

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

OA/050/00518/2016

Date of CAV : 22nd July, 2019

Date of orders : 26th July, 2019

CORAM

HON'BLE MR. JAYESH V. BHAIRAVIA, MEMBER [J]
HON'BLE MR. DINESH SHARMA, MEMBER [A]

Arbind Kumar Singh, son of late B.P. Singh, Ex Chief Depo Material Superintendent, Under Deputy Chief Material Manager, Eastern Railway, Workshop, Jamalpur District – Munger, resident of Village – Khankitta, Post – Sabaur, PS – Sabaur, District - Bhagalpur [Bihar].

.....applicant

By Advocate :Shri M.P.Dixit .

Versus

1. The Union of India through the General Manager, Eastern Railway, 17, N.S. Road, Kolkata – 700001.
2. The Chief Personnel Officer, Eastern Railway, 17, N.S. Road, Kolkata -0 700001.
3. The Chief Material Manager/Chief Controller of Stores, Eastern Railway, 17, N.S. Road, Kolkata – 700001.
4. The Financial Advisor & Chief Accounts Officer, Eastern Railway, 17, N.S. Road, Kolkata -0 700001.
5. The Chief Workshop Manager, Eastgern Raiplay, Jamalpur, District – Munger [Bihar].
6. The Deputy Chief Material Manager, Workshop, Eastern Railway, Jamalpur, District – Munger [Bihar].

..... Respondents.

By Advocates: Mr. Kumar Sachin

ORDER

Per Jayesh V. Bharavia [J]:- The instant OA has been filed by the applicant seeking the following reliefs : -

“8[1] That your Lordships may graciously be pleased to quash and set aside the impugned order dated 11.12.2009 as contained in Annexure-a/2 with regard to denial of arrears of salary on account of retrospective promotion to the post of Depot Material Superintendent Grade-I in pay scale of Rs. 2000-3200=6500-10500 and Chief Depo Material Superintendent in pay scale of Rs. 7450-11500=930034800 Grade Pay Rs.4600/- with effect

from 01.03.1993.

8[2] That your Lordships may further be pleased to direct/command the Respondents to pay the arrears of salary on account of retrospective promotion to the post of Depot Material Superintendent Grade-I in pay scale of Rs. 2000-3200=6500-10500 and Chief Depot Material Superintendent in pay scale of Rs. 7450-11500=9300-34800 Grade Pay Rs. 4600 w.e.f. 01.03.1993 and 21.11.2003 respectively instead of from 08.12.2008 and 16.06.2009 respectively.

8[3] That the Respondents be directed to grant all consequential benefits in favour of the applicant including compound interest @ 18% on the arrears amount from the date of retrospective promotions.

8[4] Any other relief or reliefs including the cost of proceeding may be allowed in favour of the applicant.”

2. The case of the applicant in nutshell that he being deprived of promotions at par with his juniors, filed one OA No.171 of 2006 before the Patna Bench of the Tribunal which was allowed on 06.08.2007 [Annexure-A/1]. The Tribunal in the aforesaid OA, observed as follows :

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“6. Resultantly, the OA is partly allowed. The respondents are directed to pass order for promotion with salary and arrears of applicant in the light of observations made above in the body of judgement within three months from the date of receipt of copy of this order. No order as to the costs.”

3. When the order of the Tribunal was not complied with, the applicant filed a contempt petition before the Patna Bench of the Tribunal bearing CCPA No. 50 of 2008. After filing the contempt petition, the respondents issued an order dated 11.12.2009 [Annexure-A/2] granting notional promotion to the applicant to the post of Depot Material Superintendent, Grade-I in the pay scale of Rs. 2000-3200=9300-34800 w.e.f. 01.03.1993 and Chief Depot Material Superintendent in the pay scale of Rs. 7450-11500=9300-34800 with grade pay of Rs. 4600/- w.e.f. 21.11.2003 due to the reason –“No Work

no pay”, which is according to the applicant contemptuous, illegal, arbitrary, unjust, ill-motivated and contrary to the order passed by this Tribunal dated 06.08.2007 in OA No. 171 of 2006.

Recently, on 29.04.2016 [Annexure-A/3] the aforesaid contempt petition was dropped with an observations that if the applicant has any other residual dues, he is at liberty to pursue at the departmental level, hence the present OA.

