

18.01.2013

O.A. 78/2009 a/w MA 56/2009

Present : None for the applicant.

Mr. Ajay Singh proxy for

Mr. Tanveer Ahmed counsel for the respondents.

This case has been listed before the Joint Registrar due to non-availability of Division Bench. Let the matter be placed before the on 22/01/2013.



(Gurmit Singh)
Joint Registrar

VV

22/01/2013

Mr. V.D. Sharma, Counsel for applicant.

Mr. Ajay Singh, proxy counsel for Mr. Tanveer Ahmed counsel for respondents.

~~Court Officer~~

~~Case adjourned on the request of
learned counsel for applicant. All
respondent(s). Put up for hearing
on 23/01/2013~~

~~Case adjourned on the request of
learned counsel for applicant. All
respondent(s). Put up for hearing
on 23/01/2013~~

23/01/2013

~~SP/18/2013~~
~~Court Officer~~

23/01/2013

O.A. No. 78/2009 with MA No. 56/2009

Mr. Amit Mathur, Counsel for applicant.

Mr. Tanveer Ahmed, Counsel for respondents.

Heard.

O.A. and M.A. are disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

K. S. Rathore
[Justice K. S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 78/2009
WITH
MISC. APPLICATION NO. 56/2009

Jaipur, the 23rd day of January, 2013

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Bhagwan Sahai son of Shri Ganeshi Lal, aged about 73 years, resident of New Adarsh Nagar, Kutti Colony, Bandikui, District Dausa.

... Applicant
(By Advocate : Mr. Amit Mathur)

Versus

1. Union of India through General Manager, North Western Railway, Church Gate, Mumbai.
2. Regional Manager, North Western Railway, Near Railway Station, Jaipur.

... Respondents
(By Advocate : Mr. Tanveer Ahmed)

ORDER (ORAL)

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

"It is, therefore, most humbly prayed that this Hon'ble Tribunal may very graciously be pleased to admit/allow this OA and be further pleased to:

(a) Direct the respondents to consider and grant the promotion to the applicant on the post of Passenger Driver pay scale Rs.1600-2660 from 11.09.1991 and on the post of Mail Driver pay scale Rs.1640-2990 from January, 1994 when the persons junior to the applicant were promoted and they may also be directed to make the payment of arrears of salary and other benefits on the said promotional post and further to calculate and pay the pension of the petitioner on the basis of the salary that he would

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have drawn at the time of retirement, if he had been promoted.

(b) Direct the respondents to make payment of interest @ 24% p.a. on an amount of Rs.1,07,891/- from 31.03.1994 to 06.03.2000 and also to pay interest @ 24% p.a. on the arrears of salary and other benefits.

(c) Pass any other orders as may be deemed just and proper in the facts and circumstances of the case including award of cost of this Original Application."

2. The learned counsel for the applicant submitted that the applicant was initially appointed as Coalman on 11.04.1956. That because of derailment of a Good Train on which the applicant was a driver took place on 20.08.1988, a charge sheet was issued to the applicant on 22.11.1988. Vide order dated 08.02.1989, the applicant was punished with the reversion from the post of Driver to Shunter for a period of two years. The applicant filed an appeal against this order. The Appellate Authority set aside the punishment order and the case was remitted back to respondent no. 3 for deciding the same on merit. Finally vided order dated 21.11.1996, it was held that the charges against the applicant were not proved and charge sheet dated 21.11.1988 was withdrawn (Annexure A/1).

3. Simultaneously, the Railway Administration lodged a FIR on the said derailment. A criminal case was instituted against the applicant under Section 101 of the Indian Railway Act. The said criminal case bearing No. 1125/89 had been ultimately decided in favour of the applicant vide judgment dated 02.12.1999 by the Additional Chief Judicial Magistrate (Railway), Jaipur and the applicant was acquitted from the charges leveled against him

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(Annexure A/2). As such, in the case of derailment, no penalty/punishment was imposed on the applicant. However, due to pendency of the departmental proceedings/criminal case, the applicant was not considered for promotion although he had qualified the departmental examination for the post of Goods Driver on 01.04.1990.

4. The applicant though discharged in the criminal case and in the departmental proceedings, the charge sheet was withdrawn, however, he was disallowed all the consequential benefits for which he was entitled. The applicant was entitled for all the benefits which have been advanced to Shri Khem Chand D as Shri Khem Chand D is junior to him. Therefore, he should be allowed all the benefits which have been given to Shri Khem Chand D. He also submitted that similarly other junior persons like Shri Radha Kishan, Bheru Singh, Mool Chand and Mahi Lal son of Shri Onkar have also been promoted but the applicant has not been given those benefits due to the pendency of the departmental proceedings/criminal case against the applicant. Since the departmental proceedings against him have been dropped and the applicant has also been acquitted in the criminal case, therefore, he should be given all the benefits as have been given to his juniors.

