

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 680 of 2001

Jabalpur, this the 7th day of May, 2004

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

R.S. Pandey, aged 55 years,
son of late Shri R.J. Pandey,
employed as Office Superintendent-II,
under the Chief Crew Controller,
C. Rly., Satna (M.P.). ... Applicant

(By Advocate - Shri Ramesh Shrivastava)

V e r s u s

1. Union of India,
through the Secretary,
Department of Railways,
Rail Bhawan, New Delhi.
2. The General Manager,
Central Railway, Mumbai-CST.
3. The Divisional Rail Manager,
(P) Central Railway, Jabalpur.
4. The Senior Divisional Mechanical
Engineer, Central Railway,
Jabalpur. Respondents

(By Advocate - Shri N.S. Ruprah)

ORDER

By Madan Mohan, Judicial Member -

By filing this Original Application the applicant
has claimed the following main relief :

"to consider the case of the applicant for due promotion from the due date as if the applicant was not punished including the promotion for the post of Superintendent Grade-I with all consequential benefits and to place the applicant at correct position in the relevant seniority list. Cost of the petition be also awarded."

2. The brief facts of the case are that the applicant was a selected candidate by the Railway Service Commission for the post of Junior Clerk and resumed his duty on 23.1.1965 under the Executive Engineer (Doubling) Central

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Railway, Katni. Originally the lien of the applicant was fixed under the Divisional Electrical Engineer, Bombay under the name of Shri M.K. Sharma, who is now working as office Superintendent Grade-I under the control of the Chief Crew Controller, Central Railway, Jabalpur. The lien of the applicant and Shri Sharma was subsequently transferred to Jabalpur Division. The applicant had passed the written test examination of the Senior Clerk Grade during 1974-75 and declared passed in the first attempt whereas Shri Sharma was declared failed. The applicant was promoted as Sr. Clerk on 17.5.1979 under the Loco Foreman, Central Railway, Satna. Shri Sharma was promoted as Senior Clerk after the promotion of the applicant as Senior Clerk. On 25.9.1982 the applicant was served with a major charge sheet for irregular attendance in the office of Divisional Rail Manager, Jabalpur between 3.7.1982 to 8.7.1982 and 5.8.1982. An enquiry into the charge was held and the applicant was found guilty of the charges and consequently vide order dated 18.4.1985 the disciplinary authority imposed the penalty of removal from service with effect from 20.4.1985. This penalty of removal from service was converted in to the penalty of compulsory retirement by the appellate authority vide order dated 20.5.1985. Aggrieved by the said order the applicant filed a petition before the Hon'ble High Court and the same was transferred to this Tribunal and registered as TA No. 85/1986. The Tribunal set-aside the orders of the disciplinary authority as well as the appellate authority vide order dated 14.1.1987 and directed ^{that} the applicant should be reinstated. It was further directed that in case a fresh departmental enquiry is desired the respondents in accordance with the rules de-novo could hold it by another enquiry officer. The applicant was reinstated

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vide order dated 28.1.1987 and the applicant resumed duty on 31.1.1987. The applicant was immediately placed under suspension on the same date. Thereafter the respondents issued a fresh charge sheet dated 12.2.1987. The disciplinary authority based on the findings of the enquiry officer imposed the penalty of reversion of the applicant to the post of Junior Clerk from the post of Senior Clerk for a period of 3 years vide order dated 13.1.1989. An appeal was preferred by the applicant before the Divisional Rail Manager on 14.2.1989 and the appellate authority set aside the order of the disciplinary authority but directed a fresh enquiry. The applicant filed another OA in this Tribunal and vide order dated 28.3.90 the de-novo action from the stage of consideration of the enquiry officer's report was ordered. Thereafter the disciplinary authority imposed a penalty of reversion to the post of Junior Clerk from the post of Senior Clerk on the applicant for a period of two years vide order dated 17.4.1990. The appeal filed by the applicant was rejected vide order dated 30.7.1990 and the penalty imposed by the disciplinary authority vide order dated 17.4.1990 was confirmed. The applicant filed yet another OA No. 194/1991 challenging the impugned orders. The Tribunal vide its order dated 6.9.1999 quashed the orders dated 17.4.1990 and 30.7.1990 of the disciplinary authority and of the appellate authority respectively. The Tribunal further directed that the applicant shall be entitled for all consequential benefits as per rules. The applicant had submitted the order of the Tribunal to the respondents vide his application dated 5.11.1999 to grant the balance claims and consequential benefits but the applicant was not granted the consequential benefits as per order of the Tribunal. The applicant sent another reminder on 25.1.2000. But the respondents approached the Hon'ble High Court in a

