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Central Administrative Tribunal, Principal Bench

O.A.911/98

New Delhi, this the 6th day of December, 2000

Hon'ble Mr. Kuldip Singh, Member (J)

Hon'ble Mr. M.P. Singh, Member (A)

Shri S.C. Gupta
S/o Shri
Hd. Typist, DRM Office
Northern Railway Moradabad
Residential Address
S.C. Gupta,
E-257, Prem Nagar,
Moradabad

....Applicant

(By Advocate: Shri G.D. Bhandari)

1. Union of India through
The General Manager
Northern Railway, Baroda House,
New Delhi

2. Divisional Railway Manager
Northern Railway
Moradabad

....Respondents

(By Advocate: Shri R.P. Aggarwal)

ORDER (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (J)

The applicant in this case had been promoted to the post of Senior Typist vide order dated 27.6.96, with immediate effect. But he is not happy and wants that his promotion be ante-dated since he alleges that his four other colleagues had been promoted w.e.f. 29.10.93. Despite the fact that there were five vacancies in the general quota and the applicant was eligible and proposal to consider him was also mooted, but his case was not considered on the plea that a disciplinary case was pending against him, though the same had also been closed. The applicant has not been given promotion from the date when the vacancies were available and that was a general upgradation when all other candidates were promoted but the applicant was

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not considered for promotion on the plea that a disciplinary case was pending against him.

2. The respondents in their counter affidavit have submitted that at the time when four other employees with whom the applicant wants his promotion to be ante-dated were given promotion, at that time there were only four vacancies and not five. Besides that, he was placed under suspension and, therefore, could not be promoted.

3. In order to support his contention that at the time when the case of his four other colleagues was considered for promotion there were five vacancies, the applicant had requested for summoning the record from respondents. But when the case was taken up for hearing today, respondents were unable to produce the record. On the contrary, Shri Bhandari, learned counsel appearing on behalf of applicant handed over to us across the Bar a photostat copy from the file of respondents which shows that when the four other colleagues of the applicant were considered for promotion, at that very time, the name of the applicant was also proposed but his case was not considered since an endorsement was made that the applicant was facing an enquiry and standard form No.5 had already been issued to him. However, this document also shows that at that time, five vacancies in the general quota were available and the name of the applicant was also under consideration for the said proposal. The respondents' counsel was unable to deny this document, still he submitted half-heartedly

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that -perhaps at the time when the case of four other colleagues of the applicant was considered for promotion, out of five posts of general quota, one might have been abolished or rendered surplus.

4. We have given our thoughtful consideration to the matter. From the perusal of document produced by learned counsel for the applicant, it is quite clear that on 28.10.93 when there was a proposal to consider the promotion of typists to the post of senior typists, the name of the applicant was very much there in the list of eligible persons in accordance with the seniority and he was also to be considered for promotion but as a departmental enquiry was pending against him, his case was dropped.

5. Learned counsel for the applicant had also taken us to the record showing that the chargesheet issued to the applicant was cancelled by the respondents vide annexures A-6 and A-7, so that obstacle was also no more there which could come in the way of his promotion.

6. The document submitted by learned counsel for applicant makes it quite clear that on 29.10.93, five vacancies were available in the general quota and the applicant was entitled to be considered for promotion from that very date. Merely because some chargesheet was pending against him which was also cancelled at a later date, his promotion could not be withheld.

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7. In the result, we allow this O.A. and direct the respondents to consider the applicant's case for promotion to the post of Senior Typist from the date when his four other colleagues were considered for promotion and on re-consideration, if the applicant is found fit for promotion, then he should be promoted with effect from 29.10.93. These directions should be implemented within a period of three months from the date of receipt of a copy of this order. No costs.



(M.P. Singh)
Member (A)



(Kuldip Singh)
Member (J)

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