

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.2558/96

(8)

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

New Delhi, this the 20th day of April, 2000

Shri S.M.Mital
s/o Shri T.R.Mital
r/o 2A/246, Rly. Apartments
Panchkuian Road
New Delhi - 110 001.
at present working as
Chief Engineer (TSP)
Northern Railway
Baroda House
New Delhi - 110 001. Applicant

(By Mrs. Meenu Mainee, proxy of Shri B.S.Mainee,
Advocate)

Vs.

1. Union of India through
The Secretary
M/o Railways
(Railway Board)
Rail Bhawan
Raisina Road
New Delhi - 110 001.
2. The Chairman
Railway Board
Ministry of Railways
Rail Bhawan
Raisinna Road
New Delhi - 110 001. Respondents

(By Shri Rajenndra Khattar, Advocate)

ORDER (Oral)

By Reddy. J.

The applicant belongs to the Indian Railway Service. He was working in the Senior Administrative Grade in the pay scale of Rs.5900-6700. The Senior Group A establishment in Indian Railways also has the grade of 7300-7600. The administrative grade posts are filled up by selection on merit by the selection committee. The applicant has been considered for promotion to the Senior Grade of Rs.7300-7600 in June, 1995. The Departmental Promotion Committee constituted by the Railway Board empanelled officers

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for promotion and submitted the panel to the Railway Board, for obtaining the approval of the Appointments Committee of Cabinet (ACC). The applicant's name was figured in the panel at No.1 position above the name of Shri P.K.Wahi, Executive Director (Land Management), Railway Board. At the time when the panel was approved by the ACC, the applicant's residuary service was less than one year, as he was to retire on 31.12.1996. The Railway Board ignored the applicant's name for promotion only on the ground that he had only brief period of service and promoted his junior, the next person in the panel, Shri Wahi and got it approved by the ACC. The applicant made a representation in August, 1996 to the Member, Engineering and Secretary, Railway Board against the illegal action of the respondents but the Railway Board did not reply. The applicant, therefore, filed the present OA.

2. It is the case of the respondents that as the posts carry the scale of Rs.7300-7600 and also carry enormous responsibility and accountability, the Railway Board has desired as a policy to fill up such posts of high responsibility by persons having adequate service so that it would be possible for them to devote undivided attention to the functioning of their departments and ensure continuity of operations. Therefore, the railways have been following policy not to appoint officers who have less than one year service left to the posts in the grade of Rs.7300-7600. It is further stated that the ACC did not approve the applicant's name in the panel.

[Signature]

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3. Heard the counsel for the applicant and the respondents. We have carefully considered the pleadings and arguments advanced by the learned counsel on either side.

4. The short question that arises in this case is that whether the practice followed by respondents in not considering an officer for promotion after his empanelment, only on the ground that he had less than one year service ^{left} is permissible? The applicant has been admittedly empanelled and that he was in No.1 in the panel for promotion. It is the case of the respondents that there was an unwritten practice which has been followed uniformly over several years not to consider for promotion if the period left for an officer in service is less than one year, to Group 'A', Railway Services carrying the scale of Rs.7300-7600. Admittedly, no rule or any provision of law provided to that effect. Accordingly, the same policy has been followed in the case of the applicant and the applicant was not promoted as he had only short period of service. The reply states as follows:

".....the applicant did not satisfy the eligibility condition of one year balance service and hence he was not considered."

5. The learned counsel for the applicant placed strong reliance, in support of his contention, upon the cases of Shri S.N.Venkata Rao, Chief Engineer (C) Vs. The Chairman, Railway Board and Others, OA No.519/89, Bangalore Bench of the Tribunal decided on 3.8.1990 and OA No.2836/91, J.N.Sharma Vs. Union of India & Others, Principal Bench, CAT, decided on 3.2.1993.



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6. We have perused the above two judgements.

The learned judges in both the cases have taken the view that in the absence of any rule or provision of law, the unwritten policy of the Railways cannot be placed as embargo for promotion to officers who were otherwise eligible or were empanelled. In these two cases also the promotion was to the post carrying the pay scale of Rs.7300-7600. In our view, these cases squarely cover the dispute in the present case. The learned counsel for the respondents seeks to distinguish by referring to the date of appointment of the applicants therein and their seniority position. In our view, the points of distinction are wholly untenable. We do not find any distinguishable features in the above two cases from the instant case.

7. We respectfully agree with the reasoning of the learned judges in the above cases. Relying upon the above judgments, we hold that the impugned practice is illegal. If the practice is ignored, then the applicant having been empanelled, he should have been promoted, in the place of Mr. Wahi. Now, that the applicant is retired, the respondents are directed to consider the case of the applicant for promotion to the Grade of Rs.7300-7600 notionally as on 30.9.1996, i.e., when his junior Shri Wahi was promoted, without placing any bar of one year residual service, with all consequential benefits. This exercise shall be completed within three months from the date of receipt of a copy of this order. No costs.

Shanta Shastray

(SMT. SHANTA SHAstry)
MEMBER(A)

V.Rajagopala Reddy

(V.RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

/RAO/