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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 186/1994

New Delhi this the 5th Day of August, 1994

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri B.K. Singh, Member (A)

Shri Kawal Krishan Attri,
S/o Shri Shankar Dass,
Dy. Shop Superintendent,
Northern Railway Signal Shop,
Ghaziabad

R/o 340-B Railway Road,
Opp. Railway Hospital,
Bhaziabad.

... Applicant

(By Advocate : Shri M.L. Sharma)

Vs.

1. Union of India through
General Manager,
Northern Railway,
Headquarters Office,
Baroda House,
New Delhi.
2. Chief Personnel Officer,
Northern Railway,
Headquarters Office,
Baroda House,
New Delhi.
3. Chief Works Manager,
Northern Railway,
Signal Shop,
Ghaziabad.
4. Shri Amrik Singh,
Deputy Shop Superintendent,
(under Order of Promotion as S.S)
through Chief Works Manager,
N. Rly., Signal Shop,
Ghaziabad.

... Respondents

(By Advocate: R. Dooraiswamy with Shri Sant
Singh, for Respondent No. 4)

O R D E R

Hon'ble Shri J.P. Sharma, Member (J)

The applicant was initially engaged as semi-skilled category in the Northern Railway and was promoted to Senior Chargeman in the grade of Rs. 1600-2660 with effect from 1.1.1987 on seniority basis. The next higher

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post is of Deputy Shop Superintendent in the grade of Rs. 2000-3200 which is a selection post and the applicant qualified in the selection held on 29.12.1988 and viva voce was held on 27.1.1989. A panel was issued on 16.2.1989. The applicant was promoted on 10.3.1989 and his number in the position of the seniority is at Serial No. 6 of Deputy Shop Superintendent which was issued on 8.9.1989. The next higher post is of Shop Superintendent and is a safety category and in the case of safety category the condition of two years minimum service is to be adhered strictly not only in Group 'C' category but also in Group 'D' category and this condition is applicable to every category of post reserved or unreserved. The grievance of the applicant is that one Shri Amrik Singh failed in the selection for the post of Deputy Shop Superintendent though he was working on ad hoc basis. After he failed in the selection he was reverted from the ad hoc officiation to the grade of Rs. 1600-2660 by the letter dated 10.3.1989 (Annexure A-3). The said Shri Amrik Singh did not appear in the selection for the post of Deputy Shop Superintendent held in Feb. 1991, May 1992 and January 1993. Instead of reverting Shri Amrik Singh by the order dated 10.3.1989 he in collusion with the staff continued to work on the post of Deputy Shop Superintendent contrary to the provisions of Rules 215 and 216 of IREM Vol. I. This will not give any benefit to the applicant for the promotional post of Shop Superintendent where two years service in the lower grade of Deputy Superintendent is required. He was promoted to the post of Deputy

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Shop Superintendent on 24.9.1993 giving him promotion with effect from 1.3.1993 and he has not fulfilled the conditions of two years minimum service on the date of issue of promotion to the next higher post of Shop Superintendent by the order dated 19.1.1994. The applicant, therefore, has been ignored. The applicant made representations in August, November, December 1993 but he was not given any reply, hence the applicant filed the present application in January 1994 praying for the grant of the reliefs that the impugned order of January 1994 be quashed with the direction to the respondents to consider the promotion of the applicant with effect from 21.8.1993 to the post of Shop Superintendent.

2. A notice was issued to the respondents and Respondent No. 4 Shri Amrik Singh and official respondents filed their replies to the original application. It is stated that Shri Amrik Singh was Senior Chargeman in Signal Workshop, Ghaziabad was allowed to officiate as Deputy Shop Superintendent on 4.11.1988 since Shri Amrik Singh did not qualify CWM/Ghaziabad was advised to revert Shri Amrik Singh as he was not placed on the panel. It is further stated that Respondent No. 4 Shri Amrik Singh was promoted as Shop Superintendent in the grade of Rs. 2375-3500 against the reserved quota of 15%. For promotion from Railways Deputy Shop Superintendent to Shop Superintendent, two years service is required including ad hoc promotion followed by regular promotion if otherwise suitable. Shri Amrik Singh had completed

