

CAT

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**NEW DELHI**

**O.A. No. 1300/89**  
~~EXX No.~~

**199**

**DATE OF DECISION** 2/8/93

Hargovind Singh **Petitioner** *(Signature)*  
Shri B.S. Mainee **Advocate for the Petitioner(s)**  
**Versus**  
Union of India & Others **Respondent**  
Romesh Gautam &  
Shri O.N. Moolri **Advocate for the Respondent(s)**

**CORAM**

**The Hon'ble Mr. J. P. Sharma, J.M.**

**The Hon'ble Mr. B.K. Singh, A.M.**

1. Whether Reporters of local papers may be allowed to see the Judgement ? *(Signature)*
2. To be referred to the Reporter or not ? *(Signature)*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *(Signature)*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *(Signature)*

**JUDGEMENT**

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**(By Hon'ble Mr. B.K. Singh, Member (Admn.))**

Heard the learned Counsels S/Shri B.S. Mainee for the applicant and Romesh Gautam for the respondents at length and perused the record of this O.A. No. 1300 of 1989 Shri Hargovind Singh applicant Vs. Union of India and others respondents. It is directed against impugned order contained (i) in letter No. E.E./Pravar/Variyata/89 dated 4-5-89 issued by D.R.M. Moradabad Shri O.P. Verma issuing the seniority list of PWIS Grade I Rs.2000-3200 & Grade II Rs.1600-2660 - Annexure A(i), (ii) letter No. 754 E/134 VIII(E.II 131) dated 11-1-89 - Annexure A 2 raising certain queries on Respondent No.2. Unless the right of promotion of the applicant as on 1-1-84 is determined the issue of seniority list is illegal (iii) the two orders dated 9-5-89 and 23-6-89 placed at Annexure-5 and Annexure-6.

2. The reliefs sought are issue of a direction or order to respondents to promote applicant from P.W.I. Grade II (Rs.1600-2660) to PWI Grade I (Rs.2000-3200) (RPS) w.e.f. 1-1-84 with arrears of pay and allowance and other consequential benefits such as revision of seniority list of PWI Grade I and the applicant's confirmation in that higher grade on the basis of S.C. quota and this should be given effect to within 30 days of its pronouncement and arrears must be paid with 18% interest and the cost of litigation should be reimbursed to him. The interim reliefs sought are stay of the operation of the order for fresh selection of PWI Grade I on the basis of written examination held on 27-5-89 and another supplementary examination in which the applicant appeared on 8-7-89. Unless the question of petitioner's promotion w.e.f. 1-1-84 is decided the order for written examination etc. may be treated as illegal. Till the legality of previous promotion w.e.f. 1-1-84 is decided Railway should not have proceeded to make fresh panel on the basis of written examination which is a new criterion for selection after restructuring.

3. Brief facts of the case are that the applicant joined Railway service on 14-6-1977 as a permanent way Inspector (PWI) Grade III in the pre-revised grade of Rs.425-750 at Moradabad against the S.C. quota. He was promoted to PWI Grade II special Rs.550-750 at Moradabad w.e.f. 7-1-82. There was a fresh selection for promotion in the revised grade of Rs.2000-3200 w.e.f. 1-1-84 and the applicant was overlooked. Though there is no reservation in promotion quota but another S.C. candidate who was junior to the applicant and whose name figured at Sl.No.46 Shri A.K. Kanodia who has been impleaded as Respondent No.3 got promoted alongwith other general candidates. Shri Hargovind Singh's name figures at Sl.No.44 of the combined gradation list of PWI grade II.

The present selection was based on ACRs and overall work and conduct of the candidates working as PWI Grade II. In the meanwhile as a result revised pay scales and restructuring even the criteria for selection got changed and a written examination was held on 27-5-89 in which the present applicant did not participate. There was another supplementary examination for promotion held on 8-7-89 in which the applicant participated but neither the learned counsel for the applicant nor the learned counsel for respondents could tell the Court about the result of the supplementary examination and also whether the applicant has been promoted or not.

4. It is admitted by both the parties that the applicant Shri Hargovind Singh was overlooked for promotion as a result of adverse entry which was communicated to him on 24-5-85 for the period ending 31-3-84 and the representation against the adverse entry had not been disposed of when the selection was made on 1-1-84. The contention of the learned Counsel for the applicant was that only A.C.Rs before 1-1-84 i.e. till 31-3-83 were relevant for promotion and as such the adverse entry of 1-4-83 to 31-3-84 should not have been taken into consideration. The circular of DOPT also stipulates this. No cognizance can be taken of an uncommunicated remark nor could this be relevant till the adverse entry is communicated and representation against is disposed of. There was delay in communication of remarks is admitted by both the parties. The remarks instead of being communicated within six months time were communicated after a lapse of more than a year. The department of Personnel Circular lays down that remarks must be communicated within

6 months and representation filed may also be disposed of in six months. The delay in communication will lead to delay in filing of representation and its disposal. Then the process of appeal and memorial will take further time.

