
(2019) 05 CAT CK 0056

In the Central Administrative Tribunal

Case No : Original Application No. 3776 Of 2013

Shivnand Sharma

APPELLANT

Vs

Union Of India Through General Manager

RESPONDENT

Date of Decision : 09-05-2019

Acts Referred:

Citation : (2019) 05 CAT CK 0056

Hon'ble Judges : V. Ajay Kumar, J;Aradhana Johri, J

Bench : Division Bench

Advocate : Yogesh Sharma, VSR Krishna, Shailendra Tiwari

Final Decision : Allowed

Judgement

Aradhana Johri, J

1. The applicant Shivnand Sharma was initially appointed as Assistant Station Master (ASM) in the pay scale of Rs.4500-7000 as direct recruit in Western Railway.

Subsequently, he was transferred to Northern Railway at his own request on the same post and pay. He was promoted to the post of Traffic Inspector in the pay scale of Rs.5000-8000 and subsequently to the post of Traffic Inspector in the pay scale of Rs.6500-10500 (PB-2 + 4600 Grade Pay). The applicant applied for the post of Traffic Apprentice. After clearing the written test on 18.11.2000 and viva voce test on 26.02.2001, he was included in the panel of 19 persons vide order dated 12.03.2001.

2, Before posting, it was mandatory to pass pre-requisite course of TP-4 (all phases). There were two phases of TP-4 course, and phase-I course is equivalent to the ASM training. Therefore, all the 19 persons, including the applicant, were exempted from 1st phase of TP-4 course. In respect of 2nd phase of TP-4 course, the respondents issued order dated 28.08.2001 in respect of 15 persons, including the applicant. All other 14 persons were working as ASM whereas the

applicant was working as Traffic Inspector. Before appointment as Traffic Inspector, the applicant had already passed his TP-7 course which, he considered, as equivalent to 2nd phase of TP-4 course since the syllabus, training and duration of both courses are the same, only the nomenclatures are different. Since the applicant had already cleared the TP-7 course, he represented to the competent authority to exempt him from 2nd phase of TP-4 course. All the 14 persons were sent for training including junior persons from the panel, and after completing the 2nd phase of TP-4 course, all 14 persons were given promotion and posting of Traffic Apprentice vide order dated 26.03.2002 but the applicant was not given promotion and posting due to non-finalization of the issue of exemption from 2nd phase of TP-4 course. Hence, he has filed this OA seeking the following reliefs:-

- i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 01.08.2012 (Anne.A/1) only to the extent by which the respondents have not granted the due promotion to the applicant to the post of Traffic Apprentice with effect from 26.03.2002 i.e. from the date of promotion of junior person from the panel dated 12.03.2001 and consequently pass an order directing the respondents to consider and to promote the applicant to the post of Traffic Apprentice w.e.f. 26.03.2002 with all consequential benefits including fixation of pay, fixation of seniority and further promotion accordingly.
- ii) That the Hon'ble Tribunal may further graciously be pleased to pass an order declaring to the effect that the whole action of the respondents not considering and not promoting the applicant to the post of Traffic Apprentices on the basis of the panel dated 12.03.2001 in spite of facts the applicant had already passed the required courses (both phases) immediately or at least along with the similarly situated and junior persons w.e.f. 26.03.2002 is illegal, arbitrary and discriminatory in the eyes of law and consequently the applicant is entitled for his promotion to the post of Traffic Apprentices from due date or at least w.e.f. 26.03.2002 with all consequential benefits.
- iii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant along with the costs of litigation.

3. The applicant has stated that his matter was referred to the Northern Railway Headquarter by the DRM Office.

The General Manager, Northern Railway vide order dated 07.05.2012 gave the following directions:

"In reference to your above cited letter the case of Sh. S.N. Sharma, TI/Plg was put up to Competent authority i.e. COM/G and it has decided that "It must be clarified here that the case of Sh. S.N. Sharma is not a case of exemption for any prescribed promotional course, rather it is the case of simply avoiding repetition of the same training. The interpretation of ?P? Branch regarding exemption for a prescribed course has no relevance in this case."

It is very clear that the employee has already passed a particular course and need not repeat the same. It is worthwhile mentioning that prior and after this case, the division has bypassed the repetition of courses in all cases of traffic apprentices including 1st Phase of TP 4 course of all 19 employee (ASM) except 1 (TNC) of this panel, in which name of Sh. S.N. Sharma was bypassed. This may be confirmed from division as per available record.

It is further stated that this issue has already been finalized by this office vide your office GM/P/NDBH letter no.844E/183/XX/E/R/ dated 28.07.1997 written to principal ZTS/CH now ZRTI/CH in which consent of CSO and order of COM was envisaged (Copy enclosed).

In view of above, S.N. Sharma may be considered for his due seniority followed by other relevant benefit."

Thereafter the DRM office fixed the seniority of the applicant vide order dated 01.08.2012 (Annexure A-1) in PB-II 9300-34800 + GP 4600 w.e.f. 25.07.2011 but did not grant promotion to the applicant w.e.f. 26.03.2002 which was the date from which the similarly situated and junior persons from the panel dated 12.03.2001 were promoted.

The applicant gave several representations to the respondents but has not been granted the desired relief.

4. The respondents have opposed the claim of the applicant. They have stated that this matter is time barred and have cited several rulings to this effect. They have also taken the ground that seniority counts from the date of service after completion of prescribed training period.

5. Heard Sh. Yogesh Sharma, learned counsel for the applicant and S/Shri V.S.R. Krishna and Shailendra Tiwari, learned counsels for the respondents.

6. As far as the plea of limitation is concerned, the applicant has been consistently taking up the matter with the authorities and as a result of this, some partial relief was given to him in 2012 when he was given his due place in the seniority list of Station Master. Therefore, it cannot be said that the claim of the applicant is barred by limitation.

7. It is undisputed that the applicant cleared various tests for selection as Traffic Apprentice. But the matter in dispute is whether the training of TP-7, which he had undergone as Traffic Inspector, was equivalent to the requisite training of TP-4 Phase-II meant for Traffic Apprentice since the reasons for his non-consideration as Traffic Apprentice from the date when other members of the panel in which the applicant was placed, were given promotion. This issue should have been sorted out through letter dated 07.05.2012 of G.M. Northern Railway. DRM's Office, Northern Railway letter No.729E/22/ 3419/P-1 dated 30.05.2012. To this effect, there is also a letter from Principal/ZTC, Chandausi dated 22.12.1997 which clearly indicates that Assistant Station Masters who have passed course TP-7 should not be booked for the 2nd phase of Course No.TP-4

subsequently.

8. When it has been recognized that the applicant need not have undergone the TP4-Phase-II Course, which was repetition of TP-7 and the GM, Northern Railway directed that he should be considered for his due seniority followed by other relevant benefits, then the next logical step, in our view, is that he should be given due promotion to the post of Traffic Apprentice from the relevant date i.e. from the date of promotion of his juniors from the same panel dated 12.03.2001, which would be w.e.f. 26.03.2002.

9. In light of the above discussion, the instant OA is allowed. The respondents are directed to grant due promotion to the applicant to the post of Traffic Apprentice w.e.f. 26.03.2002 i.e. from the date from which his juniors from the panel dated 12.03.2001 were given the same with all consequential benefits, within a period of three months from the date of receipt of certified copy of this order. There shall be no order as to costs.