

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.2987/2013
M.A.No.2289/2013

Order Reserved on: 13.02.2017
Order pronounced on 03.03.2017

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

Ghanshyam Meena
S/o Sh. Shankar Lal Meena
Resident of A-Block, Flat No.302
DDA HIG Flats, Near Sports Complex
Pitampura, Delhi-35. Applicant

(By Advocate: Shri Abinash Kumar Mishra)

Versus

1. General Manager (Personnel)
Northern Railways, Baroda House
New Delhi.
2. Chief Commercial Manager
Northern Railway, Baroda House
New Delhi.
3. General Manager
Northern Railway, Baroda House
New Delhi.
4. Mr. Anil Kumar
(Presently working as ACM, Base Kitchen, New Delhi)
5. Mr. Kishan Lal Kanwat
(Presently working as ACM/MB,
Vice Sh. S.U.Siddiqui, DRM Office
Moradabad, Northern Railway)

6. Mr. Philip Ekka
(Presently working
as Assistant Registrar/RCT/LKO)
7. Shri Unni Chandra Mohan
(Presently working as OSD Catering,
Parliament House, New Delhi)
8. Mr. Prem Chand Tirkey
(Presently working at ACM-Service
DRM Office, New Delhi).
9. Mr. Pascal Billing
(Presently working as ACM/UMB
At DRM Office, Ambala)
10. Mr. Rajan Alfred Paul
(Presently working at Manger/ITB
Railway Station, New Delhi).
11. Mr. Ramesh Kant Singh
(Presently working at ACM-Claims/BSB, Varansi).
12. Ananias Ekka
(Presently working as Area Officer
Chandigarh Railway Station
Ambala Division)
13. Narinder Kumari
(presently working as CE&RS/IRCA in
SPO/T&C/HQ Division
All C/o General Manager (Personnel)
Northern Railway, Baroda House
New Delhi. Respondents

(By Advocate: Shri Shailendra Tiwary)

O R D E R

By V. Ajay Kumar, Member (J):

This OA has been filed by the applicant while he was working as Chief Ticket Inspector (Group 'C') under the Respondent-Northern Railway, seeking the following relief(s):

"8.1 declare that the non-inclusion of the name of the applicant in the panels dated 30.8.2011 and 4.9.2012 is illegal, arbitrary and discriminatory,

8.2 Set aside the order dated 15.2.2013 (served on the applicant under the covering letter dated 18.2.2013 and direct the official respondents to promote the applicant by including the name of the applicant in the panels dated 30.8.2011/4.9.2012 with all the consequential seniority and financial benefits and pay fixation,

8.3 set aside the act of interpolation of Mr. Anil Kumar (Respondent No.4) by the letter Respondent Nos.1 to 3 in the seniority list attached with the letter dated 6/16.6.2011 and thereby declaring the applicant to be senior to Respondent No.4 (Mr. Anil Kumar) in the seniority list and consequentially in the results dated 26.7.2011, 30.8.2011 and 4.9.2012,

8.4 direct the Respondent Nos.1 to 3 to promote the applicant before Respondent Nos.4 to 7 and Respondent Nos.8 to 12 by either giving the benefits to the applicant for his having secured high marks than the Respondent Nos.8 to 12 or by treating the applicant as senior to Respondent Nos.4 and 7 or by holding that the Respondent Nos.5 and 6 could not have been promoted due to the fact that they have been punished by Respondent Nos.1 to 3 in the departmental action,

8.5 Pass other order(s) as may be deemed fit and proper in the facts and circumstances of the case."

2. After the OA is filed, the applicant was promoted from the post of Chief Ticket Inspector (Group 'C') to Assistant Commercial Manager (Group 'B') w.e.f. 11.07.2014. Thereafter, he retired from service, on attaining the age of superannuation, on 31.08.2015.

3. In view of promotion of the applicant as Assistant Commercial Manager (Group 'B'), after the OA is filed, the relief is restricted for retrospective promotion as Assistant Commercial Manager w.e.f. 04.09.2011, on which date the 4th Respondent, a junior to the

applicant, was promoted as Assistant Commercial Manager, with all consequential benefits.

