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O.A. 350/936/2017

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH, KOLKATA

PARTICULARS OF THE APPLICANT:

¶ Sri Subhasis Koley, son of late D. P. Koley, aged about 55 years, working as Senior Station Manager (Gazatted), South Eastern Railway, Howrah, residing at Village & P.O. - Diwan Maro-Nimpura, P.S. - Kharagpur Town Police Station, District - West Midnapur.

..... APPLICANT

V E R S U S -

- i) Union of India, through the General Manager, South Eastern Railway, Garden Reach Road, Kolkata 700 043
- ii) The Secretary, Railway Board, Rail Bhawan, New Delhi 1
- iii) The Chief Operation Manager, South Eastern Railway, Garden Reach, Kolkata 700043
- iv) The Chief Personnel Officer, South Eastern Railway, Garden Reach, Kolkata 700043
- v) Chief Commercial Manager, S.E.Rly, 14 Strand Road, 8th Flr, KOL
- vi) K S Anand, Deputy Chief Safety Officer, S.E.Rly, Garden Reach Road, Kolkata 700043 presently working as 8o, Dem. Admin. Director, A & B Railway, Adra, Purulia - 723101.

..... REASON

Sub

O.A.No.350/936/2017

Date : 19.07.2017

**Coram : Hon'ble Mr. A.K. Patnaik, Judicial Member**

For the applicant : Mr. A. Chakraborty, counsel  
Ms. P. Mondal, counsel

For the respondents : None

**ORDER****A.K. Patnaik, Judicial Member**

The instant O.A. has been filed by the applicant challenging the impugned order of promotion issued by the Chief Personnel Officer, South Eastern Railway, Garden Reach, Kolkata-43 vide office order No.20/2017 dated 20/01/2017 in which the applicant was deprived of his promotion and his junior Sri K.S. Anand (Respondent No.6) was promoted to the post of Junior Administrative Grade(Grade Pay 7600/-) and posted as Deputy Chief Safety Officer, S.E. Railway, Garden Reach, Kolkata-43.

2. I have heard Mr. A. Chakraborty, Id. Counsel for the applicant. None appears for the respondents.

3. In the O.A., the applicant has prayed for the following reliefs:-

"(I) Non inclusion of the name of the applicant in the JAG list is arbitrary since his APARs for the last five years were above bench mark and K.S. Anand junior to the applicant was promoted as DY CSO(Traffic) Garden Reach.

(II) An order do issue directing the respondents to include the name of applicant in the JAG list for further promotion since neither departmental nor any criminal proceeding is pending against him;

(III) An order do issue directing the respondents to cancel/set aside the order dated 20.01.2017 issued in respect of the private respondents and to grant promotion in favour of the applicant."



4. Ld. counsel for the applicant, Mr. A. Chakraborty has submitted that though the applicant's APARs for the period from 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016 were 'Very Good' and he was empanelled for Group 'A' service on 30.03.2016, the name of Mr. K.S. Anand who is the private respondent No.6 in the instant O.A., was included in the list of JAG depriving the legitimate claim of the applicant for such promotion. Being aggrieved by such action of the respondents, the applicant made representations to the Chief Operation Manager, South Eastern Railway, Garden Reach, Kolkata [Respondent No.(iii)] on 22.02.2017 and to the Chief Commercial Manager, South Eastern Railway, Kolkata[Respondent No.V] on 27/28.04.2017 ventilating his grievances therein(Annexure A/3 to the O.A.), but the said representations have not been considered till today. It is the further submission of Mr. Chakraborty that the applicant is entitled to get the reliefs claimed in this O.A. in view of the Office Memorandum dated 14.09.1992 issued by the Department of Personnel & Training(DOP&T), New Delhi on the subject "Promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation- Procedure and guidelines to be followed". He has also filed copies of Office Memorandum dated 02.11.2012 and Office Memorandum dated 23.01.2014 which were issued by DOP&T regarding "Comprehensive review of instructions pertaining to vigilance clearance for promotion-clarifications" and submitted that the applicant's case may be considered in view of the said instructions of DOPT.

5. I have perused the aforesaid Office Memoranda issued by the Department of Personnel & Training, New Delhi. The relevant portion of the aforesaid Office Memorandum dated 14.09.1992 is as under:-



"xxxGovernment have also noticed the judgment dated 27.8.1991 of the Supreme Court in Union of India etc. Vs. K.V. Jankiraman etc.(AIR 1991 SC 2010).

2. At the time of consideration of the cases of Government servant for promotion details of Government servant in the consideration zone for promotion falling under the following category should be specifically brought to the notice of the Departmental Promotion Committee.

### (i) Government servants under suspension

(ii)Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and

(iii) Government servants in respect of whom prosecution for criminal charge is pending.

2.1 xx The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the findings of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover.

