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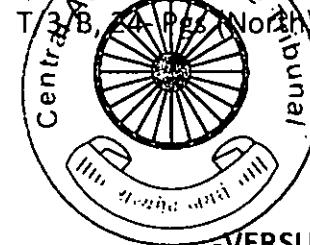
O.A. No. 350/1170/2012

Date of Order: 13.10.2018

Present: Hon'bleMs.Bidisha Banerjee, Judicial Member
Hon'bleDr.NanditaChatterjee, Administrative Member

MUNNA LAL SHARMA,
son of Late Ram Janam Sharma, aged about
58 years, working for gain as Head
Commercial Clerk, New Barrackpore, Eastern

Railway, residing at Railway Qr. No.Bira-



.....APPLICANT

1. UNION OF INDIA,

Through the General Manager, Eastern
Railway.

2. CHIEF PERSONNEL OFFICER,

Eastern Railway ,
-both having office at Fairlie
Place,Kolkata-700 001.

3. THE DIVISIONAL RAILWAY MANAGER,

Sealdah Division, E. R..

4. THE SENIOR DIVISIONAL PERSONNEL

OFFICER, Eastern Railway, Sealdah

Division;

5. THE SENIOR DIVISIONAL COMMERCIAL

MANAGER, Sealdah Division, Eastern



Sl. nos. 3 to 6 having office at Sealdah,

Kolkata – 700 014.

7. THE BOOKING SUPERVISOR,

Bisharpara, Kodalia, Eastern Railway.

...RESPONDENTS

For the Applicant : Mr. K Sarkar, Counsel

For the Respondents : Mr S Banerjee, Counsel

B

ORDER

Per Ms. Bidisha Banerjee, Judicial Member:

1. This is the second journey to this applicant to this forum.
2. The applicant was found unsuitable for promotion to the post of Chief Commercial clerk on restructuring of cadre.
3. Aggrieved he preferred OA No.429 of 2009 with the following reliefs :
 - (i) An order do issue directing the respondents, their men and agents to consider the case of the applicant for promotion to the post of Chief Commercial Clerk on reconstructing of cadre owing to administrative error/ fault at par with the junior colleagues of the applicant who have already been promoted to the said post in violation of seniority-cum-suitable criteria.
 - (ii) To direct the respondents to deal with and dispose of the several representations made by the applicants.
 - (iii) To direct the respondents to produce all the records of the case before the Hon'ble Tribunal.
 - (iv) Any order to pass such further another order or orders as this Hon'ble Tribunal may deem fit and proper.
4. The O A was disposed of with the following order :

" 7. It is clear that the applicant was served with the major penalty chargesheet and was awarded punishment of stoppage of three increments. The order was issued on 28.06.2002. He preferred an appeal and in the appeal the punishment period of three years is reduced for a period of two years as such the same was over in August,2004.

8. Considering the facts of the case since the promotion order issued on 06.09.2004 on that date there was no punishment against the applicant as such not considering the case of the applicant for promotion to the said post appears to be unjustified. It is clear that the promotion is not a right by consideration for promotion is a right of an employee.

9. Accordingly, we are of the view that a direction be issued to the respondents to consider the case of the applicant for promotion to the post of Chief Commercial Clerk with effect from the date when his punishment was over and if the applicant otherwise eligible he may be given promotion to the said post. The same shall be done within a period of 3 months from the date of copy of the order is produced to the respondents.

10. Accordingly, the OA is allowed. No order as to costs. "

AS

5. Aggrieved with the consequent order dated 11.10.2012 passed pursuant to the direction of this Tribunal, the applicant has come up with this OA to seek the following reliefs :

- a) to direct the respondents to cancel, withdraw and/or rescind the speaking order dated 11.10.2012 as contained in Annexure "A-9" herein;
- b) to direct the respondents to consider the promotion of the applicant to the post of Chief Commercial Clerk with effect from 06.09.2004 when his punishment was over in terms of the order of the Hon'ble Tribunal dated 29.06.2012 passed in OA No.420 of 2009; as contained in Annexure "A-8" herein;
- c) to direct the respondents to pay arrears of salaries and allowances upon such promotion to the post of Chief Commercial Clerk and to refix his pay accordingly for all practical purposes;
- d) to direct the respondents to produce all the relevant documents before this Hon'ble Tribunal for adjudication of the issues involved herein;
- e) And to pass such further or other order or orders as to this Hon'ble Tribunal may deem fit and proper.

