

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 29<sup>th</sup> day of August, 2008

ORIGINAL APPLICATION No.172/2005

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER  
HON'BLE MR.B.L.KHATRI, ADMINISTRATIVE MEMBER

Kripa Shankar Goyal,  
s/o Shri B.L.Goyal,  
at present working on the post of  
Chief Goods Supervisor, Railway Station,  
Rewari, N.W.R. Headquarter Office at Jaipur  
r/o Care of Shri Sushil Madan, Modal Town,  
Rewari.

.. Applicant

(By Advocate: Shri P.V.Calla)

Versus

1. Union of India  
through General Manager,  
Northern Western Railway,  
Jaipur
2. Divisional Railway Manager,  
North Western Railway,  
Jaipur Division,,  
Jaipur
3. The Senior Divisional Commercial Manager  
(Estt.),  
Jaipur Division,  
N.W.R., Jaipur

.. Respondents

(By Advocate: Shri V.S.Gurjar)

O R D E R

Per Hon'ble Mr. M.L.Chauhan, M(J)

This case has got chequered history. Briefly stated, facts of the case are that the applicant was appointed as Commercial Clerk in Jaipur Division w.e.f. April 21, 1975. While working as Assistant Goods Clerk during the year 1978, a departmental inquiry was initiated against the applicant. The gravamen of the charge against the applicant was that he unauthorisedly prepared BPTS from Sl.No.2586 to 2591 for a total amount of Rs. 3570.05 without collecting the amount from the passenger and in collusion with certain persons obtained the amounts of the said DPTs from them on the basis of refund slips prepared by himself. The departmental inquiry culminated in the dismissal of the applicant vide order dated August 18, 1980. The appeal preferred by the applicant was also rejected. The applicant filed Writ Petition against the impugned order in the High Court of Rajasthan which was transferred to Jodhpur Bench of the Tribunal and registered as TA No.476/86. Vide order dated 11.8.1987, the Jodhpur Bench of the Tribunal quashed both the impugned orders passed by the Disciplinary and Appellate Authority and hold that dismissal order has been passed by an authority who is far subordinate to the General Manager, Western Railway and also that the applicant was not afforded

opportunity to cross examine the witnesses Nos. 12,14 and 21 and he had also not been supplied copies of the documents. However, the Tribunal further observed that this order will not preclude the competent authority from initiating fresh inquiry in accordance with law in case they feel so.

The applicant was reinstated in service pursuant to the order dated 11.8.1987 only vide order dated 13/16.9.88 that too, subject to decision of SLP. However, the SLP filed by the Department was also dismissed on 31.7.1989. Since this tribunal in TA No. 476/86 has directed that the applicant shall be entitled to all consequential benefits less the earnings he might have received by any gainful employment during the period subsequent to his dismissal and prior to his reinstatement, the applicant was promoted to the post of Goods Clerk on ad-hoc basis vide order dated 29.7.98 and he was also allowed to appear in the written examination conducted for the aforesaid post, result of which was declared on 14.12.2000. After dismissal of SLP vide order dated 31.7.1989, the respondent Railways served a Memo dated 23.5.1990 to the applicant thereby informing that a De-novo inquiry has been initiated against him and he should file reply within ten days. However, the department did not proceed further till April, 2001 when vide order dated 24.4.2001 the applicant was informed that Inquiry Officer in respect of

chargesheet served upon him in the year 1979 vide Memo dated 15.5.1979 has been appointed. This order was challenged by the applicant by filing OA No.332/2001. The said OA was ~~dismissed~~<sup>allowed</sup> by this Tribunal vide judgment dated 22.11.2002 (Ann.A3) on the ground of delay and it was held that the respondents had not given any explanation for the delay caused what to talk of proper explanation in conducting the disciplinary proceedings and as to why it took 11 years for them to appoint an Inquiry Officer, when the Memo was issued on 23.5.90 and reply was given by the applicant on 9.6.2990. Since the disciplinary proceedings were set-aside by this Tribunal vide order 22.11.2002 passed in OA No.332/2001, the respondents have given benefit of promotion and seniority to the applicant pursuant to the order of this Tribunal dated 11.8.87 passed in TA No.476/86 whereby the applicant was held entitled for consequential benefits.

At this stage, it will be stated that in terms of the order passed in TA No.476/86, the applicant was held entitled for consequential benefits which has accrued to him obviously prior to passing of the said order dated August 11, 1987. The respondents have granted the benefit of promotion and seniority to the applicant in the cadre of Goods Clerk which promotion was granted to him firstly on ad-hoc basis vide order dated 29.7.98 and he was also given seniority and

