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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 745/97

New Delhi, this the 12th day of April, 1999

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

N.K. Tyagi
S/o Shri Prem Chand Tyagi
Aged about 31 years,
Resident of C-292, Lohia Nagar,
Ghaziabad.
and employed as
Data Entry Operator,
Electronic Data Processing Centre,
Northern Railway, Baroda House,
New Delhi-110001. **Applicant**
(By Advocate: Sh. B.B. Raval)

Vs.

1. Union of India
through the General Manager,
Northern Railway,
Baroda House,
New Delhi-110001.
2. The Chief Personnel Officer,
Northern Railway,
Baroda House,
New Delhi-110001.
(By Advocate: Sh. R.L. Dhawan)

O R D E R

delivered by Hon'ble Shri T.N. Bhat, Member (J)

The applicant who is working as Data Entry Operator at the Electronic Data Processing Centre, Northern Railway, New Delhi is aggrieved by his non-promotion to the post of Welfare Inspector grade Rs.1400-2300 (un-revised) and non-disposal of his representation claiming that promotion.

2. Shorn of unnecessary details the contention of the applicant appears to be that although persons working in the grades of Rs.950-1500, Rs.1200-2040 and Rs.1350-2200 are eligible for being considered for

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promotion those who are working in the higher grade of Rs.1350-2200 would rank enblock senior to those working in the lower grades of Rs.950-1500 and Rs.1200-2040. The applicant states that since he is working in the grade of Rs.1350-2200 he would automatically rank higher in the seniority and would thus become entitled to get promotion in preference to those who might be working in the lower grades.

3. It is common ground of the parties that the applicant has not been promoted nor does his name figure in the list of successful candidates. The applicant's contention is that after giving due weightage to his seniority on account of the fact that he was working in the highest grade out of the four grades he would be entitled to promotion to the post of Welfare Inspector.

4. The respondents have contested the applicant's claim mainly on the ground that the applicant was considered for promotion and he also appeared in the examination held for that purpose but that he did not pass the examination and was, therefore, not considered fit to be empanelled. On the question of seniority also the respondents have questioned the correctness of the applicant's assertion that he would rank senior to those who were working in the lower grades than him.

5. We have heard at length the counsel for the parties and have perused the material on record including the departmental records furnished by the learned counsel for the respondents.

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6. During the course of his arguments the learned counsel for the applicant drew our attention towards the order dated 3.7.98 in which we had noticed that the counter filed by the respondents did not contain replies to many averments made in the OA. We had accordingly directed the learned counsel for the respondents to file an affidavit containing all the details necessary for the disposal of the OA. The learned counsel for the applicant points out that instead of filing a better affidavit as directed by the Tribunal the respondents have filed an additional reply. According to Mr. Raval this was in contravention of the specific directions given by the Tribunal that a better affidavit should be filed. In reply, the learned counsel for the respondents states that since the original counter was on verification the respondents considered it sufficient to file additional pleadings. At the same time he stated that the respondents would be prepared to file an affidavit in support of the aforesaid additional reply.

7. Having considered the rival contentions we are of the view that there has been substantial compliance with our direction. Since the original counter reply did not contain replies to many averments made by the applicant in the OA we had directed the respondents to file better pleadings, though we had used the word 'affidavit'. The respondents filed an additional reply duly verified by an officer. In these circumstances we do not consider it to be an act of non-compliance with our directions.

A handwritten signature in black ink, appearing to read "Lalwani".

8. As regards the merits of the case we find from the departmental records furnished by the learned counsel for the respondents that the applicant had also appeared in the selection held for the post of Welfare Inspector grade Rs.1400-2300 which was held on 30.8.96. In the selection the applicant could not succeed though he appeared and his case was also considered alongwith others.

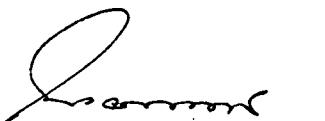
9. The notice whereby applications have been called from eligible candidates to sit in the examination to be held for selection for the post of Welfare Inspector it was specifically stated that only those who would qualify in the selection would be empanelled and that too according to the merit secured in the selection. The selection consisted of written test followed by viva voce from amongst those who would qualify in the written test. The applicant appeared in the selection on the aforesaid conditions and he cannot now be heard to say that he was entitled to be promoted solely on the basis that he was working in the highest amongst the four grades which had been made eligible.

10. It is now well-settled that the Court/Tribunal is not supposed to act as some sort of an appellate authority over the DPC. The Apex Court has laid down the law on subject in D.A.Solunke vs. Dr. B.S.Mahajan, reported in AIR 1990 SC 434 and Smt. Nutan Are vind vs. Union of India and another, reported in JT 1996 (1) SC 699. In the instant case, as already mentioned, the applicant did appear in the examination held for selection for promotion to the post of Welfare

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Inspector and he could not make the grade. It is not for us to examine the correctness of the result of the written examination.

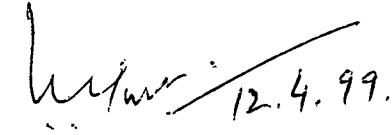
11. For the foregoing reasons we find no merit in this OA, which is accordingly dismissed, leaving the parties to bear their own costs.



(S.P. BISWAS)

Member (A)

sd:



(T.N. BHAT)

Member (J)

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