

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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O.A. No. 1691/92

Date of decision 13-5-93

Sh.Virender Kumar ... Applicant

V/s

U.O.I. & Others .. Respondents

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Hon'ble Vice Chairman Sh. N.V.Krishnan, V.C.(.)

Hon'ble Member Sh.B.S.Hegde, Member(J)

FOR THE APPLICANT ... Sh. B.S.Mainee, counsel

FOR THE RESPONDENTS ... Sh.A.L.Dhawan, counsel

- (1) whether reporters of local papers may be allowed to see the judgement?
- (2) To be referred to the Reporter or not?

JUDGEMENT(ORAL)

(Delivered by Sh. N.V.Krishnan, V.C.(A))

This application has been filed by the applicant a Sr.electrical Foreman(TA) W, Northern Railway, Moradabad who is aggrieved by the fact that he has not yet been promoted as Chief Electrical Foreman in the grade of B-2373-3300 even though the Departmental Enquiry proceedings initiated against him have been dropped.

2. Disciplinary proceedings were initiated by the Memorandum of Chargesheet (Annexure A-1) dated 19-8-87. The Respondents appointed^{as} an Enquiry Officer to enquire into the charges levelled against the applicant. The report of the Inquiry Officer was accepted by the Disciplinary Authority and he exonerated the applicant of the charges levelled against him by the Annexure A-4 order dated 4-1-91.

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3. The grievances of the applicant is that in the circumstances, he should be considered for promotion to the post of Chief Electrical Foreman in the grade of Rs 2375-3500, with effect from the date his juniors were promoted, when the Departmental Enquiry was pending. The applicant's case was, obviously, either not considered or having been considered, no action was taken in view of the pending disciplinary proceedings. It is stated that the applicant made a representation on 11-1-91 (Annexure A-8) mentioning these facts and requested that his case should be considered for promotion as CERO in the grade of Rs 2375-3500 from the date his immediate junior, Sh. K. L. Badhan, was promoted to the said post.

4. As the applicant was not given suitable relief, he has approached this Tribunal for directions to be issued to the respondents to consider the applicant for promotion to the post of Chief Electrical Foreman in the grade of Rs 2375-3500 w.e.f. 26-7-89 with all consequential benefits of fixation of pay, seniority as well as arrears.

5. The respondents have filed a reply in which the facts narrated above, are substantially admitted. The only new contention of the respondents is that, since then, a major penalty case is pending against the applicant as per General Manager(.) Vigilance letter dated 2-9-92 (Annexure B-1) and, therefore, he is not

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eligible for promotion. The letter states that a major penalty CBI case is pending against the applicant.

6. Learned counsel for the applicant relies on the decision of the Hon'ble Supreme Court in Jankireman's case 1991(4) SCC 109 to contend ^{that} the consideration for promotion cannot be withheld on this ground.

7. We have gone through the records carefully and heard the learned counsel for both the parties. We are satisfied that there is ~~no~~ justification, whatsoever, for the respondents for not considering the case of the applicant for promotion in the circumstances of the case. He has been exonerated ^{at} of the charges levelled / memorandum of charges dated 12-2-87, by the annexure II-IV order dated 1-1-91. As a matter of fact, the respondents ought to have considered his case for promotion, notwithstanding the pendency of this departmental inquiry and placed the recommendation of the D.P.C. in a sealed cover which ^{should} have been opened when he was exonerated. The learned counsel for the respondents, however, submits ^{only} that the promotion is made, on the basis of seniority-cum-suitability basis and, therefore, the question of constituting of a D.P.C. does not arise.

8. In the circumstances, we are of the view that pendency of the CBI vigilance case, as stated in Annexure A-I cannot stand in the way of the applicant's case ^u from being considered for promotion with effect from the date

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his junior was promoted w.e.f. 26-7-89, which was
^u~~held up~~ when a Departmental Enquiry was pending
against him, *in which he has since been exonerated*

9. We, therefore, dispose of this application with
a direction to the respondents to consider within
two months from the date of receipt of this order
the case of the applicant for promotion as Chief
Electrical Foreman with effect from 26-7-89, the date
on which his junior was promoted to the higher post
and if he is not found suitable, then his case should be
considered when other juniors were promoted later and
if promoted, to grant him all benefits in accordance
with law and in the light of the decision rendered by
the Supreme Court in Janki Raman's case (Supra). There
will be no order as to costs.

B.S. Hegde
(B.S. HEGDE)
MEMBER (J)

N.V. Krishnan
13.5.93
(N.V. KRISHNAN)
VICE CHAIRMAN (A)

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