

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No.866/03

Gwalior, this the 13th day of October, 2004.

C O R A M

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

Mahendra Kumar
S/o Shri Balakdas
R/o RB-II 23-A
Railway Colony
Guna.

Applicant

(By advocate Shri S.Paul)

Versus

1. Union of India through
its General Manager
West Central Railway
Near Indira Market
Jabalpur.
2. Divisional Railway
West Central Railway
Bhopal Division
Bhopal.

Respondents.

(By advocate Shri S.K.Mukherjee)

O R D E R

By Madan Mohan, Judicial Member

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

- (i) Declare that the action of the department in not giving the proforma promotion and fixing of pay to the applicant from the year 1996 is bad in law and direct the respondents to fix the pay of the applicant from the year against which he was selected on proforma/notional basis as if he is working from 1996.
- (ii) On grant of such proforma fixation, the applicant's pay be appropriately fixed in the pay scale of Rs.4500-7000 on the date his juniors and counterparts were promoted i.e. 12.1.2001 with all consequential benefits. Accordingly, from 12.1.2001, he be given the benefit of arrears of pay in the pay scale of Rs.4500-7000 along with other attendant benefits.



(iii) Set aside the order dated 19.11.2003 (Annexure A1) to the extent it gives the promotion to the applicant on provisional basis and direct its retrospective effect as indicated above. Also set aside the order dated 4.12.2003 (Annexure A2).

2. The brief facts of the case are that the applicant was initially appointed as casual labour on 19.1.1983. He was promoted as Assistant Pointsman and Sr.Asstt. Pointman in 1990 and 1991 respectively. On 1.3.1993, the applicant became Pointsman Grade A. The applicant was within the zone of consideration for selection on the post of Goods Guard under 50% Limited Departmental Competitive Examination Quota. Accordingly, pursuant to a notification dated 3.9.95 (Annexure A3), the applicant submitted his candidature for the post of Goods Guard. He was selected and the result was declared on 22.5.1996 (Annexure A4). The applicant thereafter appeared for viva voce held on 25.6.96, but the entire panel was dropped by the department on 15.7.96. Aggrieved by the cancellation of selection, the applicant filed OA No.518/96 which was decided on 16th August 2000 and the Tribunal directed that a separate examination should be held, maintaining by and large the same standards within a period of 4 months. A written examination was again conducted on 25.11.2000 followed by a viva voce on 14.2.2000. The result of viva voce was published on 8.12.2000 (Annexure A6) wherein the name of the applicant is at Sl.No.1. The applicant was finally selected and was sent for training and he completed his training by order dated 31.1.2002 (Annexure A8). Promotions were given from prospective effect and the direction of the Tribunal has not been complied with in letter and spirit. Certain similarly situated persons filed OA 51/03 which is pending for adjudication. The applicant was chargesheeted



under Rule 9 of Railway Servants (Discipline & Appeal) Rules and by order dated 7.2.2000, the charges were dropped and the applicant stood exonerated from the charges. The department ought to have promoted the applicant in compliance with the direction of the Tribunal in the earlier case. The applicant's educational qualifications were found to be in order. Thus there was no impediment for the department in not issuing promotion order in favour of the applicant pursuant his selection and completion of training. Although the applicant was promoted as Goods Guard in the pay scale of Rs.4500-7000 by letter dated 19.11.03 (Annexure A1), the said promotion was provisional and subject to verification of his educational qualifications. The applicant preferred a detailed representation. To the shock of the applicant, by impugned order dated 4.12.03 (Annexure A2), the applicant was reverted from the post of Goods Guard to the post of Pointsman Grade A. Before issuing this order, no show cause notice was given to the applicant nor opportunity of hearing. Hence this OA is filed.

