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In the Central Administrative Tribunal
Principal Bench: New Delhi

OA No.689/87
(MP 486/93)

Date of decision:23.02.1993.

Shri Bharamjit

...Petitioner

Versus

Union of India through
Director General, Post and
Telegraph & Another

...Respondents

Coram: -

The Hon'ble Mr. Justice V.S. Malimath, Chairman
The Hon'ble Mr. I.K. Rasgotra, Member (A)

For the petitioner Shri D.R. Gupta, Counsel.

For the respondents Shri P.P. Khurana, Counsel for
Respondent No.1.

Shri B.K. Aggarwal, Counsel for
Respondent No.2

Judgement(Oral)
(Hon'ble Mr. Justice V.S. Malimath, Chairman)

The petitioner is a Despatch Rider who commenced his career in the year 1974. He says that a vacancy of Head Despatch Rider occurred in 1984 which was filled up by promoting respondent No.2 on a provisional basis by order dated 15.1.1985 and on regular basis by order dated 1.3.1985. He further says that respondent No.2 has been confirmed by order dated 2.5.1987. The petitioner appears to have been under a cloud between 1984 and 1986 when he was subjected to a disciplinary enquiry. The said disciplinary enquiry ultimately resulted in his exoneration by order dated 25.9.1986. The petitioner after his exoneration appears to have made a representation claiming that he should have been promoted in preference to respondent No.2 who is junior to him. That representation was rejected by Assistant General Manager TTE by order dated 12.11.1986. It is in this background that the petitioner has approached the

Tribunal by way of this Application in which he has prayed for a direction to promote him as Head Despatch Rider from the date the vacancy occurred on the retirement of Shri Harbans Singh. He has also prayed for quashing the order, rejecting his representation dated 18.12.1936.

2. Both the respondents have filed their replies. Respondent No.1 impleaded is the Director General, Post and Telegraph Department, New Delhi. The petitioner's case is that his case was not considered for promotion because a disciplinary enquiry was pending against him. It is his case that in a case like this a sealed cover procedure should have been followed, his merit assessed and kept in a sealed cover and opened after the conclusion of the disciplinary proceedings. In the reply filed in this case it is stated that the petitioner's case was in fact considered and that on overall assessment of his record of service it was found that he is not fit and suitable for promotion. It is for this reason that Respondent No.2 was considered and was found fit and suitable for promotion. In other words, it is their case that they did not resort to sealed cover procedure and that his case was actually considered by the DPC. The right of the petitioner is only for consideration. We are satisfied from the stand taken on behalf of respondent No.1 that the petitioner's case was considered by the DPC and he was not found fit and suitable for promotion. The learned counsel for the petitioner, however, maintained that since no adverse entries have been communicated to him it must be presumed that his record of service was satisfactory, in which event he was entitled to be promoted in preference to respondent No.2. Respondent No.1 has stated that there

were no adverse entries which were taken into account. Hence the question of communicating any adverse remark does not arise. If an official does not have any adverse entries in the confidential records it does not mean that he is entitled to promotion to a post which is required to be filled up on seniority-cum-fitness principle. If there are no adverse remarks it may justify an inference that the official is adequate for the job which he is holding. It does not necessarily follow that he is fit and suitable for the promotional post. Consideration for assessing the suitability for holding promotional post are not the same for the post held by the official concerned. Hence, mere fact that there are no adverse entries at the relevant point of time does not mean that the official cannot be held to be not fit and suitable for promotion on consideration of the record of service of the official. The DPC having done its exercise, there is no good reason to draw the inference that they acted arbitrarily. Hence, it is not possible to take the view that the petitioner's case was not properly considered.

3. There is a principal infirmity in these proceedings the appointing authority who has passed the order of promotion of respondent No.2 and who has also confirmed him not having been impleaded in the proceedings as a party. He is a necessary party. Respondent No.1, impleaded is Director General, Post and Telegraph Department. An MP No.486/93 has been filed in which the petitioner wants us to permit substitution of respondent No.1 by the Union of India through the Member (Services) Telecom Commission/D.G. Telecommunications, Sanchar Bhawan, 20, Ashoka Road, New Delhi-11001. By this substitution the appointing authority will not be

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brought on record. Hence the principal infirmity in not impleading the necessary party would not be cured by allowing this MP. Hence the MP stands rejected.

4. For the reasons stated above, this O.A. fails and is dismissed. No costs.


(I.K. Rasgotra)
Member (A)


(V.S. Malimath)
Chairman

'San.'