

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**OA No. 2600/2015
MA No. 2317/2015**

Reserved on: 28.05.2019
Pronounced on: 31.05.2019

**Hon'ble Mr. R. N. Singh, Member (J)
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Pradeep Khera, Aged – 53 years,
S/o Sh. H. L. Khera,
Working as Office Supdt.,
Northern Railway Board House, New Delhi.
R/o 6/24, Railway Colony, Kishan Ganj,
Delhi – 110007.

...Applicant

(By Advocate: Mr. Yogesh Sharma)

Versus

1. Union of India through,
The General Manager,
Northern Railway, Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railways,
State Entry Road, New Delhi.

...Respondents

(By Advocate: Mr. A. K. Shrivastava)

O R D E R (ORAL)**Mohd. Jamshed, Member (A):-**

The applicant is working as Office Superintendent with Northern Railway and seeks the following relief(s) through this O.A.:-

“(i) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 9.3.2015(A/1) and order dated 07.1.2013 (A/2) declaring to the effect that the same are illegal, unjust, arbitrary and discriminatory and consequently, pass an order directing the respondents to consider and to grant the applicant his due promotion to the post of Office Supdt. From the date of promotion of Junior persons i.e. w.e.f. 13.1.2000 with all the consequential benefits including the arrears of difference of pay and allowances.

(ii) Any other relief which the Hon’ble Tribunal deem fit and proper may also be granted to the applicants along with the costs of litigation.”

2. Primarily, the applicant is seeking this Tribunal’s indulgence in passing orders for quashing of the orders dated 09.03.2015 and dated 07.01.2013, in order to grant the applicant his due promotion to the post of Office Superintendent from the date of promotion of his juniors w.e.f. 13.01.2000.

3. The applicant joined the Railways in the year 1984 as Clerk. He was issued a major penalty charge sheet and awarded a punishment of withholding of increment for three months without cumulative effect vide order dated 26.04.1999. During the pendency of disciplinary proceedings, the respondents promoted

his juniors to the post of Senior Clerk, Head Clerk and Office Superintendent. The applicant on completion of disciplinary proceedings was given the benefit of promotion from Clerk to Senior Clerk and from Senior Clerk to Head Clerk from the date of promotion of his juniors in terms of Railway Board Circular dated 21.01.1993. With these promotions, the pay of the applicant was also fixed accordingly. It is also submitted that a person namely, Sh. Ram Swaroop, junior to the applicant, was promoted as Office Superintendent on 13.01.2000 on the basis of the examination he passed in the year, 1996. The applicant requested the Competent Authority for granting him promotion to the post of Office Superintendent – II at par with his junior. In 2006, the respondents decided to conduct examination for promotion to the post of Office Superintendent, but the name of the applicant was not included in the list.

4. Aggrieved by this action of the respondents, the applicant filed an O.A. No. 303/2007 before this Tribunal. This Tribunal vide interim order directed the respondents to allow the applicant to appear in the selection provisionally. The respondents conducted the examination on 24.04.2007. The applicant was, however, not successful in written examination and due to this the impending O.A. was also dismissed on 30.04.2008, being infructuous. Subsequently the posts of Head Clerk and Office Superintendent were merged w.e.f. 01.01.2006 and this selection

thus became infructuous. As a result of directives issued by the this Tribunal, the applicant submitted a representation to the General Manager (P) to grant notional promotion of Office Superintendent to him from the date of promotion of his juniors. Later on, the applicant vide representations dated 24.12.2010 and 04.04.2011 requested the respondents to grant notional promotion and assign correct pay at par with his juniors as the selection examination had became infructuous, in view of merger of both the posts and grades, on the recommendations of 6th CPC.

5. The respondents vide letter dated 07.01.2013, rejected the request of the applicant on the ground that the applicant was not empanelled for the post of Office Superintendent-II prior to merger of both grade w.e.f. 01.01.2006.

6. Against this communication of the respondents, the applicant also submitted a detailed representation dated 04.07.2013 to the Railway Board. Railway Board vide its order dated 09.03.2015 rejected the request of the applicant by indicating that the stand taken by Northern Railway appears to be in order in light of Railway Board letter dated 26.09.2012. The applicant has also submitted that the Railway Board letter dated 26.09.2012 is not applicable to the facts of the present case.

7. Aggrieved by the action of the respondents, the applicant has filed the present O.A., which is third round of litigation.

