

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
CIRCUIT BENCH AT RANCHI
OA/051/01051/2019

Date of order : 25.11.2019

C O R A M

Hon'ble Shri Jayesh V. Bhairavia, Member [Judicial]
Hon'ble Shri Dinesh Sharma, Member [Administrative]

B.S.Chaturvedi, S/o Late R.B. Chaubey, Ex-Senior Ticket Examiner, East Central Railway, Patna [Bihar], R/o at and P.O. – Khirauli, District – Busar [Bihar] .

Applicant.

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Vs.

1. The Union of India through the General Manager, East Central Railway, Hajipur, Distt. – Vaishali [Bihar] -844101.
2. The Chief Commercial Manager, East Central Railway, Hajipur, Distt – Vaishali [Bihar] – 844101.
3. The Divisional Railway Manager, East Central Railway, Danapur, P.O. Khagaul, Distt – Patna [Bihar] – 801503.
4. The Additional Divisional Railway Manager, East Central Railway, Danapur, P.O. Khagaul, Distt – Patna [Bihar] – 801503.
5. The Senior Divisional Commercial Manager, East Central Railway, Danapur, P.O. Khagaul, Distt – Patna [Bihar] – 801503.
6. The Senior Divisional Personnel Officer, East Central Railway, Danapur, P.O. Khagaul, Distt – Patna [Bihar] – 801503.
7. The Divisional Personnel Officer, East Central Railway, Danapur, P.O. Khagaul, Distt – Patna [Bihar] – 801503.
8. The Divisional Personnel Officer, East Central Railway, Danapur, P.O. Khagaul, Distt – Patna [Bihar] – 801503.

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Respondents.

Shri A.B.Ojha with Sh. A.N.Jha, Id counsel for the applicant.
Mr.K.P.Narayan, Id. S.C. for the respondents.

ORDER [oral]

Per Jayesh V. Bhairavia , Member [J] : In the instant OA the applicant has prayed for quashing and setting aside the information supplied under Right to Information Act, vide letter dated 27.03.2019 [Annexure-A/1] whereby the respondents have informed him that his prayer with regard to promotion has been denied since punishment was going on against him from the year 2003 onwards. According to the applicant, he is entitled for promotion as CIT or any or any further post w.e.f. 2003 with all consequential benefits, like revision of amount under different heads.

2. The case of the applicant in nutshell is that he was appointed on the non-selection post of Ticket Collector on 09.12.1974. He was promoted to the post of non-selection of Train Ticket Examiner [in short TTE] in the year 1981-82 and further promotion as Head TTE in the year 1988-89.

3. The applicant submitted that, vide order dated 10.08.1996, he was selected for promotion to the post of TTI, but the same was not implemented on the ground that a minor punishment of withholding of one increment for two years was going on against him, which is evident from the charge-sheet dated 23.12.1992 communicated under office order dated 27.08.1994 [Annexure-A/3]. However, the aforesaid punishment was over in the year 1996, but no promotion was granted to the applicant thereafter. The applicant further submitted that vide office order dated 14.11.2005 [Annexure-A/4], a minor punishment was again imposed for withholding of one increment for a period of one year with non-cumulative effect.

4. The applicant contended that there was no punishment between 27.08.1994 to 14.11.2005. Therefore, he ought to have been given promotion or financial upgradation.

5. It is contended that the applicant was served with another charge memorandum dated 07.05.2006 [Annexure-A/5]. However, the said proceeding became infructuous because neither any enquiry officer was appointed nor any enquiry was held nor other procedures were followed.

6. Thereafter, the applicant was served with another major penalty dated 21.05.2007 and on conclusion of enquiry, the applicant has been awarded punishment of reduction of lower post of Sr. Ticket Examiner in the grade pay of Rs.2400/-, vide order dated 16/29.03.2012. Aggrieved by this order, the applicant preferred an OA bearing No.863/2013, which was dismissed by this Tribunal, vide order dated 09.05.2016. Aggrieved by it, the

applicant preferred CWJC No. 12312/2016 before the Hon'ble High Court of Patna, which was allowed, vide order dated 25th April, 2017 [Annexure-A/2]. The Hon'ble High Court in the aforesaid CWJC, set aside the orders dated 29.10.2010 , 29.04.2011 and 16.03.2012 issued by the respondents and the order passed by the Tribunal in the aforesaid OA.

