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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A.No.2587/1993

Date of Decision: 8/10/1994

Shri Jyoti Prakash & Ors...

APPLICANT

(By Advocate Shri B.S. Mainee)

versus

Union of India & Ors.

RESPONDENTS


(By Advocate Shri R.L. Dhawan)

CORAM:

THE HON BLE Smt. Lakshmi Swaminathan, Member(J)

THE HON BLE SHRI S.P. BISWAS, MEMBER(A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES
2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER BENCHES OF THE TRIBUNAL?


(S.P. Biswas)
Member (A)

Cases referred:

1. Raghu Nath Prasad Singh Vs. Secretary Home (Police) Department/Govt. of Bihar & Ors. (AIR 1988 SC 1033)
2. Dr. D.Z. Hussain Vs. U.U.I. & Ors. (AIR 1990 SC 313)
3. Girish Chandra Vs. U.U.I. (336/92)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-2587/93

New Delhi this the 8th day of October, 1999.

Hon'ble Smt. Lakshmi Swaminathan, Member(J)
Hon'ble Sh. S.P. Biswas, Member(A)

1. Sh. Jyoti Prakash,
S/o Sh. Dev Ram.
2. Sh. J.K. Dua,
S/o Sh. C.S. Dua.
3. Sh. Manohar Lal,
S/o Sh. Khemdi Ram.
4. Sh. Parmodh Singh,
S/o Sh. Dhar.
5. Sh. Kishori Lal,
S/o Sh. Khodule Ram.
6. Sh. Bhagwan Singh,
S/o Sh. Ratan Singh.
7. Sh. Abhay Kumar,
S/o Sh. Karisimaran Lal.
8. Sh. Naresh Kumar,
S/o Sh. Ram Narain.
9. Sh. J.K. Saxena,
S/o Sh. A.K. Saxena.
10. Sh. Chander Shekhar,
S/o Sh. Tika Ram.
11. Sh. Beni Prasad,
S/o Gokul Prasad.

..... Applicants

(C/o Sh. B.S. Mainee, Advocate, R/o 240, Jagirti
Enclave, Vikas Marg Ext., Delhi-92.)

(through Sh. B.S. Mainee, Advocate)

versus

Union of India through
General Manager,
Northern Railway,
Baroda House,
New Delhi-1.

..... Respondent

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

ORDER

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

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Applicants, Group-D employees under the respondents, are aggrieved by the order dated 12.8.93 by which the respondents alleged to have arbitrarily denied promotion of Group "D" employees (Grade Rs. 825-1200) to the posts of clerks in Category-C in the grade of Rs. 950-1500 against promotee quota. Consequently, they have prayed for quashing the said order and issuance of directions to respondents to regularise all the 11 applicants as official clerks who claim to have completed successfully the written as well as viva voce tests in the selecton held in 1992.

2. Basically two major issues fall for determinaion in this application. These are:-

(i) Whether Group-D officials of Bridge Organisation (Civil Engineering Deptt.) under the respondent railways are entitled for promotional posts in Group-C category (i.e. Clerks/Store Keeper etc.) arising in the headquarters (Baroda House) office.?

(ii) Whether the Bridge Organisation has in itself any channel of promotion to Group-C category meant for promotional prospects of those Group-D officials working in that very organisation?

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3. Proper appreciation of the aforesaid two legal issues would require a brief description of the background facts. These are as hereunder:-

Applicants who are in Class-IV category in the grade of Rs.825-1200 were subjected to a written test on 10.08.91 for promotion to the post of clerks in Headquarters office (Baroda House) in grade of Rs.950-1500 against promotion quota. They claim to fulfil all the eligibility criteria set out by the respondents. After they qualified written test on 10.08.91, they were directed to appear in the viva voce test to be held on 06.01.92 and 07.01.92. After having interviewed on 06.01.92 about 21 other candidates, the viva voce test meant for the applicants was postponed and by a subsequent circular on 12.02.92, the applicants were declared ineligible. The applicants were thus forced to file OA-420/92 challenging the aforesaid impugned circular before the Tribunal. The Tribunal vide its order dated 18.02.92 directed that the result of the viva voce would be subject to the decision of the O.A. When the OA-420/92 was under subjudice, the respondents issued yet another ^{circular} on 12.08.93 inviting ^{and} fresh applications from Class-IV employees who were eligible for promotion to the post of clerks in Grade Rs. 950-1500 but making the applicants ineligible for consideration. As alleged by the applicants, OA-420/92 was withdrawn when the 11 applicants therein were promoted as office clerks under the orders of this Tribunal on 28.01.97.