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more than 3 years as there was no irregularity in the promotion. The respondent No. 4 was not reverted in spite of having not been empanelled in the selection and his services were utilised in another vacancy. He was, however, appointed on regular basis with effect from 1.3.1993 under the restructuring scheme. Since the vacancy of Shop Superintendent in the grade of Rs. 2375-3500 is reserved for SC community, the applicant belong to General Category could not be considered and Shri Amrik Singh was promoted and appointed. The official respondents have filed another affidavit stating that point No. 1 was reserved for SC as there was no SC candidate available in 1979, 1983, and in 1984 and was filled up on 20.10.1984 Point No. 4 was reserved for SC candidates and was carried forward as no SC candidate was available. Point No. 5, 6 and 7 were unreserved and general candidates were promoted against these points. Point No. 8 was reserved for SC candidate during the year 1989-90 and general candidate was promoted against Point No. 8 by de-reservation as SC candidate was not available and Point No. 8 was carried forward. Point No. 9, 10 and 11 were unreserved as no SC candidate was available to be promoted as Shop Superintendent. Point No. 10 was unreserved. Respondent No. 4 was promoted against Point No. 8. There are five posts in cadre of Shop Superintendent in the grade of Rs. 2375-3500 and only one post is reserved for SC at this time against which the respondents No. 4 has been promoted. The SC candidate which has been shown against Point No. 13 with roaster is a mistake against which no candidate has been promoted so far. Thus, the

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applicant is not entitled for promotion on the reserved point.

3. The respondent No. 4 also stated the same facts in his reply stating that Respondent No. 4 is not junior to the applicant and has been continuously officiating in the scale of Rs. 2000-3200 with effect from 2.11.1988 and he was regularly appointed from 1.3.1993. The vacancy of Shop Superintendent is against the reserved point of SC quota, the applicant has no case.

4. We heard the learned counsel for the parties at length and perused the record. The undisputed facts are that Shri Amrik Singh, Respondent No.4 has been working in the grade of Rs. 1600-2660 was given an officiating appointment on ad hoc basis for three months by the order dated 4.11.1988 (Annexure A-5). He was a regular chargeman/Fdy. He was put in the grade of Rs. 2000-3200 only for 3 months. A selection was notified by the notice dated 30.11.1988 for the post of Assistant Shop Superintendent in the pay scale of Rs. 2000-3200. The said Shri Amrik Singh as well as to that selection of Shri Amrik Singh failed in that selection while the applicant passed and the panel was issued on 16.2.1989 (Annexure A-2). The name of the applicant is at Serial No. 1. Consequent to this the applicant was appointed in March 1989 to the post of Assistant Shop Superintendent (Annexure A-3). By the same notice Shri Amrik Singh, Assistant Shop Superintendent was reverted as Chargeman in the grade of Rs. 1600-2650 and in his place duly empanelled candidate Shri Avinash Kumar Saxena was appointed.

5. The grievance of the applicant was ~~been~~ argued by the learned counsel is that the post of Shop Superintendent is a safety category and two

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years minimum service in the lower grade is the essential eligibility for promotion to this post irrespective of the category SC or non SC. Since Shri Amrik Singh was ordered to be reverted by the aforesaid order of 10.3.1989 and was only promoted on ad hoc basis for a period of three months by the order dated 4.11.1988, he has not completed two years of service till March 1989. In spite of this fact the applicant appears not have been reverted. By the order dated 24.9.1993, Respondent No. 4 Shri Amrik Singh was placed on the panel for the post of Deputy Shop Superintendent in the grade of Rs.2000-3200 and he has been given the benefit of this post with effect from 1.3.1993. He was given this post only on the basis of modified procedure of selection of the policy of re-structuring introduced by the Railway on 1.3.1993. When the applicant has been promoted from 1.3.1993, he cannot be eligible for promotion to the post of Shop Superintendent. The respondents, therefore, have clearly issued the order dated 19.1.1994 against the rules in giving officiating promotion to Shri Amrik Singh with effect from 21.8.1993. Here, it may be recalled that Shri Amrik Singh was placed on panel by the order dated 24.9.1993 of Deputy Shop Superintendent in the grade of Rs. 2000-3200 with effect from 1.3.1993. The relaxation can be done of two years eligibility condition of fitter grade to one year but it can only be done for the first promotion and not for two promotions simultaneously. The anomaly in the order is that after the reversion of Respondent No. 4, Shri Amrik Singh, from the grade of Rs.2000-3200

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to the post of Chargeman in the grade of Rs.1600-2660, no further order was passed for giving ad hoc or temporary posting to the post of Deputy Shop Superintendent in the grade of Rs. 2000-3200. The learned counsel for the applicant has also referred to a Memo dated 11.7.1994 from the Office of Works of Accounts Officer, Ghaziabad and an earlier order on the same subject of June 1994. These copies of the Memo shows that there was no sanction for the post of Deputy Shop Superintendent on ad hoc basis and therefore the continuance of Shri Amrik Singh on the post has been clearly contrary to the provisions of Rules 215 and 216 of IREM, Vol. I. The contention of the learned counsel for the respondents No. 4 as well as of the official respondents, cannot be accepted regarding the continuous working of the Respondent No. 4 on the post of Deputy Shop Superintendent in spite of the reversion Order of March 1989. If the Chief Works Manager, Northern Railway did not comply with the orders issued by the Headquarters then that will not be little the right of the applicant and claim for promotion in his turn to the post of Sr. Shop Superintendent. If the official respondents have paid the salary of the post of Deputy Shop Superintendent to the respondent No. 4 that will not give any benefit on the post of Deputy Shop Superintendent to Respondent No. 4. There was only one post and Avinash Kumar Saxena joined the post as he qualified in the selection and was empanelled placed at Serial No.2. The official respondents in their reply have stated that Respondent No. 4 was continued as Deputy Shop Superintendent by Chief Workshop Manager, Ghaziabad

