

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No. 2066/97

New Delhi this the 4th day of May, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member (J)
Hon'ble Shri V.K.Majotra, Member (A)

(8)

Shri B.S. Tyagi,
S/O Sh.N.C. Tyagi,
R/O Banglow No.L-6,
Rly Colony, Harpur (UP)

.. Applicant

(By Advocate Shri Yogesh Sharma)

Versus

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

2. The General Manager (P)
Northern Railway, Baroda House,
New Delhi.

3. The Divisional Rly. Manager,
Northern Railway, Moradabad (UP)

.. Respondents

(By Advocate Shri R.P. Aggarwal)

O R D E R (ORAL)

(Hon'ble Shri V.K.Majotra, Member (A)

The applicant has assailed order dated 11.4.97 (Ann.A.1) passed by the General Manager (P), Northern Railway, Baroda House, New Delhi, Respondent 2 by which the applicant's claim for granting the benefit of restructuring has been rejected alleging that the impugned order is illegal, unjust, arbitrary and against the Railway Board circulars. The applicant is working as IOW in Grade Rs.1600-2660 (RPS) in Northern Railway, Moradabad under Respondent 3. A Scheme of restructuring was introduced in the year, 1985 under which the posts of Inspectors were distributed in three categories and IOW Grade-I was fixed in selected in the pay scale of Rs.700-900. The applicant has alleged that the employees junior to him were upgraded in the pay scale of Rs.700-900 vide R-2 Memo. dated 2.9.85 (Annexure R-1) w.e.f. 1.1.1984 but the benefit of this restructuring was denied to the applicant. He made representation to all the concerned authorities which remained unanswered. Thereupon the applicant had filed earlier OA 1691/96 before this Bench which was decided on 2.12.1996 directing the respondents to consider applicant's case and pass a reasoned and

speaking order. The applicant made representation dated 17.12.96 (Ann.A.2) in pursuance of the Tribunal's aforesaid order. Respondent 2 vide order dated 11.4.97(Ann.A.1) rejected the representation of the applicant on the basis that the Selection Committee did not assess him fit for empanelment for promotion on the basis of his ACRs for three years. According to the applicant the adverse ACR for the period ending 31.3.84 was prepared vide respondents order dated 26.8.95 and communicated to ^{by} him on 9.11.1985 and the promotion ~~was done to the juniors~~ on 9/19-8-85. Therefore, at the time of promotion no adverse remarks ~~had~~ been communicated to the applicant. The applicant has averred that as per the Railway Board Instructions dated 10.3.89, in case adverse remarks are not communicated to the Railway servant till the time he becomes due for promotion either against a selection post or against a non selection post, the adverse confidential report will not come in the way of his promotion and such employees may be considered for promotion. The applicant has contended that whereas un-communicated adverse remarks have been taken into consideration by the respondents and denied promotion to the applicant, his juniors have overtaken him in promotion. The applicant has sought quashing of impugned order dated 11.4.97(Ann.A.1) and declaration to the effect that the applicant is entitled for his promotion from the date of promotion of his juniors with all consequential benefits.

2. The respondents in their counter have stated that the applicant ^{by} virtue of his seniority in the cadre of IOW scale Rs.1600-2660 was in the field of promotion to the post of IOW Grade I scale Rs.2000-3200. His case for promotion in connection with restructuring of his cadre w.e.f. 1.1.1984 was processed and a panel of suitable candidates considered fit for promotion to the post of IOW grade Rs.2000-3200 was formed and issued by the respondents' office vide letter dated 2.9.85(Annexure R.1). The respondents have admitted that the applicant's junior IOW Sh.K.K.L.Srivastava was empanelled against item No.9 in Annexure R.1. On applicant's representation, Headquarters Office, vide letter dated 17.11.93(Ann.R.3) advised that the case of the applicant was duly examined but he was considered unfit for promotion w.e.f. 1.1.1984 by a constituted Selection Board due to his adverse ACR. The respondents have stated

that the adverse remarks of applicant's ACR have already been conveyed to him on 26.8.1985.

