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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1534/2002

New Delhi, this the 3rd day of April, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Mr. Govindan S. Tampi, Member (A)

L.N.Yadav ..Applicant
(By Advocate: Shri R.N.Singh)

Versus

Union of India & Ors.Respondents
(By Advocate: Shri R.L.Dhawan)

Corum:-

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri Govindan S. Tampi, Member (A)

1. To be referred to the reporter or not? YES
2. Whether it needs to be circulated to Benches of the Tribunal? NO

(Govindan S. Tampi)
Member (A)

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OA No.1534/2002

New Delhi, this the 3rd day of ~~April~~, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri Govindan S. Tampi, Member(A)

L.N. Yadav
SS Jatusana, N.Rly

Distt. Rewari (Haryana) .. Applicant
(Shri R.N. Singh, Advocate)

Versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi
2. Divisional Railway Manager
Northern Railway, Biken Division
Bikaner, Rajasthan
3. Sr. Div. Personnel Officer
DRM Office, Bikaner .. Respondents

(Shri R.L. Dhawan, Advocate)

ORDER (Oral)

Shri Govindan S. Tampi

The applicant is aggrieved by the alleged inaction of the respondents in denying him timely promotion as Station Superintendent, in spite of his having become eligible and suitable.

2. During the oral submissions, S/Shri R.N. Singh and R.L. Dhawan, represented the applicant and the respondents respectively.

3. The applicant who joined in Station Masters Group in 1964 had been continuing in the same category till 1993. Following the restructuring/upgradation of Group 'C/D' posts, ordered by the Railways vide their letter No.PC III/91/CRC/1 dated 27.1.93, 52 posts of Station Supdt.

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in the grade of Rs.2000-3200 became available for upgradation, against which 43 posts were upgraded during 1993, 94 and 95, leaving 9 vacancies ^{along with which 2} ~~with~~ retirement vacancies also arose. These vacancies among others were to be filled up by combined upgradation of Station Master (SMs), Yard Masters (YMs), Traffic Inspectors (TIs) and Section Controllers (SCs) though no combined seniority list was ever published. Those from the cadres of YMs, SCs and TIs came to be adjusted against the upgraded posts meant for ASMs/SMs, which was improper, especially as the posts of SM group have been created in the higher scale by upgradation of the post in that cadre. Upgradation of YMs/SCs/TIs against the post of SM group was challenged in various Benches of the Tribunal but with mixed results. Railway Board vide their letter No.PCIII/91/CRC/1 dated 27.1.93 and PC III/93/CRC/1/15/2 dated 9.2.94 directed that the restructured vacancies were to be filled by seniority and record of service but the applicant who was the senior most ASM was denied promotion in the scale of Rs.1600-2660, on 7.12.92 on the alleged ground of serving a penalty period from 1.8.92 to 31.1.93 while others were given the said benefit. This had caused him considerable loss financially. He has suffered primarily as the respondents were upset over his activities as the office bearer of the Union. Hence this OA.

4. Grounds raised by the applicant in this OA are:

- i) the applicant was the senior most ASM in the scale of Rs.1400-2300;
- ii) upgradation to be restructured post was to be only on the basis of seniority;
- iii) holding written tests for the posts, including restructured posts was illegal;
- iv) promoting YM/TI/SCs against upgraded posts of SMs was irregular;
- v) promoting SC/ST category officers was illegal as there was no reservation in upgradation;
- vi) correct channel of promotion was not followed;
- vii) holding written test for extra vacancies arising from restructuring was improper; and
- viii) denial of promotion to the applicant was improper.

In view of the above the applicant seeks urgent intervention of the Tribunal to have justice rendered to him.

5. Respondents strongly contest the points raised by the applicant. He had challenged his non-selection to the post of SS/TI/CYM in the grade of Rs.2000-3200 for which selection was done properly in 1995 by promoting those

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with two years of service in the grade immediately below i.e. Rs.1600-2600. The applicant was not eligible for consideration as at the relevant time he was drawing pay only in the scale of Rs.1400-2300. His two earlier OAs 3362/92 and 1082/95 on the same issued had been dismissed on 27.9.98. According to the respondents 52 posts indeed were available for upgradation as Station Superintendent (SS) and there were equal number of persons in the panel. All the vacancies of SS were clubbed and selection was made on the basis of combined seniority list of SMs/TIs/YMs in the scale of Rs.1600-2660 as directed by General Manager, Northern Railway vide his letter No.757-E/42(EIB) dated 22.7.88. Selection was correctly done on the basis of the written test and the selected panel was notified on 17.8.95. As the applicant was working in the scale of Rs.1400-2300, his case did not merit consideration in terms of para 215(a) of IREM Vol.I. His seniority position in the grade of ASM having the scale of Rs.1400-2300 was not relevant for the above selection and his placement in the seniority list of ASM of the scale of Rs.1600-2660 being incorrect had been deleted by respondents letter No.P.2/847E/ASM/Vol.I dated 20.12.95. In fact only those who were working in the grade of Rs.1600-2660 on 28.2.93 were eligible for consideration for promotion and the applicant was not among them. The applicant also cannot have any grievance as none junior to him had been promoted. Inclusion of candidates from SC/ST categories was in pursuance of the instructions of the Railway Board dated 27.1.93 and the same was followed in terms of seniority. All the averments made by the applicant on the combined panel from SMs/TIs/YMs are incorrect and accordingly not