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WP No. 3669/2000. The Hon'ble High Court dismissed the writ petition vide order dated 5.7.2000 and has maintained the order dated 6.9.1999 passed by the Tribunal. The respondents failed to obey and comply with the order of the Tribunal for 11 months, thus the respondents were liable to be punished for contempt of this Tribunal. The applicant approached this Tribunal on 23.8.2000 vide contempt petition No. 61/2000. On receipt of the notice the respondents passed through Special Pay Sheet dated 12.10.2000 and made the payment of the difference of pay arrears for the period of two years amounting to Rs. 16,538/- to the applicant. On 19.12.2000 the standing counsel for the Railways appeared before the Tribunal and submitted that vide order dated 1.11.2000 the applicant has been paid difference of arrears amounting to Rs. 16,538/-. On this statement the CCP was disposed of with the direction that if the applicant is still aggrieved, he will be at liberty to approach the Tribunal. The applicant was promoted as Head Clerk lately vide order dated 16.6.1992, on completion of the punishment of reversion and was transferred to the office of Senior Divisional Mechanical Engineer (Diesel), New Katni Junction from the office of the Carriage and Wagon Superintendent, New Katni Junction. The said reversion order has been quashed by the Tribunal vide order dated 6.9.1999. On quashing of the reversion order the applicant should have been considered for promotion from the due date which was not done due to punishment of reversion. The applicant was due and was within the zone of consideration for promotion from the post of Senior Clerk to Head Clerk during the year 1989-90. Further the special pay of Rs. 70/- as mentioned in the order dated 16.6.1992 has also not been paid to the applicant so far inspite of demand and representations given by the

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applicant in this respect. As per the Railway Board's letter dated 27.1.1993 circulated vide Chief Personal Officer, Bombay's letter dated 2.2.1993, the applicant was entitled and was within the zone of consideration to get the promotion of Office Superintendent Grade-II on the basis of the seniority but for the benefit of restructuring of post as a Office Superintendent-II the applicant was not considered due to the punishment of reversion which has been quashed by the Tribunal vide order dated 6.9.1999. Due to non-consideration of the name of the applicant, his juniors have been promoted from the post of Head Clerk to the post of Office Superintendent Grade-II vide order dated 10.5.1993. The applicant is entitled for the said promotion a day before the day on which his juniors have been promoted. The applicant has been promoted as Office Superintendent Grade-II with effect from 25.9.1995, whereas the juniors of the applicant have been promoted on the said post with effect from 22.5.1992 and subsequent dates before 25.9.1995, since when the applicant has been promoted. The applicant was not considered with the juniors due to the punishment which has been quashed by the Tribunal. Aggrieved by this the applicant has approached this Tribunal by filing this OA and claiming the aforesaid relief.

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3. The learned counsel for the parties and perused the record carefully.

4. It is argued on behalf of the applicant that the respondents had paid the difference of arrears amounting to Rs. 16,538/- But he was not promoted in due time while his juniors were promoted. When the reversion order was set aside by the Tribunal it was the duty of the respondents to consider the case of the applicant for

promotion as Office Superintendent Grade-I from the relevant time when his juniors were considered and promoted.

