

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

6

OA No.502/86

DATE OF DECISION 23/7/92

Sh.Juthar

Applicant

VERSUS

GENL.MANAGER & OTHERS

RESPONDENTS

CORAM

Hon'ble Mr.Justice Ram Pal Singh, Vice Chairman(J)

Hon'ble Member Sh.I.P.Gupta, Member(A)

For the Applicant

Sh.V.P.Sharma, counsel

For the Respondents

Sh.K.N.R.Pillai, counsel

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

JUDGEMENT

(Delivered by Hon'ble Mr.I.P.Gupta, Member(A))

This is an application filed under Section 19 of the Administrative Tribunal Act, 1985. The applicant has requested for setting aside of the order of the respondents dated 21-12-84(Annexure-A) placing some head Train examiners(Rs 550-750) on provisional panel of Chief Train examiners(Rs 700-900) wherein the name of the applicant does not figure, but his junior Sh.M.P.Suman has been included. He has therefore, prayed that he should be given promotion to the post of Chief Train Examiner, from the date when his junior was promoted with all consequential benefits.

2. The applicant joined the Railway department on 30-10-46 against the post of Khalasi. Subsequently he was promoted as Train Examiner and in the seniority list of Train examiner he was senior to Sh.M.P.Suman (Respondent No.4)

3. There is no dispute about the fact that the applicant was senior to respondent No. 4 as Train examiner. The applicant was promoted as Head Ticket examiner (Rs 550-750) vide order dated 21-9-82 but he submitted proforma refusal on 28-9-82 and this was accepted on 7-4-1983.

4. The learned counsel for the applicant brought out that proforma refusal meant that the applicant would be allowed to be retained at his existing post (prior to promotion) and station and accommodated on promotion to higher grade at his existing station of posting against future promotee quota vacancies during the next two years without loss of seniority. He would not however request for posting to higher grade at any other station during two years.

5. We heard arguments and counter arguments of learned counsels of either side. The applicant was promoted to the post of Head Train examiner (Rs 550-750) on 21-9-1982. It will be seen from the seniority list of Head Train examiner (Rs 550-750) at Annexure-C that this seniority list was dated 14-8-84 and in this list the name of the applicant does not figure whereas the name of respondent No.4 appears. The applicant was within the period of two years of refusal of promotion elsewhere and according to the learned counsel for the respondent no vacancy had arisen at the same station. He added that consequent upon restructuring of

/Annexure-C).

cadre by order of 12/84 which was given effect ^{to} from 1-1-84, certain posts for the higher grade in the pay scale of Rs 700-900 fell vacant. For filling these posts only those who were officiating in the scale of Rs 550-750 were considered. Sh.Virender Singh, Sh.Ganga Dhar and Sh.M.P.Suman had already been officiating in the scale of Rs 550-750 before issue of order of 12/84 for restructuring of cadre. The applicant was not so officiating since no vacancy had occurred at the same station after his proforma refused on 28-9-82. It was only after persons got promoted to 700-900 that posts in the grade of Rs 550-750 fell vacant and eligible persons, were considered. Promotion orders for Rs 700-900 were issued on the basis of panel approved by order dated 21-12-84 (Annexure-A). Such promotions, though issued in December, 1984 were given effect to from 1-1-84 on the basis of the order for restructuring of cadre. Consequent upon such promotions vacancies in the lower grade in the pay scale of Rs 550-750 occurred and it is against these vacancies that the applicant was promoted retrospectively from 1-1-84 in scale of Rs 550-750.

6. Since the applicants' promotion against the post in the pay scale of Rs 550-750 was only consequent upon order of 21-12-1984, the applicant cannot claim any consideration for promotion against the scale of Rs 700-900 along with those mentioned in order dated 21-12-1984 because at that point of time he was not officiating in feeder scale of Rs 550-750. On such promotion to scale of Rs 550-750 for which proforma refusal was given by the applicant in 1982, he did not lose seniority which was protected vide

seniority list dated 30-4-1985. The contention of the learned counsel for the applicant that annexure-H shows that Virender Singh and Ganga Dhar got double promotion on 1-1-84 was explained away by the learned counsel for the respondents that Virender Singh and Ganga Dhar stood promoted to the scale of Rs 550-750 before sanction of cadre restructuring in December, 1984. In any case they were senior to applicant who cannot claim any preferential treatment. So far as Sh. M.P. Suman is concerned he stood promoted to Rs 550-750 scale from 14-4-83 whereas the applicant was not in the scale either prior to 1-1-84 or prior to December, 1984 when restructuring of cadre was approved from 1-1-84. Therefore, to claim promotion to Rs 700-900 from 1-1-84 for the applicant is untenable when the applicant had not got promoted even to Rs 550-750 prior to restructuring of cadre in December, 1984 w.e.f. 1-1-84. When vacancies in 550-750 arose only consequent up promotion of some from amongst those in Rs 550-750 being elevated to Rs 700-900 that his promotion took place in such consequential vacancy only in Rs 550-750 from 1-1-84. In fact if the argument is stretched further and the impugned order at Annexure.A is assumed for a moment to be non-existent, the applicant's promotion even to scale of Rs 550-750 may get affected, in the absence of consequential vacancies.

7. In view of the above the application is dismissed with no order as to costs.

I. P. Gupta
(I.P. GUPTA) 23/7/92
MEMBER(A)

Lam 16.23.7.92.
(RAM PAL SINGH)
VICE CHAIRMAN(J)