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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O. A. No. 887 of 1989

New Delhi, this the 9th day of March, 1994.

HON'BLE MR B.N.DHOUNDIYAL, MEMBER(A)

B. S. Sarin
S/O late Shri MC Sarin
Permanent Way Inspector(Spl.)
Under Divisional Engineer, Northern Railway,
Delhi Queens Road(MG)
Delhi-110006. Applicant

(through Mr J.K.Bali, Advocate).

vs.

1. Union of India
Through the General Manager
Northern Railway
New Delhi.
2. Shri S.K.Bhandari
Executive Engineer, Northern Railway,
9A, Boulevard Road
Delhi. Respondents.
(through Mr B.K.Aggarwal, Advocate).

ORDER (ORAL)

(delivered by Hon'ble Mr B. N. Dhoundiyal, Member(A)

Heard the learned counsel for the parties.

The brief facts of the case are these. The post of PWI Grade II in the grade of Rs. 550-750(Rs. 1600-2660) is filled from amongst the PWIs in the grade of Rs. 425-700(Rs. 1400-2300) on seniority-cum-suitability basis . The petitioner had filed a suit in the Civil Court, wherein he had pleaded that his case for promotion was not considered although he fell within the zone of consideration in the year 1979 and that his C.Rs of relevant period had not been placed before the promotion committee and that those junior to him were given promotions. He succeeded in the Civil Suit and later on filed CCP No.227 of 1985 in the High Court of Delhi, which was decided on 23.9.1988. The following directions were given by the High Court:

"I now direct the respondents to place

case of the petitioner before the Promotion Committee for being considered on the basis of the position which existed in 1979 and Promotion Committee shall consider whether the petitioner was suitable for being promoted in the year 1979 or not when his juniors were promoted. Let the position be made clear within four months and I adjourn the matter to 14th February, 1989 when the respondents shall submit the report about the decision taken by them in the matter."

2. As mentioned in the Court, as per directions of the High Court, the case of the Petitioner was put up to the competent authority, the Chief Track Engineer, who, after review of service record of the petitioner, came to the following conclusion:

"Based on record of service of the employee, I am of the view that he was not fit for promotion to grade of Rs.550-750/RS in 1979 when his juniors were promoted."

The learned counsel has brought to our notice the communication dated 7.3.1989, in which, while referring to the case of the applicant, the General Manager(P) has written to the D.R.M., Northern Railway Bikaner, explaining the reasons why the applicant was not promoted in 1979. The one man promotion committee made the following observations:

"I have seen CRs of Shri B.S.Sarib, PWI for three years viz., period ending 31.3.1977, 31.3.1978 and 31.3.1979. All the three reports find him "UNFIT FOR PROMOTION". There are also many adverse entries in each of the reports. These were duly conveyed to the employee."

Based on record of service of the employee I am of the view that he was not fit for promotion to grade of Rs.550-750(RS), in 1979, when his juniors were promoted."

The applicant contends that since he had submitted representations against the adverse entries for the years 1977, 1978-79, these ACRS could not have been taken into account, while considering his promotion in 1979. The learned counsel for the respondents has argued that the applicant ~~xx xxxxx xx xxx xxxxxx xxx xxx~~ refused to accept the adverse C.Rs for the relevant years communicated to him. A perusal of Annexures A-3 and A-3/A and A-3/B shows that the adverse C.Rs were communicated to the applicant in the year 1980 and he filed representations against these C.R.s on 11.3.1981. There is no averment that his representations were considered by the competent authority and rejected. This being so, the position is that these C.Rs cannot be taken into account while considering his promotion in 1979 till these representations are decided. Without deciding the representations, they cannot claim that the judgment of the High Court has been implemented in its true spirit. The respondents, are, therefore, directed to re-convene the promotion committee and review the case for promotion of the applicant in 1979 on the basis of only those A.C.Rs which have been finalised, that is, where the applicant has been given an opportunity to appeal and the appeal has been decided. ^{This shall be done} within a period of four months from the receipt of certified copy of this judgment.

3. With the above observations, the Q.A. stands disposed of with no order as to costs.

B. N. Dhoundiyal
(B. N. Dhoundiyal)
Member(A)