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4. When the present O.A. came for hearing on 07.01.94, the applicants drew the attention of this Tribunal to Annexure A-1 impugned notice dated 12.08.93 calling for applications for further examination to promote Group-D officials as LDCs wherein it has been specifically mentioned in para-3 that the said examination is only open to those Group-D employees who did not have any avenue of promotion in their department. Since this was the basic issue in other O.A. (No. 420/92), the Tribunal vide its order dated 10.02.94 directed the respondents to allow the applicants to sit for the examination provisionally. Since the respondents did not come up with their counter in time, this Tribunal vide its order dated 17.04.95 allowed provisional promotion in the case of any of the applicants ^{who} had [^] passed the examination (both written and viva voce) but subject to the outcome of the O.A.

5. Shri B.S. Mainee, learned counsel for the applicants sought to challenge the impugned order dated 12.08.93 on the ground that the applicants could not be made ineligible for promotion to Group-C post falling within the promotional quota at the headquarters when the basic issue was to be finally adjudicated by the Tribunal. That there is neither any channel of promotion for the applicants in the Bridge Organisation nor any

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selection has been held for long and hence it was illegal and irrational to blame the applicants.

6. The main plank of applicants attack is on the basis of the communication of Dy. Chief Engineer/Bridge (Annexure-2) dated 13.02.96 wherein it has been mentioned that "as no further channel is open in Bridge Orgn. for Store-man/Material Chaser etc.", the note of Chief Bridge Engineer Headquarters to General Manager (P) highlighting the promotion position of Class-IV staff to Class-III category in the posts of Clerks (Grade Rs.950-1500/RPS) needs review.

7. Learned counsel for the applicant would also submit that the fact that there is no structured channel of promotion for the Bridge Organisation is evident through the respondents communication dated 31.08.90 addressed to two major recognised unions under the railways seeking their approval/views on the proposed channel of promotion. The said communication was followed by yet another one on 18.01.91 wherein the Dy. Chief Engineer/Bridge again wrote to the same two unions for obtaining views of General Secretaries of both the Unions for their views in the matter and communicating the same to that office at the earliest so that the case may be processed with G.M.(P)/N.Rly. In the chart attached with the

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communication dated 18.09.91, the Bridge Engineer added the following:-

"No further promotion from Storeman to Material Checker Grade Rs.825-1200/RPS is being done."

8. To add further strength to his contentions that the officials like the applicants herein would be eligible for promotion against the post Group-C clerks occurring in the head office/DRM's office, Shri Mainee brought to our notice the provisions under Section 189 of IREM Volume II 1990 which stipulates the following:-

"Railway servants in Group 'D' categories for whom no regular avenue of promotion exists 33-1/3% of the vacancies in the lowest grade of Commercial clerks, Ticket Collectors, Train Clerks, Number Takers, Time Keepers, Fuel Checkers, Office Clerks, Typists and Stores Clerks etc. should be earmarked for promotion. The quota for promotion of Group 'D' staff in the Accounts Deptts. to Group 'C' post of Accounts Clerks will be 25%."

9. To condemn the applicants by declaring them ineligible in the impugned order when OA-420/92 was to be finally adjudicated by the Hon'ble Tribunal is just to prejudice the issue which is against the principle of law, natural justice and the practice now being followed.

