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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1007/88. DATE OF DECISION: 28-11-1991.

Shri Lala Ram Applicant.

V/s.

Union of India & Ors. Respondents.

CORAM: Hon'ble Mr. T.S. Oberoi, Member (J).
Hon'ble Mr. P.C. Jain, Member (A).

Shri B.S. Mainee, counsel for the applicant.
Shri Inderjit Sharma, counsel for the respondents.

P.C. JAIN, MEMBER (A): JUDGMENT

The applicant, who was a Gangman, Gang No.2, under PWI, Northern Railway, Tughlakabad, Delhi, filed this application under Section 19 of the Administrative Tribunals Act, 1985 on the alleged failure of the respondents to promote him to the post of Keyman, praying for a direction to the respondents "to consider the Applicant for the post of Keyman and direct the Respondents to give him seniority and fixation of pay from the date from which his juniors have been promoted as Keymen".

2. The respondents have contested the application by filing a return, to which a rejoinder has been filed by the applicant. We have carefully perused the material on record and also heard the learned counsel for the parties.

3. The applicant's case, in brief, is that he was appointed as a Gangman in 1958 and after he had passed the test for the post of Keyman, he was promoted as Keyman with effect from 21.7.1978. He continued to work till 20.8.1981 when he was reverted to the post of Gangman without holding any inquiry and without giving any opportunity to him. In the meantime, in pursuance of some disciplinary proceedings, a penalty of withholding of increments for two years is said to have been imposed on him. On 7.7.1986, the

Clerk.

PWI passed orders for promoting him as Keyman on ad-hoc basis (Annexure A-1). The applicant represented against ad-hoc promotion and sought for promotion on a regular basis. It is contended that 25 persons junior to him and whose names have been given in para 6.11 of the O.A. were promoted as Keymen but the applicant was denied the same. It is further stated that in March 1988, 15 Gangmen who were all junior to the applicant were promoted as Keymen. He has, therefore, contended that denial of promotion to him is discriminatory and violative of Articles 14 and 16 of the Constitution; that his seniority has been ignored in an arbitrary manner; and that orders to promote him on ad-hoc basis were entirely arbitrary and discriminatory, particularly, when he had already been selected as Keyman and his juniors had been promoted against regular posts.

4. It is not in dispute that passing the suitability test for the post of Keyman was a condition precedent in the case. The applicant has contended that he had passed the same before 1978 and he had, therefore, been promoted as Keyman with effect from 21.7.1978. The respondents have stated in their reply that as per official record, the applicant never passed the suitability test for the post of Keyman, but being the seniormost Gangman, he used to work as Keyman in leave vacancies. They have also stated that he never drew his wages as Keyman and, therefore, the question of his reversion from the post of Keyman did not arise. It is further stated that the pay scale of both the posts of Gangman and Keyman was Rs.210-270. The applicant has not filed any primary evidence in proof of his contention that he had passed the suitability test for the post of Keyman before or in 1978; the only document on which he relies for this purpose is communication No.754-E/11/IV/P.4, dated 7.10.80, which was filed by the applicant along with his rejoinder, a copy of which is at page 34 of the paper book. The subject-matter of this communication is: Suitability test for the posts of

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P. Way Mistries gr. Rs.380-560. This communication has two lists as Annexures 'A' and 'B'. Annexure 'A' contains the names of persons who were required to appear for suitability test for the post of P.W. Mistries on 2.11.80. Annexure 'B' is the list of staff who were asked to keep themselves ready for suitability test for the above posts, and to be called at short notice, if necessity arises. The applicant's name appears at Sl. No.7 of Annexure 'B', in which he is shown to be a Key-man. Learned counsel for the applicant argued that unless the applicant had been regularly selected and appointed as a Keyman, he was not eligible for taking the suitability test for the post of P.W. Mistry. As already stated above, the applicant has not adduced any direct evidence in terms of notice for holding the suitability test, the list of persons who may have qualified in the test and finally the panel which may have been announced for that purpose. On the other hand, the respondents, in their reply, have categorically stated that the applicant appeared in the tests for the post of Keyman in 1982 and again in 1987, but failed on both the occasions. They have further stated in the reply filed on 19.10.1988 that as per official record, the applicant never passed the suitability test for the post of Keyman. In fact, Annexure 'X' filed by the applicant along with his M.P. No.1295/1990 shows that the applicant appeared in 1987 suitability test for the post of Keyman and he was declared as 'Unsuitable'. His name appears at Sl. No.2 and his designation is shown as Gangman. If the applicant had really appeared and qualified in the suitability test in or before 1978, as claimed by him, there was no occasion for him to again appear either in 1982 or in 1987. In fact, he again appeared in the suitability test in 1989, in which he was declared successful and on the basis of that result, the Tribunal, in its order dated 28.9.1990 on M.P. 1295/90 directed the respondents to promote the applicant as Keyman in accordance with his position in the panel of 1989 and he was accordingly

promoted. Thus, the evidence on record in support of the applicant having passed the suitability test for the post of Keyman only in 1989 far outweighs the importance of the document on which he has relied, and that too is a totally indirect evidence.

5. In respect of the promotion of 25 juniors to the post of Keyman, as stated in para 6.11 of the O.A., the applicant has not mentioned even the year in which these promotions are said to have been made. In fact, about these promotions, he had mentioned for the first time in his representation dated 5.10.87 (Annexure A-4). His indirect challenge to the alleged reversion from the post of Keyman in 1981 and the promotion of his juniors before 1987, if any, is barred by limitation. This O.A. was filed on 26.5.1988. It is clear from the reply of the respondents that the juniors of the applicant were promoted as they had passed the suitability test. When the applicant passed the same in 1989, he had also been promoted. His earlier promotion on ad-hoc basis, vide letter dated 7.7.1986 (Annexure A-1) was admittedly not accepted by the applicant. The plea of discrimination and consequential violation of Articles 14 and 16 of the Constitution is without force because the applicant, who did not pass the suitability test, was not equally placed with those who had passed the same and which was a condition precedent to promotion to the post of Keyman.

6. In view of the above discussion, we see no force in this O.A., which is accordingly dismissed, leaving the parties to bear their own costs.

C. C. Jain
(P.C. JAIN)
Member(A)

T. S. Oberoi
(T.S. OBEROI)
Member(J)