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accepted. Similarly on 26.8.94, it was decided to fill up all the vacancies of SS/TIs/YMs in the scale of Rs.2375-3500 as one time measure from the combined seniority and the same had been correctly gone through. Restructured vacancies were to be filled up on the basis of service records and confidential reports without holding any tests. Accordingly no tests were conducted for filling up the upgraded posts. As the applicant was undergoing punishment between 1.8.90 and 31.10.93, he could not have been promoted (His OAs against the same had been dismissed). His promotion to the grade of Rs.1600-2660 w.e.f. 1.11.93 was ordered on 12.1.94 but he joined the promotion post at Hanumangarh only on 11.3.97. Therefore he was only granted proforma promotion on 1.4.93 with actual benefits being released only on 11.3.97. This also ^{had accrued} ~~accrued~~ as the applicant had himself obtained an interim order, which was got vacated only much later. Inasmuch as the applicant was not in the feeder cadre having the scale of Rs.1600-2660, he could not have been considered for promotion as SS in 1993. All the averments to the contrary are incorrect and deserve to be rejected according to the respondents.

6. In the rejoinder filed on behalf of the applicant, all the points raised by the respondents are contested. The applicant also assails the order of the Principal Bench of the Tribunal pronounced on 27.5.1998 dismissing the OA Nos. 3362/92 and 1085/95 filed by him as incorrect and seeks to rely upon the decision of the Tribunal dated 15.7.1999 in OA-2430/93. According to him, while it was true that he was undergoing punishment for a short while during 1992-93, the same should not

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have come in the way of his promotion as a number of persons similarly placed have been given promotion and there was no reason why the same benefit could not have been extended to him. During the oral submissions, Shri R.N.Singh, learned counsel appearing on behalf of the applicant forcefully reiterated the points raised by him in the OA as well as in the rejoinder and averred that the respondents have denied him promotion by adopting improper and incorrect methods of selection and granting impermissible reservation to spite him, as they were upset and annoyed with him for his activities as a member of the recognised union. Learned counsel also invited our attention to the portion of the minutes of the informal meeting of All India OBC Association of Bikaner Division held on 21.12.2000, wherein his case had been specifically referred to as he has been officiating from 1992 in the scale of Rs.1600-2660/- . There was no reason at all for him to have been denied the promotion to the grade of Rs.2000-3200/- which arose on restructuring of the cadres. According to him, he has been denied the same by permitting promotion to the cadre of Station Master/Station Superintendent, those from the cadres of YMs, TIs, etc. also which could not have been done. The respondents have also denied him the promotion on account of a short punishment period, which was not much relevant. The respondents have brought on record facts which contradict the applicant's plea.

7. We have carefully considered the matter. The applicant is working in the Station Master's group since 1964. ~~when~~ ² Restructuring in the Groups 'C' & 'D' posts ^{WA} ₂ were ordered by the Railways in 1993. In terms of

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Railway Board's letter dated 27.1.1993, fresh posts were created and the Railway Board vide directions of the General Manager, Northern Railway dated 22.7.1998 decided to fill up the vacancies by combining all the vacancies in the grades of SMs/TIs/YMs, who were drawing the scale of pay of Rs.1600-2660/-. In terms of the above order, those who were working in the pay scale of Rs.1600-2660/- for at least two years were declared as eligible. At the relevant time, the applicant was not so working and, therefore, his case was not considered. The applicant's plea is that he was the senior-most Assistant Station Master as on 1.3.1993 but the same was in the grade of Rs.1400-2300/- and not in the grade of Rs.1600-2660/-. Those in the grade of Rs.1400-2300/- could not have been considered for promotion to the grade of Rs.2000-3200/- and, therefore, the applicant's plea in this regard is of no avail. The applicant had been given placement in the seniority list dated 21.3.1995 of ASMs in the grade of Rs.1600-2660/- but the same had been deleted immediately thereafter. Unless and until the applicant fell ⁱⁿ ~~into~~ the category of the feeder cadre for promotion in the scale of Rs.2000-3200/-, he has no case even for consideration. This is exactly what has happened in the applicant's case. The applicant's plea that he has been holding the post of and on from May, 1992 is also not correct, as he was not promoted to that post in 1993 as was undergoing punishment period. His promotion in fact came only on 12.1.1994 but w.e.f. 1.11.1993. However, he assumed charge in the promotion post only on 11.3.1997 and, therefore, he was granted proforma promotion only from 1.11.1993 whereas the actual promotion and the payment of salary ^{began} ~~started~~ only from 11.3.1997. The applicant was not keen

to join Hanumangarh to which the applicant was posted on promotion, but continued to remain at Jatusana Railway Station, Distt. Rewari and, therefore, he cannot claim seniority in the promotion post. This fact has been clearly brought out by the order of the Tribunal dated 27.5.1998 in OA-3362/2002 and OA-1080/95. Paras 9 to 11 of the said order are relevant, which read as under:-

