

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

D.A.No.2420/89

DATE OF DECISION 24.10.91

SHRI HOTU RAM ARORA

-- APPLICANT

VS

UNION OF INDIA & ORS

-- RESPONDENTS

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HON'BLE SHRI S.P. MUKERJI, VICE CHAIRMAN

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

FOR THE APPLICANT

SHRI G.D.BHANDARI, COUNSEL

FOR THE RESPONDENTS

MRS.SHASHI KIRAN, COUNSEL

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

(JUDGEMENT)

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant since retired as Station Superintendent Rohtak, Northern Railway filed this application under Sec.19 of the Administrative Tribunals Act, 1985 being aggrieved by the order dated 17-5-1989 issued by General

Manager, Northern Railway whereby the request of the applicant for promotion to Group B post in Operating Branch of T(T) and C Department of Northern Railway has been rejected (Annexure A-1). The applicant claimed following reliefs:-

- i) Set aside, the impugned order dated 17-5-1989 (A-I) whereby the respondents have rejected the consideration of the applicant for promotion to Group 'B' post, even on adhoc basis.
- ii) To direct/command/order the respondent that the applicant be admitted to have been selected from the date his next junior was promoted in Group 'B' post on adhoc basis in the Operating Branch of the T(T) & C Department with all consequential benefit and back wages arrears etc.
- iii) To order/command/direct the respondent to redetermine/recalculate the retiral benefits of the applicant viz. Gratuity, pension etc. Consequent to the deemed adhoc promotion of the applicant as aforesaid in Group 'B' post and make the payment of the same within a stipulated period of time.

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2. The applicant joined the railway service in 1949 as Station Master. From time to time he was promoted to various posts and ultimately he became Station Superintendent, Northern Railways at Rohtak Station.

In March, 1988 the respondents issued a notice (Annexure A-3) whereby it was decided to hold a selection for promotion to Group 'B' post in Operating Branch T(T) & C Department against 75% quota to fill up 38 posts. The applicant fell ill and was under the treatment of the railways authorities and remained sick from 16-5-1988 to 5-7-1988 and as such he was not in a position to take the written test scheduled to be held on 17-4-1988 for promotion to the aforesaid post. However the applicant during this period of illness ^{and} not in a fit mental condition ~~so~~ ^{as} he was made to write a written refusal for not taking part in the said selection (Annexure A-6). The selection panel was declared containing the names of the successful candidates who were promoted to group 'B' posts and the applicant has no grudge of the same. However, it is stated by the applicant that after the declaration of the selection list so issued certain group 'B' posts fell vacant and instead of holding the proper selection for filling in the same the respondents vide their letter dated 13-2-1989 promoted on adhoc basis some persons who were junior to the applicant namely Shri G.R.Babbar, Bhag Singh, V.Kumar, Gurcharan Singh, Dharamveer, Janki Dass. The applicant

submitted a representation immediately on 10-2-1989 (Annexure A-7) but to no effect. The applicant ultimately retired from service on 31-8-1989 on superannuation. The applicant stated that there is no railway rule which stipulates that anyone refusing to appear on expressing his inability due to sickness etc. can be debarred from appearing in the supplementary test being held in connection with the same selection. Instead ^{the} Ministry of Railways in their letter dated 10-10-1977 circulated by ^{the} Northern Railways vide P.S. No. 6884 ~~which~~ stipulated that adhoc promotion should be made to the barest possible minimum and then ^{only} ~~even~~ the senior most person available in the seniority list should normally be promoted (Annexure A-11). The applicant submitted representation dated 1-3-1989 and requested that he being fully eligible should be promoted for group 'B' post like ^{his} a junior (Annexure A-13). On the representation dated 1-3-1989 the impugned order was passed in which the applicant was intimated that since he refused to appear in the written test for selection for promotion to group 'B' post in the Operating Branch T (T) & C Department against 75% of vacancies held on 17-8-1988 so he cannot be considered for promotion to group 'B' post on adhoc basis as per P.S. No. 9514.

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3. The respondents contested the application. In the reply it is stated that the applicant was however awarded a number of minor punishment given in para 4.(v) of the reply. This reply has been filed by the advocate Mrs. Shashi Kiran on behalf of respondent No.2. In this reply no specific reply has been given to para xvii and xviii of the application. What has ^{been} written in the reply is that the contents of these paras of ^{the} application pertaining to respondent No.1. The respondent No.1 in the application is ^{the} Union of India through The General Manager, Northern Railway, New Delhi. Thus in fact, the respondent No.1 did not contest this application, and most of the averments made in the original application have not been specifically denied.