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3. Applicant has also filed rejoinder, as well.

4. We have heard the learned counsel of both sides and perused the records available on file.

5. At the outset, learned counsel for the respondents has contended that the OA is time barred. Learned counsel of the applicant has stated that the applicant's representation in pursuance of the order of the Tribunal dated 2.12.1996 in OA 1691/96 decided by the respondents on 11.4.97, ^{was by} ~~2.5.97~~ on the point of limitation, therefore, has to be counted w.e.f. 11.4.97 when rejection of applicant's representation was communicated to him. As the OA had been filed on 3.9.97, we are of the view that the OA is not hit by limitation and the same is rejected.

6. Learned counsel of the applicant has drawn our attention to the respondents' order dated 26.8.85 regarding communication of adverse remarks to him contained in the ACRs for the period ending 31.3.1984. The applicant has remarked that he had received the same on 9.11.85 whereas the panel in connection with restructuring of the cadre w.e.f. 1.1.1984 was prepared on 2.9.85 (Ann.R.1). The adverse remarks had been communicated to the applicant on 9.11.1985 i.e. when the panel had already been constituted. Learned counsel of the applicant maintains that as per the instructions of the Railway authority adverse remarks in the ACR which remain uncommunicated to the concerned official cannot be taken into consideration in the matter of promotion. Learned counsel of the respondents took the plea that the adverse remarks had been communicated on 26.8.85 and not on 9.11.85 as contended by the learned counsel of the applicant. A specific query was made to the learned counsel of the respondents by the Court to show any proof in acknowledgement of the adverse remarks communicated ^{on} dated 26.8.85 for the period ending 31.3.84 to the applicant. Whereas the learned counsel of the applicant has relied upon on the acknowledgement dated 9.11.85 (Ann.A.4) regarding communication of the adverse remarks for the year ending 31.3.1984 on 9.11.85.

Learned counsel of the respondents was unable to prove or rebut ^{1b} his contention that the said adverse remarks have been communicated to the applicant on 26.8.85 itself. Be that as it may be from Annexure R.1 dated 2.9.85 declaring the panel for promotion to IOW Grade-I communicates that the process of selection for the same had been initiated by letter of even number dated 1.4.85 i.e. ^{1b} much ~~panel~~ before the communication of the adverse remarks to the applicant for the period ending 31.3.84. Learned counsel of the applicant also placed reliance on the decision dated 8.10.97 in CWP No. 639/87 of Punjab and Haryana High Court in the matter of Ram Chand Vs. The State of Punjab and Another wherein it was held that unconvoyed entry in the ACRs cannot be taken into consideration while considering the case for promotion. He also drew support from the observations of the Tribunal in the matter of G. Rajendran Vs. UOI & Ors (ATR 1991(2) CAT 105.

7. From the above, we find that the adverse entries made in the ACRs for the period ending 31.3.84 were communicated to the applicant on 9.11.85 whereas the process of empanelment for promotion to Grade-I IOW had already been initiated on 1.4.85 and the panel was published on 2.9.85 (Ann.R.1), whereby the applicant's name was not included in the panel and the names of the juniors were placed in the panel. We are, therefore, of the view that the respondents ^{sh} could not have considered un-communicated adverse remarks of the applicant while considering his case for promotion to IOW Grade-I, which they have done in violations of the instructions and the settled law.

8. For the reasons given above, we ~~quash~~ and set aside the respondents order dated 11.4.97 and direct the respondents to re-consider the case of the applicant for promotion to IOW Grade I w.e.f. the date his juniors were so promoted taking ^{without} ^{ACR for the 1b A} cognizance of the adverse entry made in the year ending 31.3.84.

In case the applicant is empanelled for promotion of IOW Grade I ignoring his adverse ACR for the year ending 31.3.84 he will be entitled to all consequential benefits in accordance with law. (2)

The above directions shall be complied with by the respondents within three months from the date of receipt of a copy of this order. No order as to costs.

V.K.Majotra
(V.K.Majotra)
Member (A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

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