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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO.1750/2000

New Delhi this the 12th day of September, 2002.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI V.K. MAJOTRA, MEMBER (A)

V.K. Jain
S/o Shri G.B.K. Jain
Working as Deputy C.M.M.
Northern Railway Headquarters Office
Baroda House
New Delhi.

..... Applicant

(By Shri Rajeev Sharma, Advocate)

-versus-

1. Union of India
Through its Secretary
Railway Board
Ministry of Railway
New Delhi.
2. General Manager (P)
Northern Railway Head Quarter
Baroda House
New Delhi.
3. Union Public Service Commission
Through its Secretary
Dholpur House
Shahjahan Road
New Delhi.
4. D.O.P and T
..... Respondents

(Shri E.X. Joseph, Sr. Counsel with
Shri Rajinder Khattar, Counsel)

O R D E R

Justice V.S. Aggarwal:-

Applicant (V.K. Jain) joined the Indian Railways as an Apprentice in the year 1973. He was later on appointed as Assistant Transportation

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Manager with effect from 2.11.1983 and promoted to Grade 'A' post in Senior Time Scale on ad hoc basis in the scale of Rs.3000 - 4500/- when the Departmental Promotion Committee (for short, the "DPC") found him fit on 27.11.1987. While he was working in the Senior Time Scale, he was inducted into Grade 'A' Junior Scale of Rs.2200 - 4000 vide Notification dated 22.7.1992. Applicant submitted his representation to the Secretary, Ministry of Railways wherein he represented that his induction to Group 'A' should be regularised against the vacancy of the year 1985 instead of the actual induction of 1992. The representation of the applicant has since been rejected on the plea that his promotion with effect from 1.6.1992 had been done when his name was approved by the Union Public Service Commission, (for short, the "Commission").

2. By virtue of the present application, the applicant seeks quashing of the Notification dated 28.12.1999 and letter dated 2.8.2000 declaring his date of induction from 1.6.1992 to be illegal and to direct the respondents to treat the induction of the applicant to Group 'A' Junior Time Scale from November 1986 when he was available and eligible against the vacancy of 1985.

3. In the reply filed, the application as such has been contested. It is not in controversy that the applicant was selected by a regular DPC

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against the vacancy of the year 1985 but his promotion had been made effective from 1.6.1992. As per the respondents, the lowest rung of the Group 'A' service is the Junior Scale. As per the Indian Railway Traffic Service Recruitment Rules, appointment to the Junior Scale of the service is made from 50% of the vacancies by direct recruitment through an open competitive examination conducted by the Commission and the 50% of the vacancies are filled by selection on merit from Group 'B' officers of Traffic Department with at least 3 years' regular service in the grade. Promotion to Group 'B' officers to fill up the promotion quota is made through the process of selection conducted by the DPC convened by the Commission. For preparation of select panel for promotion, the DPC assesses the suitability of officers on the basis of their record of service with particular reference to the Annual Confidential Reports for 5 preceding years. The Annual Confidential Reports have to be collected from various Zonal Railways and, therefore, it is stated to be taking some time. Applicant was selected by a regular DPC held in 1992 and, therefore, his promotion had been made effective from 1.6.1992.

4. The learned counsel for the applicant has alleged that applicant was available for the vacancy in the year 1985. The DPC did not meet for

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7 years. The said Committee should have met every year and since the said Committee was convened only after 7 years, rights of the applicant cannot be affected. On the contrary, the contention of the respondents has been that there is no dispute of inter se seniority. There is no junior who has gone past the applicant. The promotion of the applicant could not be retrospective and in that view of the matter, the applicant had been rightly shown to have been appointed in the year 1992.

5. At the outset, we deem it necessary to mention that no person junior to the applicant is shown to have stolen march over the applicant. The applicant has not even arrayed any such private individual as a respondent to make a grievance in this regard. Thus it is not a case of inter se seniority having been disturbed. We deem it unnecessary consequently to go into the said controversy which does not arise for the purpose of the present application.

6. There is no over-emphasizing the fact that the DPC should be convened at regular annual intervals to draw panels which could be utilised for making promotions against the vacancies occurring during the course of a year. To the same effect, instructions have been issued by the Department of Personnel and Training vide its OM No.22014/5/86-Estt (D) dated 10.4.1989.

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7. Reliance on behalf of the applicant in this regard has been placed on a decision of the Supreme Court in the case of **Syed Khalid Rizvi v. Union of India**, 1993 Supp (3) SCC 575. The Supreme Court was concerned with respect to the year of allotment for determining seniority of promotees vis-a-vis direct recruits. It was held that the Committee has to prepare the seniority list every year and it has to be reviewed and revised from time to time taking into account the expected and anticipated vacancies during the year besides 20% or two vacancies whichever is more. The Supreme Court further held that the Committee should prepare every year, a select list which should be submitted to the Commission by the State Government for approval and thereafter appointment should be made in accordance with the rules. Preparation of such a select list was held to be mandatory.

