

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JABALPUR BENCH

CIRCUIT AT INDORE

Date of Decision : 4, 9, 2003

O.A No. 257/98.

Vasant B. Nadge, Retired Divisional Engineer, Western Railway, Ratlam.

... Applicant.

v e r s u s

1. Union of India, through Secretary, Railway Board, Rail Bhavan, New Delhi.
2. General Manager, Western Railway, Churchgate, Bombay-400020.

... Respondents.

Shri S. L. Vishwakarma, counsel for the applicant.  
Shri Y. I. Mehta, Senior Advocate, with Shri H. Y. Mehta, counsel for the respondents.

CORAM

Hon'ble Mr. V. K. Majotra, Administrative Member.  
Hon'ble Mr. J. K. Kaushik, Judicial Member.

: O R D E R :

(per Hon'ble Mr. J. K. Kaushik)

The applicant, Shri Vasant B. Nadge, has filed this Original Application and has sought the following reliefs :-

- 8.1. Humble applicant respectfully submits that this Hon'ble Tribunal may be pleased to order that the applicant is rightly due for promotion to the post of Deputy Chief Engineer/Senior Divisional Engineer, Junior Administrative grade from 2.8.93.
- 8.2. Arrears as a result of promotion to the post of Deputy Chief Engineer, J.A. Grade from 2.8.93 may be paid to the applicant.
- 8.3. Pension and other settlement dues may be re-calculated and paid."



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

3. The indubitable facts filtered out from the pleadings of the parties are that while working on the post of Divisional Engineer, the applicant was placed under suspension on 22.08.1988. He was issued with 2 charge sheets dated 19.02.1988 and 22.08.1989. In both the disciplinary proceedings, the applicant was exonerated and the suspension period from 22.02.1988 to 15.03.1991 was treated as spent on duty for all purposes. He was also allowed his due promotion to the post of Junior Scale Class-I w.e.f. 27.11.1989 vide letter dated 04.01.1990 (Annexure A-5). His name came to be interpolated at Sl. No.55 below Shri G. Krishnamurthy. His next junior Shri S. N. Ramanna at Sl. No. 56 was superannuated and thus Shri S. K. Prasad at Sl. No. 57 became his next junior. His next junior Shri S. K. Prasad was promoted to the post of Junior Administrative Grade (JAG, for short) w.e.f. 2.8.93. ~~But~~ But the cause of the applicant was not considered and he has submitted number of representations which remained unreplied. Subsequently the applicant has also superannuated on 31.07.96.

4. As regards the variances in the facts, it has been submitted in the reply that the applicant was allowed weightage of 5 years service and his name was interpolated in the seniority list of officers by assigning his position below G. Krishnamurthy and above Shri S. N. Ramanna. The promotion to the Junior Administrative Grade is to be made on the basis of the selection after assignment of the relevant merit and to come in the consideration zone one



must have put in atleast 8 years in Group A service and it shall be further subject to the availability of the vacancies. The applicant is said to be not in the Group A service at the time of his retirement and that is the reason his case was not considered and thus who were initially junior to him their case was considered and promoted to JAG in 1993. His retiral benefits have been granted on the basis of actual pay drawn by him.

5. We have considered the rival submissions made on behalf of both the parties.

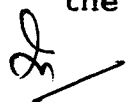
6. From the perusal of the records it is borne out that the next junior to the applicant Shri S. K. Prasad finding place at Sl. No.22 of the seniority list dated 21.11.1990 (Annexure R-1). Shri S. K. Prasad was promoted to the post of Junior Scale Officer vide letter dated 27.11.1989. In the same letter the name of the applicant has subsequently been included. In the seniority list also the applicant's name was placed above Shri S. K. Prasad. It has been strangely contended that the applicant did not fulfil the eligibility condition of 8 years and that is one of the reason that he was not given the promotion to the post of JAG. Learned counsel for the respondents was confronted with a query from the side of the Tribunal as to how Shri S. K. Prasad who was junior to the applicant on the feeder post was promoted to the JAG in the year 1993 and he had also not completed the said period of 8 years. It was clearly brought to the notice of the learned counsel for the respondents that Shri S. K. Prasad has been promoted along with the applicant on the Feeder post and as per their own pleadings

