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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.913/96

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 14th day of December, 1999

A.C.Madan
s/o Shri Chaman Lal Madan
Inspector of Works (Land)
Divl. Railway Manager's Office
Northern Railway
New Delhi.
r/o 70, Jagan Nath Puri
T.P.Nagar, Meerut (UP). Applicant

(By Shri M.L.Sharma, Advocate)

Vs.

1. Union of India through
General Manager
Northern Railway Headquarters Office
Baroda House
New Delhi.
2. Chief Engineer
N.Rly., Headquarters Office
Baroda House, New Delhi.
3. The Divl. Railway Manager
Northern Railway
New Delhi. Respondents

(By Shri R.P.Agarwal, Advocate)

O R D E R (Oral)

R.K.Ahooja, Member(A)

The applicant was working as Inspector of Works in the grade of Rs.2000-3200 when his case came up for consideration for promotion to the post of Chief Inspector of Works in the grade of Rs.2375-3500. The promotion from Inspector of Works to Chief Inspector of Works was to be made on the basis of seniority subject to fitness. In other words, it was a non selection promotion. The applicant claims that he was the seniormost Inspector of Works but in the impugned order dated 16.2.1995, Annexure A3 his name does not appear in the list of those approved for promotion.

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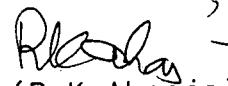
2. The respondents in the reply have stated that though the post is to be filled on non selection basis, the applicant was found unfit as there was a disciplinary case against him in which he was awarded penalty of withholding of one increment for a period of one year. They also say that the applicant had been given an adverse entry in his ACR for the year 1993-94.

3. We have heard the counsel and perused the record. We find that the penalty imposed on the applicant was challenged before this Tribunal in OA 1782/94 and the Tribunal in its order dated 13.1.1994 had set aside the same and the case was remitted to the competent authority to launch a regular departmental enquiry. Nothing has been indicated before us to show that the respondents subsequently had initiated a fresh departmental proceedings against the applicant. In view of this position, the case of the applicant was wrongly considered on the basis that he had been awarded a punishment of withholding of one increment. We also find, on perusal of the record, that the adverse report of 1993-94 was conveyed to the applicant on 11.1.1995. The orders dated 15.2.1995 had taken into consideration this adverse ACR. The instructions on the subject required that once an adverse ACR is communicated, the same is to be taken into account for promotion only after the representation against that the said adverse ACR is decided or the period prescribed for filing the representation is over. Nothing has been stated in the reply by the respondents as to whether the

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representation of the applicant, if any, had been decided before his case of promotion was taken up. The close proximity of the date, i.e., 11.1.1995 for communication of the adverse ACR and the issue of the promotion order, i.e., 16.2.1995 would *prima facie* indicate that the representation of the applicant had not been decided. Therefore the adverse ACR should not have been taken into account at that time.

4. In the conspectus of the afore mentioned facts and circumstances, we allow the OA and direct the respondents to hold a review DPC to reconsider the case of the applicant for promotion as Chief Inspector of Works. In doing so, they will also examine whether the adverse entry against the applicant could at all be taken into account in terms of the Rules. This will be done within three months from the date of receipt of a copy of this order. If appoint for promotion, the applicant will be entitled to the consequential benefits, like seniority, etc. in accordance with the Rules on the subject.


(R.K.Ahooja)
Member(A)


V.Rajagopala Reddy
Vice Chairman(J)

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