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Central Administrative Tribunal, Principal Bench

Original Application No.1900 of 1997

New Delhi, this the 4th day of May, 2000

Hon'ble Mrs. Lakshmi Swaminathan, Member(J)
Hon'ble Mr.V.K.Majotra, Member (A)

Mohd.Ashraf, Hindi Assistant Grade-II, DRM's
Office, Moradabad.

- Applicant

(By Advocate Shri H.K.Gangwani)

Versus

Union of India and others
Through

1. Secretary, Railway Board, M/o Railways,
New Delhi.
2. General Manager, Northern Railway, Baroda
House, New Delhi.
3. Divisional Railway Manager, Northern
Railway, Moradabad.

- Respondents

(By Advocate Shri R.P.Aggarwal)

O R D E R (Oral)

By V.K.Majotra, Member(A) -

The applicant has assailed order dated 20.12.1996 issued by the General Manager (P), Northern Railway, Baroda House, New Delhi whereby allegedly juniors of the applicant such as Smt.Anjali Sharma, Smt. Neera Sharma, Smt. Neena Saxena, Shri Ram Kishan Bhatia, etc. have been promoted to the grade Rs.1600-2660 illegally and arbitrarily (Annexure-A-1).

2. The applicant was originally appointed in the Railways as Signaller in the grade of Rs.950-1200 (RS) in Moradabad Division on 27.10.1969. Later he was promoted as Senior Signaller grade Rs.1200-2040 (RS) in which capacity he worked till 22.5.1988. Due to shrinkage of the Signallers cadre, the applicant being a graduate in Hindi and English and Post-graduate in Urdu, he was posted as Hindi Assistant Grade-II in the grade

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of Rs.1400-2300 in Hindi Section of Divisional Railway Manager's office, Moradabad with effect from 23.5.1988. The applicant has averred that till 1990, the respondents did not hold any departmental selection to fill up the post of Hindi Assistant Grade-II on regular basis. However, his juniors Shri V.B.Lal Saxena and Shri Hari Om were promoted as Head Signaller Grade Rs.1400-2300 vide DRM's order dated 16.5.1990 ignoring the claim of the applicant. Smt.Asha Saxena was posted as Head Translator grade Rs.1600-2660 in Lucknow Division without holding any selection. Similarly, Smt.Chitra Johri was also posted as Superintendent Hindi Grade Rs.2000-3200 in Allahabad Division without holding selection. The applicant made a representation on 11.10.1994 citing the cases of Smt.Asha Saxena and Smt. Chitra Johri seeking promotion for the post of Hindi Assistant Grade-I Rs.1600-2660. According to the applicant the DRM Moradabad considered applicant's case and ordered his regularisation by redeploying the applicant as Hindi Assistant Grade-II (Rs.1400-2300) with effect from 16.5.1990 since the date his juniors Signallers were promoted in the grade Rs.1400-2300 in the cadre of Signallers vide order dated 28.12.1994 (Annexure-A-3). The General Manager agreed as per Annexure-A-5 dated 4.1.1996 to accord seniority from 16.5.1990 to the applicant as Hindi Assistant Grade Rs.1400-2300. Respondent no.2 vide Annexure-A-6 dated 1.3.1996 also agreed to redeployment of the applicant as Hindi Assistant Grade Rs.1400-2300 from 16.5.1990 as his

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junior was promoted from that date. Respondent 2 as per Annexure-A-7 dated 25.6.1996 fixed ~~the~~^h applicant's seniority in the grade of Hindi Assistant Grade-II amending the seniority list between serial nos. 14 and 15 i.e. between the names of Shri Jagdish Chandra and Km. Kulwinder Kaur. Vide applications dated 27.1.1997, 4.3.1997 and 22.4.1997 the applicant ^{-resen-}repeated that his promotion order be issued along with Shri Jagdish Chander and Smt. Kulvinder Kaur and other juniors as Hindi Assistant Grade-I Rs.1600-2660. However, the respondents ignoring the name of the applicant issued promotion orders of the above mentioned persons and juniors to the applicant vide impugned order dated 20.12.1996 promoting them to the higher grade of Hindi Assistant Grade-I. The applicant has assailed the action of the respondents in promoting his juniors to the higher grade as illegal, arbitrary and unconstitutional. He has claimed his right to be promoted to the higher grade of Rs.1600-2660 at par with his juniors. He has sought direction to the respondents to promote him as Hindi Assistant Grade-I Rs.1600-2660 at par with his juniors with effect from 20.12.1996 with all consequential benefits.

