

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA No. 104/88 .. Date of decision: 19.05.93

Sh. D.P. Srivastava .. Applicant

Versus

Union of India -General

Manager, Northern Railway .. Respondents

CORAM

Hon`ble Sh. A.B. Gorthi, Member (A)

Hon`ble Sh. C.J. Roy, Member (J)

For the applicant .. Sh. B.S. Mainee, Counsel

For the respondents .. Sh. Romesh Gautam, Counsel.

JUDGEMENT (Oral)

(Delivered by Hon`ble Sh. A.B. Gorthi, Member (A)

The applicant's grievance is that his name should have been included in the panel that was published by the respondents on 01.12.81 declaring some Class-IV staff as suitable for promotion to the post of Telephone Operators in the grade of Rs. 260-400.

2. The applicant joined the C.T.I. of Allahabad Division, Northern Railway as a Khalasi. He appeared for a written test for selection for the post of Telephone Operator on 18.10.81. Having qualified therein, he was called for a viva-voce test, which was held on 10.11.81. According to the applicant, he must have passed the viva-voce test but the respondents withheld his

name from the panel because at that time, the applicant was facing a departmental disciplinary enquiry. The enquiry concluded, with the imposition of a penalty of withholding of increment, on 27.3.82. The increment that was to be withheld was due on 16.8.82. The applicant, therefore, contended that based on his performance in viva-voce test and because of the conclusion of the disciplinary proceedings on 27.03.82, he should have been promoted to the post of Telephone Operator as soon as the disciplinary proceedings were over.

3. The respondents filed a counter affidavit, stating that the applicant did not qualify in the viva-voce test and accordingly, he could not be promoted. The contention of the respondents is that the denial of promotion to the applicant was not on account of the departmental disciplinary proceedings but was due to the fact that he failed to qualify in the viva-voce test.

4. We have heard the learned counsel for both the parties. Due to rival contentions with regard to the question whether the applicant qualified or not in the viva-voce test, we desired to see the official records but the same could not be made available. The learned counsel for the applicant has then drawn our attention to a letter dated 31.7.92 which shows that the applicant alongwith another person was selected after due screening for promotion to the post of Telephone Operator and was, therefore, deputed to undergo the requisite training at the Training Institute in Gaziabad for a period of 2 months. Further from Annexure -A 8, it is clear that the applicant did undergo the training successfully from 4.8.82 to 8.10.82. It seems that

finally the applicant was promoted only in 1984.

5. The learned counsel for the respondents has not disputed the correctness of the respondents' letter dated 31.7.82, which is at Annexure A-7 to the application.

6. As regards the penalty imposed upon the applicant, which was to the effect that his increment could be withheld for one year, the learned counsel for the applicant has drawn our attention to the relevant instructions issued by the Railway Board in this regard, which are to the effect that where the penalty imposed is withholding of increment, the employee concerned should be promoted in his turn and the penalty imposed in the promotion grade. It is clear that the applicant was screened and found suitable prior to the date (16.8.82) when his next increment became due.

7. In the light of the above facts, we consider that there is no requirement to go into the question whether the applicant had initially qualified or failed in the viva-voce test held on 10.11.81. In view of the categorical declaration made by the respondents that the applicant was duly screened and found fit for promotion to the post of Telephone Operator vide their letter dated 31.7.82 and in view of the applicant's successful completion of the training, we are of the view that the applicant ought to have been promoted alongwith his colleagues who were similarly found suitable at the same screening that was held in July, 1982.

8. Consequently, this application is being disposed of with the direction to the respondents to give notional promotion to the applicant, from a date on which the other employees who were screened alongwith him in July, 1982 were promoted to the post of Telephone Operator. We make it clear that the promotion will be notional and the applicant would not be entitled to pay and allowances in the higher post of Telephone Operator till the date on which he was actually promoted. The respondents shall comply with this order within a period of 3 months from the date of its communication.

There shall be no order as to costs.

Utkarsh
(C.J. Roy)

Member (J)

Abhishek
(A.B. Goraihi)

Member (A)

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