

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No. 251/03

~~On~~ this the 8th day of December, 2004

CORM

Hon'ble Mr.M.P.Singh, Vice Chairman
Hon'ble Mr.Madan Mohan, Judicial Member

Karuna Shanker Mishra
S/o Late Shri Shobhnath Mishra
Sr.Booking Clerk
West Central Railway
Pipariya, Hoshangabad
R/o 968/1077, 1st Lane
Baika Bagicha, Jabalpur.

Applicant

(By advocate Mr.V.Tripathi)

Versus

1. Union of India through
Secretary
Ministry of Railway
Railway Board
New Delhi.
2. The General Manager
West Central Railway
Jabalpur.
3. The Divisional Railway Manager
West Central Railway
Jabalpur Division
Jabalpur.
4. The Sr.Divisional Personnel officer
O/o divisional Railway Manager
West Central Railway
Jabalpur.

Respondents

(By advocate Mr.M.N.Banerjee on behalf of
Shri S.K.Jain)



ORDER

By Madan Mohan, Judicial Member

By filing this OA, the applicant has sought the following main reliefs:

- (i) Set aside the impugned punishment order passed by Sr.Divisional Personnel Officer dated 4.9.02.
- (ii) Declare that the applicant is entitled to be promoted vide order dated 18.3.06 with all consequential benefits, direct the respondents to promote the applicant pursuant to order dated 18.3.96 with all consequential benefits including seniority, arrears of wages and other benefits as if the applicant was promoted at par with juniors w.e.f. 18.3.96.
- (iii) Direct the respondents to pay interest on delayed payment on retiral dues.
- (iv) Set aside the order (Annexure A9) to the extent it declines arrears of wages to the applicant on the promotional post.

2. The brief facts of the case are that the applicant is working as Sr. Booking Clerk under respondents. The next promotional post is Head Goods/Parcel Clerk. The criteria for promotion to the post of Head/Goods Parcel Clerk is "seniority cum fitness". The applicant was within the zone of consideration for promotion and accordingly was considered by the DPC/Screening Committee. An office order dated 18.3.96 (Annexure A1) was issued whereby the applicant was found to be fit/selected for promotion but the promotion was not effected on account of pendency of major disciplinary proceedings pursuant to charge sheet dated 11.9.95 (Annexure A2). Subsequently vide order dated 21.12.01 (Annexure A3) the applicant was exonerated from the said charge sheet. Once the applicant is exonerated from the charges, in all fairness, the department ought to have opened the sealed cover and release the promotion of the applicant with all consequential benefits. The applicant preferred a representation dated 21.4.02 (Annexure A4) which was rejected vide order dated 4.9.02 (Annexure A5). Feeling aggrieved, the applicant preferred another representation dated 28.2.03 to respondent No.3.



Nothing has been done on the said representation. Later on the respondents promoted the applicant with retrospective effect. However, the arrears of wages arising out of the promotion were declined and a proforma promotion was ordered. This action is bad in law. Hence this OA is filed.

3. Heard learned counsel for both parties. During the course of arguments, the learned counsel of the applicant argued that he was restricting reliefs only to relief Nos. (iii) & (vi) of para 7 of the OA. The learned counsel further argued that the applicant was found fit for promotion by the DPC/Selection Committee but his promotion was not released because a disciplinary proceeding was pending against him on the basis of a charges sheet. But subsequently the applicant was exonerated from the said charges vide order dated 21.12.2001 and he was promoted with retrospective effect vide Annexure A9. However, the respondents had declined to pay arrears of wages arising out of the promotion and a proforma promotion was ordered, which is not legal. As the applicant was fully exonerated from the charges and as argued earlier, he was found fit for promotion and the respondents had promoted him with retrospective effect, the applicant is entitled for the reliefs claimed in para 7(iii) and (vi).

4. In reply, the learned counsel for the respondents argued that the applicant was due for promotion as HBC on 18.3.96 but due to pending major charge sheet, he could not be promoted and thus his juniors were promoted. Subsequently vide order dated 6/10.11.03, the applicant was given proforma promotion as Hd.Sdg.Clerk w.e.f. 18.3.96. The applicant was undergoing punishment from 1.2.2001 by way of withholding of increment for 2 years vide letter dated 31.10.2000 and the next punishment was imposed by way of reduction of pay from 1.2.2000 for one year vide letter dated 26.12.02 (Annexure R2) against a minor charge sheet issued on 14.6.02. After that, another punishment was also imposed by way of withholding of increment for one year from 1.2.2004 vide letter



dated 23.1.03 (Annexure R3). Since the applicant was undergoing punishment from 1.2.2001 i.e. before exoneration from the charges, the applicant was not considered for promotion as HBC. However, vide order dated 6/10.11.03 the applicant has been given proforma promotion w.e.f. 18.3.96. The applicant is not legally entitled for regular promotion in accordance with rules and he is also not entitled for any arrears of wages arising out of this promotion. The respondents have not committed any irregularity or illegality.

5. After hearing the learned counsel for both parties and a careful perusal of the records, we find that the applicant was exonerated from the charge sheet dated 11.9.95 vide order dated 21.12.2001 (Annexure A3). In Annexure A-3 it is mentioned by the disciplinary authority that "I agree with the findings of enquiry officer and exonerate you from charges framed against you". We have perused OM No.22011/4/91.Estt(A) dated 14th September, 1992 issued by the Govt. of India, Department of Personnel & Training, in which it is mentioned that :

"On conclusion of the disciplinary case/criminal prosecution, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the junior-most officiating person. He may be promoted notionally with reference to the date of promotion of his junior but he will not be allowed any arrears of pay for the period preceding the date of actual promotion. However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."



6. In view of the aforesaid OM, we are of the considered opinion that no irregularity has been committed by the respondents in giving proforma promotion to the applicant. The applicant has himself mentioned in the OA that he has already preferred a representation dated 28.2.03 to respondent No.3 and nothing has been done on the said representation. Therefore, the respondents are directed to decide the matter about arrears of wages arising out of the promotion according to the aforesaid OM of the Govt. of India, Department of Personnel & Training, within a period of three months from the date of receipt of a copy of this order.

7. The OA is disposed of as above. No costs.



(Madan Mohan)
Judicial Member



M.P. Singh)
Vice Chairman

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पृष्ठांकन सं ओ/ज्या.....जबलपुर, दि.....

प्रतिनिधि उपस्थित:-

- (1) सचिव, उच्च न्यायालय काउन्सिलरियेशन, जबलपुर
- (2) अध्यक्ष श्री/श्रीमती/वृ.....के काउंसिल
- (3) प्रत्यर्थी श्री/श्रीमती/वृ.....के काउंसिल
- (4) ~~वायपाल, के.प्र.अ., जबलपुर न्यायापीठ~~

सूचना एवं आवश्यक कार्यवाही हेतु

उप सचिव

V. Tripathi
Dev. JBB
S.K. Jasn
Dev. JBB

Issued
on 14-12-04
BS