

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00784/14

Reserved on: 20.02.2018
Pronounced on: 23.02.2018

C O R A M

HON'BLE MR. A.K. UPADHYAY, ADMINISTRATIVE MEMBER
HON'BLE MR. JAYESH V. BHAIKAVIA, JUDICIAL MEMBER

Sanjay Kumar Pathak, Son of Dr. K.K. Pathak, posted as Sub-Divisional Engineer (Marketing), office of the General Manager, Telecom District, BSNL, Darbhanga (Bihar).

..... Applicant.

- By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the General Manager, Eastern Railway, 17, Netaji Subhash Road, Kolkata - 700001.
2. The General Manager (Personnel), Eastern Railway, 17, Netaji Subhash Road, Kolkata- 700001.
3. The Divisional Railway Manager, Eastern Railway, Malda- 732101.
4. The Senior Divisional Personnel Officer, Eastern Railway, Malda- 732101.
5. The Senior Divisional Mechanical Engineer (Power), Eastern Railway, Malda- 732101.
6. The Senior Divisional Financial Manager, Eastern Railway, Malda- 732101.

..... Respondents.

- By Advocate(s): - Mr. Manoj Kumar Manoj

ORDER

Per A.K. Upadhyay, A.M.:- The applicant has filed this OA seeking the following reliefs:-

“(i) That Your Lordships may graciously be pleased to quash and set aside the order dated 27.05.2014 as contained in Annexure A/9 being illegal, discriminatory and unconstitutional.

(ii) That Your Lordships may further be pleased to direct the Respondents to grant/effect the promotion of applicant to the cadre of TES Group-B w.e.f. 05.08.2002 instead of from 16.09.2004 in favour of the applicant at par with his juniors including Sri Suman Kumar Jha as evident from Annexure A/3.

(iii) That this Hon'ble Court may further be pleased to direct the Respondent to grant all consequential benefits including promotion in the cadre of STS at par with his juniors including Sri Suman Kumar Jha as evident from Annexure A/7 together with arrears of pay henceforth along with statutory interest from 05.08.2002.

(iv) Any other relief or reliefs including the cost of the proceedings may be allowed in favour of the applicant."

2. The case of the applicant is that he belongs to 1989 batch Junior Telecom Officer who was initially appointed in West Bengal Circle. He came to Bihar Circle on 25/26.10.1994 under Rule 38 of P&T Manual. While he was posted in Bihar Circle a charge sheet dated 26.08.1998 was issued against him alleging slack supervision. After enquiry the Enquiry Officer submitted its report on 03.11.2003 holding that out of four charges, 1 and 2 were not proved, whereas 3 and 4 were proved. The applicant submitted his representation upon the enquiry report. The Disciplinary Authority vide order dated 23.03.2004 imposed the penalty of reduction by one stage in time scale of pay for a period of one year with a direction that the applicant will earn increments of pay during the period of such deduction, and on expiry of this period the reduction will not have the effect of postponing his future increments of pay.

3. The applicant further contends that during the pendency of departmental proceeding and before the imposition of the punishment, the respondents issued eligibility list of DTOs for holding of DPC for promotion to TES Group 'B' which also included his name at sl. no. P5273, whereas his junior Shri Suman Kumar Jha is at P5277. However, in the promotion order dated 05.08.2002 the respondents have granted promotion to his juniors including Shri Suman Kumar Jha, but the applicant was left unconsidered due to the pendency of the departmental proceeding. The applicant submitted various representations including one on 27.05.2006 (Annexure A/4) for grant of his promotion to TS Group B cadre from the date of his junior. The respondents have issued promotion order dated 10.04.2008 w.e.f. 16.09.2004 (Annexure A/5) instead of 05.08.2002. Thereafter, the applicant submitted representation dated 12.03.2010 (Annexure A/6) for inclusion of his name in the gradation list of SDE/JTO of 1989 recruitee. He gave another representation on 04.04.2012 (Anenxure A/8) for promotion as officiating DE. However, the respondents rejected his claim for promotion to SDE (T) from 2002 vide the impugned order dated 27.05.2014 (Annexyre A/9).

4. The learned counsel for the applicant Shri M.P. Dixit argued that this was a minor penalty proceeding initiated in 1998 which was concluded after about 6 years, ending in a minor punishment of reduction of one stage in time scale of pay for one

year with non-cumulative effect. The currency of the penalty would be for one year, i.e. from 01.04.2004 to 31.03.2005. However, the respondents on their own have given the applicant promotion w.e.f. 16.09.2004. Thus as per Mr. Dixit the said penalty was not the reason for delay in promotion. On the basis of the minor penalty of non-cumulative effect the applicant cannot be disadvantaged for ever which would amount to a major penalty. Therefore, Mr. Dixit argued, the applicant deserves to get promotion from the date of the promotion granted to his juniors.

