

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 219 of 2000

Jabalpur, this the 14th day of October, 2003.

Hon'ble Mr. J.K. Kaushik, Judicial Member

Hon'ble Mr. Anand Kumar Bhatt, Administrative Member

Sudha ram Samanta, aged about 51 years  
S/o Late Shri P.C. Samanta, resident of  
Railway Quarter No. RB III 327/A New Yard,  
Central Railway Itarsi (M.P.)  
Distt. Hoshangabad. 461115.

APPLICANT

(By Advocate - Shri L.S. Rajput)

VERSUS

Union of India, Through,

1. General Manager,  
Central Railway, Mumbai-CST  
(Maharashtra)

2. Divisional Railway Manager,  
Central Railway,  
Habibganj, Bhopal (M.P.)

3. Senior Divisional Electrical Engineer  
(TRS) Central Railway Electric Loco-shed,  
New-Yard, Itarsi (M.P.)  
Distt. Hoshangabad (M.P.) 461115.

RESPONDENTS

(By Advocate - Shri S.P. Sinha)

O R D E R (Oral)

By J.K. Kaushik, Judicial Member -

Shri Sudha ram Samanta has filed this Original Application under Section 19 of the Administrative Tribunals Act and has made the following prayer :

- "(a) Direct the respondents to produce the Original file of the promotion case of the applicant & the Enquiry file of the impugned Charge-Sheet for the kind perusal of the Hon'ble Court.
- (b) To quash the impugned order Annexure A-1 being non-est & ab-initio-void.
- (c) To direct the respondents to promote the applicant in Grade Rs. 7450-11500 RSRP) as per Annexure A-2 with effect from 11-12-1996 with all consequential benefits.
- (d) Any other relief(s) which the Hon'ble Tribunal may deem just & expedient in the circumstances

*Dn*

of the case including the grant of Costs of this petition in the interest of justice & equity."

2. The material facts leading to filing of this Original Application, necessary for adjudication of the controversy involved are at a very narrow compass. The applicant was issued with a charge sheet under Rule 9 of the Railway Servants Discipline and Appeal Rules, 1968, vide memo dated 04.12.1999 i.e. alleging controvention of Railway Service Conduct Rules 1964/ 3(1) (i), 3(1) (ii) and 3(2) (i). The applicant submitted the statement of defence in reply to the charge sheet. The disciplinary proceedings were pending and during pendency of the disciplinary proceedings an order dated 04.02.2000 was issued vide which the applicant was ordered to be promoted on proforma basis from 11.12.1996 to the post of Senior Section Engineer in the scale of Rs. 7450-11,500/- It is the charge sheet which has been challenged in the present original application as well as the applicant has asked for release of his promotion as indicated in the prayer clause.

3. The respondents have contested the case and have filed a detailed return. In the reply it has been specifically mentioned in para 3.12 that on consideration of the representation of the applicant the charge sheet has been withdrawn vide order dated 31.03.2000 at Annexure R-1. It is also submitted that one Shri B.K. Jain has filed a case before the Hon'ble Tribunal and has sought interim order. He was ordered to be reverted from the higher post to make room for the applicant.

4. A rejoinder also has been filed to the reply, wherein certain subsequent developments have been placed on record in as much as the applicant has been allowed certain other

*2*

fixation of pay vide Annexure A-15.

5. We have heard the learned counsel for the parties and have carefully perused the records of this case.

6. At the outset there is no dispute as regards the withdrawal of the charge sheet. Thus as far as the withdrawal of the charge sheet is concerned the applicant would inevitably be entitled to all consequential benefits <sup>as</sup> if the charge sheet itself was never in existence and there can be no quarrel on this. The only disputed question remains, which has been argued on behalf of the learned counsel for the respondents is that there is no post available on which the applicant can be accommodated. He has also submitted that the measures were taken to promote the applicant and order was issued for reversion of the junior most person i.e. Shri B.K. Jain, but unfortunately Shri B.K. Jain has also approached the Hon'ble Tribunal and obtained the stay. On this the learned counsel for the applicant has countered and submitted that there are three more persons who are junior to the applicant namely Bashir Mohd., A.K. Saxena and Mehamood Ali and they were being continued and the respondents are un-necessarily trying to obstruct the release of his promotion which is to be made effective from 1996 and he has <sup>been</sup> made to suffer for none of his faults despite that his promotion order was issued on regular basis.

7. We have considered the rival submissions made on behalf of both the parties. As regards the challenge of charge sheet since the same has been withdrawn, that part of the relief has become infructuous. As regards the matter regarding release of his promotion, the promotion order would be effective from 1996. The pendency of disciplinary case could not have been an

obstruction since issued subsequently. However, after its withdrawal, even that ground did not exist. But the applicant cannot be denied consideration of promotion, otherwise there shall be infraction of Article 14 and 16 of the Constitution in as much as one has a fundamental right for consideration of promotion and one gets the right immediately his next junior is promoted. In this case the position is beyond dispute that number of his juniors are working on promotional post. We are constrain<sup>ed</sup> to observe that the fair action which was expected from the respondents as a model employer has not been forthcoming to the applicant and it smacks arbitrariness. Thus we find substance in the contention of the learned counsel for the applicant and the original application to that extent is well-founded.

8. In the premises the Original Application is partly allowed and the respondents are directed to implement and grant the due benefits to the applicant in pursuance with Annexure A-2 i.e. the order dated 04.02.2000. The applicant shall also be entitled to all consequential benefits. This order shall be complied with within a period of three months from the date of receipt of copy of this order. However in the facts and circumstances of this case we leave the parties to bear their own costs.

*Anand Kumar Bhatt*  
(Anand Kumar Bhatt)  
Administrative Member

*J.K. Kaushik*  
(J.K. Kaushik)  
Judicial Member