

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00298/16**

Reserved on: 05.09.2019

Date of Order: 09.09.2019

C O R A M

**HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**

Binod Kumar Madhukar, S/o Sri Badri Prasad, resident of Mohalla- Aasha Nagar, PO & PS- Sohsarai, District- Nalanda.

.... **Applicant.**

By Advocate: - Mr. J.K. Karn

-Versus-

1. The Union of India, through the Chairman, Railway Board, Rail Bhawan, New Delhi.
2. The Chief Administrative Officer, Workshop Projects, Ministry of Railways, Personnel Branch, Chamber Bhawan, Judge's Court Road, Patna.
3. The Asstt. Personnel Officer, O/o the Chief Administrative Officer, Work Projects, Chamber Bhawan, Judge's Court Road, Patna.
4. The Chief Workshop Manager, Carriage Repair Workshop, Harnaut, Nalanda.
5. The Asstt. Personnel Officer, Office of the Chief Works Manager, Carriage Repair Workshop, Harnaut, Nalanda.

.... **Respondents.**

By Advocate(s): - Mr. Priyank Samdarshi

O R D E R

Per Dinesh Sharma, A.M:- In the instant OA, the applicant has prayed for directing the respondent authorities to allow notional promotion to the applicant to the grade of Personal Secretary in the scale of Rs. 9300-34800, GP Rs. 4600 w.e.f. 27.12.2012, i.e. the date on which he was found suitable for promotion by the order of South East Central Railway in Office Memo. No. NG/657/2012 dated 27.12.2012. He has also requested for benefit of

increments and re-fixation of salary consequent upon such notional promotion. His argument for grant of such notional promotion is based on the reason that he was found suitable for promotion by his parent department by this aforementioned order and following this order his juniors in the parent department have already been promoted. The applicant was working on deputation at Carriage Repair Workshop, Harnaut, Nalanda and his request for promoting him in this cadre (Harnaut) has not been accepted allegedly due to closure of cadre on 30.09.2013. The applicant has alleged that other similarly situated persons have been allowed promotions at Harnaut even after the closure of cadre and thus not giving him promotion from the year 2012 and granting it only later (by order dated 10.08.2015) the applicant has been discriminated against and hence, the OA.

2. The respondents have denied the claim of the applicant in the written statement. Though they have not disputed the facts about his having been found suitable for promotion in the parent cadre and also about the grant of promotion by the order dated 10.08.2015 they have not accepted his claim about the applicability of the “next below rule” (for promoting him from the date when his juniors in the parent cadre were promoted). They have specifically denied the averments of the applicant about he being similarly situated to the persons who got promotion after the closure of a cadre at Harnaut (by denying the statements made by the applicant in para 4.21 and 4.28).

3. No rejoinder has been filed by the applicant.

4. We have gone through the pleadings and heard the arguments of learned counsels of both the sides. Though the applicant has requested for application of next below rule he could not cite any rule or direction to support his contention about the applicability of such rule while remaining under deputation. The applicant also could not show how his case is similar to those cited in Annexure-18 series. We have gone through the orders of promotion which are cited by the applicant as similar to his situation (Annexure A/18 and A/19 series). It is not very clear from reading these orders whether the situation of these employees was exactly similar to that of the applicant. Though the respondents have denied the claim of the applicant, the written statement does not specifically mention how the cases cited by the applicant are dissimilar to his own case. In this situation, we dispose of this OA with direction to the respondents to once again consider the request made by the applicant for notional promotion from the date when juniors to him got their promotion in the parent cadre. In case such grant of notional promotion is not permissible under the rules and if the instances cited in this OA by the applicant are of persons who are not similarly situated with the applicant, this should be informed to the applicant by way of a reasoned and speaking order. The above direction shall be complied with by the respondents within three months from the date of receipt of this order. The OA is disposed of accordingly. No order as to costs.

**[Dinesh Sharma]
Administrative Member
Srk.**

**[Jayesh V. Bhairavia]
Judicial Member**