

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 2150/2013

Reserved on: 29.03.2016
Pronounced on: 4.04.2016

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)**

Nater Pal Singh
S/o Late Shri Phool Singh
R/o 356/109, Gali No.16B, Ashok Vihar
Gurgaon (Haryana) ... Applicant

(Through Shri Yogesh Sharma, Advocate)

Versus

1. Union of India through the General Manager,
Northern Railway, Baroda House,
New Delhi
2. The Divisional Railway Manager,
Northern Railway, DRM's Office,
Near New Delhi Railway Station,
New Delhi ... Respondents
3. The Divisional Personnel Officer,
Northern Railway, DRM's Office,
Near New Delhi Railway Station,
New Delhi ... Respondents

(Through Shri Shailendra Tiwary, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicant was initially appointed on 24.11.1979 to the post of Mobile Booking Clerk (MBC). He was regularized in the year 1992 as Booking Clerk. Later, he was promoted as Senior Booking Clerk (SBC) in Grade Pay of Rs.2800 (pre-revised scale

of Rs.4000-6000) and thereafter as Head Booking Clerk (Commercial Supervisor Grade) in the Grade Pay of Rs.4200/- (pre-revised scale of Rs.5000-8000) and finally promoted as Chief Commercial Supervisor in the Grade Pay of Rs.4600/-. The applicant had earlier approached this Tribunal in OA 729/2005. The Tribunal considered its earlier decision dated 30.04.2004 in OA 551/2002 and held that the applicants in OA 729/2005 were similarly placed as the applicants in OA 551/2002, wherein a direction was given to the respondents to regularize the services of the applicants therein after completion of three years of continuous service from the dates of their initial appointment. Based on this, OA 729/2005 was allowed vide order dated 13.07.2011. This decision of the Tribunal was upheld by the Hon'ble Delhi High Court as well as the Hon'ble Supreme Court. Thereafter a Contempt Petition No.18/2012 was filed. In pursuance thereof, the respondents passed order dated 9.02.2012 fixing the seniority of the applicant at serial number 47 in the seniority list of SBC and at serial number 114A in the seniority list of Head Booking Clerk. The Tribunal held in the aforesaid CP that orders have been substantially complied with but a direction was given to the respondents to consider the representation regarding revised seniority within a period of two months and if the petitioners have any further subsisting grievances, they are at liberty to raise the same through appropriate proceedings, if so advised.

2. Thereafter, the respondents issued impugned order dated 27.06.2012 promoting the applicant to the post of Head

Coaching Clerk (HCC) in the pay scale of Rs.5000-8000 (revised Rs.9300-34800+4200 Grade Pay) with effect from 31.12.2002. The controversy is regarding this date of 31.12.2002. The respondents case is that immediate junior to the applicant was one Shri Mohd. Idrish and in the notice which the Railways issued dated 9.02.2012 regarding correction in seniority position of the applicant, in para 6 it had been wrongly mentioned that Shri Mohd. Idrish, who is junior to the applicant, stands promoted to Grade Rs.5000-8000/PB 9300-34800 (Grade Pay Rs.4200/-) with effect from 19.10.1995. Immediately thereafter, the applicant had filed a representation dated 10.07.2012 requesting for his promotion with effect from 19.10.1995 at par with his junior instead of 31.12.2002 as indicated in the order dated 27.06.2012.

3. The respondents claim that it was later on detected that Shri Mohd. Idrish, the immediate junior to the applicant, was not promoted on 19.10.1995 but was promoted on 31.12.2002 and when this came to light, they issued corrigendum dated 19.08.2013 indicating that the applicant would get promoted as HCC with effect from the date of promotion of his junior Shri Mohd. Idrish with effect from 31.12.2002. The respondents claim that there is nothing wrong with the order dated 27.06.2012 as the applicant has been promoted vis-à-vis the date from which his immediate junior has been promoted on 31.12.2002.