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as his services was utilised against one more vacancy of Deputy Shop Superintendent which existed at that time. There is no documentary evidence to support this fact. This is totally after thought which becomes clear from the letter issued by the Office of the Principal of Audit, Northern Railway (Annexure A-20), when the Audit Inspection Report was submitted and CUM, Northern Railway, Signal Workshop, Ghaziabad. This letter of 21.2.1994 also directed WAO, Northern Railway to fix the responsibility of the concerned officer and also effect recovery of the excess payment made to Shri Amrik Singh to the tune of Rs. 12030/50 P till August 1993. It was only in August 1993 that the orders for promotion for the post of Deputy Shop Superintendent were issued on the policy of re-structuring with effect from 1.1.1993. Thus, the respondent No.4 was not eligible for promotion to the post of Shop Superintendent in the grade of Rs. 2375-3500.

6. The other contention of the learned counsel for the applicant is that the Respondent No. 4 has wrongly been given promotion as Shop Superintendent by the impugned order dated 19.1.1994 (Annexure A-1). The appeal preferred by the applicant against this order was rejected by the order dated 4.2.1984 stating that the vacancy of Shop Superintendent Grade Rs.2375-3500 caused due to the promotion of Shri Kuldev Raj is reserved for SC candidate and as such Shri Amrik Singh, SC has been promoted against shortfall of SC quota. The stand taken by the respondents in their affidavit is otherwise. It is stated that Point

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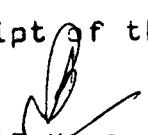
No. 8 was reserved for SC candidate in the year 1989, 1990 and general candidate was promoted at Point No. 8 by de-reservation of SC candidate as any such candidate was not available. Point No. 9, 10, and 11 were un-reserved and were filled by General candidate and during that no SC candidate was available to be promoted as Shop Superintendent. Here it may be pointed out that in Annexure A to this affidavit of the respondent dated 6.5.1994 at Point No. 9 Shri Kuldev Raj at Point No. 10 Shri S.C. Sahani, and at Point No. 11 Shri S.N. Srivastav was promoted in an unreserved category. Point No. 12 is shown unreserved and Shri Amrik Singh has been promoted on 20.1.1994. In the remarks column it is stated that SC candidate has been appointed as a short fall. In the affidavit official Respondent Deputy CPU has stated that Point No. 12 was unreserved and Respondent No. 4 was promoted against Point No. 8. Now judging this statement on oath there is no doubt why the Point No. 8 was not filled up much earlier if Shri Amrik Singh, Respondent No. 4 was at that time available. However, since he failed in this selection in 1988 and did not take any future selection in 1989, 1990 and 1991 so Point No. 8 cannot be rightly filled up from SC category. Since Point No. 12 is unreserved category and Applicant has already cleared the selection for the post of Deputy Shop Superintendent, the post of Shop Superintendent being a non selection post he gets priority in posting ^{to} that post and cannot be ignored. Shri Amrik Singh has been given regular promotion to the post of Deputy Shop Superintendent in September, 1989 with effect from the date of restructuring introduced from 1.3.1993. He cannot be appointed at Point No. 12 and has to wait for his turn and by time he can also be eligible of completing at least two years required for the promotional post of safety category.

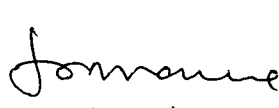
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7. It is observed that the respondents after giving out of turn promotion have entered into an exercise particularly Chief Workshop Manager in issuing orders in favour of Respondent No. 4 and that is an after thought. The Chief Workshop Manager has also written to the WAO, GZB for dropping of the part 2 of the Audit Inspection Report regarding ad hoc promotion of Shri Amrik Singh by which certain arrears of money paid in excess was directed to be recovered.

8. We therefore find that the impugned order of promotion of Shri Amrik Singh, Respondent No. 4 is illegal, irregular and is also in breach of the Railway Rules for Promotion to the post of Shop Superintendent. The impugned orders, therefore, for promotion of Respondent No. 4 dated 20.1.1994 and the order passed by the higher authority rejecting the appeal of the applicant dated 4.2.1994 are quashed and set aside. The promotion of Shri Amrik Singh to the post of Shop Superintendent is declared as illegal, and against the rules. The respondents are directed to consider the case of the applicant for promotion to the post of Shop Superintendent from 21.8.1993 with all consequential benefits. The respondents to comply with the direction within a period of two months from the receipt of the copy of the order.


(B.K. Singh)
Member(A)


(J.P. Sharma)
Member(J)