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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 28 of 1986
T.A. No.

DATE OF DECISION 21.7.1988

Shri Wazir Chand Petitioner

Shri B.S. Charya Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent


Shri O.N. Moolri Advocate for the Respondent(s)

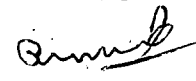
CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judicial)

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether to be circulated to all the Benches ? No


(S.P. Mukerji)
Administrative Member


(P.K. Kartha)
Vice-Chairman (Judicial)

(4)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.
...

DATE OF DECISION: 21.7.1988.

REGN. NO. O.A. 28/86.

Shri Wazir Chand ... Applicant

Vs.

Union of India & Ors. ... Respondents.

For the applicant: Shri B.S. Charya, Advocate.

For the respondents: Shri O.N. Moolri, Advocate.

CORAM:

Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judicial).

Hon'ble Mr. S.P. Mukerji, Administrative Member.

JUDGMENT

(delivered by Hon'ble Shri S.P. Mukerji, AM).

The applicant, who is a member of the Scheduled Caste and is working as Chargeman grade 'B' under the Northern Railway, has filed this application dated 20.12.1985 under Section 19 of the Administrative Tribunals Act, 1985, praying that the order of reversion dated 16.11.1984 reverting him from the post of Chargeman grade 'A' to that of Chargeman grade 'B' be set aside and the adverse remarks in his confidential reports for the period between 1975-76 and 1982-83, be expunged and not taken into consideration for the

82

purpose of promotion of the applicant. During the course of arguments, the learned counsel for the applicant withdrew the second relief regarding expunction of adverse remarks.

2. The brief facts of the case are as follows.

The applicant was originally recruited as Semi-skilled fitter on 6.4.1953 and promoted as Skilled Fitter in October, 1958 and thereafter, as Highly Skilled Fitter with effect from 10.4.1974. He was appointed to officiate as Chargeman grade 'B' in the scale of Rs. 425-700 with effect from 29.3.1975 on a regular basis. He was promoted to the next higher post of Chargeman grade 'A' in the scale of Rs. 550-750 on 9.6.1978 on an ad-hoc basis subject to the verification of vigilance and clearance under the Railway Servants (Discipline & Appeal) Rules. This order of promotion was cancelled on 4.7.1978 as he was not found fit for promotion. Prior to 1.1.1979, promotions of Chargemen grade 'B' to that of Chargeman grade 'A' were made on the basis of seniority-cum-suitability test. The applicant, admittedly, failed in the suitability test for the post of Chargeman grade 'A' which was held on 3.2.1978. The applicant filed writ petition No. 4463/82 in the High Court of Punjab and Haryana against the order of his reversion on 9.6.1978. The writ petition was dismissed in limine by the said High Court. On 1.8.1984, the applicant was promoted again as Chargeman

grade 'A' (Annexure P-5) "entirely as a temporary measure under local arrangements...." but by the impugned order dated 16.11.1984, he was again reverted to the post of Chargeman grade 'B' in order to accommodate a Scheduled Tribe candidate, junior to him, who had become eligible for such promotion with effect from 1.8.1984. The main contention of the applicant is that a number of persons junior to him had been promoted to the post of Chargeman grade 'A' between 1979 and 1984 and since he was promoted on 1.8.1984 when no Scheduled Tribe candidate was eligible for such promotion, he could not be reverted on 16.11.1984 in order to accommodate a Scheduled Tribe candidate who was not eligible when he was promoted. He has also urged that another Scheduled Caste candidate, Shri Bachna Ram, who was ^{also} junior to him, was promoted to the post of Chargeman grade 'A' in April, 1984 while he was not considered. Similarly, another junior officer, Shri Prem Chand, was promoted in April, 1984 as Chargeman grade 'A' with effect from 1.1.1979. He has also challenged the various adverse entries which he had earned during 1975-76, 1976-77, 1977-78, 1980-81, 1981-82 and 1982-83, as born out of prejudice, which have also stood in his way of promotion.

(11)

3. The respondents have stated that the applicant was not found fit for promotion during 1977-78 and his writ against reversion in 1978 was rejected by the High Court of Punjab and Haryana. They have also denied any element of alleged bias on the part of the Chief Mechanical Engineer as the CME did not write the confidential report of the applicant for the year 1977-78. They have clarified that the applicant was promoted as Chargeman grade 'A' on a purely temporary and local arrangement with effect from 1.8.1984 against a post reserved for a Scheduled Tribe candidate. The confidential report of the applicant for the year 1983-84 was average and for 1984-85, was unsatisfactory and his representation against the adverse reports was rejected and the decision was communicated to him on 6.12.1985. He was undergoing punishment of withdrawal of increment for a period of one year with effect from 1.4.1985 which was subsequently reduced to a period of six months on appeal. As regards the promotion of a junior candidate, Shri Bachna Ram, the respondents have clarified that Shri Bachna Ram was promoted to Chargeman grade 'A' in preference to the applicant on 21.4.1984 as the applicant was not found fit for promotion in his annual confidential report. The respondents have further

52

12

stated that on completion of 30 years of service by the applicant, his case was reviewed by the Review Committee who recommended that he was not considered ^{fit} for retention in a post higher than the scale of Rs. 425-700 because of his unsatisfactory service over the last many years. This decision was conveyed to the applicant on 25.2.1985. On reconsideration of his case, it was decided that he was fit for retention in grade Rs. 425-700.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. Since the learned counsel for the applicant withdrew the prayer regarding expunction of adverse remarks, we do not wish to go into that relief.

