
(2011) 09 DEL CK 0329
In the Delhi High Court
Case No : Writ Petition (C) 1413 of 2011

Ram Pal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-09-2011

Acts Referred:

Citation : (2011) 09 DEL CK 0329

Hon'ble Judges : Siddharth Mridul, J; A.K. Sikri, J

Bench : Division Bench

Advocate : Meenu Maini, for the Appellant; Kumar Rajesh Singh and Jagat Singh, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, J.—The Petitioner was initially appointed as Loco Cleaner in the Northern Railway and was thereafter promoted as Foreman Grade-III w.e.f. 21.8.1976. Further promotions are to the post of Shunter and Driver respectively. The Petitioner has been promoted to these posts as well. However, these promotions were from earlier dates than the dates from which these promotions were granted to the posts by the Respondent. The dispute qua the dates had arisen in the following backdrop.

2. When the Petitioner was working as Foreman Grade-A he was served with a Memo of Charge for major penalty proceedings and enquiry was held which resulted in imposition of punishment of removal from service vide order dated 20.01.1986. Challenging that order, the Petitioner preferred O.A.1669/87 before the Principle Bench, CAT, New Delhi. This O.A. was allowed by the learned Tribunal inter alia on the ground that the Appellate Authority while confirming the penalty had not passed a reasoned order based on the material on record and had also taken into consideration the facts which were not on record. While setting aside the order of the Appellate Authority dated 8th July, 1986 the order of the Disciplinary Authority, which was merged in the order of the Appellate Authority was also set aside. Following directions were given permitting the

Respondents to proceed with the enquiry:

Consequently the Petitioner shall be deemed to be reinstated in service from the date he was removed from service with all consequential benefits. The Respondents, however, are not precluded from proceeding with the disciplinary proceedings from the stage the enquiry officer submitted his report.

3. The result of the aforesaid order was that the Petitioner was to be reinstated from the date he was removed from service and all consequential benefits were also to be granted, meaning thereby it was to be treated as if there was no order of removal from service.

4. The Disciplinary Authority considered the matter again and vide orders dated April, 1995 imposed a penalty of withholding of increments of the Petitioner for a period of two years without postponing his future increments. This order was confirmed by the Appellate Authority as well. So far the result of the aforesaid Departmental Enquiry was that it resulted in imposition of minor penalty.

5. It happened that when the Petitioner was out of service as a result of his removal vide orders dated 20.01.86, persons junior to him were appointed as Shunters. The Petitioner being deemed to be treated in service throughout and thus was to be treated in service even in the year 1988, he submitted that he should be promoted to the post of Shunter w.e.f. 1980. For promotion to the post of Driver, the concerned employees are required to qualify trade test. After reinstatement, the Petitioner has also passed that test. Those junior to him were promoted as Driver (Goods) from 1993. On this basis, the Petitioner made claim for promotion for appointment to the post of Driver (Goods) as well from 1993 on the ground that he fulfilled all eligibility conditions and he qualified the test. Since his request was not entertained, the Petitioner approached the Tribunal by filing O.A. No. 1669/1987. The Petitioner was, however, given promotion to the post of Shunter from 01.08.95.

6. In these circumstances, the Petitioner approached the Tribunal again by filing O.A. No. 297/1997 claiming promotion to the post of Shunter as well as Driver (Goods) from the dates mentioned above. The Tribunal has, however, not accepted the contentions of the Petitioner and instead it has only given a partial relief notionally permitting the Petitioner as Shunter w.e.f. April, 1995. The reasons given for adopting this course of action by the Tribunal is contained in Para 4.2 of the impugned order which reads as under:

4.2 In the order of this Tribunal dated 2.9.93, it was ordered that the applicant shall be deemed to be reinstated in service from the date he was removed with all consequential benefits. Liberty was also given, in the said order to proceed from the stage of W.P.(C) 1413/2011 Page 5 of 9 enquiry report. The Respondents proceeded and ultimately the Disciplinary Authority imposed a minor penalty. It is also seen that the Respondents have paid salary and counted his service as duty. Since, major penalty charge sheet existed against the applicant and proceedings continued till the issue of order of April, 95, the

applicant can only be promoted as Shunter and Driver Goods from the date immediately after the date of issue of order of April, 95 as per rules. In fact, the Respondents themselves promoted the applicant a day earlier to the start of currency period although he should have been promoted immediately after the issue of order of April, 95.

7. It would be manifest from this part that the Tribunal is influenced by the condition that major penalty charge sheet existed against the Petitioner and those proceedings continued till the issue of order of punishment which were passed in April, 1995. On this premise it is held that the Petitioner could not have been promoted as Shunter or Driver (Goods) before the said date. On this ground, the promotion of the Petitioner as Shunter is made effective from April, 1995.

8. Challenging this order, present petition is preferred by the Petitioner. Learned Counsel for the Petitioner has drawn our attention to the Railway Board's letter dated 21.09.1988 which deals with promotion of railway servants who are under suspension or against whom departmental proceedings/prosecutions have been initiated etc. Para 3.6 thereof is relevant for us as it deals with the situation in which the Petitioner was placed at the relevant time.

3.6 If the disciplinary proceedings against the person under suspension etc. for whom a vacancy has been reserved, is finalized-in the case of promotions so selection posts-within a period of 2 years of the approval of the provisional panel 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 position in the selection panel/suitability list and his empanelment/enlishment enounced and he may be promoted in this turn. If his junior has already been promoted before interpolation of his name in the selection panel/suitability list, he should be promoted 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 inspite of 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 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 finalization 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 persons concerned are 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, at least the penalty of censure should be imposed.

9. From the bare reading of the aforesaid paras it would be clear that in case minor penalty is inflicted and promotion is to a non-selection post, then such minor penalty would not come in the way of incumbent.

10. Having regard to the aforesaid specific provision dealing with the promotions of the Railway servants like the Petitioner, the imposition of minor penalty could not have blocked the promotion. The Tribunal did not consider or keep in mind the aforesaid provision which resulted in the error in the order of the Tribunal. It is clear import of the aforesaid provision that the Petitioner could have been granted promotion to the post of Shunter from the date his junior was promoted as the disciplinary proceedings ultimately culminated in the imposition of minor penalty.

11. Proper to the fact that the earlier removal order was quashed and as a recourse it was a clear post giving consequential benefits to the Petitioner keeping him to be in service throughout.

12. For the aforesaid reasons, the present petition is allowed. Rule is made absolute. The Respondents are directed to keep the Petitioner to be promoted to the post of Shunter w.e.f. April, 1988 when person junior to him was promoted. Further, he will be treated promoted to the post of Driver (Goods) from 1993 again when his junior was promoted. The promotion would be treated as notional from the said date till April, 1995, the date he was reinstated and he joined services. From the date of joining service he will be given benefits of both posts. Since the Petitioner has retired from service, the benefits shall be calculated in the aforesaid manner and paid to him within two months from the date of receipt

of copy of the order. His pension should also be revised and arrears of pension be also fixed. The Petitioner is also entitled to the costs quantified to Rs. 5,000/-.