5. We have seen the adverse entry which has been communicated. It merely mentions about his work and conduct being watched for purposes of improvement. There is always scope for improvement in every human being. Only the adverse entry has been communicated but the good portion if any in ACR has not been communicated. Normally the entire ACR for the period is communicated. Where there is a corrective remark entered in ACR it is presumed that the applicant must have been told verbally by his superiors about the short-comings in his work and conduct. The records do not indicate anything of the sort.

6. The learned Counsel for respondents described the application as bad in law on account of its claim for plural remedies. The reliefs claimed for promotion w.e.f. 1-1-84 and quashing of gradation list according to the respondents' Counsel are distinct and independent. He further argued that the application is time-barred since it challenges the adverse entry of 1983-84. Since the applicant did not file any objection when the seniority list was circulated inviting objections and as such he has forfeited his right to raise any grievance now. The law of estoppel operates in this case.

7. We have heard the learned Counsels at length. It is admitted by both the parties that the selection on 1-1-84 was based on work and performance as reflected in ACRs of various candidates falling within the zone of consideration. The fact of delayed communication of adverse entry is also admitted by both the parties. The mark being of a corrective nature cannot materially decide the fate of the applicant. The adverse remarks of 1-4-83 to 31-3-84 is not relevant and should not have been

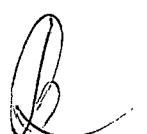
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taken cognizance of for promotion due from 1-1-84. The result of the representation is also not known. The appeal or memorial etc. must have been decided by now. Even when promotion is based on work and conduct of the eligible candidates within the Zone of consideration the persons who have got outstanding remarks for a period of 3 years or five years or 3 outstandings or two very-good will be considered first. It is then that 'Very Good' entries are taken into consideration. Somebody may get 3 very good entries and two 'good' entries. His case for promotion will be inferior to one getting 3 outstanding and 2 'Very good' entries. The synopsis of the ACRs for the period one has worked as PWI Grade II is relevant and promotion by selection has to be based on this comparative assessment of ACRs. The adverse or indifferent entries in ACR will result in being overlooked. A comparative chart of the synopsis of ACRs has not been placed on record to show the comparative merits of those who were promoted w.e.f. 1-1-84 and those who were superseded. This was necessary to assess the case of the applicant. It can, however, be safely presumed that the authorities must have duly considered relative merits of the entries for purposes of promotion. The Roster system seems to have been followed since the applicant who is at Sr.No.44 has been overlooked but another S.C. candidate Shri Kanodia at Sr.No.46 got promotion. It is also evident that the ACRs of Shri Kanodia must have been much better than those of Shri Hargovind Singh the applicant. Since another S.C. candidate has been promoted though Junior cannot be a cause for declaring the panel of 1-1-84 as void. Merit takes precedence over seniority since it is promotion by selection.

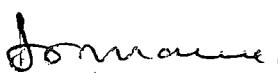
8. As regards quashing of the revised criteria for promotion on the basis of written test we do not find any merit in the contention of the learned Counsel for the applicant. Government have a right to change the

qualification or criteria provided it is applicable to all uniformly. This is the domain and prerogative of the Government. This holds good for direct recruitment as well as promotion. This has been upheld in AIR 1990 SC 1233 by Hon'ble Justice K.N. Singh and Justice Kastiwal in K.T. Bevin Katti applicant Vs. Karnataka Public Service Commission as respondent. There is another more relevant ruling contained in AIR 1990 SC 535 comprising Hon'ble Mr. Justice Rangnath Mishra and Justice Punachi in the case of J. Rangaswamy applicant Vs. Govt. of Andhra Pradesh and others. A guiding principle was laid down that Court should refrain from scrutiny of the relevancy and suitability of qualifications or criteria for selection of candidates for direct recruitment or promotion. This falls within the domain of Govt. and in case of any grievance the persons concerned will have to approach the competent authorities. No prima facie case is made out for quashing the panels based on the written examination one in which the applicant did not participate and another in which the applicant participated - one held in May, 1989 and the other held in July, 1989. Taking a synoplic view of all the facts and circumstances we do not think there is any prima-facie case for tribunal to interfere. The respondents may consider the case of applicant against S.C. quota based on roster system as and when a vacancy arises based on the written test and overall performance of the applicant whose work and conduct are being watched by respondents for improvement. The applicant is devoid of any merit or substance. The supercession cannot be based on one adverse entry nor can promotion by selection be based on a single entry. It is always on the basis of totality of remarks. Merit takes precedence over seniority the latter taking a backseat. Screening by a D.P.C. is based on a comparative study of ACRs of all candidates falling within the Zone of consideration. The assessment is based on categorisation of ACRs as outstanding, very good and good and

grouping the officers accordingly. This is the established procedure under the Union Government. An objective assessment is presumed till the contrary is proved. There has been no charge of malice or bias against respondents and therefore we cannot question the propriety and fairness of the officers. This being so there does not appear any substance or merit in the application and accordingly it is dismissed. No orders as to costs.

  
(B.K. SINGH)

Member (A)

  
(J.P.SHARMA) 21/9/93  
Member (J)

Dated: 21/9/93, New Delhi.

  
(tgk)