3. xxThe Government servant may be promoted, if necessary, by reverting the junior most officiating person.”

The relevant portion of the aforesaid Office Memorandum dated 02.11.2012

reads as follows:-

"xx that vigilance clearance for promotion may be denied only in the following three circumstances:-

- (i) Government servants under suspension
- (ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and
- (iii) Government servants in respect of whom prosecution for criminal charge is pending

6.xxThe sealed cover procedure is to be resorted to only after the charge memo/charge sheet is issued or the officer is placed under suspension. The pendency of preliminary investigations prior to that stage is not sufficient to adopt the sealed cover procedure.

“(b) judicial proceedings shall be deemed to be instituted

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(i) In the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made."

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12. It may thus be noted that vigilance clearance cannot be denied on the grounds of pending disciplinary/criminal/court case against a Government servant, if the three conditions mentioned in para 2 of this Department's O.M. dated 14.09.1992 are not satisfied."

The relevant portion of the Office Memorandum dated 23.01.2014 which was relied on by Mr. Chakraborty is also quoted below for ready reference:-

"2xx with regard to the official who is clear from vigilance angle on the date of promotion of the junior in the original DPC but subsequently attracts the provisions contained in para 2 of DoPT OM dated 14.09.92.

3.xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx where a junior has been promoted on the recommendations of the original DPC, the official would be considered for promotion if he/she is clear from vigilance angle on the date of promotion of the junior, even if the provisions of para 2 of DoPT OM dated 14.9.92 get attracted on the date the actual promotion is considered, as provided in DoPT O.M. No.22011/2/99-Estt.(A) dated 21.11.2001."

6. Referring to the aforementioned instructions issued by the DOP&T Mr. A. Chakraborty, Id. Counsel for the applicant has submitted that the aforesaid representations of the applicant may be considered in view of the said instructions of DOPT. He has also relied on the judgment of Hon'ble Supreme Court in the case of **Union of India Etc. Etc. Vs. K.V. Jankiraman Etc. Etc.**, Civil Appeal No.3018 of 1987 and Civil Appeal No.4379 of 1990 and submitted that the respondents may be directed to consider the opinion of the Hon'ble Supreme Court in such matters while disposing of the representations of the applicant.

7. Right to know the result of the representation that too at the earliest opportunity is a part of compliance of principles of natural justice. The employer is also duty bound to look to the grievance of the employee and respond to him in a suitable manner, without any delay. In the instant case, as it appears, though

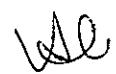
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the applicant submitted representations to the authorities ventilating his grievances ,no reply has been received by him till date.

8. It is apt for us to place reliance on the decision of the Hon'ble Supreme Court of India in the case of **S.S.Rathore-Vrs-State of Madhya Pradesh, AIR1990 SC Page 10 / 1990 SCC (L&S) Page 50** (para 17) in which it has been held as under:

**"17. .... ....Redressal of grievances in the hands of the departmental authorities take an unduly long time. That is so on account of the fact that no attention is ordinarily bestowed over these matters and they are not considered to be governmental business of substance. This approach has to be deprecated and authorities on whom power is vested to dispose of the appeals and revisions under the Service Rules must dispose of such matters as expeditiously as possible. Ordinarily, a period of three to six months should be the outer limit. That would discipline the system and keep the public servant away from a protracted period of litigation."**

9. Though no notice has been issued to the respondents for filing reply, considering the aforesaid facts and circumstances I do not think that it would be prejudicial to either of the sides if a direction is issued to the respondents to consider and decide the representations of the applicant in view of the aforesaid Office Memoranda of DOP&T, Judgments of the Hon'ble Supreme Court and as per the relevant rules and regulations governing the field. Accordingly the Respondent No.(iii) or Respondent No.(v) i.e. The Chief Operation Manager, South Eastern Railway, Kolkata or the Chief Commercial Manager, South Eastern Railway, Kolkata is directed to consider and dispose of the representations of the applicant, if such representations are still pending for consideration, by passing a well reasoned order as per rules and intimate the result to the applicants within a period of six weeks from the date of receipt of a certified copy of this order. If the applicant's claim is found to be genuine, the benefits as claimed in his



representations be granted to him within period of further six weeks from the date of taking decision in the matter.

10. It is made clear that I have not gone into the merits of the case and all the points raised in the representations are kept open for consideration by the respondent authorities as per rules and guidelines governing the field.

11. As prayed by the Id. Counsel for the applicant Mr. A. Chakraborty, a copy of this order along with the paper book may be transmitted to the Respondents No.(iii) and (v) by speed post by the Registry for which Mr. Chakraborty undertakes to deposit the cost within one week.

12. With the above observations the O.A. is disposed of. No order as to cost.

( A.K. Patnaik)  
Judicial Member

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