

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.2939/97

New Delhi, this the 2nd day of June, 2000.

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. H.O. GUPTA, MEMBER (A)

Sh. L.S.Verma, Retd. Senior Civil
Engineer (Bridges), Northern Rly.
Headquarters' Office, Baroda House, New
Delhi.

Present Address:

C/O Sh. Sanjay Verma, 584, Sector 29,
NOIDA, Distt. Gautam Budh Nagar.

.....Applicant.

(By Advocate: Sh. B.S.Maine)

VERSUS

Union of India : Through

1. The Secretary, Ministry of Railways
(Railway Board) Rail Bhavan,
Raisina Road, New Delhi.

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

...Respondents.

(By Advocate: Sh. R.L.Dhawan)

O R D E R

Hon'ble Mr. H.O.Gupta, M (A):

In this case, the applicant is praying for directions to the respondents to give him the benefit of proforma promotion in the Senior Scale from the year 1990 when his junior Sh. S.L.Malhotra was promoted with consequential retiral benefits along with interest and as also the costs of the application, on the various grounds stated in the application.

2.0 The case of the applicant is that :-

2.1 He joined as Assistant Inspector of Works on 15.2.97 and thereafter he was promoted as Inspector of Works (IOW) in September, 1963. He was involved in a criminal case and based on the order of the Trial Court, he was dismissed from service in the month of February, 1977. His appeal was allowed by the Jammu & Kashmir High Court on 4.1.85 and the applicant was reinstated on

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3.12.85 (Annexure A-2). On reinstatement, he was given all consequential benefits and period of absence was treated as spent on duty for all purposes. He was also given promotion to the next higher grade of Inspector of Works from the date his juniors were promoted. For his further promotion in Group 'B' to the post of Assistant Engineer, the matter was referred to the Railway Board and based on the approval of the Railway Board, as per the orders dated 4.5.93 (Annexure A-3), a meeting was held for the panel of 1989 in which the name of the applicant was interpolated after the name of Sh. O.P. Gaur and above the name of Sh. R.C.Sharma, i.e. between Sl.Nos. 45 to 46 as would be seen from Annexure A-4. The applicant was also given seniority based on his panel position in Group 'B'.

2.2 The applicant has further stated that Sh. R.C.Sharma and Sh. D.L.kataria etc. were promoted as Senior Scale Officers in the year 1990-91. They were junior to the applicant in Group 'B' as would be seen from Annexure A-5 but the applicant has not been accorded Senior Scale.

2.3 Based on representation of the applicant, he was promoted in the Senior Scale on adhoc basis vide respondents' letter dated 28.5.93 (Annexure A-5). He was posted as Senior Engineer in Sr. Scale vide Notice dated 31.5.1993 (Annexure A-6).

2.4 He further sent his representation dated 24.11.93 (Annexure A-7) and pointed out to the respondents that his junior Sh. S.L.Malhotra was promoted in Senior Scale

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and, therefore, he should have been given promotion, fixation of pay etc. from the date of which is junior Sh. Malhotra was promoted. Respondent No.2 rejected the claim of the applicant on the grounds that his promotion from Group 'B' to Senior Scale was made on adhoc basis.

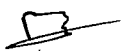
3.0 In reply, the respondents have stated that:

The name of the applicant was interpolated in the panel of 1989. Sh. Malhotra and the applicant were promoted in the Senior Scale purely on adhoc basis and the claim for fixation of pay of the applicant was not found tenable and the same was accordingly rejected after having examined the same in the light of the instructions as contained in PS No.10181 and 10232. The applicant was informed accordingly.

4.0 Heard both the learned counsel for the parties and perused the records.

4.1 During the course of the arguments, learned counsel for the applicant submitted that his prayer is not for stepping up of the pay but for proforma promotion to the Senior Scale from the date his juniors were promoted. He further submitted that the respondents have wrongly rejected his representation on the ground that the applicant is seeking stepping up of his pay.

4.2 Learned counsel for the applicant argued that the adhoc promotions made by the Railway Board, is not in fact the adhoc promotions as are generally understood but the said adhoc promotions are de-facto regular promotions as may be seen from the Railway Boards' letter No.E(GP) 85/1/6, dated 1.3.90 & E(G) 89/1/8, dated 22/23.8.90, which are reproduced below:-



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"Railway Board's letter No.E(GP)85/1/6, dated 1.3.90.