5. The respondents in their written statement have stated that the minor penalty charges were proved against the applicant. The provisional eligibility list was issued without consideration of any vigilance case pending against any official. The disciplinary proceeding was initiated under major penalty. However, it ended in a minor penalty by punishment order dated 23.02.2004 which had the currency w.e.f. 01.04.2004 to 31.03.2005. Due to pendency of the disciplinary proceedings the applicant was not promoted as SDE (T) at par with junior Shri Suman Kumar Jha who was promoted in the year 2002. Since vigilance case under Rule 14 of CCS (CCA) Rules, 1965 was pending against the applicant, the vigilance clearance was withheld. Hence, the case of the petitioner was decided in accordance with the DoP&T OM No. 22011/4/91-Estt(A) dated 14.09.1992 (Annexure-B), and he was granted promotion w.e.f. 16.09.2004 after getting vigilance clearance.

6. The applicant has filed a rejoinder in which he has referred to a judgment of the Hon'ble Patna High Court in 1999(1) PLJR 391 (Dhirendra Nath Saha Vs. State of Bihar) in which it was held that *"Once an order of punishment is passed finally, the delinquent will only suffer the legal consequences arising from that order and it would not be permissible to go back to the charges to deny him promotional benefits, otherwise it would amount to punishing a delinquent employee twice over for the same charges."* The learned counsel for the applicant Mr Dixit also submitted the judgment of Hon'ble Madras High Court dated 17/11/2009 in WP (MD) No. 10011-110012 of 2009.

7. Heard the parties and perused the records.

8. The legal issue to be examined in this matter is what would be the impact of disciplinary proceeding/penalty on promotion. The respondents have cited a DoP&T circular of 14.09.1992 (Annexure-B with the WS). However, the DoP&T have come out with a comprehensive circular vide OM No. 22011/4/2007-Estt.(D) dated the 28th April, 2014 in which their earlier circulars including that of 14.09.1992 have been referred. Further this circular also refers to several judgments of the Hon'ble Supreme Court, viz (i) *A.K. Narula vs. Union of India & Ors. (AIR 2007 SC 2296)*, (ii) *Union of India Vs. K.V. Janakiraman (AIR 1991 SC 2010)* and (iii) *Union of India & Anr Vs. S.K. Goel & Ors [Appeal (Civil) 689/2007- SLP @ - 2410/2007]*. Therefore, we treat this circular as providing the guiding

principle on the issue of impact of disciplinary proceeding/penalty on promotion.

9. Admittedly, since the applicant was facing a departmental proceeding where his junior was promoted vide order dated 05.08.2002, therefore, the respondents were justified in not considering/granting him promotion from that date. The disciplinary proceeding ended in a minor penalty order dated 23.02.2004. The currency of the punishment is upto 31.03.2005. The relevant paragraph, i.e. para 7(G) of the DoP&T circular of 28.04.2014 are as follows:-

“ In assessing the suitability of the officer on whom a penalty has been imposed, the DPC will take into account the circumstances leading to the imposition of the penalty and decide whether in the light of general service record of the officer and the fact of imposition of penalty, the officer should be considered for promotion. The DPC, after due consideration, has authority to assess the officer as ‘unfit’ for promotion. However, where the DPC considers that despite the penalty the officer is suitable for promotion, the officer will be actually promoted only after the currency of the penalty is over (**para 13 of DoPT OM dated 10.4.89**)”

9. Thus, it is clear that the promotion could not be given during the currency of the penalty. The circular also provides that depending on the nature of the charges and nature of penalty the authorities have to consider the eligibility for promotion and the date of effect of such promotion. In this case, it appears that the authorities have considered the issue of his promotion in pursuance

of the BSNL Corporate Office, New Delhi letter dated 29.03.2008. This letter is however not on record. But the Chief General Manager, Bihar Circle has issued the promotion order in pursuance of the aforesaid instructions of the corporate office, vide memo dated 10.04.2008 giving notional promotion to the applicant w.e.f. 16.09.2004. This date happens to be even before the end of the currency of punishment. The reason explained is that this is the date of receipt of vigilance clearance. Since this date is before the end of currency of punishment there is no damage caused to the applicant and this action of the respondents cannot be faulted.

10. Therefore, the applicant's prayer for granting promotion from 05.08.2002 is rejected.

11. However, it is observed from the promotional order of the applicant that they have given it with effect from his junior. Without getting into detail into this aspect, since the impact of minor penalty cannot be everlasting, the intent of the above circular seems to be clear that for future promotions the concerned employee's original seniority shall be restored.

12. Our aforesaid view seems to be in consonance with the extracts of Hon'ble Patna High Court's judgment reported in 1991 (1) PLJR 391 cited by the applicant in his rejoinder, which has been cited in para 6 of this order. The delay in granting promotion is a legal consequence of the punishment order. He has not been denied promotion. We are also holding that for future promotions his

original seniority shall be reckoned. As far as Hon'ble Madras High Court judgment is concerned, this is regarding a State Government employee of Tamil Nadu who was governed by another set of rules. The Punishment in that case was that of "Censure". Therefore, this matter is distinguishable from the judgment of the Hon'ble Madras High Court.

13. In conclusion, the applicant's prayer for granting him promotion to SDE(T) from 05.08.2002 is rejected. However, It is made clear that for future promotions his original seniority shall be reckoned prior to the punishment order. The OA is disposed of accordingly. No order as to costs.

[Jayesh V. Bhairava]
Judicial Member
Srk.

[A.K Upadhyay]
Administrative Member