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and orders Shri S. K. Prasad is placed below to the applicant on the feeder post. There was no satisfactory answer from the side of the respondents so as to countenance their assertion. Thus the inescapable conclusion is that the main grounds of defence put forward on behalf of the respondents itself is groundless. We are also not impressed from the ~~statement~~ submission of the learned counsel for the respondents that the applicant was not employed on Group A post and i.e. the reason his case was not considered for the promotion to the post of JAG. Since the applicant was faced with certain charge sheets against him which culminated into his clear exoneration and was exonerated in the year 1996. We find no fault with the applicant in the matter inasmuch as he could not enjoy the said promotion for the reason of pendency of the disciplinary proceeding and the respondents are not expected to place Cart before the horse. They cannot be allowed to blow hot and cold together or approbate and reprobate. After exoneration from the charges, the applicant becomes entitled to all the benefits, as if, no disciplinary case was ever instituted against him.

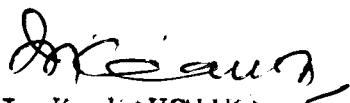
7. Learned counsel for the applicant has placed reliance on the Railway Board Circular RBE No.14/93, wherein, in Para 3 the procedure has been laid down as regards the opening of the sealed cover and also grant of the arrears of difference of pay, on promotion in case of exoneration.

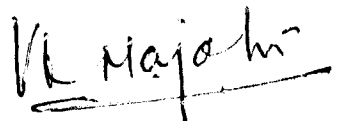
A feeble argument was laid on behalf of the respondents that no arrear should be allowed in case the applicant's OA is allowed, neither in the pleadings nor in the oral submissions any ground has been put forward on behalf of the respondents as to why the payment of any arrear on



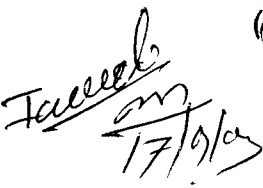
account of the retrospective promotion should be restricted. The position regarding the payment of arrears and the release of the other benefits has already been settled and laid down by the Hon'ble Supreme Court in the case of UCI vs. Janki Raman AIR 1991 SC 2010, wherein it has been laid down that FR 17 has no application in such cases and the arrears are invariably to be paid until there are special reasons for granting the same and there is no such reason here.

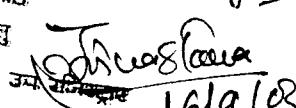
8. The upshoot of the aforesaid discussion is that the OA has ample force and substance, the same deserves to be allowed. The respondents are directed to consider the case of the applicant for promotion to the post of Junior Administrative Grade w.e.f. the year 1993 from the date his next junior Shri S. K. Prasad has been promoted and in case he is considered fit for the same, the applicant shall be allowed all consequential benefits including the arrears of the difference of the salary, revision of pension and other retiral benefits etc. This order shall be complied within a period of 3 months from the date of receipt of a copy of this order. However, in the facts and circumstances of the case, we make no order as to costs.

  
(J. K. KAUSHIK)  
MEMBER (J)

  
(V. K. MAJOTRA)  
MEMBER (A)

पुस्तक सं. ओ/का. .... जलपुर, दि. ....  
प्रतिनिधि अर्जित :-  
(1) सचिव, उच्च न्यायालय बार एसोसिएशन, जलपुर  
(2) आवेदक श्री/श्रीमती/कु. .... के कार्यालय  
(3) प्रत्यर्था श्री/श्रीमती/कु. .... के कार्यालय  
(4) दायमाल, को.प्र.वा., जलपुर न्यायपीठ  
समाप्ति एवं आवश्यक कार्यवाही हेतु

  
17/9/03

  
16/9/03

S.L. Veshwalegarain, R ad Room.  
y I. mehta, Adu.  
Andore