

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1024/87.

~~TXXX No.~~

199

DATE OF DECISION 12.9.87.SHRI NARINDER NATH SHARMA

PENHOLDER APPLICANT

SHRI G.D. BHANDARIAdvocate for the ~~Penholder~~ APPLICANTUNION OF INDIA & OTHERS

Versus

Respondent's

SHRI Q.N. MOQLRI

Advocate for the Respondent(s)

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The Hon'ble Mr. JUSTICE RAM PAL SINGH, VICE CHAIRMAN

The Hon'ble Mr. R. VENKATESAN, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT

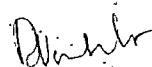
(Delivered by Hon'ble Mr. R.
Venkatesan, Administrative Member)

The applicant in this case was recruited as a

Class III employee of the Railways on 10-4-87. He was promoted on ad hoc basis on 18.7.78 to Group 'B'. He retired on 30.6.86.

2. The applicant came before this Tribunal originally with three prayers. The first prayer was that the orders promoting one Shri P.C.Gupta to Group 'A', who, the applicant contends, was junior to him in the Group 'B' cadre, but was wrongly promoted superseding the applicant. The second prayer is that the letter of the respondents dated 18.9.86

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rejecting the representation of the applicant for promotion under the 'Next Below Rule' from the date on which the said Shri P.C.Gupta was promoted, be set aside. The thired prayer is to give consequential benefits of pay fixation etc. to the applicant by giving him the promotion ^{/as due} under the 'Next Below Rule'.

This Tribunal while hearing a Miscellaneous Petition filed in this application for condonation of delay (MP No.993) ordered that the first prayer was patently barred by time. It was held that it was open to the applicant to challenge the promotion of Shri P.C.Gupta, if it was illegal, within six months of the coming into existence of the Central Administrative Tribunal, but this was not done. The second relief was, however, held to be within time because it was denied by ^{/a} letter dated 15-9-86. The OA was, therefore, admitted only as regards reliefs (2) and (3).

3. The facts of the case are that after his ad hoc promotion, the applicant appeared in test for regular promotion in December, 78. The panel of selected candidates was provisionally announced on 18.7.84 pending decision of the Delhi High Court on a Writ Petition. This shows the applicant at serial no.4 in the panel of 19 persons. Pursuant to terms of this Tribunal on 31.1.87 and 6.2.87, supplementary selection was held in March, 87 and a revised provisional panel of 35 persons was issued for selection for promotion to the Class II service against vacancies of 1978-79. In the said panel, the applicant's name continues to be shown at serial no.4 with the words "retired" added against his name. He had been retired on 30-6-86.

4. The learned counsel for the applicant contended that the provisional panels which had been issued in 1984 and 1987

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were against the regular selection for Class II of the Northern Railway for the year 1978-79. The applicant, who figured in this panel at serial no.4 would, therefore, rank for seniority in Group 'B' from the year 1978-79. Shri P.C.Gupta had been promoted in the North-Eastern Railway in the year 1983 to Group 'B' and came on transfer at his own request. The Counsel contended that in terms of the instructions of the Railway Board, such persons coming on inter-Railway transfer on his own request, would be assigned bottom seniority in the Railway to which he is transferred on the date he takes over. Since Shri P.C.Gupta came to the Northern Railway only on 1-1-84, according to the counsel, he would rank junior to the applicant in class II (Group 'B' Service) in the Northern Railway. The Counsel contended that ignoring this fact the respondents had promoted Shri P.C.Gupta to Group 'A' post w.e.f. 13.12.84 on an ad hoc basis.

5. The Counsel contended that the applicant being senior to ~~themselves~~ Shri P.C.Gupta, was also entitled to promotion to Class I from the date on which Shri P.C.Gupta was promoted, he being junior, under the 'Next Below Rule'. The rejection of the applicant's representation in this regard amounted to not only violation of rules but also an active discrimination which was violative of Articles 14 and 16 of the Constitution and deserves to be quashed.

6. The learned counsel for the respondents drew our attention to the averments in the reply affidavit. In the reply, it has been stated that the seniority position of Shri P.C.Gupta was assigned below the persons who were empanelled for Class II promotions prior to January, 1984, when he joined Northern Railway. According to the respondents, the last regular panel of Group 'B' was of persons of 1975-76 selection. It is their contention that he would rank above the persons of 1978-79

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selection as only a provisional panel had been announced on 18-7-84 in which, the applicant had been included. This panel was superseded by the panel which was announced on 13-3-87 after supplementary selection held in March, 87 and was also provisional. The respondents contend that the applicant cannot claim seniority of 1978-79 on the basis of these provisional panels.

7. The counsel for the respondents drew our/attention to the averment that the 'Next Below Rule' had no application to the present case as both Shri P.C.Gupta and applicant belong to the same cadre and moreover there was no case of a junior having been promoted over the head of the applicant, as stated above. Hence, the counsel contended that the prayer had to be rejected.

8. As per the averments of the respondents, appointments to posts in the senior scale of Group 'A' are made by promotion in the order of seniority, subject to rejection of the unfit, of officers of ordinarily not less than 4 years service in the junior scale of Group 'A'. They have further stated that if no eligible junior scale officer is available, the promotion of Group 'B' officers to the senior scale can be made but only on ad hoc basis. In the present case, Shri P.C.Gupta had been promoted on ad hoc basis to a senior scale post of Statistical Officer, presumably invoking the above provision. Neither the applicant nor the respondents have contended that Shri P.C.Gupta was regularly promoted to the senior scale.

9. The prayer of the applicant in this case is for promotion under the 'Next Below Rule'. The 'Next Below Rule' is a principle by which a railway employee who is out of his regular line, does not suffer by forfeiting an acting promotion to which he would have been entitled, had he been in his regular

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line. The following conditions have been prescribed by the railways, further, for the benefit :

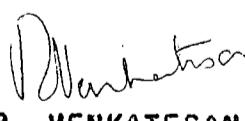
- (1) That the promotion in the regular line is not fortuitous.
- (2) That all the staff, senior to the Railway employee, have been given promotion unless some one amongst them has been declared unfit on account of inefficiency, or has not been able to get promotion being on leave.
- (3) That the Railway servant next below him and in case of inadmissibility of such an employee, the next junior man has been promoted.

(R.B's.No.F(E) II-71-PA-4/1 of 21-10-71)(N.R., S.No.5480)

and, G.I. decision no.4 below Rule 1325 of the Indian Railway Establishment Code, Sixth Edition).

10. The present case cannot be covered under the 'Next Below Rule'. Shri P.C.Gupta was not promoted on a regular basis to the senior scale Group 'A' but on a purely ad hoc basis due to non-availability of a junior scale officer. Such a case of ad hoc promotion cannot be covered under the 'Next Below Rule'. Moreover, the applicant was not serving outside his regular line. Both the applicant and Shri P.C.Gupta were serving in the same line and this has not been denied by the counsel for the applicant. Hence, the essential conditions for the applicability of the 'Next Below Rule' have not been fulfilled.

In the circumstances, we consider that the prayer of the applicant cannot be granted. The application is accordingly dismissed. There will be no order as to costs.


(R. VENKATESAN)

MEMBER (A)


(RAM PAL SINGH)
VICE CHAIRMAN

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