5. On the other hand, learned counsel for the respondents submitted that the present OA is barred by limitation. However, he argued that the contention of the applicant that junior

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employee named, Shri Khem Chand, was promoted on the post of Driver 'C' Grade from 01.09.1984 is not admitted. He submitted that vide office order dated 11.09.1986 in the seniority list of Shunter, the name of the applicant was shown at sr. no. 263 whereas the name of Shri Khem Chand was shown at sr. no. 187. Thus, the applicant was junior to Shri Khem Chand. Therefore, the averment made by the applicant that he was not promoted to the post of Shunter from 01.09.1984 whereas his junior Shri Khem chand was promoted from that date is not correct. The applicant was promoted from the date his junior Shri Ram Swaroop Mangilal was promoted vide order dated 18.07.1984 and proforma promotion was given to the applicant from 24.07.1984 but actual benefits was given from 19.02.1986 the date of joining his duty on the post of Shunter and order to that effect was issued on 06.02.1986. The applicant was promoted to the post of Driver on ad-hoc basis vide office order dated 22.09.1986.

6. Learned counsel for the respondents further submitted that seniority list for the post of Shunter was issued vide office order dated 11.09.1986 and in that the name of Shri Khem Chand was at sr. no. 187, the name of Bheru Singh P was at sr. no. 194, the name of Shri Mool Chand was at sr. no. 105, the name of Mahilal son of Onkar was at sr. no. 108 and the name of Radhakishan SR was at sr. no. 238 whereas the name of the applicant was at sr. no. 263. This seniority list is not challenged in this OA. Therefore, the averment of the learned counsel for

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the applicant that he is entitled for the promotion from the date his juniors were promoted is not correct. He further submitted that neither in the Original Application nor in the representation, the applicant has disclosed the name of the actual junior person.

7. The promotion to the post of Goods Driver was granted to the applicant from which post he has retired. Till the date of his retirement, a criminal case and departmental proceedings were pending against the applicant, therefore he could not be considered for promotion.

8. Heard the learned counsel for the parties and perused the relevant documents on record.

9. With regard to the argument of the learned counsel for the respondents that this OA is barred by the limitation, we have gone through the application filed by the applicant for condonation of delay by the applicant and also the order passed by the Hon'ble High Court in the Civil Writ Petition No. 4285/2000 decided on 26.11.2008 [Bhagwan Sahai vs. Union of India & Others]. The Hon'ble High Court in Para No. 5 of their judgment dated 26.11.2008 have observed that the Tribunal should treat the OA within limitation and should decide the matter on merit. Therefore the delay is condoned and the case is being decided on merit. Accordingly the MA No. 56/2009 is disposed of.

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10. The short controversy in this OA is that since the departmental proceedings were dropped against the applicant and he was acquitted in the criminal case pending against him, he should have been given the promotion and other consequential benefits, which were allowed to his juniors. According to the averment made by the learned counsel for the respondents, the name of the applicant in the seniority list issued vide office order dated 11.09.1986 for the post of Shunter was at sr. no. 263 while the persons with whom he is claiming seniority like Khem Chand D, Radhakishan SR, Bhero Singh P, Mool Chand and Mahilal son of Onkar were senior to him. The name of Shri Khem Chand D was at sr. no. 187, the name of Shri Radhakishan SR was at sr. no. 238, the name of Shri Bhero Singh P was at sr. no. 194, the name of Shri Mool Chand was at sr. no. 105 and the name of Shri Mahilal son of Onkar was at sr. no. 108. As per this seniority list, the applicant is not senior to the employees with whom he is claiming seniority. On the contrary, he is junior to all of them. The seniority list issued vide office order dated 11.09.1986 is not under challenge in this OA. Therefore, in our considered view, the applicant is not entitled for any relief as claimed in Relief 8(a).

11. With regard to the interest on gratuity, which was released to the applicant on 06.03.2000 is concerned, we are of the view that there is no deliberate delay in making the payment of the gratuity to the applicant by the respondents. The departmental proceedings were finally dropped against the applicant vide order

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dated 21.11.1996 (Annexure A/1). The applicant was acquitted in the criminal case vide order dated 02.12.1999 (Annexure A/2). After his acquittal in the criminal case, the gratuity was released to the applicant within a period of four months. Therefore, it cannot be said that there was any extra-ordinary delay on the part of the respondents in making the payment of gratuity to the applicant.

12. We are of the view that the applicant has not made out any case for relief in this OA, therefore, the OA being devoid of merit is dismissed with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

K. S. Rathore
(Justice K.S.Rathore)
Member (J)

AHQ