4. We have heard the learned counsel of the parties ^{advocate} at length and gone through the record of the case. The grievance of the applicant has been that the adhoc promotion of some of his juniors who were also not empanelled in the selection of 1988 is 'per se' discriminatory as per the Railway Board's circular senior ^{most} has to be first promoted on adhoc basis unless he is unfit. The applicant has preferred the P.S. No.6884 (Annexure A-1) which in para 2 sub clause (2) lays down that ^{the} senior ^{most} person available in the seniority unit should normally be promoted in the adhoc arrangement unless the authorities ordering

(12)

the promotion consider him unsuitable. Exceptions may, however, be made in cases where a change of Station is involved and short term promotion involving transfer is not desirable. The learned counsel for the applicant has given a list of junior officers namely Shri G.R.Babbar and five others should have been given promotion w.e.f. 13-2-1989. When the applicant represented he was informed that since he did not appear in the selection of 1988 so he could not be promoted ~~on~~ad-hoc promotion. However, the applicant has given the reason of not appearing in the selection held on 17-8-1988. He stated that he was not only medically unfit to take the examination but he was also ^{an} ~~in~~door patient in the ^{an} Railway Hospital as ^{an} ~~alleged~~ in para 10 of the application which is not denied by the respondents. It is stated that the applicant was on sick list from 16-5-1988 A.N. to 5-7-1988 F.N. The letter addressed by the applicant to the Sr.DOS Northern Railway, New Delhi dated 25-6-1988 clearly shows that the applicant was on sick list on that date, though the applicant has alleged in the application that this refusal to appear in the examination was taken under coercion but there is nothing to substantiate this fact so the applicant rightly gave up his claim for empanelment in the selection held in 1988. The applicant

therefore only claims his promotion on adhoc promotion from the date his juniors were promoted without considering him. Dharamveer ^{is} at Sl. No. 111 at page 36 of the paper book (Annexure A-3) and the name of the applicant is at Sl. No. 110 thus Dharamveer is admittedly junior to the applicant. The applicant has alleged that Dharamveer has been given promotion w.e.f. 13-2-1988 to group 'B' post in the Operating Branch. In Budhmal versus Union of India 1986 (4) SLJ CAT 663 it has been held that denying promotion to some persons and promoting others in similarly placed conditions is discriminatory. In Srikant Laxman versus Union of India 1987 (2) SLJ CAT page 10 and in Badri Nath versus State of Tamil Naidu A.T.R. 1987 (1) CAT page 63 it has been held that even for officiating promotions, the seniority cannot be ignored unless ^{the} senior most person is found unfit.

5. No reason has been given by the respondent No.2 in their reply to the O.A. as to why the applicant was not considered for adhoc promotion. The respondent No.2 only stated in the reply that most of the averments in the application concern respondent No.1 ~~or~~ are matter of record. The learned counsel for the respondents also could not file any copy of P.S.L. No. 9514 which is referred in the impugned order dated 17-5-1979 (Annexure A-1).

On the other hand, the applicant has filed copy of the Railway Board's letter dated 31st December 1980 (Annexura A-9) detailing the procedure of selection and copy of P.S.No.6884 dated 31st December 1977 (Annexura A-11). In the representations preferred by the applicant in March and April, 1989 (Annexure A-13 and A-14) the applicant has clearly stated about his illness which prevented him from taking the selection of 1988. Since the applicant was treated at ^{the} Railway Dispensary so it cannot be said that the applicant feigned illness. This, therefore, cannot be taken as voluntary refusal by the applicant. In fact the respondents should have called him for supplementary examination after the applicant ceased to be in the sick list.

6. In view of the above discussion we find that the applicant was wrongly denied promotion to group 'B' post on adhoc basis while ^{those} juniors to him like Dharamveer have been promoted and this arbitrary and discriminatory and attracting ^S Arts.14 and 16 of the Constitution of India. Since the applicant ^{was} retired on 31st August, 1989 and there was no regular selection during this period so the applicant could not avail of any further chance for selection to group 'B' post. The applicant's case, therefore should not go by default. The applicant

The applicant should not suffer because of his illness at the time of earlier selection in 1988 which was duly accepted by sanction of sick ^{new} certificate to the applicant by the respondents. Thus the applicant is entitled to adhoc promotion from the date his immediate junior was promoted which according to the applicant is from 13-2-1989.

7. The application is, therefore, partly allowed and the impugned order dated 17-5-1989 is quashed and the respondents are directed to give adhoc notional promotion to the applicant to group 'B' post in the Operating Branch of the T(T) & C Department with all consequential benefits and back wages and arrears w.e.f. the date his next junior has been given ^{such ad hoc} promotion. The respondents are further directed to revise the Gratuity and the pensionary benefits with all consequential benefits within the period of three months from the date of receipt of this order. In the circumstances the parties shall bear own costs.

J.P. SHARMA
(J.P. SHARMA)
MEMBER (J) 26.X.91

S.P. MUKERJI
(S.P. MUKERJI)
VICE CHAIRMAN 26.X.91