

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 26th day of November, 2010

ORIGINAL APPLICATION NO. 239/2008

CORAM

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Ellwill Giri son of Shri Raghunandan Giri aged about 44 years, resident of Quarter No. 204 B, Workshop Colony, Behind Hospital, Kota Junction (Rajasthan) and presently working as Junior Engineer, Grade II under Senior Section Engineer (Power) Workshop, West Central Railway, Kota Division, Kota.

.....Applicant

(By Advocate: Mr. C.B. Sharma)

VERSUS

1. Union of India through General Manager, West Central Zone, West Central Railway, Jabalpur.
2. Divisional Railway Manager (Establishment), West Central Railway, Kota Division, Kota.
3. Senior Divisional Electric Engineer (Power), West Central Railway, Kota Division, Kota.
4. Senior Divisional Personnel Officer, West Central Railway, Kota Division, Kota.

.....Respondents

(By Advocate: Mr. Hawa Singh)

ORDER

The applicant has filed this OA thereby praying for the following reliefs:-

"(i) That the respondents may be directed to promote the applicant to the cadre of Junior Engineer Grade I scale Rs.5500-9000/- from 16.11.2007 by interpolating his name in order dated 16.11.2007 (Annexure A/10) by treating as suitable by quashing order dated 06.11.2007 (Annexure A/10) to the extent of treating him unsuitable with all consequential benefits including seniority and arrears of pay and allowances after due fixation of pay.

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- (ii) That the respondents be further directed to interpolate name of the applicant in the eligibility list dated 11.4.2008 (Annexure A/12) for selection to the cadre of Section Engineer scale Rs.6500-10,500/- and to allow the applicant to go through selection going to be held on 21.06.2008 treating as eligible with all consequential benefits.
- (iii) Any other order/directions or relief may be granted in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case.
- (iv) That the cost of this application may be awarded."

2. As can be seen from the prayer clause, the grievance of the applicant was regarding his promotion in the cadre of Junior Engineer Grade I in the pay scale of Rs.5500-9000/- from 16.11.2007 when the said benefit was given to the person junior to him but the same was denied to the applicant as he was not found suitable for promotion pursuant to the order dated 06.11.2007 (Annexure A/10). Subsequently, the said adverse remarks were expunged and the respondents themselves vide office order dated 05.09.2008 on the basis of the same record found the applicant fit for promotion.

3. The respondents have also placed on record another order dated 18.11.2009 (Annexure R/1), perusal of which reveals that the applicant has been granted the benefit of promotion with effect from 16.11.2007. However, perusal of the said order further reveals that such promotion in the pay scale of Rs.5500-9000/- was granted on proforma basis with effect from 16.11.2007 and on actual basis with effect from 03.10.2008 when the applicant has started working against the said post.

4. In view of the fact as stated above, the only question which requires our consideration is whether the applicant is entitled to pay & allowances for the period with effect from 16.11.2007 to 02.10.2008. We are of the view that the applicant was not promoted to the post of Junior Engineer Grade I as he was not found suitable for promotion on account of adverse entries and subsequently when the said entries were expunged, the respondents have granted promotion to the applicant from the due date.

5. Thus in view of what has been stated above, we are of the view that the applicant is entitled to all the consequential benefits with effect from 16.11.2007 as he was not promoted from due date on account of fault on the part of the respondents as respondents took into consideration the adverse remarks against which representation was pending and not decided. Subsequently when the adverse entries were expunged, benefit was given to the applicant from the due date though on proforma basis and actually with effect from 03.10.2008. Thus we are of the view that the applicant is entitled for pay & allowances for the period of proforma promotion. The view which we have taken is in conformity with the decision of the Apex Court in the case of **Gopi Chand Vishnoi vs. State of U.P. & Another**, 2006 SCC (L&S) 1976 whereby the Apex Court has held that once the adverse entries have been expunged, the appellant's promotion must be treated to have been wrongly refused. Therefore, the appellant before the Apex court was held entitled for promotion from due date when his juniors were granted promotion with consequential benefits. The law laid down by the Apex Court in the Gopi Chand's case (supra) is

squarely applicable in the facts & circumstances of this case. Accordingly, the respondents are directed to make payment of arrears for the period with effect from 16.11.2007 to 02.10.2008 within a period of three months from the date of receipt of a copy of this order.

6. So far as second prayer of the applicant that he may further be held eligible for promotion to the post of Section Engineer in the pay scale of Rs.6500-10,500/-, it is stated that pursuant to the interim order passed by this Tribunal on dated 20.06.2008, the applicant was provisionally permitted to appear in the test for the post of Section Engineer and the result of the test was ordered to be kept in sealed cover. As can be seen from the order sheet dated 21.05.2009, the respondents have produced the selection record for the post of Section Engineer pursuant to the direction given by this Tribunal vide order dated 30.04.2009 and the same was perused. It was recorded that the applicant had obtained 39 marks and as such he has not been declared successful. In view of this, no relief can be granted with respect of Relief No. 8 (ii).

7. With these observations, the OA is disposed of with no order as to costs.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

M.L. Chauhan
(M.L. CHAUHAN)
MEMBER (J)

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