

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 539 of 1996

Allahabad this the 6th day of June 2002

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.  
Hon'ble Mr.C.S. Chadha, Member (A)

R.C. Khare, Resident of S17/330 D, Maldahia, Varanasi working as Assistant Engineer, Diesel Locomotive Works Varanasi, Staff No.2979.

By Advocate Shri S.K. Om

Applicant

Versus

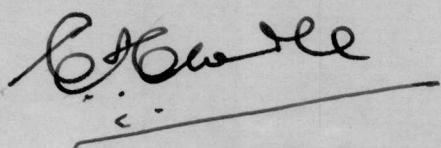
1. Union of India through Secretary, Railway Board Rail Bhawan, New Delhi.
2. General Manager, Diesel Locomotive Works, Varanasi.
3. Personnel Officer, Diesel Locomotive Works, Varanasi.
4. Sri S.K. Kad, Working as Assistant Engineer, Diesel Locomotive Works, Varanasi.

By Advocates Shri Prashant Mathur,  
Shri Sudhir Agarwal

O R D E R

By Hon'ble Mr.C.S. Chadha, Member (A)

This O.A. has been filed seeking to quash the impugned order at annexure-8 dated 27.01.95 by which the applicant's representation for promotion to the rank of Executive Engineer was rejected and the promotion of Shri S.K. Kad was upheld. The applicant has also sought his own promotion and quashing of the order of Shri S.K. Kad who, it is claimed, is junior to the applicant.



2 . The brief facts of the case are that the applicant sought promotion to the rank of Assistant Engineer from his earlier post as his junior, Shri S.K. Kad, had been promoted to that rank, but his claim had been overlooked. He, therefore, filed O.A. No.177 of 1991 in which he was successful and vide a Judgement dated 04.03.93 the Tribunal directed to include the applicant's name also in the panel and he shall be given promotion. He shall be given promotion w.e.f. the date the vacancy available but it will be notional, but actual w.e.f. the date he will actually be promoted. " Accordingly the applicant was promoted as Assistant Engineer (Group 'B' post) w.e.f. 05.08.94 but given the notional seniority w.e.f. 31.07.89. The applicant therefore claims that in the grade of Assistant Engineer too, he remained senior to respondent no.4 as his notional date of promotion was kept at 31.07.1989. However, while the applicant was fighting his case to get promoted as Assistant Engineer, the Respondent no.4, Shri S.K. Kad, was considered for next promotion and vide order dated 23.03.94 he was further promoted as Executive Engineer and the said promotion was given effect to from 01.04.94. The applicant therefore filed a representation before the authorities on 07.11.94 to the effect that since he was senior to Shri S.K. Kad, he should be promoted to the rank of Executive Engineer, if not earlier than him, atleast from the same date as Shri S.K. Kad was promoted. His representation was rejected by the impugned letter (dated 27.01.95 (ann.-8)). He filed further representation dated 16.05.95 pointing

out the provisions of a Railway Board's circular which laid down that if a junior Group 'B' Officer is promoted to the higher grade after completing 3 years of service, than his senior Group 'B' officer, has been empanelled later and has not completed 3 years, would be deemed to have completed 3 years and he shall also be placed at par with his juniors. The second representation 16.05.95 had not been decided when he filed this O.A.

3. Although much has been said about the earlier lack of promotion of the applicant to the rank of Assistant ~~Engineer~~ <sup>in in</sup>, we feel that the ~~matter~~ of promotion to the rank of Assistant Engineer now stands closed after the implementation of the decision of the Tribunal in O.A. no 177/91 duly approved by the Hon'ble Supreme Court.

4. The question to be decided in this O.A. is whether the supersession of the applicant at the level of Executive Engineer by his junior, Shri S.K. Kad, can be justified or not, specially in view of the above quoted Railway Board circular.

5. Despite the fact that vide annexure-8 dated 27.01.95 the respondents had informed the applicant that he could not be considered for promotion to the level of Executive Engineer because he had not actually acquired the experience of 3 years in a group 'B' post, in their counter-affidavit, the respondents have averred that after applicant ~~the~~ filed his second representation dated 16.05.95, a relaxation in terms of the Railway Board circular was given for consideration of the case of the applicant.

In other words the bar of actually physically working for 3 years as Assistant Engineer for being promoted to the rank of Executive Engineer was relaxed and considering his notional promotion to the rank of Assistant Engineer w.e.f. 31.07.89 he was considered eligible for being considered for promotion to the post of Executive Engineer. However, the respondents have produced at the time of arguments, the actual minutes of the <sup>D.P.C.</sup> meeting held on 08.09.95 to consider the promotion of the applicant from Group 'B' post to senior scale post. The said minutes clearly show that the applicant was found unfit for promotion. This is what they have also averred in the counter-affidavit in para-6 thereof. The respondents have also averred that the respondent no.4 Shri S.K. Kad was found fit by the D.P.C. and that is why he was promoted w.e.f. 01.04.94.

6. Learned counsel for the applicant argued at length that yardstick adopted by the D.P.C. is unfair and that the applicant had never been informed about any adverse remarks and therefore it was improper to have passed him over for promotion. On the other hand the minutes of the meeting of the D.P.C. held on 08.09.95 clearly show that the applicant's record for 1991 rated as "Good", for 1991-92 again as "Good" but with some remarks conveyed, for 1992-93 again "Good" and for 1993-94 "Very Good". However, for the only year in which he worked as a Gazetted Officer, i.e., 1994-95 his rating was "Good, unfit for promotion", therefore, it is quite clear that the applicant had a colourless record having secured "Very

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Good" only once in the last 5 years and also being rated as unfit for promotion by his superior in 1994-95. The D.P.C. had adopted a point scale for judging the capability of the candidates , apparently giving 5 points for Outstanding, 4 for Very Good, 3 for Good, 2.5 for Good/Not Fit, 2 for Average and 1 for Below Average , though it is not mentioned in the D.P.C. proceedings. From the D.P.C. record, it is clear that Shri Khare-the applicant secured only 15 points as against the requirement of 18 points and, therefore, was not found fit. We see no reason to come a conclusion that there has been any injustice to the applicant. His C.Rs were duly considered ignoring the fact that he had not actually worked for 3 years as Assistant Engineer and it is unfortunate for him that C.Rs were not good enough for promotion.

7. In the circumstances mentioned above, we come to the conclusion that there has been no injustice to the applicant as his case for promotion as Executive Engineer was considered but he was not found fit for promotion by the D.P.C. on 08.09.95. In view of the fact that Railways have already assured him that he will be considered for promotion when found fit , he cannot have a grouse about the earlier promotion of Shri S.K. Kad, who had already been promoted to the rank of Executive Engineer on 01.04.94 and soon thereafter the applicant was found unfit for promotion. The O.A. has therefore, no merit and it is rejected. No order as to costs.

*Chethan*

Member (A)

/M.M./

*Vice Chairman*