consequential benefits including arrears of pay. He has relied upon the decision of the Hon'ble Supreme Court in the case of State of Madhya Pradesh Vs. Syed Naseem Zahir & ors (1993) 24 ATC 249, and also the judgment of the Hon'ble Supreme Court in the case of Union of India Vs. K.V. Jankiraman, 1991 (2) SCALE SC 423. We have gone through the judgment of the Hon'ble Supreme Court in the case of Syed Naseem Zahir (supra). In the said case the charge-sheet was issued on 15.4.1988 and in the meanwhile sealed cover procedure was adopted by the DPC which met on

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28.10.1987. In these circumstances, the Hon'ble Supreme Court directed to promote the respondent notionally with all consequential benefits including back wages, if he was exonerated in the departmental enquiry and sealed cover recommendation was in his favour.

4. We find that the facts in the case of (supra) are different. In that case a decision was taken to initiate the disciplinary proceedings against the applicant, but no charge-sheet was served on the applicant on the date of DPC held, but in this case when the DPC was held, the charge-sheet had already been issued on the applicant, and it is a well settled legal position that the sealed cover procedure is to be followed which has been held correctly by the respondents. It is not the case that the applicant was not allowed deliberately by the respondents to work on the higher post from the due date. There was a DE pending against the applicant on the date when the DPC met and therefore ~~is~~ ^{it is not correct to say as it} ~~was~~ no question that there is no fault of the applicant and he was not allowed to work on the higher post from that date. It is only after the Tribunal has quashed the punishment order, the applicant has been granted the benefit of notional promotion. Since the applicant has not worked on the higher post, he cannot be allowed the arrears of pay and allowances for the period he has not performed his duties of the higher post. The decision of the Hon'ble Supreme Court in the case of K.V.Jankiraman(supra) also cannot come to the rescue of the applicant in the present OA.

5. Keeping in view the above facts, we do not find any merit in the present OA. The same is dismissed. No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

rkv.