

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 52 OF 1989.
-T.A.-No.-

DATE OF DECISION 26.4.91

D.P.Mittal Petitioner

Shri V.P.Sharma Advocate for the Petitioner(s)

Versus

Delhi

1. U.O.I. thro' G.M., N.Rly., New Respondent

2. G.M.(Personnel), N.Rly., New Delhi

Shri Inderjit Sharma Advocate for the Respondent(s)

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The Hon'ble Mr. B.N.Jayashimha, Vice-Chairman(A)

The Hon'ble Mr. J.P.Sharma, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement? 33
2. To be referred to the Reporter or not? 33
3. Whether their Lordships wish to see the fair copy of the Judgement? 2
4. Whether it needs to be circulated to other Benches of the Tribunal? 2

Judgement of the Bench delivered by Hon'ble Mr. B.N.Jayashimha,
Vice-Chairman(A)

The applicant is an Asst. Engineer/Track Planning in the Northern Railway. He has filed this application aggrieved by the order No.940/14(EIA) dated 22.4.1987 by which his junior has been promoted ignoring his claim for promotion.

2. The applicant states that he joined the Railway Department on 15.2.1957 and he got his promotion to the post of Asst. Engineer/Track Planning w.e.f. 13.7.1981. In 1986, a Departmental Promotion Committee considered the applicant along with others for promotion to the senior scale and included in the panel at S.No.8 in the proceedings No.940-E/14-XXXIX/Eia dated 29.10.1986. By Office

Order No.940-E/14-XXXIX/EIA dated 26.5.1987 juniors to the applicant were promoted ignoring him. By order dated 22.4.87, one Shri V.K.Duggal who is placed at S.No.9 in the panel was promoted ignoring him. The applicant says that no disciplinary case is pending against him. Another D.P.C. met on 23.11.1987 and again on 13.12.1988 and the applicant was not promoted while his juniors were promoted. He submitted representations against his non-promotion on 15.10.1987. He was informed by letter dated 29.12.1987 that his case was considered and will be considered in future. The applicant submitted further representations on 31.12.87, 27.1.88 and 26.1.88. The applicant contends that the action of the respondents in not promoting him while promoting his juniors is illegal, unjust and arbitrary.

3. The respondents in their reply admit that the applicant was approved for appointment to the senior scale but he could not be promoted as a vigilance case is pending against him. After the D.P.C. meeting held on 28.10.86, two more D.P.C. meetings were held on 18.11.87 and 8.12.88 and it did not recommend the applicant for promotion. For the year ending 31.3.87, an adverse remark "He tends to slow down due to which he needs chasing. He is not keen to take additional responsibility" was made in his Confidential Rolls and this

was duly communicated to him by letter dated 28.4.88. He filed a representation on 29.4.88 against these adverse remarks and the competent authority did not find any reason to make any change. The applicant was informed accordingly by letter dated 31.8.88. He was also given a recordable warning by letter dated 1.6.86. The respondents therefore contend that the claim of the applicant for promotion is untenable.

4. We have heard the learned counsel for the applicant Shri V.P.Sharma and the learned standing counsel for the Railways. Shri Sharma states that so far no charge-memo has been issued to the applicant and the applicant cannot be denied promotion merely on the ground of pending vigilance case. He relies upon the ruling ⁱⁿ State of Madhya Pradesh Vs. Bani Singh & another [1990(1)SCALE675] in which the Hon'ble Supreme Court held "that normally, pendency or contemplated initiation of disciplinary proceedings against a candidate must be considered to have absolutely no impact upon, to his right to be considered. If the departmental enquiry had reached the stage of framing of charges after a *prima facie* case has been made out, the normal procedure followed as mentioned by the Tribunal was "sealed cover" procedure, but if the disciplinary proceedings had not reached that stage of

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framing of the charges after *prima facie* case is established the consideration for the promotion to a higher or selection grade cannot be withheld merely on the ground of pendency of such disciplinary proceedings." The learned counsel for the respondents submits that while it is true that the applicant's name was included in the panel by the D.P.C., the Chief Engineer found that the applicant was not suitable for promotion due to the pendency of the vigilance case No.Vig/CT/1391/86/Engg/GO.

5. We have considered these rival contentions. In reply to our query Shri Inderjit Sharma, learned counsel for the respondents stated that the vigilance case has been dropped. No charge-sheet has been issued to the applicant and applying the aforesaid ruling of the Supreme Court in Bani Singh's case, we find that the applicant was entitled to be promoted according to his position in the panel issued on 29.10.86. Accordingly we direct the respondents to promote the applicant with effect from the date his immediate junior in the said panel was promoted and will also give him all the consequential benefits. The department will comply with these directions within a period of two months from the date

of receipt of these orders.

6. There will be no order as to costs.

J.P.Sharma
(J.P.Sharma)
Member(J).

B.N.Jayasimha
(B.N.Jayasimha)
Vice-Chairman(A).

26.4.91