

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**OA-160/2012
MA-381/2014**

Reserved on : 05.09.2016.

Pronounced on : 26.09.2016.

Hon'ble Mr. Justice L.N. Mittal, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)

Sh. Ramesh Raj Gupta,
S/o Sh. Ram Sarup Gupta,
844, Sector-37,
Faridabad-121 003.

.... Applicant

(through Sh. B.S. Rajesh Agarjit, Advocate)

Versus

Union of India through

1. Secretary,
Railway Board,
Ministry of Railways,
Rail Bhawan, Rafi Marg,
New Delhi.
2. General Manager,
Northern Railway,
Baroda House,
New Delhi.

..... Respondents

(through Sh. A.S. Dateer, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The applicant was appointed as a Clerk with the Railways on 06.10.1961. He was promoted in higher grade on 27.05.1963 and further promoted as Console Operator on 18.07.1968. He was also

confirmed on this post on 03.09.1969. On 26.03.1970, Railway Board created two posts of Asstt. Programmer and issued a Notification regarding selection for these posts on 09.06.1971. According to the applicant, the written exam was held on 25.06.1971 and viva voce on 26.06.1971. The panel was finalized in which the applicant was placed at Serial No. 1 and Sh. D.N. Joshi and Sh. O.P. Seth were placed at Serial Nos. 2 and 3 respectively. Simultaneously, the applicant also applied for a post in Air India on 06.12.1970. The applicant has further stated that he received an appointment letter from Air India on 30.06.1971. The applicant applied for relieving from the department so that he could join Air India. Meanwhile, the respondents promoted the next person in the panel Sh. D.N. Joshi as Asstt. Programmer but did not relieve the applicant. The Air India finally cancelled his selection. After that what followed was a series of charge sheet against the applicant. Several punishments were inflicted upon him including removal from service, censure, compulsory retirement etc. The applicant approached Hon'ble High Court of Delhi by filing various Writ Petitions and according to him all these punishments were set aside. He then approached the Hon'ble High Court of Delhi by filing CWP-14192/2009. This was disposed of by Hon'ble High Court of Delhi on 16.08.2010 by an order, the operative part of which reads as follows:-

“9. The record before us is most sketchy.

10. Accordingly we dispose of the instant petition directing the petitioner to file a detailed representation bringing out his claim with clarity. In the representation the petitioner would clearly state his claim as to from which date he seeks promotion and to which post. If the petitioner has some issue even with respect to the post he was holding as a consequence of the order passed by the Division Bench on 27-4-2005 or full wages have not been paid to him, petitioner would bring out said aspect with clarity.

11. The representation shall be filed to the General Manager, Northern Railway Baroda House, New Delhi, who shall pass a detailed and speaking order dealing with each and every contention urged in the representation. The order would be passed within 8 weeks of receipt of the representation. Needless to state the claim of the petitioner for further promotion would be dealt with in the order which would be passed by the General Manager.

12. Needless to state if the General Manager finds that the petitioner is entitled to some further benefit he would ensure that the pecuniary aspect of the benefit is paid over to the petitioner.

13. No costs."

2. In compliance thereof, the applicant made a representation to the respondents dated 09.09.2010. The aforesaid representation was decided by them vide their impugned order dated 18.12.2010 in which the relief asked for by the applicant was denied. The applicant then filed Contempt Petition before the Hon'ble High Court but was directed to approach the Central Administrative Tribunal. Hence, he has filed the present O.A. before us seeking the following relief:-

"(i) That the Hon'ble Tribunal may graciously be pleased to allow the O.A. and quash the impugned order dated 28.12.2010 passed by respondent.

