

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 855 of 1998

Jabalpur, this the 5<sup>th</sup> day of April 2003.

Hon'ble Mr. R.K. Upadhyaya - Member (Admnv.)  
Hon'ble Mr. A.K. Bhatnagar - Member (Judicial)

Anand Prakash S/O Matha Prasad,  
Dy. Chief Engineer (Construction)  
Central Railway, Jabalpur.

APPLICANT

(By Advocate - Shri R.P. Agrawal)

VERSUS

1. The Union of India  
through the Secretary,  
Ministry of Railways, Rail  
Bhawan, New Delhi,
2. Chairman,  
Railway Board, Rail Bhawan,  
New Delhi.
3. Genral Manager, Central Railway  
Chatrapati, Shivaji terminal  
Mumbai.
4. Chief Personnel Officer,  
Central Railway, Chatrapati,  
Shvaji terminal, Mumbai.

RESPONDENTS

(By Advocate - Shri S.P. Sinha)

O R D E R

By R.K.Upadhyaya, Member (Admnv.)-

The applicant has filed this application with a prayer that the order dated 25.9.1998(Annexure-A-7) be quashed in so far as it relates to non-payment of arrears for the period of notional placement in the selection grade from 1.7.1996 to 1.8.1997. The applicant has, therefore, asked for a direction to the respondents that he may be paid arrears along with interest at 18% per annum with cost of this O.A.

2. It is stated by the applicant that he was appointed as Probationary Officer in the Western Railway on 21.6.1984 having been selected by the Union Public Service Commission. It is further stated that a charge

*Subscribed*

memorandum dated 25.3.1997 (Annexure-A-1) was issued to him by the disciplinary authority. The applicant has not filed complete charge-sheet with its enclosures, but the charges can be culled out from the order of the disciplinary authority dated 4.11.1997 (Annexure-A-8) which states as follows:-

"The charges against Shri Anand Prakash can be divided into two parts viz.

(i) Delay in finalising the Tender Committee's Recommendations, and not preparing the Rate Analysis and not changing the rate value of the tender when the fresh tenders were invited.

(ii) The Second part pertains to recommendations made by convenor for awarding a contract to Shri K.N.Sharma, although in the past, his performance was not satisfactory".

2.1 The disciplinary authority as per his order dated 4.11.1997 (Annexure-A-8) has disposed of the charge-sheet as follows-

"3. As far as the first part of the charge is concerned, Shri Anand Prakash should have been careful in dealing with the tender papers and should have avoided delay and other irregularities which are considered minor. For which I have decided to counsel Shri Anand Prakash, which is hereby done".

2.2 The applicant has stated that he had filed a reply dated 15.4.1997 (Annexure-A-2). The respondents had not instituted any enquiry in pursuance to the explanation filed by the applicant, but the disciplinary authority had only gave a 'counsel' to the applicant. According to the applicant, this does not amount to a punishment. It is further stated that the applicant was placed in the selection grade with effect from 2.8.1997 <sup>as per</sup> Annexure-A-3. However, the applicant had made a representation stating that his juniors have been promoted with effect from 1.7.1996, therefore, he should also be given the selection grade prior to the date of his junior's promotion. The impugned order dated 25.9.1998 (Annexure-A-7) has been passed and the applicant has been given selection grade on notional basis with effect from 1.7.1996, i.e., the date of placement of his junior Shri Kripal Prasad. But, the

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grievance of the applicant is that in spite of the fact that no penalty has been imposed on him, he has not been paid arrears on account of award of selection grade with effect from 1.7.1996. Therefore, it is urged that this Tribunal may direct the respondents to pay the arrears and not restrict the promotion on notional basis only.

3. The learned counsel of the respondents invited attention to the reply filed in which it has been stated that the DPC, which approved the panel of 25.5.1997, kept the finding in respect of the applicant in a sealed cover, as he was involved in a vigilance case. On finalization of the proceedings, he was counselled, ~~and~~ as advised by the CVC on 1.8.1997. Thereafter, as per the procedure laid down in Railway Board's letter dated 21.1.1993 (Annexure-R-II), the sealed cover containing the findings of the DPC was opened and on being found fit, the applicant was placed in the selection grade with effect from 2.8.1997, i.e., following the date of his being counselled. The case of the respondents is that the finalization of the vigilance case did not conclude in complete exoneration of the applicant and hence as per para 3 of the Railway Board's letter dated 21.1.1993, he could only be granted the benefit of selection grade on notional basis with reference to his junior, without payment of arrears of pay and allowances.

3.1 The learned counsel of the respondents referred to para 3 of the Railway Board's circular dated 21.1.1993 (Annexure-R-II) which provides as under:-

"3. On the conclusion of the disciplinary case/ criminal prosecution which result in dropping of allegation against the Government servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his junior on the basis of such position....."

The learned counsel further stated that the appointing authority took a conscious decision to allow him notional

benefit in selection grade with effect from 1.7.1996 as per the recommendations of the DPC. The actual benefit in Selection Grade accrues to the applicant only with effect from 2.8.1997 - the day after he was counselled.

4. The learned counsel of the applicant in rejoinder stated that the Railway Board's circular letter dated 21.1.1993 (Annexure-R-II) cannot be allowed to be interpreted in such a way that it deprives the applicant normal benefit of promotion. He stated that the applicant has not been imposed even a minor penalty. Therefore, it can always be stated that he was completely exonerated. In any case, he stated that the provisions of the circular dated 21.1.1993 which permits only notional promotion should be struck down and declared unconstitutional being contrary to the normal rules of promotion.

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

6. It is undisputed that the applicant's case for promotion was kept in sealed cover because he was issued a charge-sheet. The point for consideration is whether the Railway Board's circular letter dated 21.1.1993 (Annexure-R-II) can be said to be unsustainable as claimed by the applicant. In our considered view, the applicant has never challenged the Railway Board's circular, neither in the body of the application nor by any separate application for amendment. Therefore, we have to confine ourselves to the provisions contained in the circular letter dated 21.1.1993 (Annexure-R-II) which provides that "In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover covers and with reference to the date of promotion of his next junior" (emphasis supplied by us). From the reading of the order dated 4.11.1997 (Annexure-A-8) it is clear that the applicant has not been

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completely exonerated. The disciplinary authority has stated that the applicant "should have been careful in dealing with the tender papers and should have avoided delay and other irregularities which are considered minor". In view of these observations, the 'counsel' was offered by the disciplinary authority. We are, therefore, of the considered view that the applicant has not been completely exonerated, as such his notional promotion with reference to the date of promotion of his junior is in consonance with the Railway Board's circular dated 21.1.1993 (Annexure-R-II). In this view of the matter, we do not find any justification to interfere with the order of the respondents. Therefore, this application is dismissed, however, without any order as to costs.

(A.K. Bhatnagar)  
Member (Judicial)

(R.K. Upadhyaya)  
Member (Adminv.)

rkv.

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

प्रतिनिधि अर्पणित:-

(1) सचिव, उच्च न्यायालय, जबलपुर

(2) आदेश, उच्च न्यायालय, जबलपुर के काउंसल

(3) प्रत्यक्ष, उच्च न्यायालय, जबलपुर के काउंसल

(4) कार्यपालक, उच्च न्यायालय, जबलपुर न्यायाधीश

सूचना एवं आवश्यक कार्यवाही हेतु

*[Signature]*  
उप निदेशक  
18/4/03

*R. P. Aggarwal, Adl.*  
*S. P. Singh, Adl.*

*Issued*  
*on 16.4.03*