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10. Shri R.L. Dhawan, learned counsel for the respondents argued vehemently that the applicants are not eligible for promotion from Class-IV to Class-III as office clerks (Grade 950-1500) in headquarters/divisional office as they have got their own channel of promotion. The said channel is at Annexure R-2. The respondents would also submit that Hon'ble Jodhour Bench in the case of Girish Chandra Vs. U.O.I. (336/92) decided on 01.02.94 held that Group-D staff of engineering, mechanical, electrical, signal and telecommunication department are not eligible for promotion as office clerks. Relying on the said judgement, this Tribunal dismissed on 11.10.96 the claims of the applicants, similarly placed, in OA-750/93 who were also Class-IV employees of the Civil Engineering Department.

11. The respondents would submit that the applicants were called for participation in the test vide letter dated 07.01..91 with clear stipulation that those Class-IV employees who have no channel of promotion in their own department/seniority units/category should only apply. The applicants do not satisfy this basic eligibility criterion prescribed by the administration inasmuch as they have their own channel of promotion. The applicants have appeared in the written test by concealing this vital truth of there being a promotion channel in the Bridge Department where the applicants were

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working. Shri Dhawan, in an attempt to add strength to his argument, drew our attention to some important details in OA-2315/97 to highlight that such Group "D" officials of Bridge Organisation do have promotional prospects from Khalasi to Storemen, to Material Checkers from Storemen and to Material Clerks from Material Checkers.

12. Relying heavily on the provisions under Sections 143 and 146 of IREM Vol.II/1990, the respondents have further contended that Bridge Organisation have a separate channel of promotion and the Class-IV employees therein are not eligible to any Group-C category posts at headquarters. By making a pointed reference to the reply of Dy. Chief Personnel Officer/Headquarters Northern Railway/Baroda House dated 13.08.99, the respondents have reiterated that officials of the Bridge Organisation has a channel of promotion for Group-D employees (Grade Rs.800-1150) having opportunities of moving upwards right upto Material Clerks (Group-C) in the scale of Rs.950-1500. The above "channel of promotion from Group-D of Bridge Branch of Civil Engineering Department was proposed and the same is being followed", the respondents would contend. As per respondents, the applicants were correctly debarred from selection for the post of Office Clerks in Grade Rs.950-1500 in the headquarters seniority unit in the selection held in 1991 and 1992.

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13. We shall now examine the two main issues involved herein.

14. Regarding availability of channel of promotion, we find that the respondents claim is based on details annexed with R-2 communication issued by Dy. Chief Engineer Bridge as well as the affidavit sworn in by the Dy. Chief Engineer Bridge dated 13.8.99. It is not in dispute that the documents annexed with R-2 relate to seeking of approval/views of General Secretaries of the two recognised unions on the issue of channel of promotion. The exercises undertaken did not culminate by entering into a finding as regards the channel of promotion. The communication of Dy. Chief Engineer dated 18.1.91 mentions that "no further promotion from Storeman to Material Checker in Grade 825-1300 is being made". The fact that Class-IV officials of the Bridge Organisation are facing acute stagnation and have no channel of promotion open to them is evident in the communication of Dy. Chief Engineer (Bridge) dated 13.02.96. The respondents cannot deny that they have not come out with any channel of promotion for the applicants which have been finalised and widely circulated for the information of one and all. On the contrary, it was only in the context of lack of such promotional opportunities that the Dy. Chief of the Bridge had addressed G.M.(P) vide his communication of February 1996 to explore the

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possibilities of providing adequate promotional opportunities to such bridge officials. Responsible respondents like the Railways have a right to "say" that they have a channel of promotion but they are required to "show" that there is already a channel of promotion in operation as they profess. The test of pudding lies in eating and none can play Hamlet without the Prince of Denmark. Respondents claim that there is a channel operating is negated by the fact that there has been no regular selection at all, not even once, for effecting promotion of Group-D Bridge officials to Group-C category ever since 1976. It is also not in dispute that the applicants are stagnating for more than quarter of a century as Group-D officials. What the respondents have done so far during the last two decades is only one 'suitability test' held on 15.12.89 and that too without any details of benefits offered. Under these circumstances, the submission of the applicants that there is no channel of promotion for them in reality commands acceptance.

