

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH  
CIRCUIT CAMP : INDORE

Original Application No.496 of 1998

Indore, this the 14th day of May, 2003

Hon'ble Mr.R.K.Upadhyaya-Administrative Member  
Hon'ble Mr.A.K.Bhatnagar-Judicial Member

Brijmohan Joshi S/o Shri Motilal Joshi,  
Aged 50 years, working as Office Supdt.,  
Typist in Divisional Railway Manager's  
office-Ratlam Resident of Quarter No.  
765/A Old Railway Colony, Road No.4,  
Ratlam (MP) 457001

- Applicant

(By Advocate-Shri G.L.Gupta)

Versus

Union of India - Through

1. The General Manager, Western Railway,  
Churchgate, Mumbai.
2. The Divisional Railway Manager, Western  
Railway, Do-batti, Ratlam (M.P.).

- Respondents

(By Advocate-Shri Y.I.Mehta, Sr. Advocate with  
Shri H.Y.Mehta)

O R D E R

By R.K.Upadhyaya, Administrative Member -

The applicant has claimed that he should be promoted as Superintendent Typist in the scale of Rs.6500-10500 on regular promotion even though he has been ordered to be promoted from 18.7.1997 as per order dated 16.12.1997 (Annexure-A-2).

2. The case of the applicant is that he has been asked to discharge the duties of Superintendent Typist - a non-selection post in the grade of Rs.6500-10500 temporarily since 18.7.1997. According to the applicant, final selection should have been decided within four months from such appointment as per policy of the Railway Board. The applicant claims that three posts of Superintendent Typist in the scale of Rs.6500-10500 were shown to be sanctioned as per order dated 11.6.1996 (Annexure-A-4), therefore, the applicant should have been regularly promoted to the vacant post being the senior most person.

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3. The respondents in their reply have stated that the applicant was only sanctioned officiating allowance as per order dated 16.12.1997 (Annexure-A-2) on account of sick leave of Shri K.L.Borasi. The applicant had been charge-sheeted for major penalty as per memorandum dated 26.6.1998. The fact of the charge-sheet has not been stated by the applicant in the present OA. Therefore, this OA deserves to be dismissed <sup>on account of</sup> concealment of material fact. The applicant has not been reverted on account of interim order of this Tribunal dated 2.7.1998. One Shri Pyarelal, senior to the applicant was promoted only on 20.8.1998. The applicant could have been considered only for regular promotion in the next vacancy. However, because of pendency of this OA in which interim relief has been granted in favour of the applicant and because of disciplinary proceedings the applicant could not have been promoted.

4. The learned counsel of the applicant stated that Shri K.L.Borasi, in whose leave vacancy the applicant was promoted, died on 29.12.1997. Therefore, there was a regular vacancy and the applicant should have been regularly promoted. It is further stated that on the date of death of Shri K.L.Borasi, the applicant had not been served with a charge-sheet. Therefore, the issue of charge-sheet and subsequent disciplinary proceedings have no relevance. It is also stated by the learned counsel that the applicant being in the open line was the senior most and promotion of Shri Pyarelal and others alleged seniors was of no relevance to the promotion of the applicant.

5. We have heard the learned counsel of both the parties and have perused the material available on record.

6. There is no promotion order of the applicant. The alleged order of promotion dated 16.12.1997 (Annexure-A-2) is only an order of sanction of "officiating allowance" to the applicant with effect from 18.7.1997. During the period when the charge-sheet was issued and punishment proceedings

were in progress, the applicant could not have been considered for regular promotion. In any case, the order of status quo granted by this Tribunal on 2.7.1998 prevented the respondents from taking any decision in the matter. Now, the disciplinary proceedings have come to an end by order dated 12.9.2002 by which the applicant has been imposed the penalty of withholding of increment for a period of three years with cumulative effect.

7. In View of the fact that the applicant was given officiating allowance with effect from 18.7.1997 and was subsequently not reverted because of the interim order of this Tribunal dated 2.7.1998, it will be just and fair to direct the respondents to take a decision in the matter in accordance with rules. For this purpose, the applicant may make a fresh representation stating as to how he is eligible for being promoted from the date from which officiating allowance has been granted to him. The respondents may also examine the effect of issue of charge-sheet and the resultant punishment order dated 12.9.2002 awarding punishment to the applicant before taking a final decision in the matter. If the applicant makes such a representation within a period of one month from the date of receipt of a copy of this order, the respondent no.2 is directed to take a decision in the matter within three months from the date of receipt of a copy of this order by a speaking and reasoned order under communication to the applicant.

8. In view of our direction in the preceding paragraph, this O.A. is disposed of without any order as to costs.

  
(A.K. Bhatnagar)  
Judicial Member

  
(R.K. Upadhyaya)  
Administrative Member

Issued  
on 22.5.03  
BS

पृष्ठोक्त सं ओ/न्या.....जबलपुर, दि.....

च विनिधि उपस्थित:-

- (1) श्री. जयप्रकाश ..कार एसोसिएशन, जबलपुर
- (2) श्री. जयप्रकाश ..कार एसोसिएशन, जबलपुर के काउंसल
- (3) श्री. जयप्रकाश ..कार एसोसिएशन, जबलपुर के काउंसल
- (4) श्री. जयप्रकाश ..कार एसोसिएशन, जबलपुर के काउंसल

सूचना एवं आवश्यक कार्यवाही हेतु

*[Signature]*  
22/5/03

EL Cupta, Adm. DND  
YI Mehra, Adm. DND