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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO 578/2003

Date of Decision 6.8.2003

Jas Ram Harnotia Applicant

Sh. S. K. Sawhney Advocate for the Applicant

VERSUS

VOI through GM (NR) ... Respondents
and Ors.

Shri R. L. Dhawan ... Advocates for the Respondents

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri R. K. Upadhyaya, Member (A)

1. To be referred to the Reporter or not ? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 578/2003

New Delhi this the 6th day of August, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri R.K. Upadhyaya, Member (A)

Shri Jas Ram Harnotia,
Retired Senior Booking Clerk
Northern Railway, Delhi
R/O H.No.26/82-A, Dr. Ambedkar
Street, Vashwas Nagar, Shahdara,
Delhi-110032

(By Advocate Shri S.K. Sawhney)

..Applicant

VERSUS

1. Union of India through
General Manager, Northern
Railway, Baroda House,
New Delhi.
2. Divisional Railway Manager,
Northern Railway, DRM Office,
Chelmsford Road, New Delhi.

..Respondents

(By Advocate Shri R.L. Dhawan)

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminthan, Vice Chairman (J)

The applicant has impugned the order issued by the respondents dated 16.8.2002, in which it has been stated that the "competent authority has now regretted your case on merits and under the rules provisions" i.e. for being considered for promotion as Chief Booking Supervisor (CBS).

2. The brief relevant facts of the case are that the applicant was appointed as Booking Clerk (BC) and promoted later as Senior Booking Clerk (Sr.BC). As a result of the selection held for the post of Luggage and Platform Inspector (L&PI), he was selected and promoted in the higher scale w.e.f. 18.10.1977 when according to him, this post of L&PI was a separate

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cadre post having separate seniority. Later, the respondents had declared the post of L&PI as an ex-cadre post by their letter dated 6/9.11.1987. The applicant, however, continued on the said post till he was reverted back to his parent cadre as BC by their letter dated 24.7.1992. In the meantime, learned counsel for the applicant, has submitted that in the parent cadre to which applicant belonged, his juniors were promoted to the next higher post of Sr.BC/CBS. The main claim of the applicant in the present case is that the respondents ought to have considered the applicant's case for promotion to the higher post when considering the case of his juniors i.e. to the post of CBS w.e.f. 11.3.1987 with all consequential benefits. Later, the applicant had sought voluntary retirement from the services of the respondents by his request/letter which was accepted w.e.f. 2.4.1996.

3. Shri S.K.Sawhney, learned counsel for the applicant has also submitted that vacancies in the scale of Rs.2000-3200 were also created on account of restructuring orders issued by the respondents from 1.3.1993 against which post also the applicant was not considered at the relevant time. He submits that the respondents ought to have considered the claim of the applicant for promotion to the higher post on the basis of the records i.e. modified procedure of selection adopted by them in all such cases while filling up the post of CBS. In the circumstances, learned counsel for the applicant has prayed that a direction may be given

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to the respondents to promote the applicant in the pay scale of Rs.2000-3200 w.e.f. 11.3.1987 or in the alternative atleast from 1.3.1993 under the restructuring orders. He has further submitted that there is no question of limitation in the present case as the respondents have themselves issued the impugned order dated 16.8.2002 after giving him an interview and on the merits of the case. He has relied on the judgement of Tribunal in Ram Kartar Vs. The Secretary (Services) Govt.of NCT of Delhi and Ors. (2003 (1) ATJ 153(PB). In this case, the Tribunal has rejected the contention of the respondents that as he had not made any representation while he was in service, therefore, his case for promotion could not be considered. It has been further observed that there was no hesitation on the part of the Tribunal in rejecting the said contention because as a model employer, it was the duty of the respondents to consider the cases of all the employees in accordance with rules and regulations.

4. We have seen the reply filed by the respondents and heard Shri R.L.Dhawan, learned counsel for the respondents. Learned counsel for the respondents has taken a preliminary objection that the claims raised in the OA by the applicant are barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. He has submitted that the applicant has nowhere stated as to when he had made a representation regarding the aforesaid claims and in

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any case that time has expired after eighteen months and, therefore, the OA should be dismissed on this ground alone. He relies on the orders of the Hon'ble Supreme Court in S.S.Rathore Vs. State of MP (AIR 1990 SC 10) and Ratan Chandra Sammanta & Ors. Vs. Union of India & Ors. (JT 1993(3) SC 418).

