

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A.No. 917/89.

DATE OF DECISION 19.8.1993

Shri D.P. Mittoo,

Petitioner

Shri B.S. Mainee,

Advocate for the Petitioner(s)

Versus

Union of India & Others, Respondent

Shri B.K. Aggarwal,

Advocate for the Respondent(s)

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The Hon'ble Mr. V.N. Krishnan, Vice-Chairman (A)

The Hon'ble Mr. B.S. Hegde, Member (Judicial)

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

JUDGEMENT

Delivered by Hon'ble Shri B.S. Hegde, Member (Judicial)

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs :-

(1) The Tribunal may be pleased to set aside the impugned orders as at Annexures A-1 and A-2, respectively.



(2) The Tribunal may be pleased to direct the respondents to include the name of the applicant in the list of P.W.I. grade Rs. 550-750 which was issued in 1982 at the appropriate place in accordance with his seniority.

(3) The Tribunal may be pleased to direct the respondents to consider the applicant for promotion to grade Rs. 700-900 against upgraded post w.e.f. 1.1.1984 when his juniors had been promoted only on scrutiny of service records.

(4) The Tribunal may be pleased to give proforma fixation to the applicant and also arrears w.e.f. 1.1.1984.

2. The applicant joined the Railways as Clerk in 1960. After joining the Railways, he passed diploma in Civil Engineering from British Institute of Technology, Bombay. Thereafter, in the year 1970 he was declared successful and he was promoted as Permanent Way Inspector Grade III. He states that he

had kept lien in Delhi Division and his seniority was fixed in the cadre of permanent Way Inspector, Grade Rs. 425-700 and he was placed at S.No. 52 as per seniority list issued by Delhi Division on 9.3.1987 (Annexure A-3). The applicant has been posted in construction organization. There, he was promoted as permanent Way Inspector in the grade of Rs. 550-750 w.e.f. January 1977 on ad hoc basis. In that grade he had been continuously working till 1982. The Railway Board introduced a scheme of restructuring of the cadres as a result of which large number of posts of various categories were upgraded with effect from 1.1.1984. It has also laid down that the upgraded post will be filled up by scrutiny of service record and written as well as viva voce test to fill up the upgraded posts. Accordingly, a large number of posts of P.W.I. Grade Rs. 700-900 became available as a result of upgradation, thereby the lower grade staff were promoted on the basis of their service records.

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3. On 1.1.1984, the applicant was within the field of eligibility of promotion against upgraded post but he was ignored and number of his juniors were promoted in Grade of Rs. 700-900 against the upgraded posts. On enquiries, it was revealed that the applicant was found

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unsuitable for promotion to the post of P.W.I.

Grade II Rs 550-750 in the year 1982 and he was promoted in the grade of Rs 550-750 against the regular post w.e.f. 24-3-1984 which is marked as Annexure A-4.

4. The applicant contends that this stand of the respondents is entirely unjustified because he had been continuously working, though on an ad hoc basis, on the post of PWI Grade II in the construction division from January, 1977 onwards. Therefore, there is no question of his not being found fit in 1982 for regularisation.

5. The applicant states that he made a representation in this regard on 9-2-1986(Annexure A-5), 22-12-1986(Annexure A-6), 28-6-1987(Annexure A-7) and 14-2-1988(Annexure A-8). He also submitted another representation on 29-3-1988 (enclosure to annexure A-9) through proper channel, which was forwarded to first respondent by the Chief Engineer (construction), Northern Railway, Kashmeri Gate, New Delhi. That letter(Annexure 9) is reproduced below:-

for signature
" An application dated 29-3-88 alongwith annexures received from Sh.D.P.Mittoo, PWI grade I on ad hoc is forwarded for further necessary action.

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In connection with the above it is informed that the promotion orders of Sh.O.P.Mittoo, PWI in Grade II Rs 550-750 (Rs) were issued late by your office vide item No.1 your above reference as he was facing a DCAR case at that time.

Secondly, his empanelment for the post of PWI Grade I Rs 700-900 was also pended on account of above DCAR case and junior to him were placed on the panel.

Now the above said case has been finalised and employee has been awarded punishment of minor penalty of 'CENSURE'.

In view of the above circumstances it is requested that his case for the empanelment of the post of PWI Grade I may kindly be considered and advised to this office early so that employee be informed accordingly."

6. It is in reply to this letter that the impugned Annexure A-1 letter was issued by the first respondent to the 3rd respondent which is reproduced below:-

"Please refer to item No.(13) on page of this office notice No.754E/186-X(EIIB) dated 7-1-1982, vide which Sh.O.P.Mittoo, PWI Grade III Rs 425-700 Delhi Division was declared unfit for promotion as PWI grade II Rs 550-750. He could only be declared fit for promotion as PWI Grade II Rs 550-750 in terms of item No.(10) of this office Notice No.754E/186-XI(EII B-I) dated 26.3.84.

Sh. O.P. Mittoo

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The selection against the upgraded posts of PWI Grade Rs 700-900 (Rs) sanctioned w.e.f. 1.1.84 was held from amongst PWIs grade II Rs 550-750 (Rs) who happened to be working this grade as a regular measure prior to 1.1.84. Since Shri Mittoo could only be cleared for promotion to Grade II Rs 550-750 (Rs) only on 26-3-84, the question of considering him (Shri Mittoo) for selection held against the upgraded posts sanctioned w.e.f. 1.1.84, does not arise".

This was communicated to the applicant (Vide annexure A-1) in May, 1988.

