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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

DA.2777/92

Date of Decision: 08.01.1993

Shri T.K. Mitra & Anr.

Applicant

Vs.

Union of India through
Chairman, Railway Board
and others

Respondents

Shri A.K. Behra

Counsel for the applicant

Shri J.P. Verghese

Counsel for the respondents

CORAM:

The Hon'ble Mr. P.K. KARTHA, Vice Chairman(J)

The Hon'ble Mr. B.N. DHOUNDIYAL, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter, or not? *Yes*

J U D G E M E N T

(Of the Bench delivered
by Hon'ble Member Shri B.N. DHOUNDIYAL)

This DA has been filed by S/Shri T.K. Mitra and K. Shankar working in the Grade of Section Officer (S.O.) in the Ministry of Railways, challenging the impugned order dated 23.10.1992, promoting their juniors to Group 'A'/Junior scale of I.R.P.S. Both the applicants, after working in the junior posts, appeared in the limited departmental competitive examination in the year 1984, and on the basis of results of this examination, were appointed as SOs; applicant No.1, being so appointed on 4.11.85 and applicant No.2 on 21.10.86. Normally, the channel of promotion of SOs is Deputy Director/Under Secretary, but an option is also given to the holders of these posts to be inducted in the junior scale of Indian Railway Personnel Services (IRPS). On 30.8.91, a circular was issued by respondent No.1 for 3 general category vacancies and one SC and one ST vacancy, ~~each~~ ^{EW} pertaining to the year 1988, 1989 and ^{EW}

1990. Eleven candidates including the applicant exercised their option to be inducted in the junior scale service of the I.R.P.S. for the year 1989 and 12 for the single vacancy for the year 1990. For the vacancies of 1989, the respondents have selected S/Shri P.K. Goyal and K. Rajendran, who did not fulfil the requisite condition of three years non-fortuituous service as on 1.4.90. The applicant represented against their irregular selection and vide the impugned order dated 22.10.92 (annexure A6), the respondents have rejected their requests. The applicants have prayed that the DPC proceedings for filling up of the vacancies for the year 1989-90, as also the impugned order dated 23.10.92 be set aside and quashed and the respondents be directed to consider the names of the applicants for induction in I.R.P.S./Junior scale service (Grade 'A') for the vacancies ~~of~~ ^{by} of the year 1989-90 by convening of the review meeting of the DPC.

2. The respondents have stated that S/Shri P.K. Goyal, K. Rajendran and Anuj Dayal (Respondents 4, 5, and 6) have been promoted strictly in accordance with the Rules. According to them, it is the established practice to treat the length of Group 'B' service of the senior promotee officer as equivalent to that of his eligible junior, when the senior promotee officer is having lesser service. One Shri P.C. Chandy was appointed as SO in Group 'B' service on the basis of seniority-cum-suitability only, and had rendered more than 3 years Group 'B' service as on 1.4.90. The applicants who were senior to him were, therefore, given the advantage of service rendered by their immediate junior being taken as deemed service rendered by them. The DPC was convened by the UPSC and respondents No. 4 and 5 were selected on merits. It is quite common for juniors to supersede seniors in such selections. The representations submitted by the applicants were duly considered and a reply was given to them on 23.10.1992.

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3. We have gone through the records of the case and heard the learned counsel for both parties. The learned counsel for the applicant has argued that under Rule 8(d) (ii) of the I.R.P.S. Rules, 1975, as well as the circular dated 30.8.91, three years non-fortituous service on the prescribed date is essential. The recruitment rules did not contain any provision for deemed service. There is no established practice to treat the length of Group 'B' service of the senior promotee officer as equivalent to that of his eligible junior, when the senior promotee officer is having lesser service. On the other hand, the learned counsel for the respondents has relied upon Rule 13 of the I.R.P.S. Recruitment Rules, 1975, which reads as under:-

"Power to relax:- Where the Government is of opinion that it is necessary or expedient to do so, it may, by order for reasons to be recorded in writing and in consultation with the Commission, relax any of the provisions of these rules with respect to any class or category of persons of posts."

4. The need for giving the relaxation to respondents No.4 and 5 was considered in consultation with the UPSC on the ground that one of the juniors had rendered 3 years equivalent service. The practice of giving such relaxation to the seniors is based on the sound principle that in the matter of selection, a senior person should not be ignored while his junior is being considered. The selection process necessarily involves rejection and cannot be faulted on that count. We, therefore, hold that no case is made out for justifying interference in the selection made by the duly constituted DPC.

5. The application is, therefore, dismissed, with no order as to cost.

B.N. Dhoundiyal
(B.N. DHOUNDIYAL) 8/1/93.
MEMBER(A)


(P.K. KARTHA) 8/1/93
VICE CHAIRMAN(J)