8. The respondents in their counter reply have opposed the O.A. It is also submitted by the respondents that the applicant was issued a major penalty charge sheet in 1988 and a penalty of reduction of pay in time scale for a period of one year was imposed upon him but the same was reduced to a minor punishment of withholding of increment for three months, without cumulative effect by Appellate Authority vide order dated 26.04.1999. His promotions due to the pendency of the disciplinary proceeding were also affected, in terms of the extant rules. During this period, selection to the post of Office Superintendent – II was held in the year 1996 in which he was not called, being ineligible for promotion, as he was only a Clerk at that time. Subsequently, he was given the benefit of promotion from Clerk to Senior Clerk and from Senior Clerk to Head Clerk. However, he was not promoted to the post of Office Superintendent – II that being a selection post which could only be filled by eligible staff who come under the zone of consideration. Later on selection to fill up two vacancies of Office Superintendent –II was initiated in the year 2006. Although, the applicant was not in the zone of consideration as per his seniority, he was allowed to appear in the written test of Office Superintendent – II as per directives of this Tribunal in O.A. No. 303/2007.

9. The applicant appeared in the written test held on 24.04.2007 but he did not succeed in the examination. This Tribunal also dismissed the O.A. vide order dated 30.04.2008. The case was further referred to Railway Board for clarification regarding benefit of seniority to the applicant. Railway Board vide letter dated 09.03.2015, clarified that the claim of the applicant for seniority cannot be considered as he did not qualify in the written test for the post of Office Superintendent – II held in the year 2006, i.e., prior to the recommendation of the 6th CPC, merging the grade of Head Clerk and Office Superintendent – II. The seniority of merged grade was prepared in terms of Railway Board's letter dated 26.09.2012. The applicant was, however, granted the benefit of MACP w.e.f. 01.09.2008 and also was promoted as Chief Office Superintendent on 16.03.2015.

10. Respondents have also submitted that representation of the applicant with detailed comments of respondents was forwarded to the Railway Board for seeking Railway Board's views as to whether seniority of the applicant can be assigned from the date of promotion of his juniors. The Ministry of Railways/Railway Board vide letter dated 09.03.2015 clarified that the applicant lost his seniority as he did not qualify the written test held for the post of Office Superintendent –II held in the year, 2007 which is prior to the implementation of the recommendations of the 6th CPC by the Railways. Railway Board, further, confirmed that the decision

taken by the respondents regarding the seniority of the applicant is correct.

11. We heard, Mr. Yogesh Sharma, learned counsel for the applicant and Mr. A. K. Srivastava, learned counsel for the respondents and perused the records.

12. This is the third round of litigation by the applicant. From the above it is evident that the promotions of the applicant were affected on account of major penalty disciplinary proceeding against him till 1999. Thereafter, the applicant was granted various promotions from Clerk to Senior Clerk and from Senior Clerk to Head Clerk by the respondents. In 1996, the applicant was not called for the selection held for the post of Office Superintendent –II, in view of the ongoing disciplinary proceedings. In another selection held in the year, 2006 for filling up two (UR) vacancies of Office Superintendent also the applicant's name did not figure as he was junior in the list. However, as per the directives given by this Tribunal in O.A. 303/2007 he was allowed to appear in the written test for the same held on 24.04.2007. The applicant did not succeed in the same and the O.A. No. 303/2007 was also dismissed. The post of Office Superintendent – II was a selection post for which examinations were held from time to time. After the implementation of recommendations of 6th CPC, the post of Head

Clerk and Office Superintendent -II were merged. As the applicant did not qualify in the selection process he was not given any promotion. The applicant, thereafter, filed O.A. No. 318/2010 against the result of the selection. This O.A. was also dismissed in default. Representations were made by the applicant for granting notional promotion and assigning correct pay at par with his juniors, in view of the merger of the grades, which made the selection held for the post of Office Superintendent – II as infructuous. The representations were rejected by the respondents by order dated 07.01.2013. The representation submitted by the applicant to the Railway Board which was also forwarded by Northern Railway to the Railway Board was also rejected vide Railway Board letter dated 09.03.2015.

13. In this third round of litigation, the applicant has sought relief in terms of quashing and setting aside the orders of the respondents dated 07.01.2013 and 09.03.2015. It has been argued by the learned counsel for the applicant that the applicant appeared in the examination for selection to the post of Office Superintendent -II and has not qualified the written examination held on 24.04.2007 but as both the grades of Head Clerk and Office Superintendent -II have been merged as per the recommendations of the 6th CPC, this selection process has become infructuous and, therefore, he was granted seniority without taking into consideration the fact that the applicant was

not successful in the written examination for the post of Office Superintendent. It is also argued that the Railway Board's letter dated 26.09.2012 is not relevant to the facts of this case.

14. Learned counsel for the respondents on the other hand has drawn our attention to the Railway Board's letter dated 26.09.2012, clarifying the position in this regard. The relevant portions of this letter, reads as under:-

“The issue of status of promotions made between date of effect and date of implementation of 6th CPC and seniority of staff in case where two or more prerevised grades were merged and placed in a common grade pay, in consonance with the recommendations of 6th CPC, was under consideration of Ministry of Railways in consultation with Department of Personnel & Training (DoP&T).

