

Central Administrative Tribunal
Principal Bench

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O.A. No. 1098/94

New Delhi, this the 16th Day of May, 1995.

HON'BLE SHRI J.P. SHARMA, MEMBER (J)
HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

Abhey Ram s/o Shri Gordhan,
R/O Village Garhauri Kalan,
Near Gurgaon (Haryana)

Applicant

(By Shri Pratap Rai, Advocate)

Versus

Union of India through

The General Manager,
Northern Railway,
Baroda House,
New Delhi - 110 001

Respondents

(By none)

JUDGEMENT

(delivered by Hon'ble Sh. J.P. Sharma, Member (J))

The applicant retired as Chief Goods Clerk on 31.12.1991 while working in Delhi Lahori Gate Goods Office of Bikaner Division over Northern Railway in the Pay scale of Rs. 1400-2300/- . The next promotional post is that of Goods Supervisor which is a selection post in the Pay scale of Rs. 1600-2660/- . The grievance of the applicant is that his juniors Shri K.L. Achdeva and Shri Brijender Behari belonging to his cadre and also of the same seniority

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group have been given that promotion ignoring the claim of the applicant.

The applicant filed this application in May, 1994 and he prayed for the grant of the relief that the order dated 20/21-6-1991, ignoring the claim of the applicant, be quashed. It is also prayed that a declaration be made regarding the promotion of the applicant to the post of Goods Supervisor in the pay scale of Rs. 1600-2660/- from June, 1991 with all consequential benefits.

On notice, the respondents contested this application and it is stated that the applicant was considered but he could not be given promotion to the post of Goods Supervisor in the pay scale of Rs. 1600-2660/- as a departmental disciplinary enquiry was pending against him on the basis of S.F. 5 issued in August, 1990 and he was only exonerated vide orders dated 19/30.3.1992.

The applicant has also filed the rejoinder.

We have heard the applicant's counsel at length and perused the record. The applicant retired from the post of Chief Goods Clerk on 31.12.1991. The applicant claims promotion to the post of Goods Supervisor on the basis of his juniors having been promoted w.e.f. June, 1991. In column 3 of the

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application, the applicant has stated that the application is within limitation. In the case of the applicant, the limitation will run from June, 1991 the date when juniors to the applicant were promoted namely Sh. K.L. Sachdeva and Shri Brijender Behari, as alleged by the applicant.

The applicant made a representation on 12.7.1991 to the Senior D.P.O., Northern Railway, Bikaner stating that by virtue of seniority, the name of the applicant is at the

top for formation in grade 1600-2660/- and his name is missing from the formation list issued on 20/21-6-1991. The applicant made another representation on 21st December, 1991 i.e.

10 days before his retirement. In that case, he should have filed this application one year after this order or 12 years awaiting the result of the representation. As said above, the application has been filed in May, 1994. Therefore, the present application is hit by section 21 of the A.T. Act, 1985 and the applicant has wrongly mentioned that the application is within time. There is no request to condone the delay in filing this application. The respondents have taken the point of limitation in their counter in para 3. In reply to this para in the rejoinder, it is stated that the applicant served a notice on 20th September, 1993 on the respondents who

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kept silence after waiting for about 8 months filed the present application on 13-4-1994 (actually filed on 13/5/94 by filing No. 1011), so well within time. Thus, the statement made in the rejoinder is also incorrect. The limitation does not start from a legal notice as stated in the rejoinder. The limitation when once started to run it will not stop running by any act of the applicant either by way of representation or a legal notice. The applicant has to come within one year from the order of which he is aggrieved and a statutory representation is provided a further period of awaiting of the result of the representation is allowed. The applicant, therefore, has to file the application within 1½ years of time from the date of impugned order. The impugned order in this case was issued in June, 81 in which the claim of applicant was ignored. The applicant has to come, in any case, by June, 1993. The application is, therefore, barred by time.

