

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH



OA No.49/2003

New Delhi this the 28th day of October, 2004.

HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MR. S.K. MALHOTRA, MEMBER (A)

Lallu Ram, S/o Sh. Mata Deen,
R/o 650, Sunaro Wali Bagchi,
Qutubpur, Rewari (Har.)

-Applicant

(By Advocate Shri Yogesh Sharma)

-Versus-

1. The Union of India through
the General Manager,
Northern Railway, Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Bikaner Division,
Bikaner.
3. Sr. Section Engineer (PR) Electric,
Northern Railway, Rewari (Har.)
4. The General Manager,
North Western Railway,
Jaipur.
5. The D.R.M.,
North Western Railway,
Jaipur.

-Respondents

(By Advocate Shri R.L. Dhawan)

O R D E R

Mr. Shanker Raju, Member (J):

Applicant through this OA has sought promotion to the post of Meter Reader (MR) Grade-I from the due date, i.e., from 1993 with all consequential benefits.

2. Applicant while working as MR Grade-II was inflicted seven minor penalties as under:

1. WIT 2 years vide order dt. 25.9.84.
2. WIT 2 years vide order dt. 8.2.85.



3. WIT 3 years vide order dt. 17.10.85.
4. WIT 2 years vide order dt. 31.12.86.
5. WIT 3 years vide order dt. 11.3.87.
6. WIT 1 year vide order dt. 10.3.87.
7. WIT 1 year vide order dt. 24.9.91.

3. Applicant appeared in the year 1993 in a trade test meant for promotion to the post of MR Grade-I and was declared passed. Due to currency of punishment applicant was not promoted. A major penalty proceeding drawn against applicant in 1992 culminated into a punishment vide order dated 17.5.96, which was converted into a minor penalty of withholding of one set of passes in appeal vide order dated 22.7.96.

4. Applicant preferred a representation against his non-promotion. As no reply has come-forth the present OA.

5. Learned counsel for applicant Shri Yogesh Sharma contended that as per paragraph 3.9 of RBE 13/93 after the currency of punishment the promotion has to be accorded but in case a penalty of withholding of increment is inflicted operative from a future date one has to be promoted in turn and on penalty of stoppage of passes promotion is to be accorded from the due date. Having regard to the above, it is stated that after currency of all the punishments on 31.12.98 applicant's promotion is to date back in the light of withholding of increments operative from future date and withholding of passes from the due date.

6. Learned counsel for respondents Shri R.L. Dhawan vehemently opposed the contentions and stated that applicant has preferred this OA with delay and contended that only after currency

of punishment was over on 31.12.98 applicant's case has been considered but due to want of vacancy of MR Grade-I which is not existing at Bikaner Division applicant has no case. Learned counsel relies upon the decision of the Apex Court in **Union of India v. K.V. Jankiraman**, JT 1991 (3) SC 537 to substantiate his plea.

7. We have carefully considered the rival contentions of the parties and perused the material on record.

8. It is trite law that one has no right to promotion but consideration only. Applicant was admittedly imposed several minor punishments but punishment imposed on 15.4.1985 had a prospective effect from 1.10.1994 for two years and one inflicted on 1987 had effect from 1993 to 1995. Accordingly, withholding of increment operating in future the currency remained till 31.12.1998. The major penalty inflicted on 17.5.1996 was modified to a minor penalty of withholding of passes on 22.7.1996. RBE-13/93 in paras 3.6 and 3.9 provide as under:-

“3.6 If the disciplinary proceedings against the person under suspension etc. for whom a vacancy has been reserved, is finalized within a period of 2 years of the approval of the provisional panel in the case of promotions to selection posts or at any point of time in the case of promotion to non-selection posts and if such a person is inflicted only a minor penalty, he should automatically be assigned the position in the selection panel suitability list and his empanelment/enlistment announced and he may be promoted in his turn. If his junior has already been promoted before interpolation of his name in the selection panel/suitability list, he should be promoted by reverting the junior-most person if necessary and his pay on promotion should be fixed under the normal rules.