15. The issue would then arise what is the legality of the applicant's claim for promotion in a clerical cadre at the headquarters. Just because they do not have any channel of promotion in their cadre would justify staking the claim wherever they find selections taking place. Admittedly, there are no dearth of Class IV officials in the Headquarters who would have similar claims for channel of

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promotion. Under the present structure, these Group 'D' officials at the Headquarters would not have any legitimate claim of promotion elsewhere. It is not for the Tribunal/Court to declare that the vacancies arising in clerical grade at the Headquarters shall be also kept open to the Group-D officials working in the Bridge Division. Matter regarding determination of channel of promotion for any category of officials are to be decided by the appropriate executive authorities, ^{keeping} in view the relevant factors for determining ^{and} promotional channels. For this reason, the application partly fails.

16. What we find ^{is} that the applicants are stagnating for more than a ^{but} two decades and consideration of their promotion/upliftment does not brooke any delay. This is particularly so in the background of the "Assured Career Progression Schem2" (A[P for short) for Central Government employees introduced by the Minstry of Personnel/Public Grievances vide its communication dated 09.08.99. The Fifth Pay Commission in its report has made certain recommendations relating to ACP Scheme for similarly placed employees like the applicants herein in all Ministries/Departments and the Government ^{of} India have since issued circulars to implement the Scheme. The Scheme has to be viewed as a "Safety Net" to deal with the problems of genuinene stagnation and hardships of the

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employee due to lack of adequate promotional avenues. Keeping in view all the relevant facts, the Government has decided to grant two financial upgradations under the Scheme to Group-B, C and D employees on completion of 12 and 24 years of regular service. Isolated post in Group A, B, C & D categories which have no promotional avenues shall also qualify for similar benefits as per details indicated in the Scheme. How the Scheme has to be operated have also been prescribed in the annexure attached therein. We find no reasons as to how the applicants herein could be denied benefit of that ACP Scheme introduced by the Government of India. Even otherwise, the case of applicants should have been covered under "In Situ" Scheme of promotion. We find that the respondents have not even cared to talk about extending the benefit of in situ promotion to the applicants. It would be appropriate to mention here that the respondents reliance on the decision of the Jodhour Bench of this Tribunal in OA-336/92 dated 01.02.1994 is ^{mis-} ~~conceived~~ ^{un-} This is because the basic issue before that Bench was not the determination of channel of promotion for employees like the applicants herein. It is also necessary to mention here that creation of adequate promotional avenues to keep the services ~~content~~ ^{level} is an accepted norm in the area of service jurisprudence and this has been recognised by the Apex Court in Raghu Nath Prasad Singh Vs. Secretary Home (Police) Department/Govt. of Bihar & Ors.

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(AIR 1988 SC 1033) and Dr. (Ms.) O.Z. Hussain Vs. U.O.I. & Ors. (AIR 1990 SC 313). The respondents did start in 1996 examining the issue, for providing promotional avenues for employees like the applicants herein but did not pursue the same to its logical conclusion. The determination of the channel of promotion for such employees still remained unresolved while the applicants or the similarly placed employees of the Bridge Division continue to suffer for decades. *Sum*, The O.A., therefore, deserves consideration, in part, for the reasons as aforesaid.

17. In the background of the aforesaid details, we partly allow the O.A. with the following directions:-

(i) Respondents shall consider applicants claim for promotion/upliftments under ACP or In Situ Scheme forthwith.

(ii) The exercise already initiated in 1996 for determination of channel of promotions for such employees shall be completed within six months from today and the decisions shall be widely circulated.

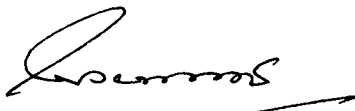
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(iii) Those of the applicants or similarly placed employees who have been provisionally promoted should not be disturbed and the eleven applicants who have successfully completed required test held in 1992 shall be adjusted as Clerks in (in Scale Rs.950-1500) in Civil Engineering Department only as a measure of one time exception.

(iv) Our orders in sub-para(i) above shall be complied with within a period of three months from the date of receipt of a copy of this order.

No costs.


(S.P. Riewas)
Member(A)


(Mrs. Lakshmi Swaminathan)
Member(J)

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