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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 488/86 198
T.A. No.

DATE OF DECISION 16.1.1987

Shri K.S. Badan, Petitioner

Shri S.K. Bisaria, Advocate for the Petitioner(s)

Versus

Union of India & Others, Respondent


Shri K.N.R. Pillai 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*
4. Whether to be circulated to other Benches? *No*


(H.P. Bagchi)
Judicial Member


(S.P. Mukerji)
Administrative Member

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. T-488/86

Dated: 16th January, 1987.

Shri K.S. Badan

.... Petitioner

VERSUS

Union of India & Others

.... Respondents

For petitioner

.... Shri S.K. Bisaria,
Advocate.

For respondents

.... Shri K.N.R. Pillai,
Advocate.

CORAM: Hon'ble Member Shri S.P. Mukerji.
Hon'ble Member Shri H.P. Bagchi.

(Judgement of the Bench delivered by
Hon'ble Member Shri S.P. Mukerji)

2 Hon'ble Judge Member Shri H.P. Bagchi

JUDGEMENT

The petitioner, Shri K.S. Badan who is Supdt. (Laboratories) in the Northern Railways workshop at Kalkaji, moved the Tribunal under Section 19 of the Administrative Tribunals Act praying that he should be declared to be senior to respondent No.3, Shri R.S. Dhore, and that the applicant should be declared to have been selected in Class II post of Assistant ~~Chemist and Metallurgist~~, ^{material} (ACM) with effect from 13.6.1986. The brief/facts relevant for a decision in this case can be narrated as follows. Both the petitioner as well as respondent No.3, Shri Dhore, joined the Railway Service as Junior Chemical and Metallurgical Assistant (JCMA). While the petitioner joined on 17.11.1969, respondent No.3 did so on 20.12.1969 and, therefore, according to the petitioner, he was senior to respondent No.3. The petitioner was promoted as Chemical & Metallurgical

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Assistant in the revised scale of Rs.425-700 in February, 1972 and on 17.4.1977, he was promoted on an ad hoc basis as Lab. Supdt. in the scale of Rs.550-900. Between July and October, 1977, written tests and interviews were held for ^{the} preparation of a Select List for regular appointment as Lab. Supdt. Whereas respondent No.3 was included in the Select List which was published on 2.1.1978, the petitioner failed to qualify. However, being a member of the Scheduled Cast~~e~~, he was given six months' training and was included in the final panel which was issued on 11.8.1978 but below respondent No.3, who was also a member of the Scheduled Caste. Whereas respondent No.3 was regularised as Lab. Supdt. (LS) with effect from 9.2.1978, the petitioner was regularised with effect from 11.8.1978. When, as a result of restructuring, certain posts of Lab. Supdt. were upgraded with the changed designation of Supdt. Lab. in the scale of Rs.650-960, both the petitioner and respondent No.3 were given the higher scale with effect from 1.1.1984. Whereas respondent No.3 passed the screening test, the petitioner failed to do so, but later, on a review, the General Manager gave him the promotion with effect from 1.1.1984 as Supdt. Lab. from the same date on which respondent No.3 was promoted. For the next higher Class II gazetted post of Assistant Chemist and Metallurgist (Rs.650-1200), again there was a test in which the petitioner did not qualify but respondent No.3 did so.

2. The petitioner's main contention is that since he was senior to respondent No.3 as JCMA, he should be

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made senior to him in the grade of Supdt. Lab. He claims such seniority also on the basis of his longer period of officiation as Lab. Supdt. from 17.4.1977 as against such appointment of respondent No.3 from 9.2.1978. He has challenged his rejection by the Selection Board for the post of Lab. Supdt. in 1977 on the ground that he had been rejected because of an adverse entry which was expunged on 13.1.1978. The respondents have denied any discrimination or malafide against the petitioner and have explained that regularly constituted Selection Boards had found the petitioner not fit for promotion either as Lab. Supdt. in 1977 or for promotion to Class II post of ACM during 1985-86.