5. So far as the question of the applicant's reversion from grade 'A' to grade 'B' Chargeman vide the impugned order dated 16.11.1984 is concerned, the applicant was promoted as Chargeman grade 'A' vide the order dated 1.8.1984 (Annexure P-5), the relevant portion of which reads as follows:-

"3. Shri Wazir Chand chargeman grade 'B' Rs. 425-700 Prog/JUDW is put to officiate as Chargeman Grade 'A' Rs. 550-750 on Rs. 550/- P.M. and is posted in CR/JUDW against an existing vacancy.

Note: The promotion of item No. 3 is entirely as a temporary measure under local arrangements and shall not confer upon the promotee any prescriptive right for similar future promotion over his senior." (emphasis added)

From the above, it is clear that the applicant was promoted not on a regular basis but was promoted for meeting temporary and local exigencies of service. The impugned order of reversion dated 16.11.1984 clearly stated that the applicant was officiating as Chargeman grade 'A' under local arrangement and the Scheduled Tribe candidate, Shri Sukh Ram, was to be promoted in an officiating arrangement. It is conceded by the learned counsel for the applicant that Shri Sukh Ram, who is a Scheduled Tribe candidate, in accordance with the seniority list of Chargemen grade 'B' as on 1.6.1984 (page 22 of the Paper Book), was promoted as Chargeman grade 'B' on 1.8.1982. He thus completed two years of service and became eligible for promotion to the post of Chargeman grade 'A' on 31.7.1984. Thus, when the applicant was promoted as Chargeman grade 'A' on 1.8.1984 as a local and temporary measure, Shri Sukh Ram had already become eligible for such promotion. As such, the applicant cannot have prescriptive right to hold that post which was to go to a Scheduled Tribe candidate with effect from 1.8.1984 in accordance with the roster. The fact that the order of promotion of Shri Sukh Ram on a regular basis was ^{passed} ~~made~~ on 16.11.1984 should not confer, by default or delay, any such right on the applicant.

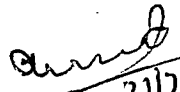
6. As regards the promotion of another Scheduled caste candidate, Shri Bachna Ram, in April, 1984, the respondents have clearly stated in the counter affidavit that Shri Bachna Ram was promoted on 21.4.1984 "in preference" to the applicant as the latter was not found fit for promotion in his annual confidential report. As regards his non-promotion prior to 1984, his claim for promotion in 1978 was rejected by the High Court of Punjab and Haryana. In Annexure R-1 (page 38 of the Paper Book), which is a letter from the Additional Chief Mechanical Engineer to the Northern Railway Headquarters, it is clearly indicated that the applicant was considered for promotion as a Scheduled Caste candidate against a reserved vacancy in March, 1982, 1983 and 1984 but was not promoted because of adverse confidential reports and his conduct being under investigation. He was promoted on 1.8.1984 against a Scheduled Tribe point as a Scheduled Tribe candidate, though available, had less than two years of service in the lower grade as Chargeman grade 'B'. The applicant was reverted to accommodate that Scheduled Tribe candidate as the applicant was junior-most promotee Chargeman grade 'A'. We have also seen the copies of the adverse reports communicated to the applicant and annexed as R-14, R-15, R-16, R-17 and R-18 between 1978 and 1985, which

13

give a very poor picture of the applicant's performance. In the confidential reports of 1978, 1981 to 1983 and 1985, he was not assessed as fit for promotion. He was awarded punishment on 30.9.1975, censure on 24.2.1976, punishments on 24.9.1980 and 5.1.1981, censure on 11.5.1981 and another punishment in February, 1985, not to speak of a series of punishments between February, 1985 and September, 1986. The Review Committee also found him to be not fit to be retained in service in a scale higher than that of Chargeman grade 'B'. Being thus consistently adjudged as not fit for promotion as Chargeman grade 'A', he cannot claim it even as a Scheduled Caste candidate for whom also fitness as such is a pre-requisite for promotion.

7. In the facts and circumstances of the case, we see no merit in the application and reject the same. There will be no order as to costs.


21.7.88
(S.P. MUKERJI)
ADMINISTRATIVE MEMBER


21/7/88
(P.K. KARTHA)
VICE CHAIRMAN