7. The applicant is aggrieved by the fact that he has not been given his rightful promotion to PWI Grade-II from Feb., 1982 when his juniors were promoted and he has not been given promotion to PWI Grade-I from 1.1.84 after restructuring of the cadre in the Railways. Injustice has also been done to the applicant because of the omission of his name from the seniority list of PWI Grade II (Annexure A-12). As a result, when promotion were considered for PWI Grade-I his name was not considered. Instead, his juniors have been placed on the panel, after giving them written examination test and viva-voce test vide impugned memorandum dated 10-2-1982 (Annexure A-2). The applicant contends that the first person on the panel, Sh.D.L.Sachdeva, was his junior in the grade of PWI Grade II, even according to the selection held on 24-3-1984, as is

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evident from Annexure A-4 wherein, the applicant is placed at serial No.10 whereas the said Sh.D.L.Sachdeva is in serial No.35.

8. In these circumstances, the applicant has made the following prayers:-

1. That this honourable Tribunal may be pleased to set aside the impugned orders Annex. A -1 and A-2.
2. That this honourable Tribunal may be pleased to direct the respondents to include the name of the applicant in the list of P.W.I. grade Rs 550-750 which was issued in 1982 at the appropriate place in accordance with his seniority.
3. That this honourable Tribunal may be further pleased to direct the respondents to consider him for promotion to grade Rs 700-900 against upgraded post with effect from 1.1.1984 when his juniors had been promoted only on scrutiny of service records.
4. That this honourable Tribunal may be further pleased to direct the respondents No 2 to include the name of the applicant in the seniority list of the PWIs in grade Rs 550-750 as well as 700-900 in which the applicant had been completely ignored.
5. That this honourable Tribunal may be further pleased to direct the respondents

Sh. D. L. Sachdeva

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to give proforma fixation to the applicant and also arrears with effect from 1.1.84.

9. The respondents have filed a reply denying these claims. It is stated that the applicant was not found fit for regular promotion as PWI Grade II because there were adverse entries in the CRs for the year 1979-80 and 1980-81 hence he could be promoted in 1982 as PWI Grade-II. He was subsequently promoted to that grade only by the order dated 24-3-84 (Annexure A-4). In the meanwhile, on the restructured posts of PWI Grade-I, only those persons who were working as PWI Grade-II on 31.12.1983 were considered for promotion. As the applicant was not holding that post on that date, he is not entitled to any promotion from 1.1.84 as PWI Grade-I.

10. The respondents admit that, in the Annexure A-12 seniority list of PWI Grade-II in the scale of Rs 550-750/1600-2660, the applicant's name was not included, purely by mistake and hence his name could not be included in the Annexure A-2 panel. The

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applicant did not make a representation against the annexure A-12 seniority list which resulted in his name not being considered.

11. We have perused the records and given our careful consideration to the arguments of both sides. Three question arise Firstly, whether the applicant is entitled to promotion as PWI grade -II in 1982. Secondly, whether, consequently, he is entitled to promotion to PWI Grade I on the restructured post from 1.1.94. Thirdly, whether the applicant is entitled to any relief in respect of Annexure A-2 panel in the preparation of which his name was not considered.

12. The respondents have stated in the Annexure R-1 reply(3/4-10-88) to the Chief Engineer (Construction)Northern Railway, Kashmeri Gate, New Delhi that the applicant was not regularised as PWI Grade II in 1982 because of the adverse remarks in CRs for the year 1979-80 and 1980-81. Though/applicant contends

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that his record as PWI Grade-II in the construction division where he was promoted an ad hoc basis was satisfactory, yet, he admits in para 4.13 of the application that

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adverse remarks for the year 1980-81 were communicated to him and he preferred an appeal. He has neither submitted the appeal memo, nor has he stated what action he took when the appeal ~~remain~~^{as} unanswered. The respondents have denied the receipt of the appeal. We find that the applicant was considered for regularisation as PWI from 1982 but he was superseded due to his bad record. Therefore, this action of the respondents is fully justified and the applicant is not entitled to any relief on this grounds.

13. Further, respondents have stated that only persons who were working as PWI in Grade-II on 31-12-1983 were considered for promotion to the restructured post of PWI Grade I. As the applicant was not holding such a post on 31.12.83, he is not entitled for promotion to the post of PWI Grade I from 1.1.1984.

14. *Signature* The applicant, however, is on strong ground in respect of the impugned annexure-2 panel. Obviously admittedly respondents have made a mistake. The applicant had been working as

PWI Grade-II from 24.3.84 vide Annexure A-4 order, in which he is senior to D.L.Sachdeva who is in the panel of annexure-2 at serial No.1. In the circumstances, respondents should be directed to consider the applicant also by holding an appropriate examination and viva-voce test and in case he is found fit for promotion his name should be included in the Annexure A-2 panel at the appropriate place.

15. In the circumstances, we allow this application in part and direct the IInd respondents to hold a test, in accordance with law, to consider the applicant for selection to the post of PWI Grade-I, within 2 months from the date of receipt of this order and in case the applicant is found successful and he is entitled to promotion, his name shall be included in the Annexure A-2 panel at the appropriate place, and he should be given promotion to the post of PWI Grade I on his turn with all consequential benefits of arrears of pay with effect from the date his immediate junior was promoted.

16. O.A. is disposed of accordingly.

Abreg
(B.S.HEGDE)
MEMBER (J)

19/8/93

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(N.V.KRISHNAN)
VICE CHAIRMAN (A)