4. Heard Shri Abinash Kumar Mishra, the learned counsel for the applicant and Shri Shailendra Tiwary, the learned counsel for the official respondents, and perused the pleadings on record. Though the private respondents were served through the official respondents, but none of them have chosen to file any counters.

5. The learned counsel for the applicant, while drawing our attention to the Annexure A9, seniority list of Class III commercial categories for selection to Class II, dated 30.06.2003, mainly contended that the name of the applicant was shown in the said seniority list at Sl. No.244 whereas the name of the Private Respondent No.4 was not even included in the said list, but the respondents included the name of the 4th Respondent in the Annexure A3-Panel for selection to Group 'B' posts, dated 30.08.2011, however, ignored to include the name of the applicant. Similarly, even in Annexure A4, Panel dated 04.09.2012, also the name of the 4th Respondent was included but the applicant was excluded.

6. Further, though against the private respondents 5 and 6, the punishment imposed was in currency, their names were included in the said panels but whereas the applicant's name was excluded, though having an unblemished record.

7. The respondents vide their counter in respect of the above submissions of the applicant, stated as under:

"8. as for (sic. far) as the name of Shri Anil Kumar is concerned while working as Additional SS/LKO, he was medically de-categorized and absorbed as CIT grade Rs.6500-10500 vide DRM's LKO letter No.615-E/6-9/Class-III decatg/08 dated 19.05.2009. His name was interpolated in the seniority list issued in 2003 vide letter No.757E/39/XVI/Eic dated 6/16/06/2011 in terms of provisions contained in para 1314 of IREM Vol I which states that the medically de-categorized staff absorbed in alternative posts, whether the same or other cadres, should be allowed seniority in the grade of absorption with reference to the length of service rendered in the equivalent or correspondence grade irrespective of rate of pay fixed in grade or absorption. In the case of staff who are in grade higher than the grade of absorption at the time of medical de-categorization, total service in the equivalent and higher grade is to be taken into account.

9. It is submitted that the as far as placement of name of S/Shri K.L.Kanwat and Philip Ekka on the panel despite the fact that they were imposed penalty of withholding of increment w.e.f. 1.7.2012 is concerned, it is seen from the records that they were imposed penalty of withholding of increment on 26.07.2011 and 25.07.2011 respectively. The selection was held on 25.08.2011 as such no disciplinary proceedings were pending on the date when DPC met. Both were promoted as ACM vide letter No.940 E/15/Pt 60/EiA dated 09.09.2011 as per the provisions contained in note(a) below para 3.9 of Railway Board's letter No.E(D&A)/92-RG-VI-149(a) dated 20.01.1993, which states that where the penalty imposed is withholding of increment and it becomes operative from a future date, the person concerned should be promoted on his turn and the penalty imposed in the promotional grade for a period which would not result in greater monetary loss."

8. It is not in dispute that as per the provisions of Para 1314 of IREM Vol.I, if a medically decategorized employee absorbed in alternative post, whether the same or other cadres, should be allowed seniority in the grade of absorption w.r.t the length of service rendered in the equivalent or correspondent grade irrespective of scale of pay fixed in grade on absorption. It is also not seriously disputed that the private Respondent No.4 was a medically decategorized employee and entitled for the benefit of Para 1314 of IREM Vol.I.

9. Equally, it is also not in dispute that as per the Railway Board's letter dated 20.01.1993, where the penalty imposed is withholding of increment and if it becomes operative from a future date, the person concerned should be promoted on his turn, and the penalty imposed in the promotional grade for a period which would not result in greater monetary loss. Since the private Respondents No.5 and 6 were given the benefit of the said letter, while promoting them to the post of Assistant Commercial Manager, we do not find any illegality in the said action.

10. In the circumstances and for the aforesaid reasons, we do not find any merit in the OA and accordingly, the same is dismissed. No costs. Pending MAs, if any, stand disposed of accordingly.

(P. K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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