If such a person as aforesaid is held guilty and awarded one of the major penalties of reduction to lower time scale of pay/grade etc. or reduction to lower stage in the time scale of pay, his case should be referred to the authority which approved the original selection panel/suitability list for consideration whether he is suitable for promotion in spite of the penalty imposed on him. If he is considered suitable for promotion, his case



for promotion and fixation of pay etc. should be dealt with in the same manner as that of a person who is awarded a minor penalty as indicated above.

If on the other hand, the person concerned is considered unsuitable for promotion, his case should be referred to the authority next above that which approved the original selection panel/suitability list and that authority should take a final decision regarding the suitability or otherwise for promotion of such a person. If he is considered suitable for promotion by that authority, his case should then be dealt with in the same manner as that of a person who is awarded a minor penalty. If on the other hand, he is considered unsuitable for promotion by that authority, he should not be promoted on the basis of his earlier selection/earlier decision regarding suitability and the vacancy reserved for him should be carried forward for inclusion in the number of vacancies for formation of next selection panel/suitability list.

While reviewing the cases of staff under suspension etc. after finalisation of the disciplinary proceedings against them, the competent authority need not follow the rigid formula laid down for the purpose of promotion to selection posts, i.e. to allot marks under various heads like record of service etc. In such cases, the competent authority may take an overall decision – whether it is for promotion to selection posts or non-selection posts, having regard to the facts of the case, whether the person concerned is suitable for promotion even after the conclusion of the disciplinary proceedings.

Note: It is also clarified that in a case where disciplinary proceedings have been held, "warning" should not be issued as a result of such proceedings. If it is found, as a result of the proceedings, that some blame attaches to the Railway servant, atleast the penalty of "censure" should be imposed."

"3.9 The cases of persons falling under para 3.1 above should be dealt with after finalisation of the disciplinary proceedings against them in view the principles laid down in paras 3.5 and 3.6 above. Where the person concerned is considered unsuitable for promotion consequent on consideration by the competent authority of the result of the disciplinary proceedings, his name should be removed from the panel. This should be done by the authority next above that which initially approved the panel after giving the person concerned an opportunity to explain his case against the proposed action.

Note (1) :- If a person becomes due for promotion after the finalisation of the disciplinary

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proceedings and the penalty imposed is one of the following, he should be promoted only after the expiry of the penalty:-

- (i) withholding of promotion;
- (ii) withholding of increment;
- (iii) reduction to lower stage in time scale;
- (iv) reduction to a lower time scale, grade or posts.

Provided that where the penalty imposed is 'withholding of increment and it becomes operative from a future date, the person concerned should be promoted in his turn and the penalty imposed in the promotional grade for a period which would not result in greater monetary loss. If the penalty imposed is 'censure', 'recovery from pay' or 'stoppage of passes/PTOs', he may be promoted when due.

Note (2):-The provision selection panel framed in accordance with the above instructions shall be current as provisional till a final panel is issued after completion of the disciplinary cases and the next panel being formed, if found necessary, is declared as final."

9. On a co-joint reading of these provisions, it is clear that during the currency of punishment, one cannot be promoted but as per the proviso when the penalty imposed is withholding of increments, operative from a future date and in case of penalty of stoppage of passes, the promotion is to be accorded from the due date.

10. In the present case, though currency was over on 31.12.1998, on consideration of promotion of applicant, his promotion is to relate back to the due date, i.e., when his juniors were promoted in pursuance of the trade test held in 1993.

11. In the result, for the forgoing reasons, OA stands disposed of with a direction to the respondents to hold a Review DPC and consider promotion of the applicant as MR Grade-I from the due date, i.e., the date of promotion of his juniors subject to availability

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of vacancy. In that event, he would be entitled to all consequential benefits only on notional basis. No costs.

Malhotra
(S.K. MALHOTRA)

MEMEBR (A)

S. Raju
(SHANKER RAJU)
MEMBER (J)