5. On the merits of the case, learned counsel for the respondents has submitted that the applicant while in service had never appeared in the selection test which was required to be passed under the rules for promotion to the post of CBS. The respondents have stated in their reply that the applicant had joined in the booking cadre as BS grade Rs.550-750/1600-2660 on 31.3.1996. The main contention of the learned counsel for the respondents is that as the applicant himself had raised the question of promotion much after his ~~last~~ voluntary retirement from service, there is no merit in the OA and the same should be dismissed.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

7. The relevant portions of the impugned order dated 16.8.2002 read as follows:-

"In reference to your interview with Sr.DPO/DLI as mentioned above, the facts relating to your case with regard to your promotion as CBS Gr.Rs.2000-3200 has been scrutinised further it is not possible to give your promotion as the post of CBS is a selection post and a retired employee cannot be called to appear in the selection as per extent rules.

You are therefore informed that the competent authority has now regretted your case on merits and

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under the rules provisions".

8. It is clear from the above letter issued by the respondents themselves that as late as 16.8.2002 they had, after giving the applicant an interview in July 2002, considered his case for promotion on merits and rejected the same as not feasible under the relevant rules. In the facts and circumstances of the case, the judgements relied upon by Shri R.L.Dhawan, learned counsel will not assist him in the present case. We say so because the respondents have apparently got the records of the applicant for the relevant periods and after having reconsidered the matter issued the letter dated 16.8.2002, rejecting his claim for consideration for promotion to the post of CBS either from 11.3.1987 or w.e.f. 1.3.1993 as the case may be. It would have been a different matter if the respondents have merely rejected the case of the applicant that the matter is time barred as he had already retired from service w.e.f. 2.4.1996 but that is not the case in the present OA. The respondents have considered the case of the applicant on merits and have now regretted that his claim could not be considered under the Rules at the relevant time. It is relevant to note that this OA has been filed on 11.3.2003 i.e. within six months from the passing of the impugned order. In the facts and circumstances of the case, the preliminary objection taken by the respondents that the OA should be dismissed on the ground of limitation is rejected.

9. In view of the above, we have considered the case ~~also~~ on merits. It is relevant to note from the

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reply affidavit filed by the respondents that nowhere they have stated that applicant's case had been considered for promotion to the post of CBS in accordance with the relevant rules during the period mentioned above i.e. from 1987 or 1993 under the Restructuring Orders. It is also relevant to mention that the respondents have not annexed any document from their records to show that the applicant was informed to appear in the selection test for the post of CBS before his retirement on voluntary basis from the services of the respondents on 2.4.1996. Therefore, in the absence of any documents annexed by the respondents it cannot be concluded that after being duly informed by the respondents to appear in the selection test for the post of CBS, he had declined to do so on impermissible grounds at the relevant time. However, having said so, since the applicant has retired from service, it would not be possible to direct the respondents to call him for the relevant selection test for consideration against the year of 1987. However, if indeed any test was held by the respondents in that year, it cannot also be said that the applicant would not have been aware and he should have also made some efforts to bring it to the knowledge of the respondents as to why he had not been called for the selection test then. In this regard, it is relevant to note that no such document has been annexed by the applicant also, to enable us to come to the conclusion that the entire blame rests only on the respondents in not considering him for promotion to the post of CBS in the year 1987. The observations of the Tribunal in the case of Ram Kartar's case (supra) are fully applicable to the facts in this case.

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10. The above facts would, however, not appear to be germane to the question of consideration of the applicant's case for promotion under the Restructuring orders of 1993. Admittedly, the respondents have issued these orders by which an amended selection procedure has been introduced i.e. by scrutiny of the personal records of the candidates. In this connection, we note from respondents' reply that no explanation has been given by them as to whether such scrutiny had been done by them at the relevant time when applicants juniors were considered for promotion on account of the Restructuring Orders issued in 1993. In this view of the matter, we partly allow the application with the following directions:-

(i) The impugned order dated 16.8.2002 is quashed and set aside;

(ii) Respondents shall consider the case of the applicant for promotion to the post of Chief Booking Supervisor in terms of the Restructuring Order issued by them on 1.3.1993, in accordance with the relevant rules and instructions. In case, he is found suitable for promotion, he shall be given all the consequential benefits from the date his junior was so promoted. ³ However, In the facts and circumstances of the case, he shall not be entitled to any arrears of difference of pay from that date i.e. when his junior was so promoted till the date of his retirement on 2.4.1996. However, he shall be entitled to revision of pension notionally w.e.f.2.4.1996 but shall not be entitled

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to any difference in the pensionary amounts till the date of filing the OA 11.3.2003.

(iii) Necessary action as above shall be taken within a period of three months from the date of receipt of a copy of this order, making it clear that any revised pension due to the applicant should also be given to him within this period. No order as to costs.

R.K.Upadhyaya

(R.K.Upadhyaya)
Member (A)

Lakshmi Swaminathan

(Smt.Lakshmi Swaminathan)
Vice Chairman (J)