4. The respondents have filed their written statement and contended that the applicant approached this Tribunal for redressal of his grievance vide OA No.171/2006 which was decided on 06.08.2007. In compliance to the directions given in judgement dated 06.08.2007, actions as admissible were taken by the respondent authorities and the applicant was granted all promotions in Grade-‘C’ at par with his junior Mr. M.E. Haque but he could not qualify for Gr.-‘B’ as such he was not promoted to Grade-‘B’. The respondents submitted that the applicant was granted proforma promotions to the Grade of DMS and CDMS and actual payment were made from the date of actually he shouldered his higher responsibility.

5. The applicant in the meantime, approached this Tribunal by way of filing CCPA No. 50 of 2008 for non compliance of the order dated 06.08.2007 passed in OA No.171/006 but the same was dropped vide order dated 29.04.2016 [Annexure-A/3] wherein it has been specifically observed that –

“4. We find substantial compliance of the order of this Tribunal.

5. Accordingly, the contempt petition is dropped and the notices issued to the alleged contemners are hereby discharged. If the applicant has any other residual dues, he is at liberty to pursue at the departmental level. No costs.”

6. The respondents submitted that in compliance of the order passed in OA 171/2006 dated 06.08.2007, they submitted a detail fixation and payment order along with show cause filed in CCPA No. 50/2008, which was considered by the Tribunal and the contempt petition was dropped with directions to the applicant to pursue at departmental level if he has any residual dues. In this connection, the respondents submitted that the applicant has not filed any application before the respondent authorities and has straight away filed the present OA for the relief which was already decided in OA 171/2006 followed by CCPA No.50/2008, vide order dated 06.08.2007 and 29.04.2016 respectively.

7. Heard the learned counsel for the parties and gone through the materials on record.

8. Earlier the applicant had approached this Tribunal vide OA No. 171/2006 challenging his non-promotion to the post of DMS-I, Chief DMS and AMM Group-'B' at par with his juniors, M.E. Haque and R.K.BAsak, which was partly allowed on 6th August, 2007 with directions to the pass order for promotion with salary and arrears of applicant in the light of observations made above in the body of the judgement. The Tribunal in para 5 of the order dated 6th August, 2007 has categorically held that there is no manner of doubt that once the applicant has successfully completed the selection test for the post of DMS-II, he is entitled to further promotion, according to the recruitment rules, at par with his junior. The Tribunal has further held that since the applicant was promoted on the post of DMS-II on 04.02.2006 and granted actual salary of DMS-II [treating the date of proforma promotion as 23.09.1999], as alleged in para 16 of the written statement, we have

no hesitation to hold that he is entitled to further promotion at par with his junior. The date of promotion of his junior to the post of Chief DMS and AMM Gr. 'B' have not been disclosed. However, the promotion to the post of DMS-I under restructuring scheme was granted to his junior with effect from 01.03.1993, therefore, the applicant was to be granted promotion with salary on the post of DMS-I after having earned promotion to the post of DMS-II i.e. on 04.02.2006 and the applicant will be further entitled to promotion on the post of Chief DMS and AAM with payment of salary, if found suitable, according to the recruitment rules at par with his junior M.E. Haque.

9. The applicant relied upon the decision rendered by Hon'ble High Court of Patna in case of Umesh Lal vs. The State of Bihar through the Secretary, Public Health Engineering Department, Bihar, [CWJC No. 5459 of 2008 decided on 06.05.2011] reported in 2011 [3] PLJR 351 wherein the Hon'ble High Court held that "material benefits cannot be withheld to the Government servant who has been granted promotion notionally or retrospectively – petitioner is entitled for the monetary benefits to the post of Assistant Engineer from the year 1996.

The applicant has also relied upon the decision reported in AIR 2015 Supreme Court 2904, Ramesh Kumar vs. Union of India & Ors. wherein the Hon'ble Supreme Court held that – "Principle of 'No work no pay' would not be attracted where respondents were in fault in not considering case of appellant for promotion and not allowing him to work on promotional post carrying higher pay scale.

10. It is noticed that the respondents have themselves admitted in para 5 of their written statement that the applicant has not filed any application before the respondent authorities and has straight away filed

this OA in view of orders passed by this Tribunal in CCPA 50/2008 dated 29.04.2016. Therefore, in our considered view, this OA can be disposed of with direction to the applicant to file a representation before the respondent authorities to pursue for his residual dues, which may be disposed of within stipulated time.

11. Accordingly, the OA is disposed of with directions to the applicant to file a representation within two weeks from the date of receipt of a copy of this order, which the respondent authorities shall dispose of by issuing a speaking and reasoned order within a period of four months from the date of receipt of a copy of this order. No costs.

Sd/-

[Dinesh Sharma]
Member [Admn.]

Sd/-

[Jayesh V. Bhairavia]
Member [Judicial]

mps/-