Sub: Procedure for promotion of Group 'B' officers to Senior Scale on adhoc basis

The Ministry of Railways have reviewed the policy laying down the existing norms for assessing suitability of Group 'B' officers for adhoc appointment in Senior Scale and have decided that in supersession to the norms contained in their letter No.E(GP)85/1/6, dated 21.7.87 and E(G)85/1/6, dated 11.2.88, adhoc appointments of Group 'B' officers to Senior Scale shall be made on the basis of assessment of Confidential Reports for the proceedings 5 years period. The Departmental Promotion Committee should categorise the officers as 'Fit' or 'Not Yet Fit' for adhoc promotion on the basis of Overall assessment of the Reports and not merely on the basis of grading/fitness assigned therein. Bench mark for such fitness should not be less than 'Good'."

Railway Board's letter No.E(GP)89/1/8, dated 22/23.8.90.

Sub: Promotion of Group 'A' and Group 'B' Officers to Senior Scale on adhoc basis.

Ref:- Rly.Board's No.E(GP)89/1/98 dt. 17.4.90.

In partial modification of this office letter of even number dated 17.4.90 the Board have decided that para 3 thereof may be amended to read as under:-

While empanelling Group 'B' Officers for adhoc promotion to Senior Scale, it shall henceforth be ensured that the criteria followed are such that there may be no reasonable likelihood of such officers not getting empanelled for regular promotion to Group 'A' at a later date, by the DPC constituted by the UPSC. Further, when promoting Group 'B' Officers will 6 years service to Senior Scale, on adhoc basis, it shall be ensured that adequate number of vacancies in Senior Scale would be available for promotion of Group 'A'/Junior Scale Officers to Senior Scale soon after they complete 4 years service so that there may be no reasonable chance of Group 'B' Officers having to be reverted, once they are promoted to Senior Scale even on adhoc basis."

4.3 He further submitted that such promotions are made after working out the exact vacancy and by duly

constituted DPC and there is no possibility that such persons are reverted whenever the DPC, constituted by UPSC is held at a later date. Therefore, such promotions on adhoc basis are in fact regular promotions.

4.4 Counsel for the respondents submitted that the case of the applicant is primarily relates to stepping up and based on instructions of the Railway Board, such stepping up cannot be given in case of adhoc appointments. In support of his submissions, he relies on a judgement in Union of India & Ors. Vs. Sushil Kumar & Ors. JT 1998 (3) SC 580.

4.5 Having heard the learned counsel for both the parties and also after perusing the records and the prayer made in this OA, we are of the opinion that the applicant is not seeking stepping up of pay but seeking proforma promotion in the Senior Scale from the date his junior was promoted. Therefore, the judgement of the Hon'ble Apex Court is not applicable in this case because it relates to stepping up of pay in case of adhoc appointments.

4.6 It is not denied by the parties that ~~the junior~~ Sh. S.L.Malhotra junior to the applicant was promoted in Senior Scale on 21.1.91 on adhoc basis. It is an established rule that a junior person cannot be promoted even on adhoc basis, unless the senior is found unsuitable by the Selection Committee as per the rules.

5.0 In view of the aforesaid discussions, this OA is allowed with following the directions:-


5.1 Respondents shall convene a review DPC for considering the promotion of the applicant to the Senior

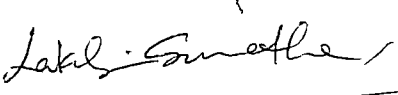
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Scale from the date Sh. S.L.Malhotra, was promoted and if found fit, he shall also be promoted to Senior Scale on adhoc basis from the said date . This exercise shall be completed within a period of four months from the receipt of a copy of this order. However, the applicant shall not be entitled for arrears of pay & allowances.

5.2 If he is found fit ²for, promoted^{ed}, his pension shall also be refixed accordingly and he shall be paid increased retiral benefits as per rules, within a period of six months from the date of receipt of this order. In case of delay in payment of arrears, he shall also be entitled for interest @ 11% p.a. if the arrears are paid beyond the prescribed period.

5.3 No order as to costs.


(SH. H.O.GUPTA)
MEMBER (A)


(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)

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