

**Central Administrative Tribunal
Principal Bench**

OA No. 95/2014
MA No.1584/2016

Order reserved on : 08.05.2019
Order pronounced on: 10.05.2019

Hon'ble Mr. Pradeep Kumar, Member (A)
Hon'ble Mr. Ashish Kalia, Member (J)

S.K.Trikha
S/o Sh. Ganpat Rai Trikha
R/o C-116, Anand Vihar,
Delhi-92.

... Applicant

(Applicant in person)

VERSUS

1. Managing Director of RITES Ltd.,
Sec-29, Gurgaon, Delhi.
2. Ministry of Railways
Through its Secretary,
Room No.256-A,
Rail Bhavan, Raisina Road,
New Delhi-1.
3. Central Vigilance Commission,
Satarkata Bhavan,
A-Block, GPO Complex,
INA, New Delhi-110023.

... Respondents

(By Advocate: Sh. G.C.Chaturvedi with
Sh. Shrinkar Chaturvedi)

ORDER

By Hon'ble Mr. Ashish Kalia, Member (J)

Applicant is seeking the following reliefs:

a) Direct the respondents to grant the promotional benefits to the applicants w.e.f. issuance of the A-1, i.e.; w.e.f. yr. 2008 along with arrears and interest @ 18% pa with all other consequential benefits;

b) Direct the respondents to grant the compensation of 15,00,00,000 (1% of 1500 crore, the tender amount.) only for the humiliation, harassment and mental agony that the applicant and his family had to go through which was caused due to loss of the dignity and status that would have been achieved if the applicant did not get into the trial of exoneration which was his undisputed right. The applicant was alleged with the false allegations when he was at his peak on his career and that time the applicant gained so much popularity and dignity in the professional area as well as he earned kind respect in the society and family and friends which was ruined after these allegations.

c) Direct the respondents ask for unconditional apology in written form for humiliation and harassment caused to the applicant.

d) Direct the respondents to produce all the records of the case along with their reply for perusal by this Hon'ble Tribunal;

e) Allow the cost of this application to be borne by the respondents.

f) Pass such other orders or reliefs as deemed fit and proper in the facts and circumstances of the case in the favour of the applicant and against the respondents."

2. Applicant has joined at RDSO/Lucknow under Ministry of Railways in 1974. He came on deputation to RITES Ltd. in 1986 as an Assistant Manager/Electrical and got absorbed in 1989. He was promoted as Manager/Electrical in 1992 and Dy. General Manager/Electrical in 1997. He is having unblemished record of service of 34 years.

A selection for promotion to the post of Jt. General Manager/Electrical was held on 18.06.2007. All eligible employees who fulfilled the qualifying service/criteria for promotion to a higher post as on 30th June of the year were to be called for selection. The applicant was accordingly called for the selection as he fulfilled the prescribed eligibility criteria for the said selection.

However, by that time on 03.11.2006 a memorandum was issued to the applicant and on 10.05.2007 an Inquiry Officer (IO) was appointed. On 26.01.2009 the enquiry report was submitted. On 31.01.2009, the applicant retired after attaining the age of superannuation. On 10.02.2010 applicant was exonerated from all the five charges.

In the meantime, the above selection process for promotion to Jt. General Manager/Electrical was initiated. On 30.05.2007 the applicant and one Sh. R.K. Kalra, who was junior to applicant, were called for the promotional post. The DPC recommendation of the applicant was kept in the sealed cover due to the pendency of the enquiry against him as per Rule 5.2 of HRM Manual of RITES Ltd. On exoneration, sealed cover was opened but applicant was not promoted as he was assessed unfit.

Rule 5.2 was thereafter amended vide office order dated 27.05.2008 in which it was clarified that same procedure shall be followed by subsequent DPC till the disciplinary proceedings/criminal prosecution against the employee is concluded. The eligibility period was on the cut off date i.e. 30th June of the year in which selection has occurred and the applicant's case was kept under sealed cover.

Subsequently, another selection was held on 16.05.2008 for the same post of Joint General Manager and the said Sh. R.K. Kalra was again called for the selection and he was placed on promotional panel for the post of Joint General Manager with immediate effect but applicant was not even called for this selection.

It is further submitted that even the persons who are imposed with minor penalty were called for said selection but applicant was ignored. The grievance of the applicant is that he should also have been called because no penalty has been imposed against him on the date of selection.

3. Thereafter, applicant retired from the post on 31.01.2009 but his dues were settled with some delay. Applicant sent a legal notice despatched on 11.07.2013 as per the postal receipt requesting therein for compensation for the loss of promotion, career growth and finances and also

requested for benefit of the promotional post and revision of pension within 15 days. As no reply has been received by the applicant, he has approached this Tribunal for redressal of his grievance with the application of condonation of delay. The reason given in the application for condonation of delay is that he was on bed rest as he was suffering from old age diseases and lower back problem from the year 2010 onwards. He prayed for condonation of delay.

