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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1550/93

New Delhi this the 17th day of November, 1999.

Hon'ble Sh. Justice V.Rajagopala Reddy, Vice-Chairman(J)
Hon'ble Sh. S.P. Biswas, Member(A)

Sh. S.D. Badyal,
S/o late Sh. Karam Chand,
C/o Sh. H.L. Bajaj, Advocate,
CAT Bar Room, Faridkot House,
Copernicus Marg,
New Delhi. Applicant

(through Sh. H.L. Bajaj, Advocate)

versus

1. Union of India through
the Secretary,
Railway Board,
Ministry of Railways,
Rail Bhawan,
New Delhi-1.
2. Sh. A.S. Sandhu,
Sr. Draftsman in the office
of Railway Board, Room No.156,
Rail Bhawan, New Delhi-1.
3. Sh. R. Narayanan,
Sr. Draftsman in the office of
Railway Board, Room No. 156,
Rail Bhawan,
New Delhi-1.
4. Sh. J.S. Saxena Raj,
Estate Supervisor,
Ground Floor Near the
Reception, Rail Bhawan,
New Delhi-1. Respondents

(through Sh. R.L. Dhawan, Advocate)

ORDER
Hon'ble Sh. S.P. Biswas, Member(A)

Applicant, an officiating Sr. Draftsman under the respondent-Railways, is aggrieved by A-1 order dated 31.07.92. By A-1 order, the applicant has been informed that in a selection held in 1989 for the post of Sr. Draftsmen in the scale of Rs.1600-2600/-,

the Selection Committee had considered all the available Confidential Reports and his 'marks' arising out of the record of service were higher but he had failed to obtain 60% marks under the professional ability. It is on this basis that the applicant's plea for restoration of his seniority and stepping up of his pay has been denied by the respondents. The applicant is also aggrieved since his A-2 representation dated 21.05.92 has been rejected.

2. Applicant submits that his seniority has been depressed pursuant to 1989 selection for the post of Sr. Draftsmen in the Railway Board's office. The respondents have perpetuated in an illegality in not considering the applicant's candidature favourably when the selection for the post of Sr. Draftsmen was held on 09.02.89 and when the applicant was on deputation with a Sister Concern of the Railways i.e. Centre for Railway Information Services (CRIS for short). The applicant alleges that he was not given any information by Respondent No.1 at the appropriate time regarding the selection for the post of Sr. Draftsmen. The selection took place on 09.02.89 whereas he was informed of the same on 07.02.89. With such a short margin on hand the applicant was apparently handicapped in coming out with flying colours in the said selection. That apart, the said post has now been declared as a Selection post contrary to policy directions issued by respondents as at Annexure A-4.

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3. Applicant has also assailed the selection held in 1989 on the basis that the ACRs of the applicant for the relevant years were not obtained by Respondent No.1 for the period he was on deputation. The selection was held on the basis of incomplete ACRs and irrelevant materials devoid of the details of the applicant's performance. The respondents did not get the ACRs from the office of CRIS in time. The ACRS of the applicants were received in the Board's office on 05.07.91 i.e. much after the date of 1989 selection (Annexure A-9), the applicant would contend. Consequent upon the improper selection in 1989, the applicant has been forced to face humiliation following two of his juniors having been promoted through the said selection process. In an attempt to add strength to his contentions, the learned counsel for the applicant drew support from the judicial pronouncement of the Apex Court in the case of E.P. Royappa Vs. State of Tamil Nadu & Anr. (AIR 1974 SC 555). It has been held therein that the said action must be based on valid relevant principles applicable alike to all similarly situated cases and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, is illegitimate and irrelevant and is extraneous/outside the area of permissible considerations, it would amount of mala fide exercise of power and that is hit by Articles 14 and 16 of the Constitution. The respondents have thus faultered while considering unduly the cases of selection of some of his juniors for the post of Sr. Draftsmen.

[Signature]

4. The respondents have submitted that the applicant's claim for refixation of seniority as Sr. Draftsman by deeming him to have been selected in 1989 and fixation of his pay accordingly is not legally sustainable. The applicant had also appeared in the interview alongwith others but was not selected on merits. He also failed to secure qualifying minimum marks and as such could not find a place in the panel notified for the post of Sr. Draftsmen.

5. It is also the contention of the respondents that the post of Sr. Draftsman in the Drawing Office cadre in Railway Board's office was all along is classified as a selection post right from 1974. While trying to say that the said post is a non-selection one, the applicant is only trying to mislead the Hon'ble Tribunal.

6. We have since heard the learned counsel for both the parties and perused the records.

7. It is seen that the applicant's junior became senior to him only because of selection in 1989 on merits and empanelled for the post of Sr. Draftsman in the scale of Rs.1600-2600/-. The applicant appeared for the selection but failed to secure minimum qualifying marks in professional ability and hence could not be empanelled. Persons borne on the earlier select panels have to rank senior to those selected

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later. We also find that duly constituted DPC pursued the available CRs of the applicant and entered into finding as regards applicant's unsuitability for the post. Based on the records available before us, the applicant contention that the decision not to empanel him was on the basis of fake ACRs or incomplete material cannot be countenanced. It is not denied that the applicant had participated in the test for the selection of Sr. Draftsman. Having participated in the selection and failed for consideration of promotion as Sr. Draftsman it does not lie in the mouth of the applicant to seek promotion with retrospective effect. The applicant's challenge to the procedure adopted by the respondents is in violation of the law laid down by the Apex Court in the cases of Om Prakash Vs. Akhilesh Kumar AIR 1986 SC 1043 and Madan Lal & Ors. V. State of Jammu & Kashmir & Ors. JT 1995 SC 291. In the latter case, their Lordships have held as hereunder:

"9. Before dealing with this contention we must keep in view the salient fact that the petitioner as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes

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calculated chance and appears at the interview, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the selection committee was not properly constituted. In the case of Om Prakash it has been clearly laid down by a Bench of three learned judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner".

8. In the background of the details as aforesaid as well as the position of law, the O.A. deserves to be dismissed and we do so accordingly. There shall be no order as to costs.



(S.P. Biswas)
Member(A)



(V. Rajagopala Reddy)
Vice-Chairman(J)

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