4. During the course of arguments, however, learned counsel for the respondents produced copy of a note dated 20.03.2016. In this note, the following is stated regarding the applicant's case:

"The case was examined as it was found that the service particulars of the employee Sh. Natar Pal Singh is as below:-

DOB	-	05.10.1957
DOA	-	24.11.79 initial engagement as Mobile Booking Clerk
DO Ty.Status	-	23.3.1980 (23.3.80 to 30.04.90= 821 only working days) But break in service before completion of three year regular Service (3.3.82 to 13.6.89 not working)
	-	23.10.1990 again given Temporary status

The date of initial appointment was 24.11.79 and temporary status was given on 22.03.80. The employee was to be regularized on 23.03.83 only after completion of three years continuous service but as per available records i.e. service record and leave details there was break in period 3.3.82 to 13.6.89. He was granted temporary status in grade 975-1540 after completions of 120 days continuous service vide letter No.PCM/CC-107/78/MBC dated 22.10.90 and pay already granted vide DPO/N.Rly)/BKN letter no.P1/729E-3/Coml.Clerk/Natar Pal dated 8.6.2002.

Now the due date of regularization of employee after completion of three years continuous service from **Tv.Status on 23.10.1990 is 23.10.1993** as per court order in OA No.729/2005. But as per entry in his service Book after training pre requisite course at ZRTC/CH w.e.f. 12.10.92 to 23.11.92 he is regularized vide letter no.PCM/50/Prob CC/Vol.III/dated 16.2.93. and given the next promotion benefit of Sr. Commercial Clerk Grade Rs.5200-20200 GP 2800 w.e.f. 24.3.95 and his seniority fixed in the list of Sr. Commercial Clerk vided this office letter No.847E/594/1/p-2 dated 02.02.2012 is correct.

As we have already given the benefit of promotion Commercial Supervisor GP 4200 w.e.f. 31.12.2002 and Chief Commercial Supervisor GP 4600 w.e.f. 1.11.2013.

After calculating the service, the benefit of promotion to the post of Commercial Supervisor Grade 9300-34800+4200GP and Chief Commercial Supervisor Grade 9300-34800+4600GP of the employee is to be revised on the basis of above said temporary status/promotion dates very shortly."

5. The applicant has argued both in rejoinder as well as before us that it is an incorrect stand of the respondents to compare his case with Shri Mohd. Idrish as junior persons or immediate juniors might be promoted subsequently due to some reasons i.e. pendency of any departmental proceeding, refusal of promotion or any other reason. Therefore, just to take date of promotion of one junior to decide his claim is incorrect. In fact, it is pointed out that in the seniority list in which the applicant is incorporated at serial number 114-A, there are persons junior to him from serial number 115 to 137 onwards whose date of promotion to the pay scale of Rs.5000-8000 has been shown as 19.10.1995. This fact has been completely ignored by the respondents.

6. We have heard the learned counsel for the parties and gone through the pleadings available on record.

7. From the latest information provided by the respondents, it seems that now the department treats the applicant's date of regularization as 16.02.1993 and they admit that now they have to rework out promotion given to him to the post of Commercial Supervisor (Grade Pay Rs.4200/-) and Chief Commercial Supervisor (Grade Pay Rs.4600/) and the dates revised on the basis of above said temporary status/ promotion, which they propose to do shortly.

8. Therefore, at this stage since the department itself admits that they are re-examining the whole issue, we dispose of this OA with a direction to the respondents to re-examine this matter considering the revised date of his regularization and consequently the subsequent promotions given to the applicant. While doing so, they would also address the fact brought up by the applicant that persons from serial number 115 to 137 onwards in the seniority list have been shown promoted long back from 1995 onwards. Therefore, this question has to be specifically answered by the respondents as to why the applicant should not get the benefit of that. In this regard, the respondents shall pass a reasoned and speaking order considering all the aspects mentioned in our order, within a period of two months from the date of receipt of a copy of this order. No costs.

(P.K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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