5. The learned counsel for the respondents argued that the applicant is guilty of malicious distortion of facts. Infact, the applicant is aggrieved with his non-promotion as OS Gr. II, on the basis of seniority in restructuring of the post in the year 1993. The promotion order dated 31.5.1993 is the cause of grievance of the applicant because it does not include the name of the applicant. But the applicant has not filed the copy of this order dated 31.5.1993. The applicant has not challenged the order dated 31.5.1993 and thus no fruit full relief can be given to the applicant in this regard until and unless he challenges the aforesaid order. The challenge to the aforesaid order is difficult because the applicant will have to demonstrate that he is senior to any of the promotees and hence the applicant has avoided the filing of this document. It is also impossible to explain the delay of ten years in challenging the said document. The learned counsel for the respondents further argued that the applicant has not arrayed those employees who were promoted after 31.5.1993 as parties. The application is bad for non-joinder of proper and essential parties. The applicant also does not come within the zone of consideration. After the quashment of the punishment order by the Tribunal the applicant gets rid of the stigma because of the order dated 17.4.1990 and is restored to the position prior there to. The respondents have filed the order dated 24.9.1983 as Annexure R-3, whereby the applicant was promoted to the post of senior clerk from junior clerk. In this promotion order the applicant is at serial No. 43. Shri Balwant Singh is at serial No. 3 and

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Shri K.N. Dubey is at serial No. 9. Thus Balwant Singh and K.N. Dubey were much more senior to applicant even before the punishment order. Nevertheless he remains junior to Shri Singh and Shri Dubey. Mr. Singh and Dubey are candidates who were promoted on 31.5.1993 to OS Gr-II. When seniors are promoted in this manner, the applicant can have no grievance. The quashment of punishment order dated 17.4.1990 will not improve applicant's seniority. It will only restore the applicant to position prior to 17.4.1990 and as per this restored position the applicant definitely remains much more junior to Shri Singh and Shri Dubey who were the last two promotees. From the above clarification, it is clear that the applicant's name was not within the zone of consideration of promotion of OS Gr-II against restructuring scheme as per Railway Board's letter dated 27.1.1993 circulated vide Chief Personnel Officer Bombay's letter dated 2.2.1993. The applicant has been considered for promotion of OS Gr-II in the year 1995 as per turn and zone of consideration and was promoted to the post of OS Gr-II vide order dated 11.9.1995. It is also clear that other employees who were promoted as OS Gr.-II alongwith the applicant had been senior to the applicant from the initial post i.e. Senior Clerk. In the promotion order of OS Gr-II dated 11.9.1995 the name of Smt. Vijaya Bhatia is shown at Sl. No. 1 and the order of promotion of Senior Clerk, her name is shown at Sl. No. 24 whereas the applicant's name is at Sl. No. 43. Like this, in the order of promotion of OS Gr-II the name of Shri Rajendra Rao More, Shri O.P. Sharma, Shri Dulichand Kalloo Singh, Shri Pursottamal Pandey are shown as seniors and names are at serial No. 2 to 5 and in the order of promotion of Senior Clerks same persons names are shown at Sl. No. 26, 28, 36 and 40 respectively, whereas the applicant's name is at Sl. No. 43. Hence the question of name

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of the applicant being within the zone of consideration to get promotion of OS Gr-II in grade Rs. 5500-9000/- against restructuring scheme does not arise.

6. We have given careful consideration to the rival contentions made on behalf of the parties and we find that the applicant did not challenge the order of promotion of his juniors dated 31.5.1993 (Annexure R-1) to the post of OS Gr-II. His name is not mentioned in the said order. The applicant has also not arrayed those who were promoted after 31.5.1993 as parties. Hence the application is bad for non-joinder of proper and essential parties. The Tribunal cannot pass any adverse orders against the said juniors without hearing them. We also find that the respondents have complied with the orders passed by the Tribunal earlier, and granted the applicant all the benefits as directed by the Tribunal. The applicant was also not within the zone of consideration for promotion as OS Gr.-II against restructuring scheme. The applicant has been considered for promotion of OS Gr.-II in the year 1995 as per turn and zone of consideration and was promoted to the post of OS Gr.-II vide order dated 11.9.1995. Thus we do not find any ground to interfere with the orders passed by the respondents.

7. Accordingly, we are of the considered opinion that the applicant has failed to prove his case and the OA is liable to be dismissed as having no merits. Hence the Original Application is dismissed. No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman