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In the Central Administrative Tribunal

Principal Bench: New Delhi

OA No.111/87

Date of decision: 03.08.92.

Shri Paras Ram

...Applicant

Versus

Union of India through

...Respondent

General Manager, Northern Railway, Baroda House, New
Delhi.

Coram:-

The Hon'ble Mr. Justice V.S. Malimath, Chairman

The Hon'ble Mr. I.K. Rasgotra, Administrative Member

For the Applicant

Shri O.P. Gupta, Counsel.

For the respondent

Shri R.L. Dhawan, Counsel.

Judgement (Oral)

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

The applicant joined as Sanitary Inspector on 30.09.77. In due course, he was promoted as Senior Sanitary Inspector on 2.4.1981. He was, however, ^{not} selected for promotion to the cadre of Chief Health Inspector as per Annexure 'B' dated 5.7.1985 - the panel prepared provisionally subject to their being no DAR case pending against the persons whose names were included in the said panel. The grievance of the applicant now before us is in regard to the ranking of seniority in the provisional seniority list of Senior Health Inspectors, copy of which is produced as Annexure 'A', of August, 1984. The name of the applicant is at serial No.36 and he belongs to Scheduled Caste. He says that he should have been placed above Shri Intiaz Hussain whose name is shown at serial No.25.

2. Shri O.P. Gupta, learned counsel for the applicant contends that the provisional seniority list shows that the applicant got into the cadre of Senior Health Inspector in May, 1981 whereas Shri Imtiaz Hussain got into that cadre on 9.9.1981. As the applicant became Senior Health Inspector earlier than Shri Imtiaz Hussain, he contends that he was entitled to be placed above him in the seniority list.

3. Firstly, it is necessary to point out that the ranking is challenged in the provisional seniority list and not in the final seniority list. The preamble to the list (Annexure A) itself says that it is provisional and that objections from the concerned are called for. Apart from this, we also noticed that Shri Imtiaz Hussain, against whom the applicant claims seniority has not been impleaded as a party in these proceedings. Be that as it may, we find that on merits the applicant has not made out a case for the reasons to be stated presently.

4. In the reply filed by the respondent the reasons for the applicant being placed at serial No.36, maintaining the position of Shri Imtiaz Hussain above him at serial No.25 have been furnished. It is stated that in the year 1981 when the applicant was promoted it was not because it was his turn for promotion in accordance with the roster. It is stated that two points reserved for members of Scheduled Castes had reached, which were required

to be filled up by promoting seniormost persons belonging to the Scheduled Caste community. It is stated that the applicant was not the seniormost member of the Scheduled Caste community at that time in the year 1981. It is stated that roster points that had reached which were meant for Scheduled Castes are 25, 28 of the 40 point cycle. It is further stated that the seniormost Scheduled Caste Health Inspectors were Shri Puran Chand and Gurdial Ram. These two vacancies meant for the Scheduled Castes were required to go to these seniormost members of the Scheduled Caste community. It is, however, stated that they were not considered for promotion in the year 1981 for the reason that disciplinary proceedings were pending against them. It is, therefore, that the applicant, who was a Scheduled Caste candidate was given promotion in the year 1981. In other words, it means that the applicant did not earn promotion because of his general seniority but because of the reservation in favour of the members of the Scheduled Caste and seniormost candidates not being available in the year 1981 for being considered for promotion, there being disciplinary proceedings pending against them at that point of time. When the said disciplinary proceedings came to an end and Shri Puran Chand and Shri Gurdial Ram, the seniormost Scheduled Caste candidates became available they had to be promoted.

In the meantime, it is stated that two more vacancies of Scheduled Castes candidates became available at roster point No.36 of the first 40 point cycle and point No.1 of the second cycle. It is in these two vacancies that Shri Kanshi Ram and the applicant were allowed to continue as Senior Health Inspectors against the said roster points on regular basis w.e.f. 22.1.1983. Thus the applicant had, by virtue of these fortuitous circumstances not been required to be ^{reverted} even after Shri Puran Chand and Shri Gurdial Ram came to be restored their legitimate position and seniority. It is in this background that we have to bear in mind that Shri Imtiaz Hussain had to earn his position in accordance with roster in an unreserved vacancy. As the applicant was able to secure promotion in the reserved vacancy, his seniority had to be assigned in accordance with the roster as and when his turn came. So far as Shri Imtiaz Hussain is concerned, he got his position in accordance with the said roster when his turn came for the unreserved vacancy. The fact that the applicant got earlier promotion in the year 1981, as already stated, because of the fortuitous circumstances, cannot help him to gain an advantage over Shri Imtiaz Hussain. It is not disputed that in the feeder category ✓ Shri Imtiaz Hussain is senior to the applicant. We,

therefore, have no hesitation in holding that there is no infirmity, so far as the assignment of the ranking to the applicant vis-a-vis Shri Imtiaz Hussain is concerned. We, therefore, do not see any good ground to interfere in this Application. Accordingly, the Application fails and is dismissed. No costs.

I.K. Rasgotra
 (I.K. Rasgotra)
 Member(A)

V.S. Malimath
 (V.S. Malimath)
 Chairman

August 3, 1992.

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