7. It is contended that during the pendency of the OA referred to hereinabove, the applicant retired from service w.e.f. 30.11.2013 while working as Sr. Ticket Examiner under East Central Railway. After allowing the aforesaid writ petition, the applicant was expecting necessary orders with regard to his promotion to be issued by the respondents in his favour and also to restore his grade pay of Rs.4200/-. However, no order has been issued by the respondents. Thereafter, he sought information under RTI, vide his application dated 01.03.2019 [Annexure-A/6] to know the reason as to why he was not granted benefit of promotion and also demanded copy of promotion order as TTE in the 1995 and promotion to the post of CIT in the year 2003. In reply thereto, the respondents, vide letter dated 27.03.2019 [Annexure-A/1] informed the applicant that since the punishment imposed upon him was going on from 2003 onwards, therefore, no order with regard to his promotion can be issued. He retired as TTE in the grade pay of Rs.4200/-, which clearly shows that the applicant was granted benefit of promotion as TTE, vide Annexure-A/1.

It is submitted that the reason assigned in the information supplied under RTI Act is not correct. In fact, after the order passed by the Hon'ble High Court of Patna in favour of the applicant, promotion order of the year 2003 to the post of CIT ought to have been issued. The reasons stated in the impugned letter supplied under RTI is contrary to the facts and records of the applicant, therefore a direction to promote the applicant as CIT or any

other post w.e.f. 2003 may be issued along with all consequential benefits, like revision of amount under different heads.

8. The applicant submitted that he filed a representation along a copy of the judgment passed in the aforesaid CWJC for his promotion from 2003 as he was not given promotion as CIT earlier. The applicant vehemently argued that there is no ground to deny his promotion under ACP/MACP after having rendered service for 39 years in the Railways.

9. Heard the learned counsel for the parties and gone through the pleadings.

10. The Tribunal noticed that the applicant was appointed in the Railway on 09.12.1974 as Ticket Collector. He was promoted to the post of Train Ticket Examiner in the year 1981 – 82 and further promoted as TTE in the year 1988-89. It is further noticed that vide order dated 27.03.2019 [Annexure-A/1] whereby the respondents have denied the prayer of the applicant for his promotion since punishment was going on against him in the year 2003 onwards. Annexure-A/1 further stipulates that the applicant retired from the post of TTE [with grade pay of Rs.4200/-] whereby it is evidently clear that he was granted promotion in the grade of TTE, meaning thereby the applicant has been given three promotions in his service career.

11. Vide order-sheet dated 15.11.2019, this Tribunal asked the counsel for the applicant, whether any representation has been submitted by the applicant to claim for grant of promotion to the post of CIT before the competent authority, and if so, place the same or provide the details thereof to this Tribunal. The Id. Counsel sought some time to take instructions in this regard.

Today at the time of hearing, same query has been put. However, Id. Counsel for the applicant submitted that except the application filed under

RTI, and the information supplied under RTI, vide letter dated 27th March, 2019, the applicant has no document/application to place on record with a view to satisfy this Tribunal, whether he has raised his grievance before the competent authority. In the present OA, the applicant has prayed for quashing and setting aside the letter dated 27.03.2019 [Annexure-A/1], i.e. the letter supplied under RTI. This Tribunal noticed that the information supplied under RTI Act, cannot be said to be a decision of the competent authority. As such, the applicant has failed to place any material on record to support his claim for grant of promotion to the post of CIT or grant of MACP.

12. In view of the aforesaid discussions, we do not find any ground to quash and set aside the impugned letter dated 27.03.2019 [Annexure-A/1], which has been supplied to the applicant under RTI Act. In the result, the OA fails, and the same is accordingly dismissed. No costs.

Sd/-

[Dinesh Sharma]M[A]

Sd/-

[Jayesh V. Bhairavia]M[J]

mps.