

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 1041/98

(Q)

New Delhi, this the 29th day of September, 2000

HON'BLE MR. JUSTICE V.RAJAGOPALA REDDY, VICE CHAIRMAN (J)
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (A)

In the matter of:

Narinder Kumar Arora
s/o Late Sh. Govind Ram Arora
Office Supdt.-II under
Sr. Section Engineer/T.L.
Northern Railway,
Delhi Sarai Rohilla.

Residential Address
Narinder Kumar Arora
No.67-B DCM Loco Shed Rly. Colony,
Kishan Ganj, Delhi. Applicant
(By Advocate: Sh. G.D.Bhandari)

VS.

1. Union of India through
The General Manager
Northern Railway Baroda House,
New Delhi.
2. Divisional Railway Manager,
Northern Railway,
Bikaner.
3. Sh. Mahender Singh Jalodia,
Head Clerk/Office Supdt-II under
Chief Project Manager (G.C.)
South Central Railway/Nagpur. (M.P)
4. Sh. Ahmed Hassan Qadri
OS-II,
Electric Branch,
DRM Office, Bikaner.
(By Advocate: R.L.Dhawan and Sh. B.S.Mainee)

ORDER

By Mr. Govindan S. Tampi,

The applicant, challenges the respondents order dated 31.5.97 and 12.5.98, deciding to delete his name from the select panel for Office Superintendents in grade of Rs.1600-2660.

2. To narrate the facts in brief, the applicant who joined ~~ESL~~ as a Junior Clerk in Bikaner Division, Northern Railway on 28.5.71, was promoted as Senior Clerk on 3.2.82. His promotion

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as Head Clerk in the grade of Rs.1400-2300 came on 30.4.87 and he was posted to Lalgarh workshop. He sought that the same way be kept in abeyance till the vacancy arose in Delhi. His representation was taken as a technical refusal of promotion by the proceedings on 24.6.87 and he was promoted only on 14.7.88. In the meanwhile, persons junior to him were promoted. These were Ahmed Hassan Qadri and Hari Singh (S.C.) Following restructuring procedure, adopted by the Railways the respondents declared on 16.9.93, a panel consisting of five persons for promotion to the grade of Office Superintendent Grade-II in the Electrical Branch, Bikaner including the name of the applicant at S1. No.5. By a subsequent order dated 25.1.94, name of one Sh. Ram Asray was interpolated at S1.5, and the applicant was placed at S1.6 that is at the bottom of the panel. In between one Jalodia who was working on long deputation in the Construction Organisation, represented for placement in the panel, on the ground that he was senior to Qadri. The representation was accordingly allowed, which pushed the name of the applicant further down and he was sought to be depanelled by the letter of 21.5.97 and 12.5.98. Hence this application.

3. Arguing for the applicant Sh. G.D.Bhandari, learned counsel states that Department had taken incorrect action for pushing down the seniority of the applicant giving the benefit to his juniors primarily Resp. No.3 Mahender Singh Jalodia, who was not figuring even in the seniority list on 28.5.95 and who was always been away from the Northern Railways in Bikaner. Sh. Bhandari further points out that in terms of Rule 241 (b) of IREC Vol.1, the lien of Railway servant can be suspended, if he is appointed to a tenure post in another cadre

when there is a reason to believe that he will remain absent from the post on which he holds the lien for a period of not less than three years. ~~Ana competent authority~~ It therefore meant that Jalodia who was away all the while, should not at all have been considered for the promotion in Bikaner. Further he states that even if during the refusal period of the applicant, ~~if~~ Jalodia was considered, the promotion of A.H.Qadri who was still junior was not correct as only one vacancy arose during the period. As a result of this, the applicant has been denied his due promotion and ^{proper} placement; argue Sh. Bhandari. The decision taken by the department was improper and deserves to be set aside.

4. Replying for the respondents Sh. R.L.Dhawan points out that originally the applicant was senior to Ahmed Hussan Qadri but he was brought down as he had declined his promotion as Head Clerk and Qadri who was promoted during the refusal period naturally became his senior. Further as Resp. No.3 Jalodia continued to hold the lien in Bikaner Division and his seniority was above of Ahmed Hussan Qadri, ^{he} had to be empanelled as Office Superintendent and therefore the name of applicant, who was junior most in the panel had to be deleted. There was nothing wrong in this procedure Sh. Dhawan adds.

5. In the short reply for Sh. Jalodia, Resp. No.3, it is argued that since the applicant had refused the promotion as Head Clerk in 1987, he automatically became junior to those who were promoted during the refusal period. As Sh. Jalodia was promoted during the period he, automatically was placed above the applicant and that too correctly.

6. We have carefully considered the matter and perused the relevant records. The applicant had, on account of his personal problems declined promotion as Head Clerk as 24.6.87 and therefore he stood debarred for promotion for a period of ⁴⁰⁰ one year, i.e., upto 14.7.88. Correctly therefore ~~only~~ one who ~~was~~ ^{senior} _h promoted during that period became naturally junior to the applicant. There cannot be any dispute with that situation. The fact however is that only one vacancy in the grade of Head Clerk arose during that period and only one could have been promoted then. Abdul Hasan, Qadri who was junior to the applicant was the person, promoted against the said vacancy. Qadri was admittedly junior to the applicant. Subsequently however, Mohinder Singh Jalodia, who was on deputation in Railway Construction Organisation for long was considered and promoted on the ground that he was senior to Qadri. With the result, during the period of refusal by the applicant, not one but two persons - Jalodia and Qadri - were promoted against one vacancy. The respondents' plea is that Jalodia's lien had been retained in the Northern Railway, Bikaner, though he was away on deputation, and he had to be promoted ahead of Qadri, who was admittedly junior. But in such a case only Jalodia could have been promoted and placed above the applicant. Qadri's promotion and his placement above the applicant was clearly impermissible as only one vacancy arose during the relevant period; and Qadri was the second man. By respondents' action in not adhering to the correct position and procedure, the applicant's position in the seniority list went down by two places whereas he should have lost by only one place. This anomalous situation caused by the respondents' action and its consequences have to be set aright.

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7. In the result, the application succeeded and is accordingly allowed. The impugned orders are quashed and the panel dated 16.9.93 is directed to be modified with the interpolation of the name of the applicant below the name of Jalodia but above that of Qadri with all consequential benefits. If by this exercise any one has to be deleted from the panel, it should be done after putting the individual concerned on notice. This exercise should be completed within three months from the receipt of the copy of this order. We also direct the respondents to pay the applicant cost of the application, quantified at Rs.2000/- (Rupees two thousand only).



(GOVINDAN S. TAMPI)
Member (A)



(V.RAJAGOPALA REDDY)
Vice Chairman (J)

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