2. The matter has since been examined and it has been decided that status of promotions and seniority of staff holding post in grades which have been merged in pursuance to recommendations of 6th CPC will be determined as under:-

(I) The promotions made between 01.01.2006 to 04.09.2008 (date of implementation of 6th CPC on Railways) will be protected as the same were made as per the provisions of statutory rules existing at that time. The merger of the pay scale(s) of the post(s) as recommended by 6th CPC have been made effective w.e.f. 01.01.2006; the seniority of government servant which existed on 04.09.2008 will be maintained, i.e., the holder of post having higher pay scale or post which constituted promotion post for the posts in the feeder grade, will rank enblock senior to those holding post having lower pay scale or the posts in feeder grade.

(II) Where posts having different pay scales prior to 6th CPC recommendations and now after merger have come to lie in the same Pay Band with same Grade Pay, the inter-se seniority of all the employees will be fully maintained with employee in a higher pre-revised pay scale being placed higher vis-a-vis an employee in a lower revised pay scale being placed higher vis-a-vis an employee in a lower pay scale. Within the same pre-revised pay scale, seniority which existed prior to revision would continue.”

It is evident through the Railway Board's above mentioned letter that the date of implementation of 6th CPC on Railways is 04.09.2008 and the selection, etc. that took place during 01.01.2006 to 04.09.2008 will continue to hold and the seniority would be accordingly decided.

15. Not only the applicant had twice approached the Tribunal seeking relief but he also made representations to the respondents and Railway Board. The details were furnished by the respondents to the Ministry of Railways about the applicant's representation indicating at length various developments and ground for fixation of his seniority. The respondents, further, sought Ministry of Railways opinion in this behalf.

16. The Railway Board vide letter dated 09.03.2015 advised the respondents that the applicant lost his claim for seniority as he did not qualify the written test for the post of Office Superintendent-II, held in the year 2007, i.e., prior to the implementation of the 6th CPC on Railways. They have, further, confirmed the action taken by the respondents in the light of the provisions of Railway Board's letter dated 26.09.2012.

17. From the above, it is obvious that the promotion of the applicant during the period 1988 to 1999 were affected adversely due to ongoing disciplinary proceedings. During this period, in 1996, selection for the post of Office Superintendent – II took

place for which he was not eligible due to the disciplinary proceedings and his juniors qualified for the post of Office Superintendent – II. Later, on completion of the disciplinary proceedings in 1999, he was granted three promotions up to Head Clerk. As the post of Office Superintendent – II was a selection post for which written examinations were held, he was not granted that promotion.

18. During 2006 selection for the post of Office Superintendent –II were announced. Although he was not in the zone of the consideration, in view of the directives given by this Tribunal in the O.A. filed by the applicant, he was permitted to appear in the examination for the post of Office Superintendent –II held on 24.04.2007. The applicant did not qualify in the written examination. The earlier O.A. was also accordingly dismissed. He was, therefore, not granted the promotion. Feeling aggrieved, he filed another O.A. No. 318/2010, which was also dismissed. The applicant also made a few representations with the basic premise that the grades of Head Clerk and Office Superintendent –II had been merged as per the recommendations of the 6th CPC w.e.f. 01.01.2006 and the selection in which he did not succeed has become infructuous and, therefore, he should be considered for the post of Office Superintendent –II and also his seniority should be accordingly fixed.

19. In the meanwhile, Railway Board issued a circular dated 26.09.2012, providing detailed guidelines on the recommendation of the 6th CPC for merger of grades. In this circular it is very clearly mentioned that these recommendations have been implemented on Railways w.e.f. 04.09.2008 and various selection during the period between 01.01.2006 to 04.09.2008 will hold good for promotion.

20. A representation made by the applicant to the Railway Board was also forwarded by the respondents with the detailed comments. The Railway Board considered the case of the applicant, the action taken by the respondents and vide order dated 09.03.2015, confirmed the stand taken by the respondents fixing the seniority of the applicant and rejecting his representation. The applicant is not entitled to promotion as he did not succeed in the written examination. Earlier in 1996, his juniors were promoted after passing the selection examination. Although reference to his junior has been made, the applicant has not impleaded him in this case. The applicant who sought limited relief from the Tribunal in terms of permitting him to appear in the selection examination, being held for the post of Office Superintendent in 2007, is now seeking that he be granted promotion to the post of Office Superintendent w.e.f. 13.01.2000. This is not tenable as the selection of his juniors to the post of Office Superintendent in 2000 was based on the selection

examination held in 1996, in which the applicant could not participate, in view of the disciplinary proceedings pending against him.

21. From the above, it is evident that the grievance of the applicant had been adequately redressed by this Tribunal through earlier O.As filed by him and also by way of respondents deciding his representations.

22. In view of the above, we are of the view that there is no merit in the O.A. and the same is accordingly dismissed. M.A. No. 2317/2015 shall also stand dismissed. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(R. N. Singh)
Member (J)

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