

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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O.A. NO. 1741/1991

DATE OF DECISION : 14.2.92

SHRI JAI RAM MEENA

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

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SHRI I.K. RASGOTRA, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

...SHRI SANT LAL

FOR THE RESPONDENTS

...SHRI M.L. VERMA

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 SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant belongs to Scheduled Tribe and is employed as C/S Telegraphist, Central Telegraph Office, New Delhi and has assailed his non promotion to the cadre of Telegraph Traffic Supervisors (TTS) Group 'C', while his junior, Lachhman Prasad Kotad (respondent No.4) has been promoted along with respondent Nos.5 and 6.

2. The applicant has claimed the relief under Section 19 of the Administrative Tribunals Act, 1985 to direct the respondents to quash the impugned orders

dt. 12.3.1991, 10.4.1991, 1.5.1991 (Annexures A1 to A3 to the Original Application) and to direct the respondents to consider the applicant for promotion to the cadre of Assistant Superintendent Telegraph Traffic (TTS-Group 'C') on the basis of the marks obtained in the departmental examination held in January, 1990 and by adding grace marks thereto, giving promotion from the date his juniors are promoted with all consequential benefits of seniority and salary.

3. The facts are that the applicant was eligible for departmental competitive examination for promotion to the cadre of Assistant Superintendent Telegraph Traffic (TTS Group 'C'-departmental quota of 75%) held in January, 1990. The applicant in all the papers obtained 118 marks, while the respondent No.4 Lachhman Prasad Kotad obtained only 87 marks. Respondent Nos.5 and 6 even secured lesser marks than respondent No.4. All these persons appear below the applicant in the Select List as is evident by the results dt. 12.3.1991 (Annexure A1), dt. 10.4.1991 (Annexure A2). The case of the applicant is that by virtue of the instructions contained in DGP&T, New Delhi letter dt. 4.5.1981 (Annexure A6), where the required number of SC/ST candidates do not qualify, according to the relaxed standards, the cases of the failed candidates should be reviewed on the basis of Confidential Reports, the overall

8

performance in the examination etc. by a committee of senior officers so as to assess their suitability/unsuitability. This order also provides for adding grace marks to bring the SC/ST candidates upto the qualifying standards. The maximum number of grace marks, which are required to be given to any candidate will be given to all other candidates, who need some grace marks in order to maintain parity among the recipients of the grace marks for the purpose of determining inter-seniority. The case of the applicant is that he has been ignored for the grant of grace marks and in spite of representation in March, 1991, he has not been promoted, though respondent Nos.4 to 6 who were below the applicant in the merit list of competitive examination were sent for training for a period commencing from May, 1991 to January, 1992. The applicant has been informed by the impugned letter dt. 1.5.1991 that the applicant was not found fit for promotion. The main ground of attack is that the service record of the applicant is better than those, who have been selected vide impugned order dt. 12.3.1991. Respondent No.4 was even awarded the penalty of withholding the increment for one year in one case and for two years in another case. It is also stated that respondent No.4 was not eligible to take the said departmental examination held in

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January, 1990 because he was temporary and found unfit for confirmation in the lower grade of Telegraphist. He was made substantive w.e.f. 22.12.1990.

4. The respondents contested the application and stated that the applicant was not found fit by the DPC, as such no cause of action has accrued in his favour. The applicant appeared in the departmental examination for promotion to TTS Group 'C', i.e., to the cadre of Assistant Superintendent Telegraph Traffic on 19.1.1990. None among the ST candidates qualified. Subsequently, to fill up three posts reserved for ST candidates, among five candidates who had appeared in the above said examination, action for supplementary result was taken as per DGP&T instructions. According to the said instructions, the cases of the failed candidates should be reviewed on the basis of the confidential reports. The name of the applicant was dropped as the committee comprised of senior officers did not find him fit for promotion as a result of which no grace marks were awarded to the applicant. The committee had seen ACRs for the period from 1984-85 to 1989-90. The applicant was not found fit by the committee of senior officers, he is not entitled for any grace marks as per DGP&T's letter dt. 4.5.1981 on the subject.

10

5. We have heard the learned counsel for the parties at length and also called for the departmental file, proceedings of the DPC as well as the ACRs. of the applicant. It is not disputed that by the instructions of DGP&T of 1981, the award of grace marks should depend on the performance of the official as seen from the ACRS. The committee of the senior officers constituted for the purpose has seen the C.R. dossiers of Hem Raj Ganpat Rao, applicant-Jai Ram Meena, J.L. Meena, L.P. Kotad and M.S. Kuhikar. The C.Rs. from 1984-85 to 1989-90 were considered. According to the instructions, all individuals should be given equal grace marks so that one gets 33% marks in each paper and 38% in aggregate. The reporting in the DPC file shows that each individual requires 126 grace marks. After adding 126 grace marks, the position is reflected as shown below :-

Sl. No.	Name of the candidate	Marks obtained	Grade Marks required	Total Marks
1.	Sh.Jai Ram Meena	118	126	244
2.	Sh.Laxman Prasad Kotad	87	126	213
3.	Sh.Madhukar Sahadee Kuhikar	57	126	183
4.	Sh.Jauhari Lal Meena	55	126	181
5.	Sh.Hemraj Ganpat Rao	26	126	152

From the departmental file, it appears that there was recommendation by the DPC for the promotion of the applicant and two others on 20.6.1990. However, subsequently

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it appears that Shri Jai Ram Meena had not been considered fit and no grace marks were allotted to him, so he did not qualify for appointment. This action of the respondents, therefore, is against the instructions issued in 1981 as well as the recommendations of the DPC dt. 20.6.1991. From the ACR of the applicant, it is made out that in 1984-85 the applicant was judged as fair in all respects. In 1985-86, the applicant was judged as fit for promotion. In 1986-87, the applicant was judged fit for promotion. In 1987-88, the applicant had been judged as average. In 1988-89, the applicant was judged as average. In 1989-90 also, the applicant has been judged as average and so also in 1990-91. Thus not awarding grace marks to the applicant is discriminatory and violative of the instructions issued by the DGP&T in 1981.

6. The promotion of the applicant, therefore, according to the aforesaid instructions should have been given along with the junior respondent No.4.

7. In view of the above discussion, the application is allowed and the impugned orders are quashed and set aside and the applicant shall be deemed to have been promoted to the next grade to the cadre of TTS Group 'C' w.e.f. the date his junior ~~not~~ ^{has} ~~have~~ been promoted. The applicant shall be

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given all the consequential benefits of seniority, arrears of salary etc. within a period of six weeks from the date of receipt of this order. In the circumstances, the parties to bear their own costs.

J. P. Sharma

(J.P. SHARMA)
MEMBER (J) 14.2.92

I. K. Rasgotra
(I.K. RASGOTRA)
MEMBER (A)