However, the case of the applicant has also been considered on merits. The applicant stood retired on 31.12.1991. Only ad-hoc promotion has been given to the aforesaid juniors i.e. Sh.K.L Sachdeva and Shri Brijender Behari in the exigency of the service by respondents and no regular selection was held up to the time, the applicant superannuated. The

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promotion given to both the juniors and others was only on ad-hoc basis. The applicant has been served with a memo of chargesheet in August, 1990 for major penalty (SF 5). The promotion as stated by the applicant has been given to his juniors in June, 1991 and at that time the applicant was facing a departmental disciplinary enquiry. During the pendency of the enquiry had there been regular selection, the case of the applicant would have been considered and kept in a sealed cover as held by the Hon'ble Supreme Court of India in the case of Union of India V/s. K.V Jankiraman reported in 1991(4) SCC Page 109. The law laid down by the Hon'ble Supreme Court of India is quite elaborate and is fully applicable in the present case in hand. For stop gap arrangement or for giving a promotion for the time being which is of ad-hoc nature i.e. for the purpose, the seniority has to be considered but at the same time the persons should be cleared from vigilance angle and person who is facing a departmental disciplinary enquiry is under a cloud and therefore inspite of seniority, he cannot be rewarded during the pendency of the enquiry by giving ad-hoc promotion to a higher grade. The contention of the learned counsel that the departmental disciplinary enquiry has come to an end sometimes in August, 1992 would not give

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right to the applicant to be re-considered after his retirement from service. The position might have been different had he been exonerated from the charges before his superannuation. The contention of the learned counsel that the applicant has been exonerated and therefore, the charges which were levelled against him were not substantiated and the applicant should not be put to a loss permanently by ignoring his claim when he has subsequently been exonerated from the charges for promotion to the higher grade of 1600-2660/-." There is no substance in this contention. Ad-hoc promotion is in the discretion of the departmental authority but should not be arbitrary or the seniority should not be ignored. But an official who is senior but facing the departmental disciplinary enquiry cannot claim the parity with the junior who is free from any such clout. In such a situation the promotion of a junior on ad-hoc basis cannot be said to be arbitrary or unjust or unfair. The respondents, in their reply, have also stated that the applicant was also considered at the time of giving promotion because the selection could not be held for certain reasons. The applicant was not considered fit and so, he was not given the adhoc promotion and his juniors were preferred for the obvious reasons that he was facing a

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departmental disciplinary enquiry. The applicant counsel

has referred to an authority of the Orissa High Court

in the case of Shri Srikrushna Misra v/s. State of Orissa

and others reported in 1980 Volume-II, L.L.J. Page 328.

in

The facts of that case go against the applicant and/or counsel

it has been observed referring to the decision of the Hon'ble

Supreme Court of India that promotion to the higher post

and instructions should be made strictly according to the recruitment rules.

cannot be preferred in giving promotion. In that case under

Orissa Subordinate Education Service (General Branch) Rules

1972, certain ad-hoc promotions were made as regular

promotions could not be done and the competitive examinations

called for after advertisement was abandoned by refunding

the fees to the candidates realised from them for the

said competitive examination. In the present case, the

ad-hoc promotion was in the exigency of the service and

this can be against the statute rules also as no legitimacy

is given to appointment on ^{ad-hoc} ~~regular~~ basis. Such ad-hoc

appointees have to face the regular selection again and

only if they are found fit in the regular selection, they

get the benefit of selection from the date they are

recommended by the Departmental Promotion Committee (D.P.C.)

to

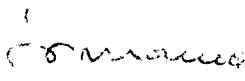
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Since ad-hoc promotion was given to the juniors in the present case only as a stop gap arrangement on the basis of their record of service and there was no ~~clout of vigilance~~ ^{case} at the time of ad-hoc promotion hence, the applicant cannot claim the parity with them. Therefore, the citation produced by the learned counsel has no application to the present case.

It is the department who has to take work from suitable employees for the higher post and the person who has been served with a major penalty chargesheet on a lower post may either be discharged from service either by order of termination or dismissal or may be exonerated subsequently. Such person, therefore, was not considered fit for promotion by the authorities and this is logical and in the interest of the employee himself.

The application is, therefore, dismissed as devoid of merits leaving the parties to bear their own costs.


(K. MUTHUKUMAR)
MEMBER(A)


(J.P. SHARMA)
Member (J)

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