

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

OA 4479/2013
MA 3434/2013

Order reserved on: 15.07.2016
Order pronounced on: 23.07.2016

**Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)**

M.M. Arora
S/o Shri Ram Krishan Arora
R/o 15-D, Radha Nagar, Mathura,
U.P. ... Applicant

(Through Shri M.K. Bhardwaj, Advocate)

Versus

Union of India & ors. through:

1. The General Manager
North Central Railway,
Allahabad
2. The Divisional Railway Manager
North Central Railway,
Agra, U.P.
3. The Divisional Railway Manager
West Central Railway
Kota ... Respondents

(Through Shri Shailendra Tiwary, Advocate)

ORDER

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

A departmental proceeding was started against the applicant, which was challenged by him in OA 2548/2008. The said OA was disposed of by the Tribunal on 31.07.2009, directing respondents to deem the applicant on the post of Head Clerk

during the period penalty has taken effect. A Contempt Petition was thereafter filed, which was also disposed of on 17.10.2011 with liberty to the applicant to challenge the order dated 9.12.2009 passed by the respondents in compliance of above Tribunal order. The applicant states that he has been given all the benefits except the benefit of promotion while his junior Shri Dinesh Srivastava has been promoted in the pay scale of Rs.1600-2660 with effect from 7.05.1993. It is further stated that the pay scale of Rs.1600-2660 pertains to that of Chief Clerk, which is promotional post for Head Clerk. The applicant has prayed for the following reliefs:

- (i) To quash and set aside the impugned order dated 09.12.2009 and direct the respondents to grant promotion to the applicant as Chief Clerk/ OS-II in the grade of Rs.1600-2660 (pre-revised) w.e.f. 07.05.1993 with all consequential benefits including arrears of pay.
- (ii) To quash and set aside the order dated 30.07.2010 to the extent the applicant has been denied promotion as OS-II/ Chief Clerk w.e.f. 07.05.1993.
- (iii) To direct the respondents to pass necessary orders which are necessary to redress the grievance of applicant.

(iv) To award exemplary costs in favour of the applicant.

Our attention was drawn to reply dated 17.08.2011 to an RTI application filed by the applicant in which the respondents have stated that the pay of Shri Dinesh Srivastava was fixed at Rs.1700/- in the pay scale of Rs.1600-2660 with effect from 7.05.1993.

2. The respondents in their reply, first of all, have raised the ground of limitation as the Contempt Petition was disposed of on 17.10.2011, giving liberty to challenge the order dated 9.12.2009, whereas the OA has been filed only on 6.12.2013 i.e. after two years and thus it is hit by limitation. In this regard, the following judgments are relied upon:

(i) **D.C.S. Negi Vs. Union of India & ors.**, SLP (Civil) No.7956/2011;

(ii) **Ratan Chandra Sammanta & ors. Vs. Union of India & ors.**, JT 1993 (3) SC 418;

(iii) **S.S. Rathore Vs. Union of India & ors.**, AIR 1990 SC 10; and

(iv) **Shri Bhoop Singh Vs. Union of India & ors.**, (1992) 3 SCC 136

3. Secondly, it is stated that when it came to the notice of the respondents that Shri Dinesh Srivastava was erroneously promoted to the post of Chief Clerk vide order dated 7.05.1993, he was reverted back to the post of Head Clerk vide order dated 5.12.1995. However, later Shri Dinesh Srivastava appeared in the regular selection held on 20.01.1996 and after passing the said test, was placed in the panel of Chief Clerk with effect from 23.04.1996. Accordingly the applicant is not entitled for any protection vis-a-vis Shri Dinesh Srivastava.

4. It is further stated that, repeatedly between December 1995 and 30.01.1997, the department organized written tests which are mandatory for promotion to the post of Chief Clerk but, despite several opportunities, the applicant did not appear to take the examination. Therefore, without appearing and passing the said test, the applicant cannot be promoted to the post of Chief Clerk.

5. In reply, the learned counsel for the applicant states that the applicant was under suspension upto 17.12.1998. Therefore, he could not have appeared for the examination during that period. Finally, the matter was settled by the Tribunal on 31.07.2009. Moreover, it is stated that while the applicant had communicated his address through letter dated 25.11.1993 (Annexure A-13), no intimation about examination reached him. It is further stated that vide letter dated 9.06.2010, North Central Railway had also stated as follows:

"Seniority and other consequential benefits in consequences in law vide letter No.WCR/E/Kota/ED/Misc. Corresp. dated 09.12.2009 also needs reconsideration at par with the junior who had been extended benefits under restructuring scheme 1993 & further promoted in Kota Division."

6. Learned counsel for the applicant also pointed out that letter dated 11.02.2002 of Western Railway would clearly show that in case of the applicant, it has been mentioned that due to pendency of a departmental proceeding, his seniority will be decided only after conclusion of departmental proceeding. Thus it is evident that his promotion was kept pending because of the departmental proceeding, which was later on quashed by the Tribunal.

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

8. In view of the clarification provided by the respondents, the basis for claiming promotion from 7.05.1993 no longer exists as the respondents have clarified that Shri Dinesh Srivastava was reverted and only when he passed the test held on 20.01.1996, was placed on the panel of Chief Clerk with effect from 23.04.1996. Moreover, the respondents have also clarified that taking the test is mandatory in order to get promoted as Chief Clerk and no relaxation can be made in this regard. It is further clarified that on number of occasions, the applicant was asked to appear in the examination and yet he failed to appear. This argument of the applicant that he could not take the exams

being under suspension does not seem to be valid because, even though the applicant might have been under suspension, since the respondents have sent letters at available address of the applicant and even one of his labourers have been contacted, he cannot now take the plea that he had no knowledge of the examination. So it appears that he has chosen not to appear in the examination.

9. Thus the only remedy available to the applicant is to appear in the next examination and if he is able to pass that examination, he can claim promotion as Chief Clerk. The OA is, therefore, dismissed. The respondents may, however, inquire as to how letter dated 17.08.2011 in reply to an RTI query did not clarify that Shri Dinesh Srivastava was reverted and then again promoted with effect from 23.04.1996 on passing the test.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

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