6. The order impugned dated 11.10.2012 reads as under :

Sub. Implementation of the judgement of the Hon'ble Tribunal in OA No.420 of 2009 dated 29.06.2012-Munna Lal Sharma Vs. UOI & Ors.

In pursuance to the judgement the proceedings for considering promotion to the post of Chief Commercial Clerk in scale Rs.5500-9000/- (RSRP) against restructuring has been reviewed. It is seen that there are other persons namely Satyabrata Sarkar and Swalia Giri who were undergoing minor penalty on the date of sitting of the Departmental Promotional Committee still they were declared suitable. Therefore, are reasons other than the fact that Sri Munna Lal Sharma was undergoing penalty at the material point of time for his non-inclusion in the select list. It may, however, be stated that in the proceedings the Departmental Promotional Committee has not disclosed the reasons for declaring suitable/not suitable against any of the 83 candidates considered by the Departmental Promotional Committee.

In view of the facts stated above, it may be concluded that the of Departmental Promotional Committee while considering suitability or otherwise has not solely dependent on the facts whether the candidates whose cases were before them were undergoing penalty at the material point of time. In that view of the matter, there is no scope to declare him eligible for promotion and hence the claim is regretted.

7. The respondents in their reply have defended their action reiterating the same issue as put forth in the order supra.

8. The applicant has further rejoined stating that a provisional seniority list of Head Commercial Clerk as on 01.08.2001 was published by the respondent authority concerned vide memo. dt. 29.08.01 wherein the name of the applicant appeared against sl. No. 18 and thereafter by an office order dated 04.10.02 railway authorities proposed to hold a selection comprising of only a viva-voice test for formation of a panel of Chief Commercial Clerk and the name of the applicant was shown therein at sl. no.12 as Head Comml. Clerk.

Thereafter, another seniority list was published on 04.03.04 by the respondent authority concerned wherein also the name of the applicant appeared against sl. no. 12. Then a notice was given by the railway authority concerned on 02.04.04 for selection to the post of Chief Commercial Clerk inviting application from the eligible candidates and the name of the applicant was shown therein in sl. no. 6.

Further that an office order was issued on 06.09.04 by the railway authority concerned for restructuring on promotion as Chief Commercial Clerk by way of promotion from the post of Head Commercial Clerk w.e.f. 1.11.03 due to restructuring and the person so promoted were directed were directed to remain posting at the same place, to the exclusion of the applicant herein, though fact remains that juniors to the applicant were promoted there.

9. We heard the Learned Counsels, perused the materials on record and considered the written notes of arguments.

10. Rummaging through the papers we noticed that the Selection Notice dated 04.10.2002 explicitly stipulated the following :

Sub : Selection for the post of Chief Comml. Clerks in scale Rs 5500-9000/-

Break-up :UR- 63, SC-01, ST-16

It has been decided to hold a selection comprising only viva-voce-test for formation of a panel of Chief Comml. Clerks in scale Rs.5500-9000/- (RSRP) consisting of 80 posts (UR- 63, SC-01, ST-16) from the eligible candidates.

The applicant duly figured in the list.

11. A promotion order dt. 06.09.2004 depicts that promotion of six(6) persons namely Baignath Rai, Subrata Chowdhury (SC), Swapan Kr. Majumder, Swatia Giri, Satyabrata Sarkar and Asok Kr. Mondal was withheld. But applicant, whose currency of penalty was over, by then, was not included in the list.

12. That the promotion was on the basis of viva-voce being self evident stands established. There could not be any other factors that would debar the applicant from his due promotion other than low merit marks in viva which is not the enumerated ground for rejection.

13. The speaking order, therefore, smacks of arbitrariness and is, therefore, quashed.

14. The competent authority is directed to consider the matter afresh, untrammelled by its earlier order and to issue appropriate reasoned and speaking order by eight(8) weeks from the date of this order.

15. O A is thus disposed of. No costs.

Nandita Chatterjee
Member (A)

Bidisha Banerjee
Member (J)