

**Central Administrative Tribunal
Principal Bench**

OA No.4549/2014

New Delhi, this the 16th day of October, 2019

**Hon'ble Justice Mr. L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Sohan Kumar, Aged 54 years
S/o Sh. Phool Shankar
Working as Fitter Grade-III/TRS
At Railway Station, Tuglakabad
New Delhi.
R/o D-1/33, Jayatpur Extension
Near Gian Mandir, Badarpur
New Delhi-44. ...Applicant

(By Advocate: Shri Yogesh Sharma)

Vs.

1. Union of India through the General Manager
West Central Railway
Headquarters, Jabalpur(MP)
2. The Divisional Railway Manager
West Central Railway, Kota Division
Kota
3. The Assistant Personnel officer(Elect.)
West Central Railway, DRM's Office
Kota Division, Kota
4. The Senior Divisional Electrical Engineer/TRS
Elect. Loco Shed, Tuglakabad
New Delhi. ...Respondents

(By Advocate: Shri Satpal Singh)

ORDER (ORAL)**Justice L. Narasimha Reddy:-**

The applicant was working as Khalasi in the West Central Railway. A criminal case was registered against him alleging that he committed a theft of railway property. A charge memo was also issued to him by the Disciplinary Authority. Promotion to the post of Fitter Grade-III was taking place, at that time. Since the applicant was facing criminal case and departmental inquiry, he was not considered. It appears that the inquiry officer found it not advisable to proceed with the disciplinary inquiry, when the criminal case was pending and he submitted a letter, to that effect. The Disciplinary Authority, however, passed an order dated 16.03.1993 imposing the punishment of reduction of pay by one increment, with cumulative effect for a period of one year. The applicant approached the Appellate Authority. Through an order dated 15.06.2011, the Appellate Authority had set aside the punishment but kept the disciplinary proceedings, alive. The applicant filed a revision petition. Through an order dated 17.05.2012, the

Revisionary Authority had set aside the charge memo itself.

2. The applicant was acquitted by the criminal court through judgment dated 04.12.2009 by giving the benefit of doubt.

3. On a representation submitted by the applicant stating that his juniors were promoted, whereas he was denied promotion on account of the various proceedings. Through an order dated 11.12.2013, the concerned authority promoted the applicant to the post of Fitter Grade-III, w.e.f. 04.12.2009, the date on which he was acquitted by the Criminal Court. This OA is filed with a prayer to direct the respondents to extend the benefit of promotion w.e.f. 03.12.1996, the date on which the junior of the applicant was promoted. The applicant contends that once the impediment for promotion ceased to exist, he was entitled to be promoted with effect from the date on which his junior was promoted. The representation made by him, in this behalf, was rejected. Hence, this OA.

4. The respondents filed a counter affidavit opposing the OA. It is stated that the applicant could not have been promoted as long as the criminal case was pending and he was given retrospective promotion with effect from the date on which he was acquitted.

5. We heard Shri Yogesh Sharma, learned counsel for the applicant and Shri Satpal Singh, learned counsel for the respondents.

6. This case presents some peculiar features. The applicant was denied promotion in the year 1996 on account of the fact that a criminal case, and disciplinary proceedings were pending. Even while the criminal case was pending, the Disciplinary Authority passed an order imposing the punishment of reduction of pay scale by one year. That naturally would have come in the way of promotion. The Appellate Authority has set aside the punishment but kept proceedings pending. The Revisionary Authority has set aside the charge memo itself.

7. A charge memo, issued to an employee, that too with an allegation of theft of Railway property, is required to be given finality in accordance with law.

Notwithstanding the fact, the inquiry officer expressed his inability to proceed with the matter by citing the pendency of the criminal case, the imposition of punishment, without conducting the inquiry was wrong. At the same time, termination of the proceedings, in their entirety, by the Revisionary Authority, is equally wrong. Once a charge sheet was issued, it is required to be taken to the logical conclusion. The flip and flop that occurred at various stages, cannot be permitted to change the legal course. Though such orders are not challenged in this O.A., the Tribunal cannot remain oblivious to such patent illegality.

8. We, therefore, dispose of the OA directing that:

- (a) the Disciplinary Authority shall appoint an Inquiry Officer in relation to charge memo dated 16.03.1993, within four weeks from today of receipt of a copy of this Order and conclude the proceedings within three months in all;
- (b) The orders passed by the Appellate Authority and Revisionary Authority, in this behalf, shall be treated as *non est*;

(c) In case the applicant is exonerated of the charge framed against him, he shall be entitled to be extended the benefit of promotion with effect from the date on which his junior was promoted.

There shall be no order as to costs.

(Mohd. Jamshed)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

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