8. Similar has been the decision in the case of **Union of India v. Vipinchandra Hiralal Shah**, (1996) 6 SCC 721. The Supreme Court in this case held that unless there is a good reason for not doing so, the select list should be prepared for every year separately. The decision rendered in the case of **Syed Khalid Rizvi (supra)** was referred to for its advantage and in para 11, the Supreme Court concluded:-

"11. It must, therefore, be held that in view of the provisions contained

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in Regulation 5, unless there is a good reason for not doing so, the Selection Committee is required to meet every year for the purpose of making the selection from amongst the State Civil Service Officers who fulfil the conditions regarding eligibility on the first day of January of the year in which the Committee meets and fall within the zone of consideration as prescribed in clause (2) of Regulation 5. The failure on the part of the Selection Committee to meet during a particular year would not dispense with the requirement of preparing the Select List for that year. If for any reason the Selection Committee is not able to meet during a particular year, the Committee when it meets next, should, while making the selection, prepare a separate list for each year keeping in view the number of vacancies in that year after considering the State Civil Service officers who were eligible and fell within the zone of consideration for selection in that year."

Identical has been the decision of the Supreme Court in the case of **Devendra Narayan Singh and others v. State of Bihar and others**, (1996) 11 SCC 342.

9. As is apparent from the perusal of the cited decision, the dispute was pertaining to the seniority of the promotees and the direct recruits interpreting Indian Administrative Service (Appointment by Promotion) Regulations, 1955 and Indian Administrative Service (Recruitment) Rules, 1954. As already noticed above, in the present case in hand, there is no inter se seniority dispute of any individual. At the risk of repetition, it is mentioned that no such person even has been arrayed as a party. In that view of the matter, the said decision must be held to be of little avail to the applicant when no other person

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is purported to have been made senior as a result of the aforesaid. We hasten to add that in any case the duty cast of convening the DPC meeting on yearly basis has not been given a go bye.

10. Otherwise, the seniority necessarily has to be reckoned when a person is selected. A person does not have a right to be selected for appointment. In the case of **State of Haryana v. Subash Chander Marwaha**, (1974) 3 SCC 220, the Supreme Court held:-

"10. One fails to see how the existence of vacancies give a legal right to a candidate to be selected for appointment. The examination is for the purpose of showing that a particular candidate is eligible for consideration. The selection for appointment comes later. It is open then to the Government to decide how many appointments shall be made. The mere fact that a candidate's name appears in the list will not entitle him to a mandamus that he be appointed."

Similar has been the decision of the Supreme Court in the case of **Union of India v. N.R. Banerjee**, (1997) 9 SCC 287 emphasising that there should be the preparation and finalisation of yearly panel, and also the decision of the Supreme Court in the case of **T.N. Administrative Service Officers Association v. Union of India**, (2000) 5 SCC 728.

11. From the aforesaid, we can draw the following conclusions:-

(a). A DPC meeting should be convened at regular intervals to draw panels which

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could be utilised for making promotions against the vacancies occurring during the course of a year.

- (b). A person does not have a right to be appointed or to be promoted, but if there is a mala fide or any other such act of the department, the same can be taken into consideration on those peculiar facts.
- (c). If there is delay, the same can be explained.

Reverting back to the facts of the present case as has already been noticed above, there is no private individual vis- a - vis whom seniority dispute has been raised. It has been explained by the department (from the comments of the Ministry of Railways) that there was a seniority dispute of officers of Traffic Department Group 'B' of the Northern Railway. Therefore, the name of the applicant could not be considered. Not only the delay in this form has been explained, it is patent that the applicant would get weightage when he is appointed and his name has been approved. In that process, the applicant cannot claim retrospective promotion. When there are vacancies, the applicant have legitimate expectation but not an enforceable right. Once the promotion has come, he would be taken to have been promoted from such date but not retrospectively unless the delay had been imputed to certain mala fides or any other extraneous reasons. No such mala fide or extraneous reasons have been shown for the delay. In the peculiar facts of the present case, we find no reason to quash the impugned order.

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12. For these reasons, the Original Application No.1750/2000 being without merit must fail and is accordingly dismissed. No costs.

V.K. Majotra

(V.K. Majotra)
Member (A)

V.S. Aggarwal

(V.S. Aggarwal)
Chairman

/sns/