3. Whereas respondents 1 and 2 have filed common counter, respondent 3 has filed a separate counter. Respondent 3 has admitted that the cadre of Signaller was shrinking and some of the applicant's juniors were redeployed, therefore, the applicant continued to work as Hindi Assistant Grade Rs.1400-2300, on which post he has been appointed on adhoc basis. Since his juniors



had been promoted as Head Signaller Grade Rs.1400-2300, the applicant was also considered for redeployment as Hindi Assistant Grade Rs.1400-2300 from the date of promotion of his juniors i.e. 16.5.1990 subject to the passing of requisite test applicable in case of posting as Hindi Assistant. According to this respondent, Moradabad Division was asked to hold the test of the applicant as he could be granted consequential benefits in the cadre of Hindi Assistant only subject to his passing of test for the category of Hindi Assistant grade Rs. 1400-2300. To the allegation that the applicant's junior had been posted as Hindi Translator grade Rs.1600-2660/ Superintendent Hindi grade Rs.2000-3200, without holding any selection, respondent 3 has stated that "this has no relevancy with the subject matter". This respondent has admitted that the applicant can be absorbed in the cadre of Hindi Assistant with effect from 16.5.1990 after passing the test for the post of Hindi Assistant grade Rs.1400-2300.

4. Respondents 1 & 2 have denied that persons junior to the applicant and named by him have been promoted to the grade of Rs.1600-2660 illegally or arbitrarily. They have admitted that the applicant has still not been regularised as Hindi Assistant Grade Rs.1400-2300. They have stated that the process of selection was dropped by respondent 3 as he was not competent^{nr} to hold the selection. They have expressed that they have no objection to the absorption of the applicant in the cadre of Hindi Assistant provided that the applicant passes the requisite test for the post.

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5. We have heard the learned counsel of both sides and perused the material on record.

6. The learned counsel of the applicant has pleaded that whereas the respondents have accepted the claim of the applicant regarding his seniority of placement between serial nos.14 and 15 i.e. between the name Shri Jagdish Chander and Smt. Kulvinder Kaur ~~_____~~ his claim for promotion ~~is~~ has been denied and his juniors have been accorded the superior grade Rs.1600-2660 onwards. He has further averred that his juniors such as Smt.Chitra Johri and Smt.Asha Saxena have been posted as Superintendent Hindi / Head Translator in the scale of Rs.2000-3200/ Rs. 1600-2660 respectively without holding any selection. The applicant has also claimed similar treatment without being subjected to any selection. The learned counsel for the respondents has contended that the applicant cannot be regularised and accorded any promotional benefits without passing the suitability test.

7. We find from the counter of respondents particularly from their reply to paragraph 4.8 of the OA that they have not denied the contention of the applicant regarding promotion of Smt.Chitra Johri and Smt. Asha Saxena to the superior scales without holding any selection/test. The respondents have stated that "this has no relevancy with the subject matter". For want of a straight forward reply from the respondents to the question whether these persons had been promoted without holding any selection, we are not able to form our opinion in this regard whether the selection test

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was actually held or not. Although the respondents had agreed that it is a prerequisite condition for promotion to Hindi Assistant Grade-I to pass suitability test, as laid down under the rules, to be held by a competent authority, at the same time, we are unable to hold on the basis of the reply submitted by the respondents whether such a test was held while promoting the persons named and junior to the applicant. We are also of the view that if at all the persons junior to the applicant have been accorded a benefit without holding a prescribed test i.e. wrongfully, the applicant cannot be given the same benefit on the ground of discrimination. However, we are extremely unhappy that the respondents have not replied to the important question raised by the applicant in regard to the promotion of his juniors and we would like to direct respondents 1 & 2 to look into the matter specifically whether the prescribed suitability test was held ^{or not} while promoting the juniors to the applicant to the higher grades as required under the rules and take suitable action in accordance with the rules in the matter.

8. We find that as per Annexure-A-~~III~~³⁶ dated 28.12.1994 the applicant had been redeployed with effect from 16.5.1990 as Hindi Assistant in the grade of Rs.1400-2300 ⁱⁿ ~~for~~ a regular arrangement and as per Annexure-A-7 dated 25.6.1996, which is issued by respondent no.2, the applicant's name has been included in the seniority list ~~in~~ between serial no.14 and 15 i.e. ~~in~~ between the names of Shri Jagdish Chander and Smt. Kulvinder Kaur, ~~As~~ he had been redeployed as Hindi

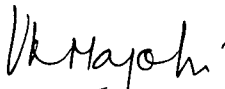
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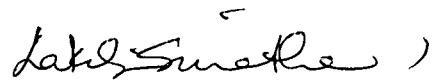
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Assistant Grade-II from 16.5.1990, resultantly the applicant is entitled to derive the benefit from the seniority allocated to him by the respondents themselves. However, he cannot be given any extra-ordinary treatment in ~~giving~~^{to} promotions which is not in accordance with the rules and also such benefits cannot be given to other persons as well de hors the rules. The applicant is entitled for promotion as Hindi Assistant Grade-I in the scale of Rs.1600-2660 subject to his clearing the suitability test as prescribed under the rules and relevant instructions.

9. In the result the respondents are directed to consider the claim of the applicant for promotion to the post of Hindi Assistant Grade-I in the scale of Rs.1600-2660 at par with his juniors with effect from 20.12.1996 with all consequential benefits provided that he is found suitable in the test to be held by the competent authority as per rules. The respondents are directed to take suitable action as per the observations ~~made~~^{made} above within a period of three months from the date of receipt of a copy of this order. The OA is disposed of. No order as to costs.


(V.K. Majotra)
Member (A)


(Mrs. Lakshmi Swaminathan)
Member (J)

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