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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.356

1986

~~TAX NOX~~

DATE OF DECISION 6.3.1987

Shri B.S.Shiva Murthy Petitioner

Petitioner in person Advocate for the Petitioner(s)

Versus

Ministry of Transport Respondent

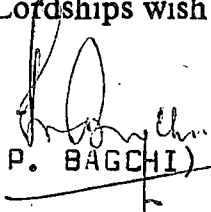
Shri M.L. Verma Advocate for the Respondent(s)

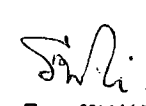
CORAM:

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

The Hon'ble Mr. H. P. Bagchi, Judicial 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


(H. P. BAGCHI)


(S. P. MUKERJI)

4

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O. A. No.356/86

DATE OF DECISION : 6.3.1987

Shri B.S. Shiva Murthy . .Applicant

Vs.

Ministry of Transport . .Respondent

For Petitioner . .Petitioner in person

For Respondent . .Shri M.L.Verma, Advocate

CORAM

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

The Hon'ble Mr. H.P.Bagchi, Judicial Member

JUDGMENT

The applicant who is working as
Superintending Engineer in the Ministry of
Shipping and Transport (Roads Wing) moved the
Tribunal with an application under Section 19
of the Administrative Tribunal Act, 1985 on
31.1.1986 praying that his date of appointment
to Selection Grade should be fixed ^{on} ~~on~~ 1.4.1984
^{is}
instead of 1.3.1985. The facts of the case
are simple and straight forward and can be
narrated as follows.

2. The applicant was working as Superintending
Engineer in the regular scale of Rs.1500-2000.
In accordance with the guidelines issued by the
Department of Personnel and Administrative Reforms

[Signature]

through O.M. No.5/12/79-PP-II dated 31.7.1982
it was laid down as follows :

"(d) No officer shall be eligible for appointment to the non-functional Selection Grade unless he has reached the maximum of Rs.2,000/- in the scale of Rs.1500-2000 or in the intermediate administrative grade as the case may be and has remained there for a period of two years."

3. It is admitted that the applicant reached the maximum of the pay scale on 1.4.1982 and he was entitled to the Non-functional Selection Grade of Rs.2000-2250 w.e.f. 1.4.1984. However, he was not given the Selection Grade because one of his seniors Shri H.R.Bapu Satyanarayana was not eligible for Selection Grade on 1.4.1984 but became eligible on 1.3.1985 and accordingly, the applicant was also given Selection Grade w.e.f. 1.3.1985. The applicant's claim is that since in accordance with the respondent's order of 14.3.1984 (Appendix E-II to the petition) S/Shri R.Gopala Krishnan and K.B. Sarkar who were juniors to Shri Bapu Satyanarayana were promoted to the Selection Grade w.e.f. 14.3.1984 without reference to the ineligibility of their senior Shri Bapu Satyanarayana, the applicant should also have been given the Selection Grade w.e.f. 1.4.1984 without reference to the eligibility of Shri Bapu Satyanarayana. The respondents have given the arguments in the following terms. "Shri A.N.Narain, who was on deputation with the Indian Roads Congress claimed

6

appointment to Selection Grade under Next Below Rule that a reference was made to the Department of Personnel who clarified that the main objective of introducing the non-functional selection grade was to relieve stagnation amongst Junior Administrative Grade level officers whose chances of promotion to the next level were limited because of the relatively small percentage of posts at higher levels. According to the guidelines for the introduction of non-functional selection grade; the selection grade posts are to be carved out from the Junior Administrative Grade level posts. The appointment to posts of non-functional selection grade being in-situ, does not involve any change in duties and responsibilities. Hence, the non-functional selection grade cannot be treated as a promotion grade."

"It was further clarified that as per provisions of clause (e) of para 3 of the non-functional selection grade guidelines, the basis of appointment to the non-functional selection grade is 'seniority subject to rejection of unfit'. Consequently, if a senior officer is not eligible for appointment to the selection grade under clause (d) of the aforesaid guidelines, then his juniors cannot be appointed to this grade even though they may be otherwise eligible under clause (d) of the guidelines".

- 4 -

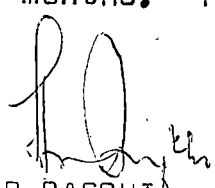
4. We have heard the argument of the applicant in person and the learned counsel for respondents and gone through the documents carefully. The introduction of the Selection Grade was obviously to avoid stagnation at the maximum of the regular scale of Superintending Engineer (Rs. 1500-2000). Since the Selection Grade is non-functional and the respondents have themselves argued that appointment to the selection grade is not a matter of promotion, the question of inter-se seniority between Shri Bapu Satyanarayana and the petitioner for giving the selection grade to the petitioner does not arise. It cannot be stated that by giving non-functional selection grade to Shri Bapu Satyanarayana who was not eligible to the selection grade on 1.4.1984 he would have been superceded. Since it is not a matter of promotion, the selection grade can be given to those juniors who have stagnated at the maximum of the regular scale earlier than their seniors. If the selection grade is denied to the juniors even after they had stagnated at the maximum of the regular scale for two years, only on the ground that the seniors have not become eligible, the very purpose of introduction of non-functional and non-promotional selection scale is defeated. The fact the juniors off

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8

Shri Bapu Satyanarayana were given selection grade with effect from 14.3.1984 when Shri Bapu Satyanarayana who was senior was not eligible and became eligible on 1.3.85, shows that it is the stagnation criterion and not the seniority criterion which would prevail in the matter of non-functional and non-promotional selection grade. Further, by giving the selection grade to two other juniors of Shri Bapu Satyanarayana and denying the same to the petitioner from the date when the petitioner became eligible for selection grade in his own right would be tantamount to adverse discrimination and would militate against Articles 14 and 16 of the Constitution of India. We are convinced that further clarification given by the Department of Personnel and Administrative Reforms as quoted above does not stand the scrutiny of law.

5. In the facts and circumstances discussed above, we allow the application and direct the respondents to give selection grade to the applicant with effect from the date on which he completed two years of stagnation at the maximum of the scale of Rs. 1500-2000: i.e. 1.4.1984 (subject to verification by the respondents). The arrears of pay should be made good to him within the next two months. There will be no order as to costs.


(H.P. BAGCHI)
JUDICIAL MEMBER

6.3.87


(S.P. MUKERJI)
ADMINISTRATIVE MEMBER