


16.03.2009

OA No. 220/2007

Mr. C.B. Sharma, Counsel for applicant.
Mr. Virendra Dave, Counsel for respondents.

Heard learned counsel for the parties.

For the reasons dictated separately, the OA is disposed of.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 16th day of March, 2009

ORIGINAL APPLICATION No.220/2007

CORAM:

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

Mahipal Singh Rathore
s/o Shri Bhagwat Singh
r/o 75, Adarsh Nagar, Ajmer
and presently working as
Office Superintendent (General) Grade-I,
Office of Chief Works Manager,
North Western Railway,
Ajmer Division, Ajmer.

.. Applicant

By Advocate: Shri C.B.Sharma

Versus

1. Union of India
through General Manager,
North Western Zone,
North Western Railway,
Jaipur
2. Chief Works Manager (Loco),
North Western Railway,
Ajmer Division,
Ajmer.
3. Deputy Chief Mechanical Engineer (Carriage),
North Western Railway,
Ajmer Division,
Ajmer.
4. Shri Madan Lal Medatwal,
Chief Office Superintendent,
Union Cell, Loco,
Office of Chief Works Manager (Loco),
North Western Railway,
Ajmer Division,
Ajmer.

... Respondents

By Advocate: Shri Virendra Dave

O R D E R (ORAL)

The grievance of the applicant in this case is regarding promotion of respondent No.4 to the post of Chief Office Superintendent (COS) scale Rs. 7450-11500 vide order dated 17.7.2006, as according to the applicant, respondent No.4 could not have been promoted because departmental proceedings were under contemplation, inasmuch as, the competent authority has approved action against respondent No.4 for initiation of minor penalty chargesheet in the month of June, 2005 and thereafter the matter was kept pending and ultimately the chargesheet for minor penalty was issued in October, 2006 when respondent No.4 succeeded for promotion. It is on the basis of these averments the applicant has filed this OA thereby praying that the order dated 17.7.2006 (Ann.A1) and penal dated 4.7.2006 (Ann.A6) be modified to the extent of deleting name of respondent No.4 and interpolating name of the applicant at appropriate place and thereafter extending benefit of promotion to the post of COS, scale Rs. 7450-11500 to the applicant from the date respondent No.4 was allowed such benefits with all consequential benefits.

At this stage, it will be relevant to notice few facts. The respondents took steps for filling up seven posts of COS scale Rs. 7450-11500 vide notification dated 28.2.2005 which examination was subsequently

postponed and amended notification alongwith eligibility list was also issued subsequently on 3.12.2005 in which name of the applicant as well as respondent No.4 find mention in List-A. The said examination was conducted on 29.12.2005 and result was declared on 28.6.2006 in which name of respondent No.4 find mention at Sl.No.1 and that of applicant at Sl.No.8. Since there were seven vacancies available against which the aforesaid examination was conducted, the respondents prepared a panel dated 4.7.2006 in which name of the applicant was not included. The grievance of the applicant is that in fact name of respondent No.4 could not have been empanelled as the competent authority has passed an order in the month of June, 2005 for issuance of minor chargesheet against respondent No.4 and in case name of respondent No.4 is deleted from the panel, the natural consequences would be that name of the applicant who has qualified the written test and his name find mention at Sl.No.8, could have automatically included in the said panel, thus entitling him for promotion to the aforesaid post.

3. Notice of this application was given to the respondents. The facts as stated above, have not been disputed. The stand taken by the official respondents is that up to 17.7.2006 when the promotion order was issued, neither departmental enquiry was initiated nor

any chargesheet was issued to respondent No.4, as such, respondent No.4 could not have been debarred and he was allowed for participating in the written test as well as in the selection process. For that purpose, the respondents have placed reliance upon the letter dated 19.3.1993 issued by the General Manager, Western Railway, Mumbai which has been placed on record as Ann.R1 stipulating the procedure for promotion of railway servants where the railway servants are under suspension or against whom departmental proceedings/prosecutions have been initiated. According to the respondents, case of respondent No.4 is not covered in terms of Para 2 of the aforesaid instructions. As such, respondent No.4 was rightly promoted.

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

5. The question which requires our consideration is as to whether a railway servant in respect of whom chargesheet for major penalty has not been issued and disciplinary proceedings are not pending and who is not under suspension nor any prosecution in criminal case is pending can be debarred for promotion simply on the ground that such proceedings are under contemplation, as contended by the applicant. The matter on this point is no longer res-integra and the

same is covered by the decision of the Apex Court in the case of Union of India vs. K.V.Jankiraman, AIR 1991 SC 2010 in which the Hon'ble Apex Court has held that - It is only when a chargememo in a disciplinary proceedings or a chargesheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to the stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. If the charge are serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. Even the Railway Board has issued instructions vide RBE No.13/1993 (Ann.R1) in the line of the law laid down by the Hon'ble Apex Court in the case of Jankiraman (supra). At this stage, it will be useful to quote para 2 of RBE No.13/1993 prescribing procedure for promotion, which is relevant in this case, and thus reads:-

"2. The procedure given below shall be applicable to:


- (i) Railway servants under suspension
- (ii) Railway servants in respect of whom chargesheet for major penalty has been issued and the disciplinary proceedings are pending


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(iii) Railway servants in respect of whom prosecution for a criminal charge is pending."

6. Thus viewing the matter on the basis of the law laid down by the Apex Court and in the light of the instructions issued by the Railway Board, we are of the view that it was not permissible for the respondents to deny benefit of promotion to respondent No.4 in the absence of any suspension, issuance of chargesheet and pendency of disciplinary proceedings or pendency of prosecution of criminal proceedings at the time of selection/promotion of respondent No.4. Simply because someone in the department has made observations that steps for initiating disciplinary proceedings against respondent No.4 be taken by framing chargesheet against him cannot be made ground for denying promotion to respondent No.4.

7. In view of above discussions, we are of the view that the applicant has not made out a case for our interference and the OA is accordingly dismissed with no order as to costs.


(B.L. KHATRI)
Admv. Member


(M.L. CHAUHAN)
Judl. Member

R/