proforma promotion from the pay scale of Rs. 4000-6000 to Rs. 5000-8000 and 5500-9000 to 6500-10500 vide order dated 7.1.2004 and 20.1.2004 (Ann.A4 and A5) on the premise that the said benefit has been granted to one Shri C.M.Gupta and Shri P.S.Chauhan who were junior to the applicant in the cadre of Goods Clerk scale Rs. 4000-6000. It may be stated that the said benefit was given to the applicant pursuant to the decision rendered by this Tribunal in OA No. 332/2001 whereas this Tribunal in the said OA has not given any direction to give consequential benefits to the applicant. The issue before this Tribunal in OA No.332/2001 was regarding disciplinary proceedings and the same were quashed on the ground of delay. The issue regarding seniority and promotion in the higher scale of Rs. 5500-9000 and Rs. 6500-10500 was not involved. The applicant could not have been granted such promotions on these posts in the grade of Rs. 5500-9000 and Rs. 6500-10500 against the posts of Chief Goods Clerk and Chief Goods Supervisor without qualifying the selection test, as promotion against these posts are to be made after qualifying the selection test. When this factual mistake came to the knowledge of the competent authority after representation against such promotion was received, the matter was inquired into and it was found that the applicant has been granted promotion on these posts by administrative mistake, hence vide impugned order,

promotion of the applicant was cancelled with immediate effect and the applicant was demoted in the pay scale of Rs. 5000-8000 vide order dated 1.4.2005 (Ann.A1). It is this order, which is under challenge in this OA.

2. Notice of this application was given to the respondents. The respondents have filed reply. In the reply the respondents have specifically stated that promotion granted to the applicant in the scale of Rs. 5500-9000 and 6500-10500 to the post of Chief Goods Clerk and Chief Goods Supervisor are against the rules, as such, keeping in view the mandate of Para 229 of the Indian Railway Establishment Manual (IREM) Vol.I as and when the fact of mistake/factual illegality is brought to the notice of the appointing authority, in that event the promotion and/or appointment order of such an employee is to be cancelled with immediate effect. Since, according to the respondents, the applicant did not pass the written test, as such the applicant was rightly reverted.

3. We have heard the learned counsel for the parties and gone through the material placed on record.

4. The fact that appointment/promotion to the post of Chief Goods Clerk scale Rs. 5500-9000 and Chief

Goods Supervisor scale Rs. 6500-10500 are by way of positive act of selection and a person can be promoted only if he qualifies the selection test, is not disputed. It is also not in dispute that the applicant has not qualified the selection test for these posts. The grievance of the applicant is two fold - (i) that under similar circumstance one Shri Ram Kishan Meena (applicant in OA No.153/2005) was granted promotion by this Tribunal vide order dated 25<sup>th</sup> July, 2007, as such, the applicant is entitled to the relief on the basis of the said judgment. It is further argued that this Tribunal has taken into consideration the judgment rendered by the Single Bench of the Hon'ble High Court in the case of Sualal Yadav vs. State of Rajasthan & Others, 2006 (2) CDR 1072 (Raj.) whereby it is stated that where a relief of reinstatement with consequential benefits was given and the person has retired from service, he has to be granted promotion without qualifying the written examination and (ii) that the impugned order has been passed without affording any opportunity to show-cause.

5. We have given due consideration to the submissions made by the learned counsel for the applicant. We are of the view that the contention raised by the learned counsel for the applicant deserves out right rejection. It may be stated that in the case of Sualal Yadav (supra), the Court was

concerned with the Rajasthan Civil Services (Departmental Examination) Rules, 1959, passing of which must be one of the conditions for granting promotion to the higher post. Since the petitioner therein had already been retired from service and dismissal order has been set-aside and that the petitioner was reinstated with consequential benefits from back date, it was not possible for the petitioner therein to qualify the departmental examination after his retirement from service. It was under these peculiar circumstances of the case the Hon'ble Court held that the petitioner therein may be granted notional promotion and he is entitled to notional fixation of pay and seniority till the date of retirement.

This is not a case of such nature. In this case, the consequential benefits were given by this Tribunal in TA No. 476/86 decided on August 11, 1987. Admittedly, pursuant to the aforesaid judgment, the applicant was entitled to his reinstatement as Commercial Clerk and further promotion to the post of Goods Clerk based upon his seniority in the cadre of Commercial Clerk but any promotion made to the higher grade of Rs. 5000-8000, 5500-9000 and 6500-10500 was not as a result of consequential benefits granted to the applicant in TA No.476/86. Further, this Tribunal while dismissing OA No.332/2001 has not granted any direction that the applicant shall be entitled to

consequential benefits. Thus, we are of the firm view that the applicant was granted promotion wrongly by the respondents on the premise that the applicant was senior in the pay scale of Rs. 4000-6000, as such, entitled for proforma promotion and seniority to the grade of Rs. 5500-9000 and then Rs. 6500-10500 solely on the ground that the said benefit has been extended to his junior Shri C.M.Gupta and Shri P.S.Chauhan. It may be stated that the said benefit to Shri C.M.Gupta and Shri P.S.Chauhan was given only after they have qualified the written examination and placed on the panel whereas the applicant has not passed such examination. As such, we see no infirmity in the action of the respondents in passing the impugned order thereby reverting the applicant to the grade of Rs. 5000-8000 as admittedly, promotion to the grade of Rs.5500-9000 and Rs. 6500-10500 has to be made only after qualifying the written examination being a selection post. According to us, such a course was ~~not~~ permissible for the respondents in terms of Para 228 of the IREM Vol.I which stipulates that if any promotion is given by factual mistake, such promotion order can be cancelled with immediate effect. From the material placed on record, it is evident that the applicant has qualified the written test for the post of Senior Goods Clerk in the year 2000, as can be seen from order dated 14.12.2000 (Ann.A2). Thus, it was open for the applicant to qualify the written

examination of the higher post of Chief Goods Clerk and Chief Goods Supervisor subsequently. It is not a case where the applicant was on road during this period. Facts remain that the applicant was reinstated vide order dated 13/16.9.88 and he has been continuously serving in the department till date. Thus, the reliance placed by the applicant to the judgment of the Hon'ble High Court in the case of Sualal Yadav (supra) is clearly distinguishable and not applicable in the facts and circumstances of this case as the petitioner before the Hon'ble High Court had already been retired from service when the order of dismissal was set-aside and consequential benefits were granted to the petitioner therein.

Further, the reliance placed by the applicant to the decision of this Tribunal in the case of Ram Kishan Meena, OA No.153/05 decided on 25<sup>th</sup> July, 2005, is also not applicable in the facts and circumstances of this case. In the case of Ram Kishan Meena (supra) this Tribunal has specifically held that "for holding the post of OS Grade II, though the applicant was required to pass the selection test but as juniors to the applicant have already been promoted upto the level of OS II without selection under modified rules as per upgradation scheme, the applicant was also entitled to hold the post." This is not the case of such nature. As already stated above, the benefit of promotion in the grade of Rs. 5500-9000 and Rs. 6400-10500 was

granted to the juniors to the applicant namely S/Shri C.M.Gupta and P.S.Chauhan only after they qualified the written examination and these persons were not promoted to the higher posts without qualifying the written examination. Thus, the applicant cannot draw any assistance from the judgment rendered by this Tribunal in the case of Ram Kishan Meena (supra).

6. Regarding the contention of the applicant that the impugned order has been passed without issuing show-cause notice to the applicant, suffice it to say that such a course was permissible to the respondents in terms of Para 228 (II) (a), which thus reads:-

"228. Erroneous Promotions.- (I)....

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(II) In pursuance of Rule 1326-R.II, 1987 Edition the following provisions shall govern the pay and increments of the Railway servant whose promotions or appointments in a substantive or officiating capacity to a post is later found to be erroneous on the basis of facts-

(a) The orders of notification of promotion of appointment of a railway servant should be cancelled as soon as it is brought to the notice of the appointing authority that such a promotion or appointment has resulted from a factual error and the railway servant concerned, should, immediately on such cancellation, be brought to the position which he would have held but for the incorrect orders of promotion or appointment.

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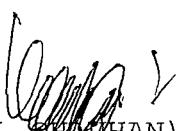
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That apart, law on this point is also clear. Where appointment is contrary to rules, such a appointment is void ab-initio and no show-cause notice is required. Further, the Apex Court in number of cases has held that principle of natural justice should be followed in each and every case has undergone sea change. The earlier view was that breach of principles of natural justice itself causes prejudice and no other 'de-novo' prejudice is need to be proved. This view was subsequently deviated and two exceptions were carved out form this principla - i) if upon admitted or undisputed facts only one conclusion was possible, then in such a case principle that breach of natural justice was itself a prejudice would not apply. In other words if no other conclusion was possible on the admitted or undisputed facts, it is not necessary to quash the order which was passed in violation of natural justice and ii) in addition to breach of natural justice real prejudice must also be proved to have been caused. The law on the point is well settled and at this stage it will be relevant to notice few decisions of the Apex Court. The Apex Court in the case of Ashok Kumar Sonkar vs Union of India, 2007 (3) AISLJ 420 has noticed its earlier decision in the case of Aligarh Muslim University and Ors. vs. Mansoor Ali Khan, 2001 (1) SLJ 409, Karnataka State Road Transport Corporation and Anr. Vs. S.G.Kotturappa and Anr., 2005 (2) ALJ 208 (SC) and Punjab National

Bank and Ors., vs. Manjeet Singh and Anr., (2006) 8 SCC 647, whereby it was stated that principle of natural justice are not required to be complied with when it leads to an empty formality. It will not issue such direction where the result would remain the same, in view of the facts and situation prevailing or in terms of legal consequences. Viewing the present case on the basis of the law as laid down by the Apex Court, it is clear that admittedly, the applicant has not qualified the written examination and promotion to the post of Chief Goods Clerk and Chief Goods Supervisor has to be made after qualifying the written examination and by way of positive act of selection. Thus, in view of these admitted facts, issuance of show-cause notice will be an empty formality and no direction can be given under these circumstances where the result would remain the same even after issuance of the show-cause notice in terms of law laid down by the Supreme Court as stated above.

7. Accordingly, the present OA being bereft of merit is dismissed with no order as to costs. It is however, clarified that the stay which was extended upto 28.3.2007 and not extended thereafter shall be of no consequence on account of dismissal of the OA.

  
(B.L. KHATRI)  
Admv. Member

  
(M.L. CHAUHAN)  
Judl. Member

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