"9. In so far as applicant's prayer for promotion as S.M. (Rs.1600-2660) with effect from the date his immediate juniors were promoted, they were promoted with effect from impugned orders dated 7.12.92, but applicant cannot be promoted with effect from that date in view of the penalty he was undergoing at that point of time.

10. In so far as promoting applicant as ASM (also Rs.1600-2660) against restructured post is concerned, it is clear that what stood in applicant's way was the interim orders dated 29.12.92 sought and obtained at his own initiative. If applicant was keen on regular promotion in the scale of Rs.1600-2660 he should have moved immediately for vacation of the interim orders and in fact it was clearly suggested to him as much vide Tribunal's order dated 1.6.94, but he moved in the matter only on 30.7.95 and eventually joined as Rost Giver ASM Hanumangarh only on 11.3.97. This lends credence to respondents' contention that applicant wanted to continue at Jatusana and was in no hurry to join as ASM, Hanumangarh. Applicant having displayed considerable tardiness in joining as ASM, Hanumangarh in the promotional scale of Rs.1600-2660 in terms of the order dated 20.5.96 has by his own conduct forfeited his right for consideration for promotion as ASM from any earlier date.

11. As regards applicant's prayer for fixation in the scale of Rs.1600-2660 for the period he worked as SM in an officiating capacity, applicant claims he worked as S.M. Jatusana in an officiating capacity and his pay should be fixed in the scale of Rs.1600-2660 for the period he so officiated. Respondents deny he ever officiated as S.M. Jatusana. Applicant has not produced any

orders of respondents promoting him as SM Jatusana on officiating basis. What he has produced with his rejoinder is what purports to be a certificate dated 11.1.93 that he is working as SM (officiating) Jatusana since the retirement of the previous incumbent and also what purport to be extracts from the staff complaint register, on the basis of which applicant rests his claim. in the absence of any orders issued by respondents showing applicant as having been promoted as SM Jatusana even in an officiating capacity, we find ourselves unable to direct respondents to fix applicant's pay in the scale of that post let alone order payment of arrears."

8. His not having been promoted to the pay scale of Rs.1600-2660/- earlier and the said non-promotion not having been ~~modified~~ modified by the Tribunal, the applicant cannot have any further claim for promotion to the higher grade of Rs.2000-3200/-, further. It is true that when the vacancies following the restructuring were sought to be filled up by selection from the cadres of SMs/TIs/YMs and SCs, challenges were made against the same in various Benches of the Tribunal but results were mixed and none of the decisions give him any specific vested right. The applicant's reliance is on the decision of the Principal Bench of the Tribunal in OA-2430/93 disposed of on 15.7.1999, where it was indicated that the restructured posts should be filled up by those belonging to the same cadre. Even the said order, does not come to the

applicant's help, as he was not in the feeder cadre when the restructured vacancies in the grade of Rs.2000-3200/- came for being filled up but was working only in the scale/grade of Rs.1400-2300/-. Only those in the grade of Rs.1600-2660/- could have been considered for the above and admittedly, the applicant was not amongst them.

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His plea that the Department has wrongly denied him promotion on the basis of the penalty, whereas a few others similarly placed have been promoted, also cannot come to his assistance, as one mistake, if any, committed by the respondents cannot give rise any right for the applicant that the same mistake should also be committed by the respondents once again to benefit him. The applicant has not been able to prove any malafides on the part of the respondents to deny him promotion or show that his activities in furtherance of collective bargaining as an active worker of the staff union had come in the way of his promotion. The fact is that at the relevant time he was not in the feeder cadre of Rs.1600-2660/- wherefrom only he could have been considered for promotion in the scale of Rs.2000-3200/-. The fact that the promotions were ordered from three or four cadres or that SC candidates were adjusted did not come in the way of his promotion. Having been only in the pay scale of Rs.1400-2300/-, he had not become eligible for being considered. Respondents' action, in the above circumstances, cannot be called in question.

9. OA, in the above circumstances, has no merit and has, therefore, to fail. It is accordingly dismissed. No costs.

(Govindan S.Tampi)
Member (A)
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(V.S. Aggarwal)

Chairman