3. Heard learned counsel for both parties. It is argued on behalf of the applicant that the applicant was exonerated from the charges levelled against him vide order dated 7.2.2000 (Annexure A13). The applicant had successfully completed his training, as required by the respondents and there was nothing adverse against him in the service record. His educational qualification was found to be proper and there was no impediment for his promotion in due time, but

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the respondents passed the impugned order dated 4.12.03 (Annexure A2) reverting the applicant from the post of Goods Guard to the post of Pointsman Gr.A. The applicant was not given an opportunity of hearing. No show cause notice was issued to the applicant before passing the impugned order. Only one letter dated 19.11.03 (Annexure A1) was issued to the applicant in which it is mentioned that his promotion is provisional and subject to verification of his educational qualification, while the charges against the applicant regarding his educational qualification had been dropped. The counsel further argued that if the respondents are of the opinion that the graduation certificate filed by the applicant relates to Magadh University, Bodhgaya is false, the verification and enquiry being conducted by the respondents is not finalised. Hence the applicant cannot be reverted and the applicant should be promoted from the due date.

4. In reply, learned counsel for the respondents argued that earlier the applicant had submitted his graduation certificate issued from Jiwaji University, Gwalior which was found to be not correct. Hence the applicant was charge sheeted but ultimately the charges were dropped vide order dated 7.2.2000 (Annexure A13). Subsequently the applicant submitted another certificate from Magadh University, Bodhgaya (Annexure R2) and also filed an intimation (Annexure R3) in which he has mentioned that if his educational qualification is found to be false, then he be reverted. He shall have no objection. The learned counsel for the respondents has drawn



our attention towards a letter dated 10.11.2003 in which the name of the father of the applicant is written as Kapil Sharma while the name is Balak Das as mentioned in the OA. Thus the applicant has cheated the Railway Administration. Subsequent certificate filed by the applicant issued by Magadh University is also apparently false as the applicant has not fulfilled the minimum educational qualification of graduation. Hence the respondents have rightly reverted the applicant from the post of Goods Guard to Pointsman Gr.A. An enquiry is pending against the applicant and hence the applicant cannot claim his promotion also.

5. After hearing the learned counsel for both parties and careful perusal of the records, we find that one graduation certificate was filed by the applicant which was issued by Jiwaji University, Gwalior and it was found to be false. Hence the applicant was charge sheeted but the charges levelled against the applicant were later ~~or~~ dropped and the applicant was exonerated from the charges vide order dated 7.2.2000 (A-13). Regarding this certificate, it is argued on behalf of the applicant that it was never filed by the applicant but some other person filed it. The applicant had filed another certificate Annexure R2 and the respondents have made enquiries from concerned office and it is found that regarding this certificate, the name of the father of the applicant is mentioned as Kapil Sharma. The applicant has mentioned his father's name as Balakdas in the OA. This certificate issued by Magadh University, Bodhgaya is under verification through vigilance department of Central Railway. we have perused the original records submitted on behalf of the respondents in which the name of the father of the applicant is mentioned as Kapil Sharma and not Balakdas. Hence

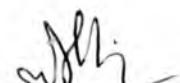


according to the contention of the respondents, the applicant does not possess the minimum educational qualification required for the alleged post of Goods Guard. As the verification about the mark sheet issued from Magadh University, which was submitted by the applicant, dated 16.12.98 is under investigation through vigilance department of the Central Railway and this matter has not been finalised and concluded by the respondents, the aforesaid mark sheet cannot be said to be false. As the matter is not finally decided by the respondents, they should not have reverted the applicant from the post of Goods Guard to Pointsman Gr.A. The respondents have legal right to take action against the applicant after completion of the inquiry regarding the validity of the alleged mark sheet issued by Magadh University, Bodhgaya.

6. Considering all the facts and circumstances of the case, we are of the considered opinion that the impugned order dated 4.12.2003(Annexure A2) is liable to be quashed and set aside and we do so. So far as the promotion of the applicant is concerned, from the alleged date, he is not entitled as the validity and correctness of the mark sheet issued by Magadh University is under verification by the vigilance of Central Railway. The respondents are directed to post the applicant as Goods Guard till the conclusion of the enquiry.

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


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman