

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

OA No. 209/88

.. Date of decision: 11.6.93

Sh. Sompal Singh

.. Petitioner

Versus

Union of India

.. Respondents

CORAM

Hon'ble Mr. I.K. Rasgotra, Member (A)

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

For the petitioner .. Ms. Raman Oberoi, Proxy counsel
for Sh. S.K. Sawhney, Counsel.

For the respondents .. None

JUDGEMENT

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

The grievance of the applicant is that he was due the benefit of restructuring and upgrading of his post to scale Rs. 455-700 (RS) w.e.f. 1.1.1984. He prayed for the grant of relief that a direction be issued to the respondents to order the promotion of the applicant to Scale Rs. 455-700 (RS) w.e.f. 1.1.1984 with all the arrears of pay etc.

2. The respondents contested the application and filed their reply. They opposed the grant of relief on the ground that due to an adverse Confidential Report of the applicant he could not be given selection grade. It is contended by the respondents that 12 post of Guards 'A' Special were created in Selection Grade in the scale of Rs. 455-700 (RS) in lieu of 12 existing posts of Guard 'A' Special in the Scale of Rs. 425-640 (RS) on 1.1.1984. Vide letter dated 1.8.85 (Annexure R-1), the staff who were eligible for the Selection Grade as on 1.1.84 were to be granted fixation from 1.1.84 and current payment w.e.f. 1.1.85. As per seniority, 12 Guards 'A' Special were due for selection grade including the applicant but as said above due to adverse Confidential Report, the applicant, after due consideration was not granted selection grade.

(B)

3. We have heard the learned counsel for the parties at length and have gone through the records. The first contention of the learned counsel for the applicant is that 12 posts of Guard 'A' Special in the scale of Rs. 425-640 (RS) were upgraded in the scale of Rs. 455-700 (RS) is incorrect. In fact, vide letter dated 1.8.85 only 12 selection grade posts of Guard 'A' Special were created w.e.f. 1.1.84.

4. The other contention of the learned counsel for the applicant that the applicant has not been given the selection grade cannot also be sustained. The applicant joined initially as Parcel Clerk and he was promoted as Guard in the scale of Rs. 425-640 in 1979. In December, 1983, the applicant was drawing at the stage of Rs. 545/- in the scale of Rs. 425-640 (RS). The next stage is Rs. 455-700 of the Selection Grade which could not be granted on the basis of fitness and seniority. According to the respondents, the applicant had adverse Confidential Report and in para 6(f) of the counter, it is stated that DOS has communicated him his adverse Confidential Report vide letter dated 1.3.84. The averment in the application that no Confidential Remarks was communicated to the applicant, is, therefore, incorrect. In the rejoinder to the reply to para 6(f), the applicant has stated that the entitlement of the Selection Grade could not have been withheld is not correct. When there were adverse remarks in the Annual Confidential Report of the applicant, in preceding the date on which 12 posts of Guard 'A' Special in the Selection Grade were created, the applicant was having a stigma in his service record. The applicant was duly considered but not found fit. ~~applicant, the grievance~~ His grievance ~~he has not~~ that he has not been given the Selection Grade of Rs. 455-700 while juniors who have been given same benefit is untenable.

5. ~~xxxxxxxxxxxxxxxxxxxxxx~~ ~~xxxxxxxxxxxxxxxxxxxxxx~~
In para 6(a) of the reply, it is stated that the applicant was awarded punishment of withholding of increment temporarily

(WIT) of 1½ years, which was effective from 1.1.83 to 30.6.84. In the rejoinder to the reply, the applicant has only stated that the same is matter of record, the punishment awarded to the applicant has not been denied. On this account also just before the consideration of the applicant for the award of the selection grade in the post of Guard 'A' Special in the scale of Rs. 455-700 (RS), the applicant was undergoing the punishment of the WIT.

6. The applicant was specifically informed vide memo, dated 26.12.1986 that his promotion to Guard 'A' Special in the selection grade of Rs. 455-700 was not granted because of adverse CRs. The applicant, therefore, has full opportunity to make representation against the C.R. of the period ending 1983 when it was duly communicated to him by DOS vide letter dated 1.3.84. The applicant has not made any representation against those adverse remarks nor he sought judicial review of the correctness of those CRs even in this application. Thus, the applicant on this account also cannot allege discrimination or, in any way, any violation of Article 14 and 16 of the Constitution of India. The action of the respondents also is not discriminatory or arbitrary or mala fide.

7. It is further argued by the learned counsel for the applicant that no opportunity was given to the applicant before withholding his promotion, but this contention is misconceived. Those who are in the zone of consideration, are considered for award of the benefit of higher pay and grade as per Administrative instructions/extant rules and those who have been passed over in promotion, need not be offered opportunity of hearing in that regard. There is no violation of the principle of natural justice involved in such a matter.

8. In view of the above facts and circumstances of the case, the application is devoid of merit and is dismissed. Parties left to bear their own costs.

J. P. Sharma
(J.P. Sharma)
Member (Judl.) 11.6.93

I. K. Rasgotra
(I.K. Rasgotra)
Administrative Member