4. Notices were issued to the respondents to put their appearance and to file detailed reply. There is preliminary objection as regards late filing of the present application which is prohibited under Section 21 of the Administrative Tribunals Act. It is further stated that present OA cannot be entertained as a compensation is sought of Rs.15 crores which is not within the jurisdiction of this Tribunal.

5. Respondents further stated that applicant was duly considered for promotion in the year 2007 but his name was not recommended to the next promotional post on culmination of departmental proceedings against him and he was communicated in terms of letter dated 26.03.2010 that he could not qualify in the selection conducted on 18.06.2007. Applicant has not raised any grievance in respect of non-considering him for promotion in the year

2008. The reason given by the respondents for not considering the case of the applicant for next promotion post as he is not covered under Rule 5.2 of HRM Manual of RITES.

6. As per Rule 5.2 sealed cover procedure shall assess the suitability of such employees coming within the purview of circumstances mentioned in sub-rule (1) above along with other eligible candidates in the consideration zone without taking into consideration the disciplinary case/criminal prosecution pending. The assessment and the recommendation of the DPC including 'Unfit for Promotion' shall be kept in sealed cover. The same procedure shall be followed by subsequent DPCs convened till the disciplinary proceedings/criminal prosecution against the employee is concluded.

On the conclusion of the disciplinary proceedings/criminal prosecution which results in dropping of allegations against the employee or his/her exoneration or imposition of any minor penalty other than minor penalty of 'withholding of promotion', the sealed cover shall be opened. In case the employee is completely exonerated, the due date of his/her promotion will be determined with reference to the position assigned to him/her promotion in the findings kept in sealed cover and with reference to the date of promotion of

his next junior on the basis of such position. The employee may be promoted notionally with reference to the date of promotion of his/her junior, if necessary, by reverting he junior most officiating person.

However, whether the employee, so promoted, will be entitled for any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record the reasons for doing so.

7. The sealed cover procedure has been followed by the department. It is further stated that the applicant has compared his case with one Smt. D.L.Sudha and Sh. R.K.Kalra but their facts and circumstances are entirely different. Smt. Sudha had appeared in selection process for promotion to the post of Joint General Manager (E) on 16.05.2005 and as per then existing rules, her result was kept under sealed cover as D&AR proceedings were proceeded against her. On conclusion of disciplinary proceedings a minor penalty of withholding of two increments of pay without cumulative effect for two years was imposed on her in terms

of order dated 04.06.2006. Therefore, respondents prayed for dismissal of present application.

8. Heard the learned counsel for the parties.

9. The short question raised by the applicant herein is that whether he is entitled for promotion retrospectively for the post of Joint General Manager. The applicant was subjected to departmental proceedings in the year 2006 and he was initially considered for the post of Joint General Manager in 2007 which is a selection post. He was considered but not found suitable for the post, which is duly communicated to him.

10. The plain reading of the amended Rule 5.2 of HRM Manual as per office order no. PP/34/2008 issued on 27.05.2008, which is applicable for the DPC to be held in the month of June for the promotional post thereafter, the fact remains that though the applicant was subjected to departmental proceeding way back in 2006, he has already suffered loss of one promotion for the post of Joint General Manager in the year 2007. We have not understood why the respondents have not called him for selection held on 16.05.2008 in terms of Rule 5.2 as charge sheet was still pending. The guidelines of instructions of Rule 5.2 have not been followed by the department. After assessing his case for

the next promotional post on 16.05.2008, his name ought to have been kept under the sealed cover as per this rule. What to talk of sealed cover, the department has not even called him for selection process, whereas Rule 5.2 clearly envisaged a situation where an employee is facing departmental proceeding and later on exonerated should be promoted notionally with reference to the date of promotion of his/her junior, if necessary by reverting the junior most officiating person.

11. After considering the rival contentions, this Tribunal feels that right to consideration for promotion is a fundamental right which is to be held on fair and equitable basis which boosts the performance of concerned employee. In our considered view, the department should have called him for selection to the post of Joint General Manager held in the year 2008 which they did not do so which has caused an irreparable loss to the applicant herein. Thus, we conclude that there is merit in the claim of the applicant.

12. We allow the OA with a direction to the respondents to grant the applicant notional promotion with effect from the date his immediate juniors were promoted to the post of Joint General Manager, applicant being senior to them. All consequential monetary benefits should be given to him by

refixing his pay. The same shall be granted to the applicant within a period of 90 days from the date of receipt of a copy of this order. No order as to costs.

13. In view of the above, pending MA No.1584/2016 is disposed of.

(Ashish Kalia)
Member (J)

(Pradeep Kumar)
Member (A)

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