3. We have heard the arguments of the learned Counsel for both the parties and gone through the documents carefully. The petitioner cannot claim seniority in the grade of Supdt. (Lab.) over respondent No.3 on the basis of his seniority in the lower scale of JCMA. Seniority in the higher grade will have to be determined on the basis of date of promotion or induction in that grade. As regards petitioner's contention that he had entered the grade of Lab. Supdt. earlier than respondent No.3 and, therefore, in accordance with the rulings of the Supreme Court, he should be senior to respondent No.3, ^{or the same} cannot be accepted. The rulings of the Supreme Court for determining seniority on the basis of length of officiation in the higher grade applies between the category of direct recruits on ~~the~~ ^{the} one hand and promoted officers on the other. The inter se seniority within the same category of

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direct recruits or promotees, will have to be determined on the basis of the respective date of selection. When the date of selection is the same between the two promotees, their inter se seniority is to be determined in the order in which they were selected. Further, the ruling of the Supreme Court applies only to such length of officiation which is put in after one is included in the Select List. The petitioner in this case was included in the panel only on 11.8.1978 and, therefore, his officiation between 17.4.1977 and 11.8.1978 cannot be considered to be regular for the purposes of seniority. Since respondent No.3 was included in the panel six months earlier than the petitioner, who failed to qualify when he competed along with respondent No.3, the petitioner has to take a lower place in the grade of Lab. Supdt. or Supdt. Lab.

4. The petitioner's contention that he would have qualified as Lab. Supdt. in 1977 itself but for the adverse entry which was deleted later, is also not very convincing. We have examined the original records and compared the ^{obtained by} remarks of the petitioner and respondent No.3 with the following results:-

<u>Item</u>	<u>Total marks</u>	<u>Marks obtained by petitioner</u>	<u>Marks obtained by respondent 3.</u>
Seniority	15	8	5
Written Test	35	15	22
Viva Voce	15	15	10
C.R (character roll)	15	7	9
Leadership	<u>20</u>	<u>9</u>	<u>13</u>
Total:	<u>100</u>	<u>44</u>	<u>59</u>

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From the above, it will be clear that even if the petitioner is given full marks against the "character roll," i.e., 15 out of 15, he would improve his total marks from 44 to 52 and will be way behind respondent No.3. Thus, expunction of the adverse entry cannot give him any benefit of seniority over respondent No.3.

5. As regards promotion to class II cadre, we have again examined the marks obtained by the petitioner and the respondent with the following results:-

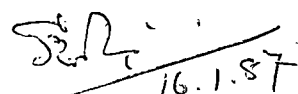
Item	Total marks	Qualifying marks	Marks obtained by the petitioner	Marks obtained by respondent No.3
Professional competence	50	30	34 $\frac{1}{2}$	30
Record of service	25	15	9	18
Personality	25	15	11	15
Total:	100	60	54 $\frac{1}{2}$	63

It will be clear that except in professional competence, the petitioner did not qualify either in the total or in two of the three items. As such, he can have no claim to promotion as ACM ^{in the} and Class II grade. We are satisfied that the selections were made by a Board of senior officers like Chief Works Engineer, Chief Traffic Safety Supdt., Chief Personnel Officer and Additional Chief Engineer who cannot be collectively presumed to be prejudiced against the petitioner as a person or as a member of the Scheduled Caste. Even respondent No.3, who has consistently been selected, is a member of the Scheduled Caste.

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6. In the facts and circumstances discussed above, we do not find any merit in the application and reject the same. The respondents have been liberal enough to promote the petitioner prematurely on an ad hoc basis as Lab. Supdt. and continue to accommodate him in that grade even after he failed to qualify in the selection. He was given the higher pay-scale of Supdt. Lab. again with effect from the same date from which it was given to respondent No.3 even when the petitioner had not been found suitable. If he could not be promoted to the gazetted rank of ACM, it was because of his failure to qualify in the selection ^{process} ~~grade~~. The application is, therefore, rejected. There will be no order as to costs.


(H.P. Bagchi) 16.1.87
Judicial Member


16.1.87
(S.P. Mukerji)
Administrative Member