- (ii) That the Hon'ble Tribunal may be further pleased to direct the Respondents to produce the relevant records.
- (iii) That the Hon'ble Tribunal may be further please to direct the Respondents to pay full wages for intervening period including wages for the period applicant was placed under suspension and also the period for which only Proforma Promotion to the post of Senior Console Operator was given and not actual.
- (iv) That the Hon'ble Tribunal may be further pleased to direct the Respondent to promote him as Assistant Programmer from the date from which his juniors Mr. DN Joshi and OP Seth had been promoted as Assistant Programmer which was a selection post and the applicant had already appeared and passed the selection.
- (v) That the Hon'ble Tribunal may be further pleased to direct the Respondents to further promote the Applicant as Programmer, Sr. Systems Analyst and Sr. EDP Manager from the date from which his juniors Shri DN Joshi & Shri OP Seth and Shri Naseeb Chand were promoted, will all consequential benefits.
- (vi) That the Hon'ble Tribunal may be further pleased to direct the Respondents to further promoted the Applicant as he qualified the selection of Assistant Programmer in 1971 and Mr. Naseeb Chand qualified in 1986 i.e. 15 years later. After promotion to Senior Scale Class-I Mr. Naseeb Chand worked for four years and the Applicant based on simple calculations is due 19 years more service with all consequential benefits after his promotion to Senior Scale Class-I Post of Senior Systems Analysts. Applicant's consequential benefits cannot be ignored and may kindly be granted as clarified in Para 9 of Annexure A-12.
- (vii) May be pleased to grant any other relief which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.
- (viii) That the cost of these proceedings may kindly be granted and in favour of the applicant and against the Respondent."

3. During the course of arguments, learned counsel for the applicant submitted that the applicant is now pressing only Clauses- 8.4 to 8.8 of his relief clause and seeking promotion in the cadre of Asstt. Programmer. Accordingly, the O.A. was heard only on this issue.

4. In their reply, the respondents have stated that the applicant has tried to mislead the Tribunal. Even the Hon'ble High Court of Delhi by their order dated 16.08.2010 in CWP-14192/2009 observed that "We have before us a most inchoate writ petition." The applicant has failed to place on record any material to substantiate his claim for promotion. He has also made a confusing averment that Sh. D.N. Joshi, who was appointed as Asstt. Programmer ignoring him, was junior to him. In fact, the applicant had opted to join Air India instead of joining as Asstt. Programmer and hence Sh. D.N. Joshi was so appointed. Due to exigency of work, the applicant could not be relieved for joining Air India. Meanwhile, he was placed under suspension vide order dated 31.07.1971 and subsequently served with charge sheet dated 12.08.1971 for wilful negligence, carelessness and lack of devotion to duties. His removal from service was ultimately ordered on 15.11.1971. Thus, the applicant had failed to place any material on record that he was finally selected and appointed as Asstt. Programmer. In fact, the

applicant cannot be deemed to have been selected for the post of Asstt. Programmer as he had tendered his resignation for joining Air India. Meanwhile, he had also been placed under suspension and served with a charge sheet. Thus, his claim that he was entitled to be promoted as Asstt. Programmer from the date his junior was so appointed is devoid of merit. The General Manager in compliance of the order of Hon'ble High Court of Delhi has already passed a detailed and speaking order on the representation of the applicant.

4. We have heard both sides and have perused the material placed on record. The applicant is seeking promotion as Asstt. Programmer w.e.f. 03.07.1971, as Programmer w.e.f. the date from which Sh. D.N. Joshi was so promoted and further promotion as Senior System Analyst. He is also seeking further promotion as due to IAS/IRAS officers as he has claimed that after being promoted as Senior System Analyst, he would fall in the category of Senior Scale Group-A officers.

5. From the facts mentioned by the applicant himself, it is clear that the applicant had actually never joined as Asstt. Programmer. Even if his contention that he was selected for this post and was placed at Serial No.1 in the panel above Sh. D.N. Joshi is accepted, the applicant has himself stated that simultaneously he was selected for Air India and he tendered his resignation from Railways to join Air

India. Thus, it is evident that he had himself opted out from being appointed as Asstt. Programmer in view of his selection in Air India. It is a different matter that he was not relieved for joining Air India and that his appointment therein was subsequently cancelled. Be that as it may, it does not create any right in the favour of the applicant to be appointed as Asstt. Programmer as he had voluntarily given up his claim for that position and in his place Sh. D.N. Joshi was appointed. It is also relevant to note that prior to this the applicant was working as a Console Operator and the post of Asstt. Programmer was not a promotional post for Console Operator. In fact, the applicant has himself stated that he had been selected for the post of Asstt. Programmer through a written exam and viva voce. Thus, since the applicant had never joined to the post of Asstt. Programmer, he never became part of that cadre. Consequently, his claim that he was senior to Shri D.N. Joshi and for seeking further promotion in this cadre to the post of Programmer and System Analyst is baseless and devoid of merit.

6. In view of the above, we are of the opinion that this O.A. has no substance. Accordingly, it is dismissed as such. No costs.

(Shekhar Agarwal)
Member (A)

(L.N. Mittal)
Member(J)

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